

30 July 2020

Sydney Western City Planning Panel
Via email: enquiry@planningpanels.nsw.gov.au

Attention: Ms Sharon Edwards, Planning Panels Secretariat

RE: 2016SYW161 – Camden City Council – DA866/2016/1 - 202 Byron Road, Leppington

This letter has been prepared by Ethos Urban on behalf of NLI Byron Development Pty Ltd, the Applicant and land owner of 202 Byron Road, Leppington. DA/866/2016/1 is to be considered at the Sydney Western City Planning Panel (the Panel) meeting scheduled for 3 August 2020.

NLI Byron **SUPPORT** the Camden City Council's recommendation to approve the DA. However, NLI Byron requests that the Panel amend the Recommended Conditions of Consent prepared by Council with regard to the five deferred commencement conditions (Schedule A - Conditions 1a-1e). It is NLI Byron's view that, while the matters addressed by the conditions are important to the construction and operation of the development, they are not matters that require resolution prior to the consent becoming active. The recommended deferred commencement conditions are unreasonable and unnecessary, and the issues addressed by the conditions can be satisfactorily resolved through actions that can be undertaken by NLI Byron prior to the issue of a construction certificate. In summary:

- The NSW State Government has established that the development and construction industry is fundamental to the State's post Covid-19 economic recovery. The project is significant and includes the dedication of 6,203sqm of land for future public space. The developer's ability to finance the project and contribute to economic growth and recovery is delayed until the consent is operative.
- There are a number of conditions in the operative consent that require amendments to plans or further work prior to the issue of a construction certificate and/or subdivision works certificate (e.g. Schedule B - NSW DPI Water's general terms of approval; Schedule B – Section 1.0, Condition 3 "Modified Documents and Plans"; Schedule B – Section 2.0, Condition 1 "Controlled Activity Approval" and Condition 18 "Civil Engineering Plans"). The work required to satisfy these conditions cannot commence until the deferred commencement conditions are satisfied which will unnecessarily delay the development. There is no material reason why the deferred commencement conditions cannot be relocated to the operative consent and be addressed concurrently with other conditions that require satisfaction prior to construction certificate and/or subdivision works certificate.
- The proposed deferred commencement conditions relate to matters that are only of importance following the commencement of construction of the development. The matters relate to the creation of easements for support and drainage, and the development will not require these easements, or result in any impacts to adjoining properties, until those specific aspects of the development are constructed.
- Relocating deferred commencement conditions 1 c) – 1 e) to the operative consent provides certainty to both the developer and the affected neighbours that the required easements (or the alternative solutions as proposed by the amendments below) serve a real purpose under the terms of the consent.
- An active consent also provides the investment certainty that NLI Byron requires, in the current economic environment, to proceed with confidence to the next stages of delivery of the project.

The deferred commencement conditions requested to be amended are listed in **Table 1** below along with NLI Byron's proposed amendments and justification.

Table 1: Recommended Deferred Commencement Conditions

Recommended Deferred Commencement Conditions	Proposed Amendments
1. a) Roundabout on Byron Road Long sections. The roundabout at Ch. 1183 on Byron Road (CH. 40.298 at Town Centre Road) shall be indicated upon the long sections for Byron Road (Drawing 132).	NLI Byron and ADG (project civil engineers) have reviewed conditions 1a and 1b and can provide the requested section drawings. However, the proposed drawing updates are relatively minor in the circumstances when considering the comparable requirements of Schedule 1.0, Condition 3 "Modified Documents and Plan" and Schedule B – Section 2.0 Condition 18 "Civil Engineering Plans". Therefore, it is NLI Byron's view that it is reasonable for the drawings to be provided prior to the issue of the relevant construction certificate rather than prior to consent becoming operative.
1. b) Town Centre Road interim works in Cross-sections. Cross sections indicating interim and future works along the length of the entire Town Centre Road shall be provided.	<p>NLI Byron request that the Conditions 1.a) and 1.b) are relocated to Schedule B Section 1.0, Condition 3 "Modified Documents and Plans" as follows:</p> <p><i>(3) Modified Documents and Plans - The development must be modified as follows:</i></p> <p><i>a) A suitable road vertical curve that is in accordance with relevant Austroads Guide to Road Design requirements must be proposed at the interim intersection of Road 2 and the existing Byron Road levels.</i></p> <p><i>b) The Landscape plans must be designed to match finished floor levels and ramp grades of the approved architectural and engineering plans specified in the approved plan table subject to condition 1.0(2).</i></p> <p><i>c) The south eastern road verge and kerb intersecting with proposed roads No. 3 and No.4 must be amended in the interim case to provide for two way traffic flow within Road No. 4.</i></p> <p><i>d) High sill windows or fix obscure glazing with a minimum sill height of 1.5m above finished floor level must be provided to all northern windows of unit E-U305.</i></p> <p><i>e) The roundabout at Ch. 1183 on Byron Road (CH. 40.298 at Town Centre Road) shall be indicated upon the roadworks longitudinal sections for Byron Road (Drawing 132).</i></p> <p><i>f) Cross sections indicating interim and future works along the length of the entire Town Centre Road shall be provided.</i></p> <p><i>Amended plans or documentation demonstrating compliance must be provided to the certifier and Council prior to the issue of a Construction Certificate / Subdivision Works Certificate (whichever occurs first).</i></p>
1.c) An Easement to Drain Water over neighbouring Lot: 5; of DP 536005 must be registered with NSW Land Registry Services to allow the free discharge of stormwater from the development site.	<p>NLI Byron acknowledges that this drainage easement must be obtained until such time as the regional basin is developed within the north eastern portion of the site on land that will be dedicated to Council.</p> <p>There is no practical reason why the registration of the easement should occur prior to the consent becoming operative. Recommending that the condition is a deferred commencement condition is inconsistent with the approach taken by the Council and the Panel for NLI Byron's previous Panel approval at 76 Rickard Road, Leppington (DA/2016/422/1) in 2017.</p> <p>Condition 9 under Section 2.0 of DA/2016/422/1 required the following (emphasis added):</p> <p><i>(9) Easement Creation - Drainage easements shall be obtained over downstream properties where drains for the disposal of stormwater are located across lands owned by others (and where the drainage is not within a water</i></p>

