

26 November 2020

17056

Mr Peter Debnam (Chair)
Sydney North Planning Panel
Planning Secretariat
12 Darcy Street
Parramatta NSW 2150

Attn: Ms Kim Holt (Project Officer – Planning Panels Secretariat)

Dear Mr Debnam,

**RE: Concept Application 2018SNH022/LDA2018/0172
45-61 Waterloo Road, Macquarie Park**

We write on behalf of the Applicant, John Holland Macquarie Park Land Custodian Pty Ltd (JHG), in respect of development application LDA2018/0172 which relates to 45-61 Waterloo Road, Macquarie Park (the Site). Specifically, we write in respect of two draft conditions of consent that Ryde City Council (Council) have proposed, being Conditions 13 and 25(c).

JHG opposes the imposition of these Conditions in their current form. The reasons for this are set out below. This letter also clarifies aspects of the deep soil components of the development. We look forward to discussing these issues further with the Panel at our briefing on 2 December 2020.

1.0 Executive Summary

This letter addresses three issues identified in Council's Assessment Report.

The first and most critical of these is proposed Condition 13, which would oblige JHG to design and construct a signalised intersection at Road 16 and Waterloo Road. In response, JHG submits:

- 1) Transport for NSW (TfNSW) have confirmed that the current Left In Left Out arrangements from the Site are appropriate to manage the traffic impacts expected to be generated by the proposed development. Therefore, a signalised intersection enabling Right Out movements from Road 16 is not required;
- 2) Any benefits of an additional Right Out movement from Road 16 would be offset by the creation of Road 1 parallel to Waterloo Road to the north of the Site;
- 3) Additional measures are required to accommodate pedestrians travelling between Macquarie Park Metro Station, the new public park and numerous developments to the north of Waterloo Road, including the JHG development;
- 4) Any pedestrian-only crossing should be situated between Roads 14 and 16. This design solution is supported by TfNSW, who has suggested that this measure would have the least impact on the surrounding road network and bus travel times; and
- 5) Any contributions to a measure to cater for increased pedestrian demand should be commensurate with the needs generated by the JHG development.

The second issue relates to Condition 25(c) requiring public domain upgrades along Waterloo Road in front of the proposed new public park. Like the proposal to construct a signalised intersection at Road 16, for the reasons set out below, this contribution item is not sufficiently related to the demands generated by the proposed development and should not be imposed as a condition of consent.

The third issue, related to deep soil planting, is not one which Council suggests should be a reason to refuse the development application but requires some clarification for the benefit of the Panel.

2.0 Draft Condition 13 – Road 16 Signalised Intersection

Proposed Condition 13 would require JHG to design and seek approval from both Council and TfNSW, formerly Roads and Maritime Services (RMS), for a new signalised intersection for vehicles and pedestrians at the intersection of Road 16 and Waterloo Road prior to lodging a development application for Stage 4 of its concept development. JHG would then be required to obtain approval for the intersection and carry out the subsequent construction works, at the full cost of JHG.

In the context of the public benefits JHG has already delivered and others that it has committed to deliver, JHG considers this requirement to be unreasonable, onerous and not sufficiently related to the needs generated by the proposed development to justify the imposition of this condition of consent. This is set out in further detail below. Critically, it is important to understand difference between the traffic management aspects of the proposed intersection (for which there is no justification) and the pedestrian management aspects, which are more appropriately managed by proportionate contributions to a mid-block pedestrian intersection between Roads 14 and 16.

Left In Left Out supported by TfNSW

- a) On 5 November 2018, TfNSW wrote to Council (**Attachment A**) advising that it would not support the installation of a signalised intersection at Road 14 due to the close proximity of the proposed intersection to the existing intersection at Lane Cove Road. In the same letter TfNSW requested that JHG provide further modelling showing the impacts of Left In Left Out movements from Roads 14 and 16 and that further investigation was to be undertaken to provide a pedestrian crossing (as either an underpass or bridge) over Waterloo Road.
- b) JHG provided the requested modelling which demonstrated that the Left In Left Out movements from the Site was adequate, concluded that an underpass is not feasible because of the Metro corridor and noted that a bridge was not supported by Council.
- c) TfNSW later advised Council that “a mid-block pedestrian crossing is considered to have the least impact on the State road network and bus travel times” (Council Assessment Report, page 25).
- d) Subsequently, in its correspondence dated 19 August 2020 (**Attachment B**), TfNSW provided its support for the operation of Left In Left Out movements only from Roads 14 and 16.
- e) TfNSW has never required the delivery of a signalised intersection at Road 16 as a consequence of the JHG development.
- f) JHG has never sought approval for an intersection at Road 16.

Council application for signalisation at Road 16

- g) Despite TfNSW's support for Left In Left Out movements from the Site and stated preference for a mid-block pedestrian crossing, Council initiated a proposal to construct a signalised intersection to facilitate Left In Right Out movements from Road 16. Page 5 of the Council Assessment Report suggests that this was a joint application by Council and JHG. This is not correct. Only Council submitted additional information to TfNSW seeking approval for the installation of a signalised intersection at Road 16. JHG does not support this proposal.
- h) Without consultation with JHG, Council presented its proposal to TfNSW. In response, TfNSW indicated on 18 November 2020 (**Attachment C**) that it would not object to an application seeking approval for new traffic signals at the intersection at Road 16 and Waterloo Road. TfNSW does not say, however, that the intersection is required to support the proposed JHG development. In fact, the letter drafted by TfNSW does not reference the concept application at all.

