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DARLING PARK, 201 SUSSEX ST
SYDNEY NSW 2000**

URBIS.COM.AU
Urbis Pty Ltd
ABN 50 105 256 228

22 September 2017

Deborah Dearing
District Commissioner - North
Chair, Sydney North Planning Panel
GPO Box 39
Sydney NSW 2001

Dear Deborah ,

2017SNH012 – 25-27 EPPING ROAD, MACQUARIE PARK (LDA2016/0395)

We refer to the Sydney North Planning Panel (SNPP) decision to defer the determination of the abovementioned development application at the meeting of 9 August 2017. A supplementary assessment has been prepared by City of Ryde Council (Council) in response to the SNPP deferral notice, for a meeting of the SNPP on the 27 September 2017.

Council has issued draft conditions of consent that include a deferred commencement condition to require a VPA be entered that transfers to Greenland the stratum of land beneath a portion of Jarvis Circuit to enable the construction of a vehicle access tunnel between Lots 104 and 105 and works in kind by Greenland to the value of \$900,000 for the construction and fitout for the Community Facility on Lot 104 in DP1224238.

Draft Condition 1(a) states that:

DEFERRED COMMENCEMENT

PART 1 - The following are the Deferred Commencement condition(s) imposed pursuant to Section 80(3) of the *Environmental Planning & Assessment Act 1979*.

1. Pursuant to Section 80(3) of the Environmental Planning and Assessment Act 1979, the Applicant must satisfy the following deferred commencement conditions of consent prior to this development consent becoming operative:
 - (a) The Applicant is to enter into a Planning Agreement (as defined pursuant to Section 93F of the *Environmental Planning and Assessment Act 1979*) with Council for the delivery of the public benefits as identified within the letter of offer from Urbis on behalf of Lachlan's Line Macquarie Park Development Pty Ltd, dated 24 February 2017 and in accordance with the terms accepted by Council at its ordinary meeting 26 April 2017, No. 3/17 in respect of the offer.

Council has advised that for Greenland to satisfy the deferred commencement condition 1(a) to enter the VPA with Council, the VPA must first be exhibited.

Greenland are in advanced discussions with Council to draft the VPA. Notwithstanding this, the exhibition and execution by Council of the VPA will unnecessarily delay the commencement of construction works of the first stage of the development on Lot 104.

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The construction of a vehicle access tunnel between Lots 104 and 105 beneath Jarvis Circuit is not part of the proposed first stage of construction and relates to a future stage of construction, associated with the development of Lot 105. Therefore, there is no risk to Council.

The development application was submitted in August 2016, and significant time has past since Greenland made the VPA Offer on 24 February 2017 and the Council meeting on 9 May 2017, where Council resolved to accept the letter of offer. Construction is ready to commence and further delays will increase already substantial holding costs.

Greenland has offered the Council a bank guarantee in the amount of \$900,000 as security for the delivery of public benefits outlined in the VPA. This amount reflects the value of the works in kind offered to the Council as part of the VPA.

We respectfully request the following changes to the draft conditions of consent:

Deferred commencement condition 1(a) be deleted, and a new general condition 2 be inserted as follows:

2. Voluntary Planning Agreement

- a) Prior to the issue of a Construction Certificate for the Community Facility Work (as defined in the North Ryde M2 Site Planning Agreement referred to in condition 3), a Planning Agreement (as defined pursuant to Section 93F of the *Environmental Planning and Assessment Act 1979*) must be entered with Council for the delivery of the public benefits identified within the letter of offer from Urbis on behalf of Lachlan's Line Macquarie Park Development Pty Ltd dated 24 February 2017, and in accordance with the terms accepted by Council at its ordinary meeting 26 April 2017, No. 3/17 in respect of the offer.
- b) Pursuant to Section 80A(1) of the *Environmental Planning and Assessment Act 1979*, the Planning Agreement the subject of condition 2(a), must be lodged for registration on the title of the property within 1 month of signing the Planning Agreement.
- c) Prior to Council executing the VPA, a bond in the amount of \$900,000 by way of cash deposit or unconditional bank guarantee in favour of Council must be provided to the Council to secure the public benefits to be delivered in accordance with the Planning Agreement identified in condition 2(a). The bond must be returned by the Council upon practical completion of the public benefits identified within the letter of offer from Urbis on behalf of Lachlan's Line Macquarie Park Development Pty Ltd dated 24 February 2017, and in accordance with the terms accepted by Council at its ordinary meeting 26 April 2017, No. 3/17 in respect of the offer.

Legal advice from Maddocks Lawyers has been obtained that confirms it is lawful to impose a condition that requires a bank guarantee (or other security) to secure the works in kind offered by Greenland which are proposed to be included in a VPA which is yet to be drafted, exhibited or executed because:

- *It is expressly authorised by section 80A(6) of the Environment Planning & Assessment Act 1979 (EP&A Act); and*

- *The security offered by Greenland is consistent with the Council resolution dated 9 May 2017.*

Maddocks further advise that:

the Council has already accepted Greenland's offer to enter into a VPA, we see no reason why the security could not be provided in advance of the actual VPA being drafted, exhibited and entered.

I would also like to confirm that myself and Mr Steve King (Solar Access Consultant) will be attending the Panel meeting, should the Panel members have any questions in relation to the Application or solar access report. For clarification, the solar access report has addressed the Panels request for solar access at the Equinox. Please refer to Solar Access Report Item 1.6 page 3 "Therefore, in comparing the views from the sun on June 21 and September/March 21, I provide instead a detailed qualitative commentary on the significantly increased solar access at the equinox– particularly to communal open space between the buildings. In my view, the Panel can form an adequate informed assessment, if it wishes to exercise its discretion on the basis of that commentary".

Thank you for consideration of the Applicant's request to amend condition 1(a) of the draft conditions of consent.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Murray Donaldson".

Murray Donaldson
Director

cc. Liz Coad, Acting Director, City of Ryde, LCoad@cityofryde.nsw.gov.au

Sandra Bailey, Major Development Assessments, SBailey@cityofryde.nsw.gov.au

Kang Xue, Assistant General Manager, Greenland Australia, kang.xue@glgroup.com.au

'Simon Blount, Senior Development Manager, Greenland Australia simon.blount@glgroup.com.au

Attachment A - Legal Advice from Maddocks Lawyers