	<p>course). The width of the drainage easement/s shall be in accordance with Council's Engineering Specifications. <u>Details demonstrating compliance shall be provided to Council with the Construction Certificate application.</u></p> <p><u>The easement shall be registered with the NSW Land & Property Information prior to the issue of an Occupation Certificate.</u></p> <p>The relevant extract from the consent is provided as Attachment A. Condition 9 was drafted by Council and approved by the Panel. As such, it establishes the precedent that both Council and the Panel consider it is unnecessary to utilise deferred commencement conditions to manage easements in Leppington. The approach taken for DA/2016/422/1 also acknowledges that the detailed design of any drainage infrastructure, and therefore the specific spatial requirements for the easement, will be determined through detailed design post-consent and to inform the construction certificate.</p> <p>To provide further confidence that the Applicant can obtain the required easement, the relevant adjoining landowner's consent has been provided at Attachment B.</p> <p>It is requested that draft condition 1. c) is relocated to become Condition 1 under Schedule B Section 2.0 "Prior to Issue of a Construction Certificate and Subdivision Works Certificate" and drafted as follows:</p> <p>(1) Easement creation – Prior to the issue of a construction certificate the following must be complied with to Council's satisfaction:</p> <p>a) An Easement to Drain Water over neighbouring Lot: 5; of DP 536005 must be registered with NSW Land Registry Services to allow the free discharge of stormwater from the development site.</p>
1.d) An Easement for Batter and Support must be registered with NSW Land Registry Services over Lot: 58B; DP: 8979 to support proposed Road 4.	<p>NLI Byron and ADG have reviewed Condition 1. d) and the proposed Road 4 level along the southern property boundary. In response ADG have provided analysis that demonstrates an easement is unnecessary to support Road 4 (refer Attachment C).</p> <p>Therefore, NLI Byron requests that condition 1.d) is deleted.</p> <p>If the Panel do not resolve to delete condition 1.d), NLI Byron request that the condition is amended and relocated to become Condition 1 under Schedule B Section 2.0 "Prior to Issue of a Construction Certificate and Subdivision Works Certificate" and drafted as follows:</p> <p>(1) Easement creation – Prior to the issue of a construction certificate the following must be complied with to Council's satisfaction:</p> <p>a) An Easement to Drain Water over neighbouring Lot: 5; of DP 536005 must be registered with NSW Land Registry Services to allow the free discharge of stormwater from the development site.</p> <p>b) An Easement for Batter and Support must be registered with NSW Land Registry Services over Lot: 58B; DP: 8979 to support proposed Road 4 unless alternative arrangements to the terms of the easements have been agreed with Council and written evidence of Council's satisfaction has been submitted to the certifier prior to the issue of the relevant construction certificate.</p>
1.e) An Easement for Maintenance and Support and a supporting Positive Covenant must be registered with NSW Land Registry Services and must be provided within Lot 3; DP 1202350 to prevent the owner of the lot undermining the retaining wall that is	<p>NLI Byron and ADG have reviewed Condition 1.e) and the proposed Town Centre road level along the northern property boundary. Attachment C demonstrates that there are alternative engineering solutions that do not rely on obtaining an easement across Lot 3 DP 1202350.</p> <p>Therefore, NLI Byron request that the condition is amended and relocated to</p>

proposed to be constructed on / within close proximity to the boundary of the lot.

become Condition 1 under Schedule B Section 2.0 "Prior to Issue of a Construction Certificate and Subdivision Works Certificate" and drafted as follows:

- (1) *Easement creation – Prior to the issue of a construction certificate the following must be complied with to Council's satisfaction:*
 - a) *An Easement to Drain Water over neighbouring Lot: 5; of DP 536005 must be registered with NSW Land Registry Services to allow the free discharge of stormwater from the development site.*
 - b) *An Easement for Batter and Support must be registered with NSW Land Registry Services over Lot: 58B; DP: 8979 to support proposed Road 4 unless alternative arrangements to the terms of the easements have been agreed with Council and written evidence of Council's satisfaction has been submitted to the certifier prior to the issue of the relevant construction certificate.*
 - c) ***An Easement for Maintenance and Support and a supporting Positive Covenant must be registered with NSW Land Registry Services and must be provided within Lot 3; DP 1202350 to prevent the owner of the lot undermining the retaining wall that is proposed to be constructed on / within close proximity to the boundary of the lot, unless alternative arrangements to the terms of the easements have been agreed with Council and written evidence of Council's satisfaction has been submitted to the certifier prior to the issue of the relevant construction certificate.***

On behalf of NLI Byron we appreciate the opportunity to make this submission to the Panel and trust that information provided above and attached will assist the Panel with the determination of DA866/2016/1 at 202 Byron Road, Leppington. Please do not hesitate to contact the undersigned prior to the meeting if further information is required.

Yours sincerely,



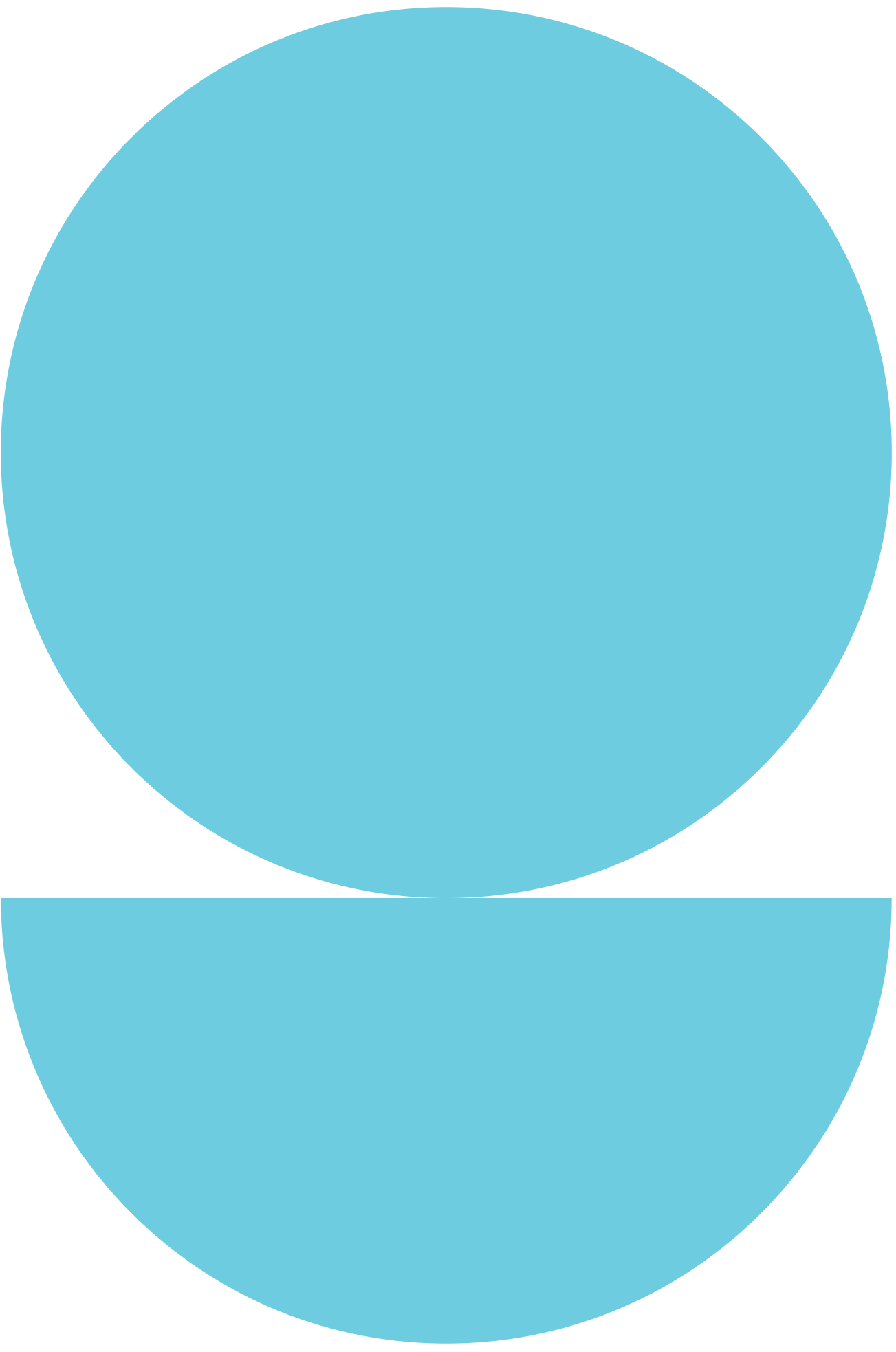
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CC: Mr Adam Sampson, Executive Planner, Camden Council
Mr Faraj Gibbs, Infrastructure Planning Engineer, Camden Council
Mr Wesley Williams, Land Development Engineer, Camden Council

ATTACHMENT A



2.0 – Prior to Issue of a Construction Certificate

The following conditions of consent shall be complied with prior to the issue of a Construction Certificate.