- i) As a merits issue, neither the cost nor complexity of installing a signalised intersection at Road 16 is justified as this measure:
 - a. has not been required by TfNSW, as discussed above;
 - b. will only deliver one additional movement (right turn egress movements – westbound on Waterloo Road) compared to the Left In Left Out access and mid-block pedestrian crossing, which *has* been endorsed by TfNSW;
 - c. would be superfluous to the needs of the road network. The necessary level of connectivity will be achieved through the delivery of the road network outlined in Council's DCP, in particular the construction of Road 1 which connects with both Lane Cove Road to the east and Khartoum Road to the west as shown in **Figure 1**. Westbound movements exiting the Site will be facilitated by vehicles traversing west on Road 1 and then connecting to Khartoum Road, rather than utilising a Right Out movement from Road 16; and
 - d. JHG is delivering its portion of Road 1 as part of its development. Part of this section of Road 1 was completed in March 2020. A number of adjoining landowners have already gained or are seeking approval for the construction of the balance of Road 1 to provide the connectivity envisaged in the DCP.
- j) It follows, therefore, that the signalisation of Road 16 primarily benefits *pedestrian* and not traffic movements across Waterloo Road. There are better solutions to this issue, which are discussed in more detail below.

No funding for intersection

- k) It is important to note that JHG is prepared to make an equitable contribution to a pedestrian crossing of Waterloo Road. However, the signalisation of the Road 16 intersection is not the optimal solution to forecast pedestrian demand and JHG does not agree to fully-fund any measure that is required to address a regional issue.
- l) To this end, proposed Condition 13(c) requiring JHG to be solely responsible for the delivery of the new intersection relies on an interpretation of the existing Planning Agreement between Council and JHG that is contested by JHG.
- m) JHG has obtained legal advice in relation to this issue from Corrs Chambers Westgarth (Corrs) (**Attachment D**). In summary, Corrs advises that there are two alternative reasons why Council's interpretation of the Planning Agreement is not correct on this issue:
 - i. the relevant contribution item requires JHG to construct a signalised intersection at Road 14, unless TfNSW does not approve this proposal. As this has in fact occurred and TfNSW did not approve signalisation at Road 14, acknowledging that Left In Left Out movements were sufficient, the potential contribution falls away; and
 - ii. even if the first reason is not supported, a second reason is that, as a matter of fact, any variation to the relevant contribution item was not "required by" TfNSW. Rather, it was required by Council. Therefore, Item 1.4(f)(ii) in Schedule 4 of the Planning Agreement referred to in Condition 13(c) is not applicable as the signalised intersection at Road 16 is not "required by another Authority" within the meaning of that provision.
- n) As Council cannot rely on the provisions within the Planning Agreement to require JHG to pay for the design and construction of a new intersection at Road 16 and this item of local infrastructure is not identified within any Section 7.11 plan, there appears to be no basis upon which Condition 13 can be legally imposed as a condition of consent. The Panel does not have the power to do so.

Figure 1 – DCP road network showing location of Road 1 (JHG site boundary shown in yellow)



A separate solution to a regional pedestrian issue is warranted

- o) TfNSW and Council acknowledge that the existing crossing at the intersection of Waterloo Road with Lane Cove Road *currently* operates at capacity and therefore cannot accommodate any additional demands generated by the development of Macquarie Park. This includes but is not limited to the development of the subject Site. A number of other developments are also proposed in the vicinity of the Site as shown on **Figure 2**. JHG accepts that a regional solution is required to address this issue.

Figure 2 – Plan showing location of sites subject to approvals or recently lodged development applications



- p) A new mid-block pedestrian crossing between Roads 14 and 16 would ensure safe passage across Waterloo Road for pedestrians to access the Site, other new developments to the north of Waterloo Road, and provide direct access to a future 7,000m² Council park known as Catherine Hamlin Park.
- q) Both TfNSW and Council have previously endorsed this solution:
- a. As set out on page 2 above, TfNSW advised Council on 12 June 2020 that “a mid-block pedestrian crossing is considered to have the least impact on the State road network and bus travel times” (Council Assessment Report, page 25); and

- 6

LANE COVE ROAD (WEST)

Item	Description	Item	Description
	Lot boundary		New ground cover planting around existing median fence
	10m offset line		New signalised intersection with pedestrian crossings, Realignment of kerbs, median and cartway to suit new traffic arrangement
	BP/PLP land acquisition extent		New public water destination
	Existing trees		Footpath upgrade with 1.5m wide planting buffer and 3m wide footpath within public domain
	New trees		Footpath upgrade with 3.0m wide planting buffer and 3m wide meandering footpath
	New paving		Potential creek line interpretation in paving
	New understorey planting		Urban upgrade with 1.5m wide planting buffer and 3m wide footpath
	Existing bus stop with seating and shelter improvements		Existing concrete median with fence
	Future development subject to approvals or under development under construction		New signalised crossing, Realignment of kerbs, median and cartway to suit new traffic arrangement

01 New ground cover planting around existing median fence

02 New signalised intersection with pedestrian crossings, Realignment of kerbs, median and cartway to suit new traffic arrangement

03 New public water destination

04 Footpath upgrade with 1.5m wide planting buffer and 3m wide footpath within public domain

05 Footpath upgrade with 3.0m wide planting buffer and 3m wide meandering footpath

06 Potential creek line interpretation in paving

07 Urban upgrade with 1.5m wide planting buffer and 3m wide footpath

08 Existing concrete median with fence

08 New signalised crossing, Realignment of kerbs, median and cartway to suit new traffic arrangement

Existing bus stop adjacent to Goolagong Road to be relocated to west of crossing

Final alignment of public realm design subject to BP/PLP land acquisition and realigned kerbs

Macquarie Park Station

Macquarie Exchange

Scale: 0 10 20 40m

North Arrow

Artistic Services Master Plan
Macquarie Street, Macquarie Park

Home 3 0

3.0 Draft Condition 25(c) – Public Domain Upgrades Waterloo Road

Proposed Condition 25(c) requires JHG to upgrade Waterloo Road along the section between Roads 14 and 16, which aligns the southern edge of the new public park. Council's Assessment Report states in respect of draft Condition 25(c):