- (1) **Performance Bond** - The applicant is to lodge a bond with Council to provide security for works undertaken within the existing public domain in accordance with Council's Development Infrastructure Bonds Policy.

Note – An administration fee is payable upon the lodgement of a bond with Council.

- (2) **Hoarding Application** - A hoarding application for the erection of a class A (fence type) or class B (overhead type) hoarding along the street frontage complying with WorkCover requirements shall be provided to Council for approval with a footpath occupancy fee based on the area of footpath to be occupied.

A Public Risk Insurance Policy with a minimum cover of \$20 million in relation to the occupation of and works within Council's road reserve, for the full duration of the proposed works, shall be obtained with a copy also provided to the Roads Authority. The Policy is to note Council as an interested party and nominate the location of works. Hoardings shall not be erected until written approval has been received from Council. The copy of the Public Risk Insurance Policy is to be provided to the Roads Authority.

- (3) **Structural Engineer's Details** - The piers/slabs/footings/structural elements shall be designed and certified by a suitably qualified structural engineer and shall take into consideration the recommendations of any geotechnical report applicable to the site. A statement to that effect shall be provided to the Certifying Authority.

- (4) **Driveway Gradients and Design** - The design of all driveways shall comply with AS 2890.1-2004 'Off street car parking' and:

- a) the driveway shall comply with Council's Access Driveway Specifications; <http://www.camden.nsw.gov.au/assets/pdf/Development/Residential-Vehicle-Crossing-Specification.pdf>
- b) the driveway shall be at least 1m from any street tree, stormwater pit or service infrastructure;
- c) the level for the driveway across the footpath area shall achieve a gradient of 4%;

- d) a Driveway Crossing Approval (PRA) must be obtained prior to the issue of a Construction Certificate; and
- e) the driveways shall comply with AS2890.2:2002 in relation to changes in grades at the top of the basement ramps.

Details demonstrating compliance shall be provided to the Certifying Authority.

(5) **Retaining Walls** - The following restrictions apply to any retaining wall erected within the allotment boundaries:

- a) retaining walls shall be constructed a minimum of 300mm from any property boundary to ensure all associated drainage and backfill remain wholly within the subject property;
- b) adequate provisions shall be made for surface and subsurface drainage of retaining walls and all water collected shall be diverted to, and connected to, a stormwater disposal system within the property boundaries;
- c) retaining walls shall not be erected within drainage easements;
- d) retaining walls shall not be erected in any other easement present on the land without the approval of the relevant authority benefited.

Details demonstrating compliance shall be provided to the Certifying Authority.

(6) **Civil Engineering Plans** - Civil engineering plans indicating drainage, roads, accessways, earthworks, pavement design, details of line-marking, traffic management, water quality and quantity facilities including stormwater detention and disposal, shall be prepared in accordance with the approved plans and Council's Engineering Design and Construction Specifications. Details demonstrating compliance shall be provided to the Certifying Authority with the Construction Certificate application.

A stormwater plan is to be submitted to the Certifying Authority prior to the augmentation of the existing drainage system to accommodate drainage from the approved development and to protect other property to the satisfaction of the Certifying Authority.

Note – Under the *Roads Act 1993*, only the Roads Authority can approve commencement of works within an existing road reserve.

(7) **Turning Facilities** - Turning facilities shall be provided at all dead end roads. All turning and manoeuvring facilities, including turning heads, cul-de-sac, etc., shall be designed in accordance with Council's Engineering Specifications. Turning

heads must be provided at the end of all dead end roads for subdivisions that are progressively developed in a staged manner.

Details demonstrating compliance shall be provided to the Certifying Authority.

- (8) **Retaining Walls** - All retaining walls shall be designed and certified by a suitably qualified structural engineer, in accordance with Council's Engineering Specifications.

- (9) **Easement Creation** - Drainage easements shall be obtained over downstream properties where drains for the disposal of stormwater are located across lands owned by others (and where the drainage is not within a water course). The width of the drainage easement/s shall be in accordance with Council's Engineering Specifications. Details demonstrating compliance shall be provided to Council with the Construction Certificate application.

The easement shall be registered with the NSW Land & Property Information prior to the issue of an Occupation Certificate.

- (10) **Stormwater Detention and Water Quality** - An on-site detention system and water quality system shall be provided for the site and designed in accordance with Council's Engineering Specifications.