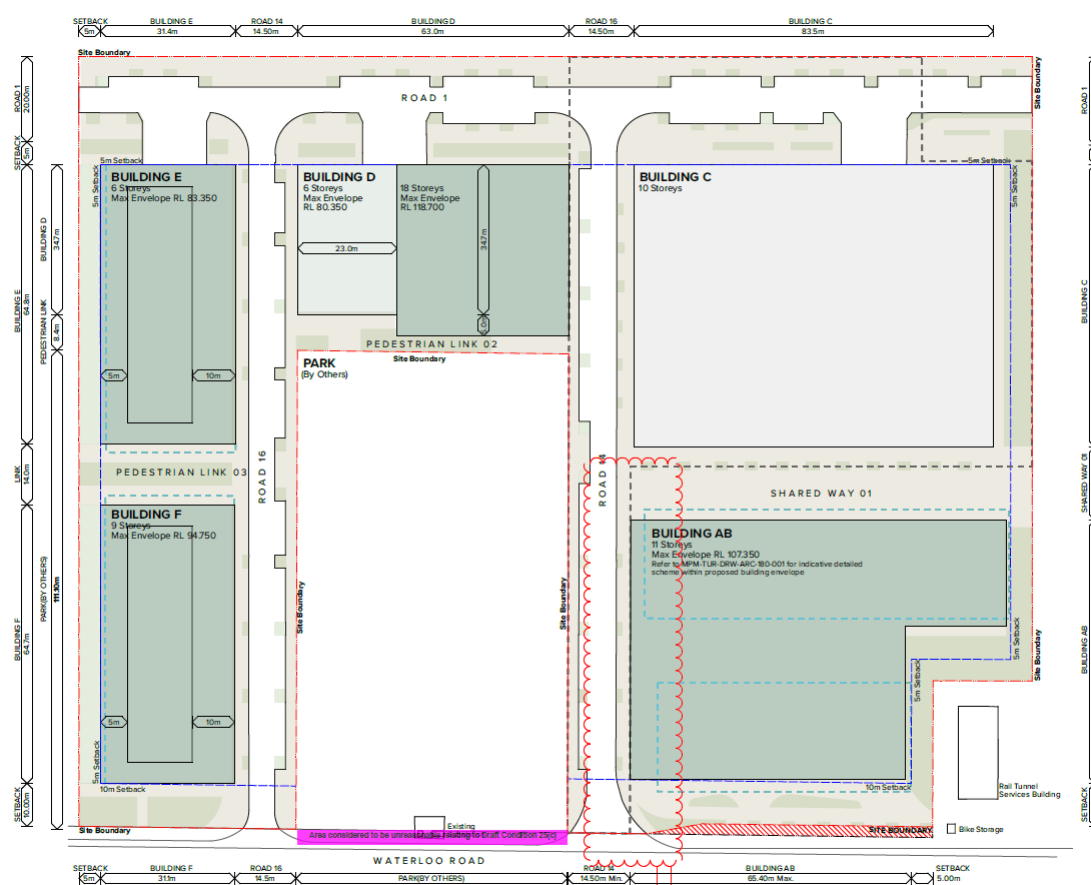
The applicant contends that the footpath on Waterloo Road between Road 14 and Road 16 is not immediately adjacent to the boundary of the subject site as such, upgrade works to the footpath in this location should be carried out as part of the delivery works for the adjacent public park.

Consideration has also been given to the unique history of development of this site, where the current land for the future public park was originally part of the subject site prior to the subdivision and rezoning of the land to separate the public park land from the remainder of the site and permit a FSR uplift and redevelopment of the site. As development of the site relies on the borrowing of amenity afforded by the future public park, in regard to deep soil area, open space and outlook, and occupants of the development are likely to traverse the public park and adjacent footpath to travel east or west along Waterloo Road, the required public domain upgrade works are associated with the demand likely to be generated by the development despite its frontage to the public park.

As such, Council officers recommend that Condition 25(c) be maintained and the construction of a new granite footpath is required as part of the final stage (Stage 4) of the development of the site to enhance the amenity for pedestrians and the public domain.

JHG considers this Condition to be unreasonable and onerous for the following reasons:

- a) There must be nexus between the imposition of a condition requiring a contribution to public works and the needs generated by the proposed development. JHG is not proposing any works along the Waterloo Road frontage that aligns the southern edge of the future Council park and there is no direct connection between that section of land along Waterloo Road and the development proposed (Refer to **Figure 4**).
- b) JHG is upgrading the public domain on all street frontages with a direct connection to the buildings on the Site, including Waterloo Road at the interface of Building A/B and Building F. JHG is also delivering the new public domain on either side of the park on Roads 14 and 16 and along the northern edge of the park at Building D. This is a significant contribution towards new infrastructure in Macquarie Park. JHG will provide DDA access to the park in an East-West direction on the northern edge of the park when Building D is constructed.
- c) As part of the rezoning of the Site and the creation of the future Council park, the State Government agreed to pay Council \$6 million towards the embellishment of the park (see pages 15-16 of Council's Assessment Report). Therefore, the "borrowed amenity" argument that Council relies on has already been accounted for at the planning proposal stage and these funds should be used towards the upgrade of the public domain associated with the delivery of the future park along Waterloo Road.
- d) In respect of timing, it is logical that the public domain along Waterloo Road be delivered at the same time as the park so that the works can be co-ordinated. On this basis, there is a stronger nexus between the delivery of the public domain along Waterloo Road between Roads 14 and 16 and the future Council park than there is with the development of the Site.
- e) It would be highly unusual and irregular for a condition to be imposed requiring the upgrade of public domain that has no direct/physical connection to the development site.

Figure 4 – Area relating to Draft Condition 25(c) shown in pink below.