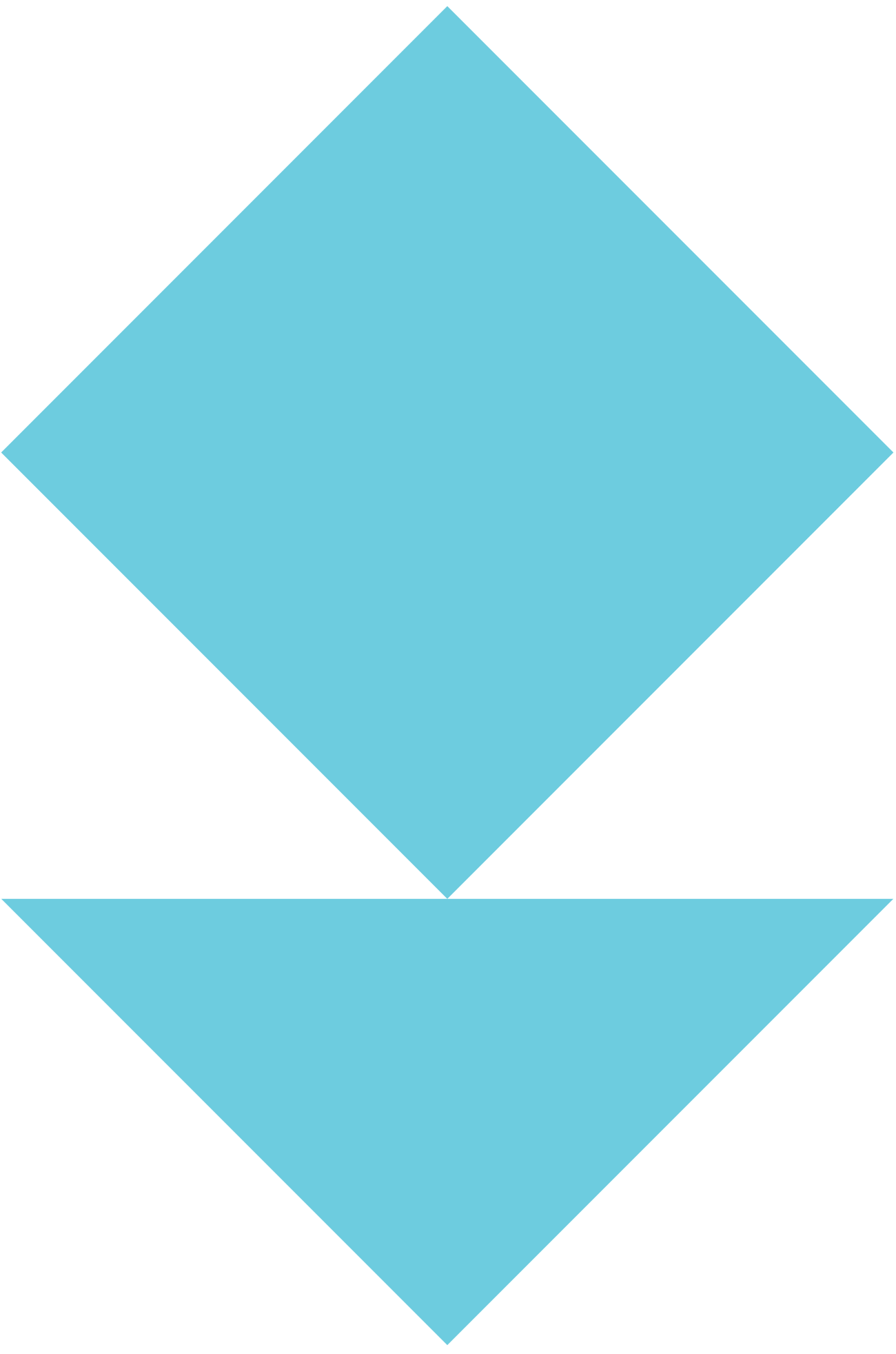
Where a Construction Certificate is required by this development consent, a detailed on-site detention and water quality report reflecting the Construction Certificate plans shall be provided to the Certifying Authority with the Construction Certificate application.

Where a Construction Certificate is not required by this development consent, a detailed on-site detention and water quality report reflecting the approved development application plans and Council's Engineering Specifications shall be provided to Council prior to works commencing.

- (11) **Soil, Erosion, Sediment and Water Management** - An erosion and sediment control plan shall be prepared in accordance with Council's Engineering Specifications. Details demonstrating compliance shall be provided to the Certifying Authority with the Construction Certificate application.

- (12) **Garbage Rooms** - Plans showing the location and details of garbage rooms and rooms used for the washing and storage of garbage receptacles shall be provided to the Certifying Authority for approval. Garbage rooms are to be constructed of solid material, cement rendered and trowelled to a smooth even surface. Floors are to be impervious, coved, graded and drained to an appropriate floor waste connection. Walls are to be smooth impervious surfaces. Ventilation, pest proofing and a hose tap must be provided.

ATTACHMENT B



Mr M and Mrs R Antonijevic
71 Cowpasture Road
Leppington NSW 2179

The General Manager
Camden Council
70 Central Avenue
Oran Park NSW 2570

**RE: Owners Consent for a temporary drainage channel from 202 Byron Rd across
part of 71 Cowpasture Road Leppington**

Dear Sir / Madam,

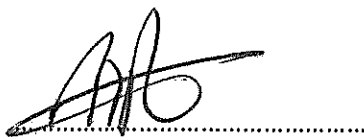
Please be advised that as the registered owners of 71 Cowpasture Road Leppington Road Leppington, that we, Miroslav Antonijevic and Ruza Antonijevic hereby give owner's consent for Byron NLI Pty Ltd to install a temporary drainage channel across part of our property to convey stormwater runoff from 202 Byron Rd into Bonds Creek.

The location and dimension of the temporary drainage channel is detailed on drawing entitled *Proposed Temporary Channel Layout Plan* Numbered SK 103 prepared by ADG Pty Ltd attached to this letter.

The channel would only become necessary and installed in the event that the construction of the development of 202 Byron, (DA 866.1/2016), commences before Council completes the extension of Byron Road and the associated drainage to Bonds Creek to which 202 Byron Road will be connected.

The continuation of this consent will become a condition in the sales contract with any purchaser if in the future we sell No. 71 Cowpasture Rd.

Yours faithfully



Mr Miroslav Antonovitch

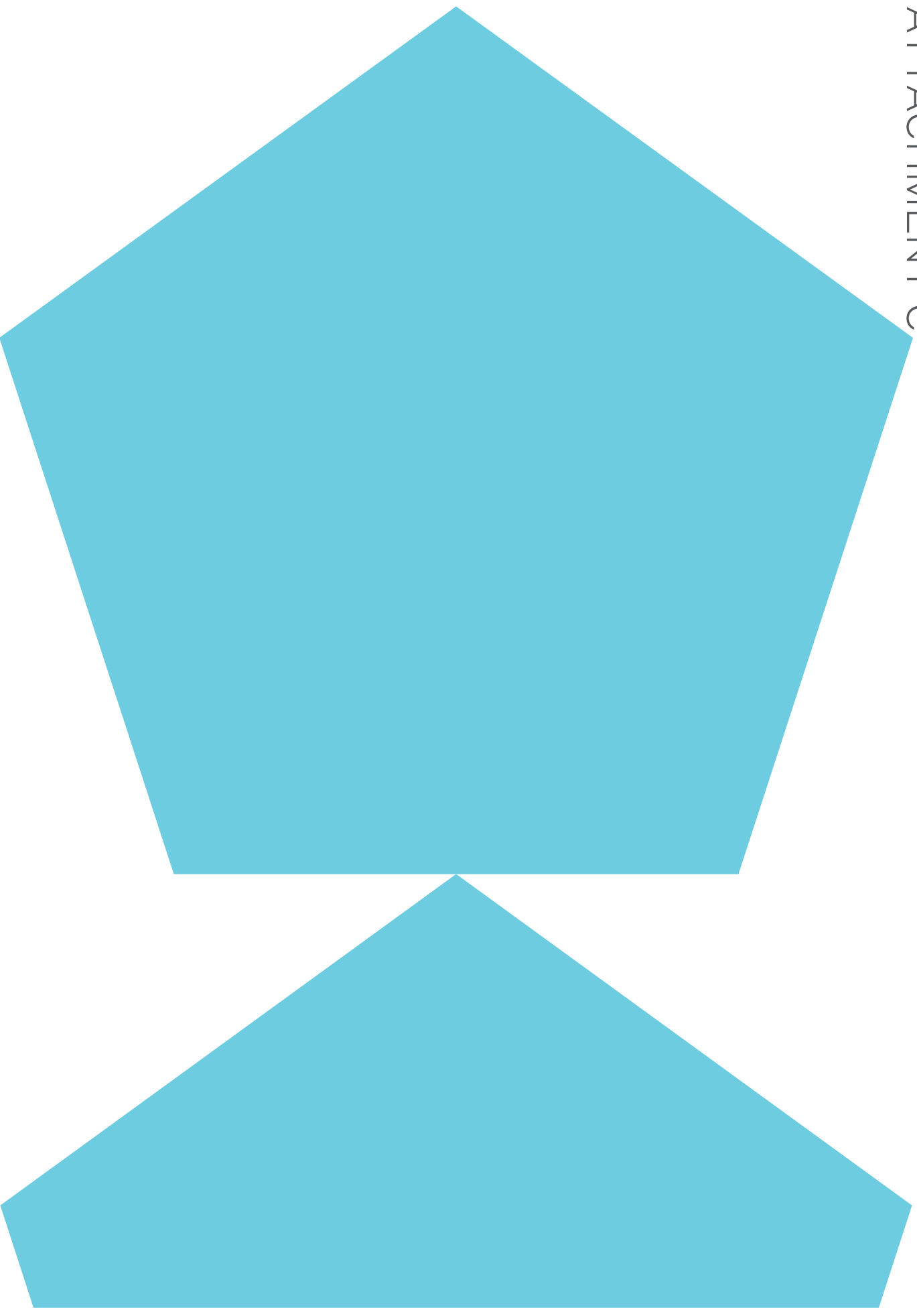
3 May 2018



Mrs Ruza Antonovitch

3 May 2018





Sydney Western City Planning Panel

320 Pitt Street,

Sydney NSW 2000

Attention: Mellissa Felipe, Project Officer - Planning Panels Secretariat

18540 / C L007

30 July 2020

ST / MVI

Dear Sir/Madam,

RE: 202 BYRON ROAD, LEPPINGTON

CAMDEN CITY COUNCIL - DA2016/866/1 – DEFERRED COMMENCEMENT CONSENT

CIVIL ENGINEERING RESPONSE

In response to the deferred commencement consent provided by Council, this letter has been prepared by ADG Engineers (Aust) Pty Ltd to discuss two specific deferred commencement conditions and the civil engineering solutions associated. We act on behalf of NLI Byron Development Pty Ltd, being the applicant of DA2016/866/1 at the above-mentioned address.