4.0 Deep Soil Planting

We acknowledge that Council does not propose that the application should be refused on the basis that the proposed development does not meet the deep soil requirements in Council's DCP. Council accepts that it would be unreasonable to require strict compliance with this control in the circumstances of this application.

For the benefit of the Panel, however, we make the following clarifications in respect of the deep soil calculations reported.

Council's DCP at clause 8.2 of Section 4.5 outlines that for the purposes of counting deep soil areas they must:

- Be at least 2m deep, and
- Only areas with a minimum dimension of 20m x 10m may be included.

The calculations included with the application are provided in **Table 1**. The deep soil provision is less than required by the DCP. However, this is considered to be acceptable as:

- 17% (5,309m²) of the Application area comprises road, paving and driveways, which are required by the DCP. This places a significant design constraint on the Site and compromises the ability to provide deep soil areas. If these areas were to be removed from the application area, the percentage of the site comprising deep soil planting would increase to 28%.
- Catherine Hamlin Park (referred to as 'Central Park' in **Table 1** below) has an approximate area of 7,000m² which equates to approximately 18% of the masterplan site area. If the park were to be considered as part of this application, the percentage of the broader site comprising deep soil increases to 18.6%. Inclusion of the

park within the deep soil area calculation is considered reasonable in this instance given that the development potential of the park was transferred to the development site. The additional development potential, together with the provision of a number of new roads, and pedestrian rights of way, reduces the ability of the masterplan area to comply with the deep soil area control.

- c) Notwithstanding that the proposal does not provide the required deep soil in the dimensions stipulated by the DCP, the site still contains a significant amount of landscaping and will be able to accommodate significant established tree planting. The development will provide in excess of the minimum amount of landscaped area required and will contribute to a green tree canopy and the implementation of Council's Waterloo Road Master Plan.
- d) The numbers provided in **Table 1** were calculated in July 2019 prior to the development of detailed design for Buildings AB and D. As detailed in the application submitted to Council, the actual amount of deep soil planting proposed on the Site is actually higher than what was estimated under the masterplan assumptions. It is therefore likely that the eventual overall deep soil planting provided on site will be higher than that calculated in **Table 1**.
- e) Finally, it is noted that the calculations in **Table 1** are based on a park design that has been negotiated with Council's Landscape Team. If amendments were made to the indicative design, additional deep soil planting could be achieved on the Site to comply with the 20% requirement.

Table 1 – Deep Soil Landscaping Calculations

Site area		DCP requirement	Provision (%)	Provision (m²)
Site excluding Central Park				
Deep soil (comply with DCP)	31,987m²	20%	1%	338m²
Deep soil (minimum depth 2m but not complying with DCP definition)			10%	3,191 m²
Landscaped Area		20%	25%	8,036m²
Road/paving/driveways		-	17%	5,309m²
Site including Central Park				
Deep soil (comply with DCP)	38,987m²	20%	8.1%	3,169 m²
Deep soil (minimum depth 2m but not complying with DCP definition)			10.5%	4,082 m²
Landscaped Area		20%	29%	11,325m²
Road/paving/driveways		-	14%	5,309m²

We trust the above provides sufficient information for the Planning Panel to determine the application favourably and look forward to meeting with the Panel to discuss the above matters further.

Yours sincerely,



Jennie Buchanan
 Director
 0404 909 035
 jbuchanan@ethosurban.com



5 November 2018

Our Reference: SYD18/00764/01 (A24672463)
Council Ref: LDA 2018/0172

George Dedes
General Manager
City of Ryde
Locked Bag 2069
North Ryde, NSW 1670

Dear Mr Dedes,

PROPOSED CONCEPT MASTER PLAN FOR 45-61 WATERLOO ROAD, MACQUARIE PARK

Reference is made to Council's correspondence dated 10 May 2018 with regard to the abovementioned Development Application, which was referred to Roads and Maritime Services (Roads and Maritime) in accordance with Clause 104 and Column 2 of Schedule 3 of *State Environmental Planning Policy (Infrastructure) 2007*. Roads and Maritime apologise for the delay in responding.

Roads and Maritime has reviewed the submitted documentation and noted that the subject proposal includes 6 tower buildings with a maximum of 117,070 m² of Gross Floor Area; 1,170 car parking spaces and construction of new internal roads. The proposal also includes a new set of traffic signals at the intersection of Waterloo Road and new Road No. 14, which would require Roads and Maritimes consent in accordance with the Section 87(4) of the *Roads Act 1993*.

Roads and Maritime does not support the application in its current form and provides the following comments for Council's consideration:

1. Waterloo Road is a major thoroughfare in Macquarie Park which provides a vital connection from Lane Cove Road to Epping Road via Herring Road. Roads and Maritime is currently upgrading Waterloo Road with separated Bus Lanes to provide better public transport for the Precinct, under NSW Government Bus Priority Infrastructure Program (BPIP). As part of the BPIP Program (under different stages) Roads and Maritime will replace existing roundabouts in Waterloo Road with traffic signals to improve network efficiency.

The subject developments proposed a new set of traffic signals at the intersection of Waterloo Road, Coolinga Street and Road No. 14 to provide access to/from the site. Roads and Maritime does not support the proposed new traffic signal. Traffic signals at this location would result in delays and increase travel time. The proposed new signals are in the proximity of the major signalised intersection of Waterloo Road and Lane Cove Road. This would mean that the proposed signals would be less than 200 metre from this major signalised intersection. In

addition, proposed signals would not meet Roads and Maritimes warrants. Therefore, the proposed signals would not be supported for the above reasons.

2. It is noted that the site could generate approximately 2,890 pedestrian movements during AM peak hours; it is recommended that the proponent investigate alternate pedestrian crossing facilities such as an underpass or pedestrian overbridge.
3. As previously advised, Roads and Maritime does not support the proposed traffic signals at Waterloo Road, Coolinga Street & Road No. 14 intersection. Roads and Maritime requests that further modelling is undertaken with LIFO movements to/from the site without any traffic signals.
4. The submitted traffic report does not contain any individual analysis (in SIDRA) of surrounding intersections to justify the potential impact due to the proposed development. Please undertake a SIDRA Network model and compare the existing traffic situation with the future potential impact due to the proposed development and propose any mitigation measures required (if there is any) to accommodate the demand. The SIDRA Network Model should identify existing and future Level of Service, Degree of Saturation, Queue length, Delays (in seconds) at those intersections.
5. The soft copy of the SIDRA Network Model file should be submitted to Roads and Maritime to review.
6. It is understood that proposed parking was based on the current City of Ryde DCP which allows the site a maximum of 1,170 car parking spaces (based on 1 space per 100m²). However, since the site is within the proximity of Macquarie Park Railway Station and within a 4 minute walk to the Railway Station, Council may re-consider reducing the number of car parking spaces to encourage use of public transport and active transport (cycling, walking). This would assist Council to achieve its goal of a minimum of 40% trips by sustainable transport in Macquarie Park.

Should you have any further inquiries in relation to this matter, please do not hesitate to contact Ahsanul Amin, A/Senior Land Use Planner on 8849 2762 or by email at development.Sydney@rms.nsw.gov.au.

Yours sincerely,



Mary Whalan
Director Network Integration
Sydney Division – North West Precinct



Transport
for NSW

19 August 2020

TfNSW Reference: SYD18/00764/08

Council Reference: CNR-8889 LDA2018/0172

General Manager
Ryde City Council
Locked Bag 2069
North Ryde NSW 1670

Attention: **Myra Malek**

**ADDITIONAL INFORMATION FOR CONSTRUCTION OF MIXED USE DEVELOPMENT
– 45-61 WATERLOO ROAD, MACQUARIE PARK**

Dear Sir/Madam,

Reference is made to Council's correspondence dated 16 June 2020, regarding the abovementioned Application which was referred to Transport for NSW (TfNSW) for comment in accordance with the *State Environmental Planning Policy (Infrastructure) 2007*.

TfNSW has reviewed the submitted application and raises no objections to the Application. The following comments are provided for Council's consideration in the determination of this Application:

1. TfNSW has previously acquired a strip of land for road for Macquarie Park Bus Priority and Capacity Improvement Project along the Waterloo Road frontage of the subject property, as shown by blue colour on the attached Aerial – "X". All buildings and structures, together with any improvements integral to the future use of the site are to be wholly within the freehold property (unlimited in height or depth), along the Waterloo Road boundary.

If you have any further questions please direct attention to Malgy Coman on 8849 2413 or email development.sydney@rms.nsw.gov.au. I hope this has been of assistance.