Response to deferred commencement conditions:

Item Number	Deferred Commencement Condition	Civil Engineering Response
1(d)	An Easement for Batter and Support must be registered with NSW Land Registry Services over Lot: 58B; DP: 8979 to support proposed Road 4.	<p>The Road 4 levels have been set at existing ground level along the boundary with Lot 58B DP 8979. This means that there will be no batter extending into the adjacent site.</p> <p>The road has been designed for precinct requirements. There may be a requirement for localised tie in batter as required to adjust for the minor surface defects along the boundary.</p> <p>No easement would be required as the proponent will be conditioned for road widening to tie into this design at the time that a development application is lodged over the adjacent property. Refer to ADG Sketch 18540 SK101-[01] for further information.</p>

1(e)	An Easement for Maintenance and Support and a supporting Positive Covenant must be registered with NSW Land Registry Services and must be provided within Lot 3; DP 1202350 to prevent the owner of the lot undermining the retaining wall that is proposed to be constructed on / within close proximity to the boundary of the lot.	<p>The concept design incorporates a standard verge profile for the future town centre road per the precinct requirements. Due to a vertical change in elevation along the boundary of the road reserve and Lot 3 DP 1202350, a retaining wall is shown to achieve the height difference and support the verge (refer ADG Drawing C137).</p> <p>The retaining wall can be designed to suit the Council comments and be supported within the proposed Town Centre Road Reserve. Should this design not provide relief for the requirement of the easement then we propose alternative civil design solutions that are attached with this letter. Refer to ADG Sketch 18540 SK100-[01] for further information.</p>
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If you have any questions, please don't hesitate to contact me.