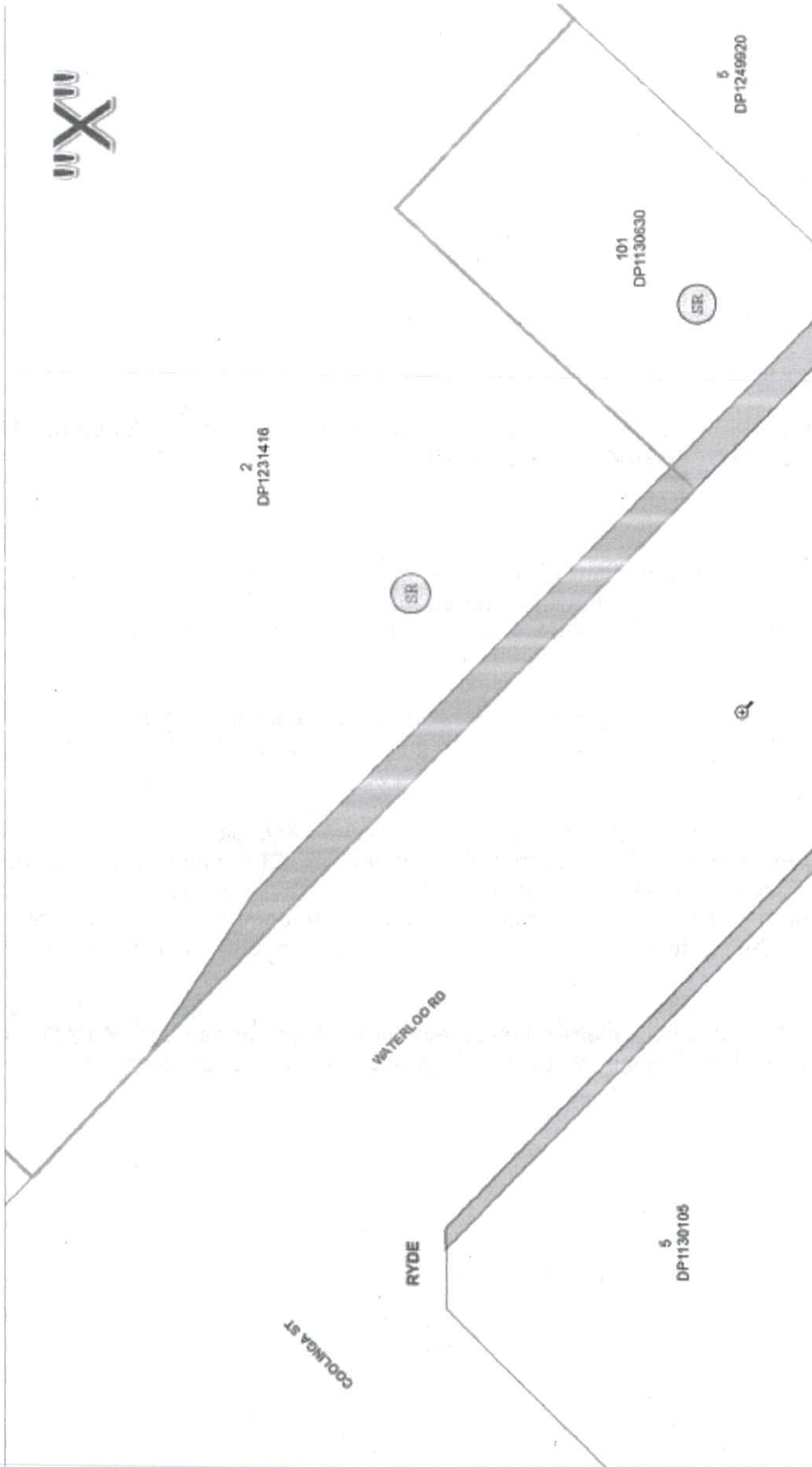
Yours sincerely,

Pahee Rathan
Senior Land Use Assessment Coordinator

Transport for NSW

27 Argyle Street, Parramatta NSW 2150 | Locked Bag 5085, Parramatta NSW 2124
P (02) 8849 2666 | W transport.nsw.gov.au | ABN 18 804 239 602

inX



18 November 2020

Mr Michael Dixon
Manager
Transport
City of Ryde Council

Dear Mr Dixon,

RE: Waterloo Road and Road 16, Macquarie Park - Traffic Signal warrant approval

I write in reference to the above and in response to the email dated 01 October 2020 wherein council provided additional modelling and warrants assessment for the approval of new traffic signals at the intersection of Waterloo Road and Road 16, Macquarie Park.

The future traffic volumes projected by Council demonstrate that the vehicle numbers using the intersection will be within a reasonable tolerance of the warrants set out in the Traffic Signal Design Guide. Accordingly I am pleased to inform you the warrant assessment is deemed acceptable subject to the following conditions:

- A concept plan for the signals is to be prepared and submitted to Transport for NSW for review and acceptance
- The Northbound right turn from Waterloo Road into Road 16 is to be banned. Access to the road will be via a left turn only from Waterloo Road, and the right turn from Road 16 into Waterloo Road will be acceptable.
- The development of these signals must take into account the future upgrade of surrounding intersections.
- That the full cost of the design and construction of the proposed signals are met by Council or the Developer.

The implementation of the new signalised intersection will require the preparation of traffic signal design plans to the appropriate design standards, which in turn will require technical approval by TfNSW via a Works Authorisation Deed.

If there are any questions, I would be happy to discuss further on 02 8849 2216

Yours sincerely / faithfully,



Peter Carruthers
Manager, Network & Safety Services

23 November 2020

By email: Andrew.Ridge@jhg.com.au
Andrew Ridge
Senior Development Manager
John Holland Group
Level 3, 65 Pirrama Road
Pyrmont NSW 2009

Contact
Max Newman (02) 9210 6822
Email: max.newman@corrs.com.au

Partner
Christine Covington

Dear Andrew

Macquarie Square Development - Interpretation of Local VPA

- 1.1 We refer to the above development at 45-61 Waterloo Road, Macquarie Park and the concept development application LDA2018/0172 (**Concept DA**) which has been lodged with the City of Ryde Council (**Council**) and is before the Sydney North Planning Panel for determination.
- 1.2 We have been provided with copies of Council's Assessment Report in respect of the Concept DA and draft conditions of consent.
- 1.3 We have been asked to provide advice in relation to Council's interpretation of the voluntary planning agreement between Council and John Holland Macquarie Park Land Custodian Pty Ltd dated 31 August 2018, which was varied on 13 February 2020 (**VPA**), as expressed in the Assessment Report and reflected in draft Condition 13.

2 Summary

- 2.1 Council has argued that JHG should be solely responsible for the cost of designing and implementing a signalised intersection at Road 16 and Waterloo Road. It has proposed draft Condition 13 to give effect to this requirement:

13. Waterloo Road Upgrades.

(a) The Applicant must deliver as part of the Stage 4 works, signalised traffic control infrastructure at the intersection of Road 16 and Waterloo Road that is also to provide for a pedestrian crossing across Waterloo Road.

(b) Prior to the submission of any development application relating to Stage 4, the applicant shall obtain approval from TfNSW and the Council of the City of Ryde as to the design and operation of the signalised traffic control infrastructure referred to in condition 13(a) above.

(c) In accordance with Item 1.4(f)(ii) in Schedule 4 of the Planning Agreement entered into on 31 August 2018 between the Council of the City of Ryde and John Holland Macquarie Park Lane Custodians Pty Ltd, all costs associated with the design and delivery of the signalised traffic control infrastructure in accordance with condition 13(a) above, are to be borne by the Applicant.

2.2 In our opinion, Council's reliance on Item 1.4(f)(ii) in Schedule 4 of the VPA is misguided and its interpretation of the VPA is incorrect. There are two reasons for this:

- (i) the relevant contribution item is not required to be delivered in circumstances where Transport for NSW (**TfNSW**) has not approved the proposal for a signalised intersection at Road 14; and
- (ii) as a matter of fact, any variation to the relevant contribution item was not required by TfNSW. Rather, it was required by Council.

2.3 We provide further detail on both reasons below.

3 Delivery of contribution item not required

3.1 Item 1.4 in Schedule 4 relates to variations to contribution items required to be delivered by JHG under the VPA. The starting point for the interpretation of this provision, therefore, is to look at the contribution item that is proposed to be varied.

3.2 Council's Assessment Report does not say which contribution item has, according to Council, been "varied" by TfNSW. The only possibly relevant item is Item 2 in Table 2 in Schedule 3 of the VPA, entitled "Stage 2 Road Works – Upgrade of Waterloo Road Intersection".

3.3 The term "Waterloo Road Intersection" is defined in the VPA and refers to the intersection at Road 14 and Waterloo Road. The obligation to upgrade this intersection is in two "substages". Substage 1 requires the completion of a left in / left out intersection at Road 14. Substage 2 refers to completion of "*the second substage of upgrading the Waterloo Road Intersection*". The specifics of the Substage 2 works are not set out in the VPA, although we understand that the parties consider that these works refer to the construction of a signalised intersection at Road 14. It is this aspect of the contribution item, therefore, that Council must be relying on for the purposes of the alleged variation under Item 1.4 in Schedule 4.

3.4 Importantly, in relation to the timing for the completion of the Substage 2 works, it is clearly stated in the VPA that "*the Developer is not obliged to deliver Substage 2 if RMS or the consent authority do not approve the works*". This is exactly what has occurred. JHG submitted a proposal for a signalised intersection at Road 14 which was rejected by TfNSW, formerly RMS. Council's Assessment Report makes this clear on pages 4 and 66. In this circumstance, the contribution item falls away and cannot be "varied" in accordance with Item 1.4 in Schedule 4 as Council has suggested. Council's interpretation and the drafting of Condition 13(c) ignores the clear words of the VPA. The Substage 2 works are not, for

example, expressed to be subject to any variations proposed by TfNSW or the consent authority. They are simply not required to be delivered if TfNSW does not consent to them.

- 3.5 There are very good reasons why the contribution item was not drafted in this way. JHG does not and has never considered, supported by empirical evidence, that an equitable contribution to public infrastructure should require it to be solely responsible for a signalised intersection upgrade including a pedestrian crossing to the west of Road 14. JHG would not have agreed to make a contribution of this kind, hence the agreement between JHG and Council in the VPA that the Substage 2 works are simply not required to be delivered if TfNSW does not consent to those works.

- 3.6 In this circumstance, it is not possible to “vary” the Road 14 intersection upgrade under Item 1.4 in Schedule 4 as the obligation to deliver this contribution item has fallen away.

4 Variation to contribution item not required by TfNSW

- 4.1 The second reason why Council has misinterpreted Item 1.4(f)(ii) in Schedule 4 is that, even if there was a contribution item to be varied, that variation and the requirement to upgrade the Road 16 intersection was clearly not “*required by another Authority*” as that provision of the VPA demands.
- 4.2 Council’s Assessment Report makes clear that the proposal for a signalised intersection at Road 16 is Council’s idea, not TfNSW’s. There are numerous references to this in the Report:
- (i) “*TfNSW subsequently recommended the installation of a mid-block signalised pedestrian crossing on Waterloo Road, between Roads 14 and 16, to address the pedestrian demand generated by the development. Council’s Traffic Section recommended signalisation of the intersection of Road 16*” (page 4);
 - (ii) “*Council recommends the replacement of the proposed mid-block signalised pedestrian crossing on Waterloo Road with a signalised intersection at Road 16*” (page 5);
 - (iii) “*Council officers no longer seek to pursue an alternative option for the provision of either a signalised intersection at Road 16 and Waterloo Road or a midblock signalised pedestrian crossing. As per Condition 13, Council requires the applicant to deliver a signalised intersection at Road 16*” (page 26);
 - (iv) “*TfNSW supported the construction of a mid-block signalised pedestrian crossing on Waterloo Road between Coolinga Road and Khartoum Road and has since considered a proposal for the construction of a signalised intersection at Road 16 and Waterloo Road at the recommendation of Council’s Traffic Department*” (page 31); and

- (v) *“Council officers have approached the applicant and TfNSW with the possibility of providing a signalised intersection at Road 16”* (page 67) [emphasis added].

4.3 Adopting the language of the VPA, the “variation” has been initiated by Council and is not “required by” TfNSW. Accordingly, the remaining provisions in Item 1.4 in Schedule 4 of the VPA should apply. These provide that Council may request a variation to a contribution item (Item 1.4(a)), which must then be scoped and costed by JHG (Item 1.4(c)) and, if Council resolves to proceed, JHG must carry out those works (Item 1.4(d)) at the cost of Council (Item 1.4(e)).

4.4 This is not, however, reflected in draft Condition 13.

5 Consequences and JHG’s offer

5.1 Having regard to the proper interpretation of the VPA, it is clear that Condition 13 as currently drafted cannot be made. Specifically, the Panel would have no legal authority to make Condition 13(c) in relation to the funding of the proposed intersection delivery at Road 16 because it relies on a false reading of the VPA.

5.2 Council has acknowledged in its Assessment Report that *“there are no funding mechanisms currently available under Section 7.11 or Section 7.12 Contribution Plans for the construction of the pedestrian crossing”* (page 67). There is, therefore, currently no power to impose a condition of consent requiring development contributions be made to deliver the proposed Road 16 intersection.

Yours faithfully

Corrs Chambers Westgarth



Christine Covington

Partner

16 October 2020

The General Manager
City of Ryde Council
Level 1, Building O, Binary Centre
3 Richardson Place,
North Ryde NSW 2113

Attention: Sandra Bailey

Dear Mr Dedes,

LDA2018/0172 - 45-61 Waterloo Road, Macquarie Park
Comments on Draft Conditions of Consent

We refer to the above concept development application (**Concept DA**) and Council's draft conditions of consent received on 28 September 2020.

As Council is aware, the Concept DA was lodged on 4 May 2018 and has undergone a lengthy assessment process. The Applicant, John Holland Group, is eager to progress this development as quickly as possible and looks forward to attending the North Sydney Planning Panel with Council on 4 November 2020.

With this in mind, the Applicant has expeditiously reviewed the draft conditions and has proposed a number of amendments which are identified in **Attachment 1** of this letter. Most of these amendments are not expected to be controversial. Draft condition 13 (Waterloo Road Upgrades), however, merits further explanation.