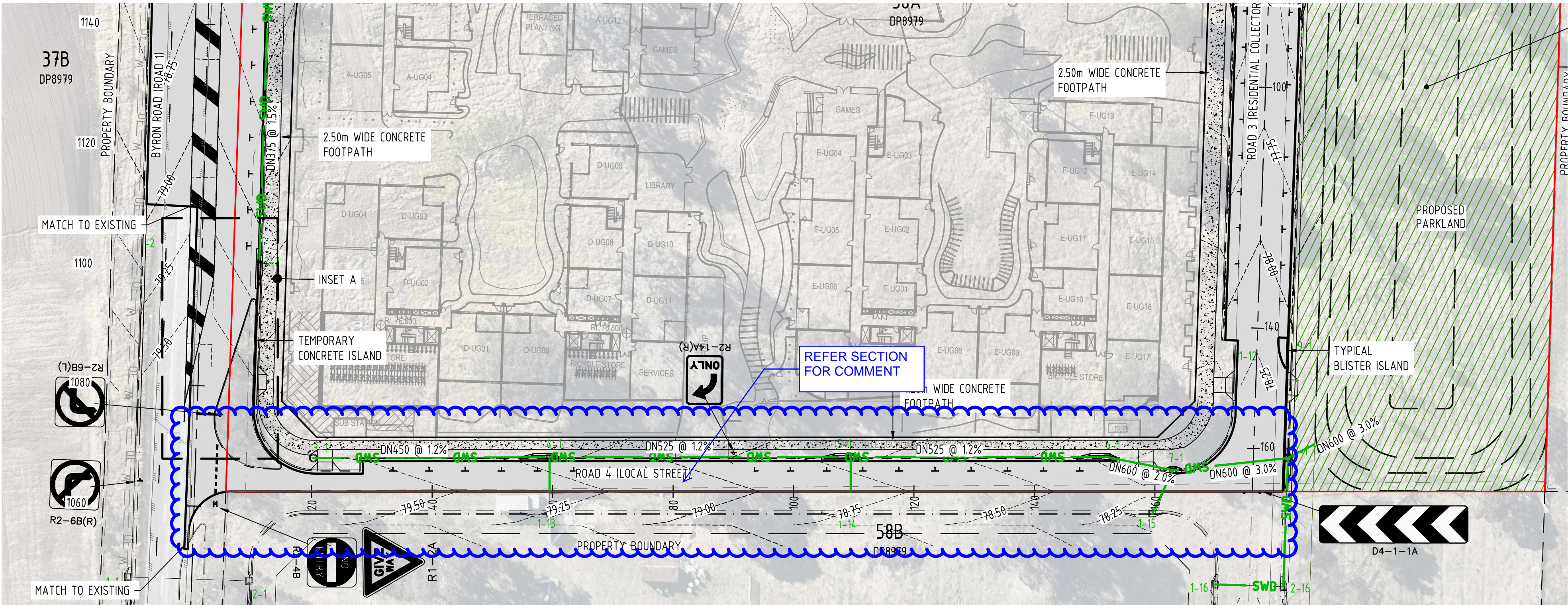
Yours sincerely

ADG ENGINEERS (AUST) PTY LTD

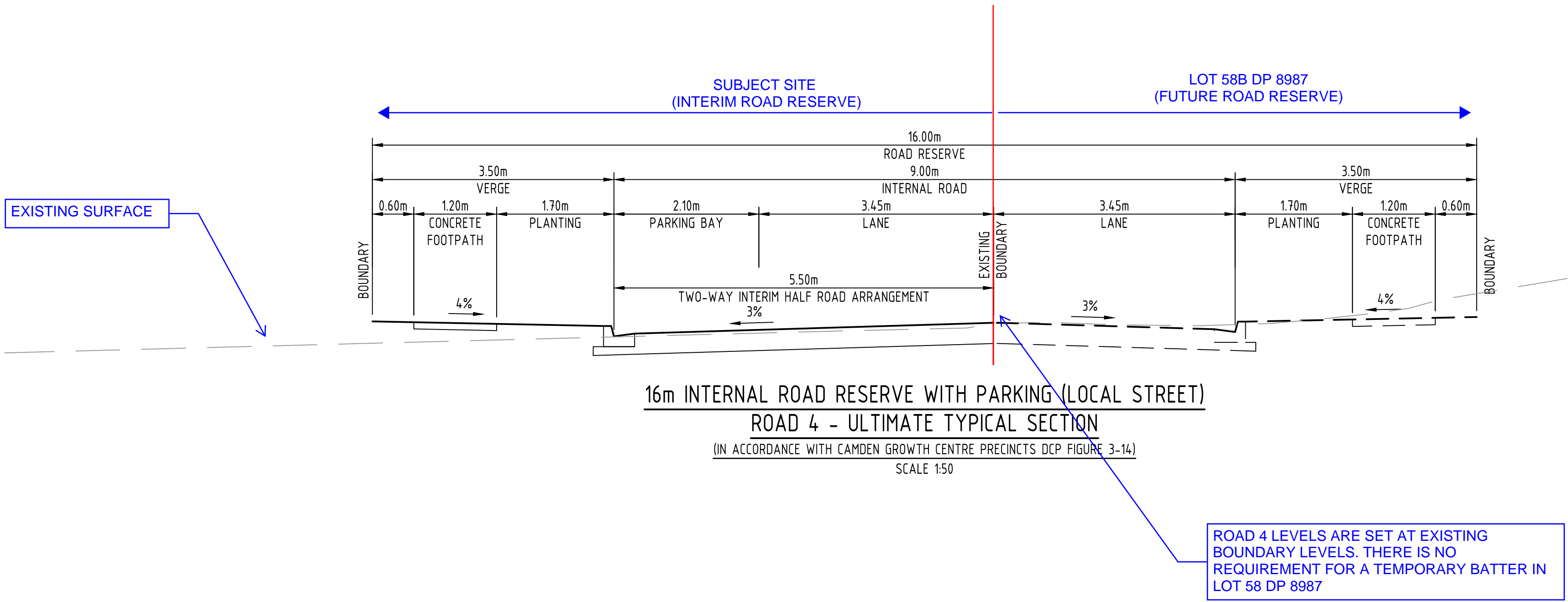


STUART THIENPONT

Civil Engineer



ROAD 4 - ULTIMATE CASE LAYOUT



16m INTERNAL ROAD RESERVE WITH PARKING (LOCAL STREET)
ROAD 4 - ULTIMATE TYPICAL SECTION
(IN ACCORDANCE WITH CAMDEN GROWTH CENTRE PRECINCTS DCP FIGURE 3-14)
SCALE 1:50

			All intellectual property rights (including, without limitation, all copyright and design rights) subsisting in the drawings and related information belongs to ADG Engineers (Aust) Pty Ltd ("ADG").	 Sydney Office Suite 302, Level 3, 181 Miller Street Northern Sydney, New South Wales 2060, Australia T 1300 657 402 F +617 3871 226 E info@adgce.com W www.adgce.com BRISBANE / SYDNEY MELBOURNE / GOLD COAST / SUNSHINE COAST / DARWIN / PERTH	Client NLI BYRON DEVELOPMENT P/L Project Name MULTI RESIDENTIAL DEVELOPMENT 202 BYRON ROAD LEPPINGTON	Discipline CIVIL Designed By ST Project No. 18540	Checked By MVI Drawn By ACG	Status PRELIM Approved By MVI Scale 1:100 (at A1)	Title ROAD 4 BATTER CONDITIONS Drawing No. SK101	Revision 01
01	29.07.20	ISSUED FOR INFORMATION	ADG accepts no responsibility or liability for any loss or damage caused to the recipient or any third party through use of the drawings or related information in any way.				The concepts and information contained in this document are the copyright of ADG Engineers (Aust) Pty Ltd. Use or copying of the document in whole or in part without the written permission of ADG Engineers (Aust) Pty Ltd constitutes an infringement of copyright. Do not scale drawings, if in doubt, ask!			
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