Draft Condition 13 – Waterloo Road Upgrades

Draft condition 13 proposes that the Applicant "*contribute to the design and delivery of future infrastructure upgrades along Waterloo Road adjacent to the site frontage that has been deemed necessary, based on the potential vehicular and pedestrian traffic implications associated with the overall development*".

We agree with the concept of an *equitable contribution* to Waterloo Road upgrades, however the wording of the draft condition would make the Applicant solely responsible for the design, construction and certification of the Waterloo Road Upgrades. This is clearly unreasonable given the nature of the proposed upgrades.

The condition would also prevent the lodgement of a development application in respect of Stage 4 of the Applicant's masterplan development before agreement has been obtained from Transport for NSW (**TfNSW**) and Council concerning either:

- The design and construction of new traffic signals at Road 16 to facilitate right in, right out vehicular access and pedestrian crossing; or
- The design and construction of a mid-block, signalised pedestrian crossing across Waterloo Road between Roads 14 and 16 (i.e. leading directly to the proposed new public park).

The Applicant was surprised to see a condition of this kind since this would prevent it from lodging a development application for certain works until it obtains agreement from Council and TfNSW on a matter which Council and TfNSW do not appear to be in agreement between themselves (refer to the correspondence between Peggy Wong of Council and Jennie Buchanan at **Attachment 3**) and over which the Applicant has no control.

The current environment for all projects is challenging, particularly due to the *Covid* pandemic. The Applicant considers that imposing additional barriers to even the *lodging* of development applications, as proposed by the draft wording, is inappropriate in these circumstances.

The proposed new wording for condition 13 (shown at item 4 below) seeks to address the above issues.

1. New traffic signals at Road 16

The Applicant's proposed revised conditions removes the requirement to investigate new traffic signals at Road 16 in draft condition 13(b)(i) for the following reasons:

In respect of vehicular movements:

- a) The current proposal for a left-in, left-out at Road 16 has already been accepted by TfNSW. The letter from TfNSW to Council dated 19 August 2020 (Attachment 2) states that "TfNSW has reviewed the submitted application and raises no objection to the application". The application referred to is LDA2018/0172 which shows a left-in, left-out at Road 14 and Road 16; and
- b) Council has advised the Applicant that TfNSW does not support a signalised intersection at Road 16 (**Attachment 3** – email from Peggy Wong to Jennie Buchanan dated 20 August 2020); and

In respect of pedestrian movements:

- c) the Applicant has never applied or advocated for a signalised intersection at Road 16, and does not support this design; and
- d) Road 16 does not align with the pedestrian desire lines between the Applicant's development and Macquarie Park metro station, hence its patronage by tenants of the Applicant's buildings is expected to be limited.

2. Mid-block pedestrian crossing between Road 14 and Road 16

The Applicant understands that Council's preferred location for a pedestrian only signalised intersection is mid-block between Road 14 and Road 16 (**Mid-Block Intersection**). The Applicant is supportive of this position since the Mid-Block Intersection:

- a) Better matches the pedestrian desire lines from the Macquarie Park metro station to the Applicant's development site;
- b) Would enhance the pedestrian network and benefit the local community, workers, residents, tenants and other landowners;
- c) Would provide a much-needed enhancement to the pedestrian experience on Waterloo Road;
- d) Will directly service the new public park, an important piece of public infrastructure; and
- e) Will contribute to ongoing efforts to achieve Council's 40% public transport target, which informs the basis of numerous strategic decisions including car parking rates.

3. Draft Condition 13 is unlawful

Given the undoubted benefits of the Mid-Block Intersection, the Applicant is prepared to make an equitable contribution to its design and construction. However, the Applicant does not accept that it is solely responsible for the costs associated with the delivery of the Mid-Block Intersection for the following reasons:

- a) We have previously advised Council (refer **Attachment 4** – Ethos Urban's letter to Council dated 22 May 2020) and reaffirm our view that *"It would be unlawful to impose a condition of consent requiring*

JHG to pay for this infrastructure given that it is not a scope of works contained within a Section 7.11 or Section 7.12 plan and that there is already a Voluntary Planning Agreement that has been signed and agreed in respect of the incentive floorspace that is to apply to the land”;

- b) *In the same letter we advised, and remain of the view, that “It would also be questionable if such a condition would satisfy the ‘Newbury Test’ given that Council is only seeking agreement with JHG when the pedestrian crossing comprises local infrastructure that will serve a much broader catchment than the Concept Application. In other words, the nexus for the crossing is not solely generated by the proposed development and as such its funding should not solely rely on JHG”.*
- c) *The Applicant is already providing significant public benefits under its VPA with Council, which include the construction of new public roads, through site links and monetary contributions; and*
- d) *The Applicant does not own or control the land on either side of the proposed Mid-Block Intersection. As such, it would be unreasonable to impose a condition requiring works to be carried out on land over which the Applicant has no rights.*

The Applicant also sought advice from its solicitors (Corrs Chambers Westgarth) about the lawfulness of this condition. They advised:

“Draft Condition 13 requires either the payment of monetary contributions or performance of works in circumstances where those contributions do not appear in a current contributions plan and the need for the proposed Waterloo Road upgrades has not arisen exclusively as a consequence of the increased demand for public amenities or services caused by the subject development.

“In our view, this condition would be susceptible to legal challenge on the basis that it is unlawful for a consent authority to impose a condition requiring the payment of money or doing of works not identified in a contributions plan adopted by the Council or for delivery of contributions to meet needs that are not generated by their development (Meriton Apartments Pty Ltd v Council of the City of Sydney [2011] NSWCA 17 at [61]). In other words, where there is no ‘nexus’ between the development proposed and the contributions required (Australian International Academy of Education Inc v Hills Shire Council [2013] NSWLEC 1 at [77]).”

It is therefore impractical, unrealistic and, based on the above advice, potentially unlawful for Council to require the Applicant to be exclusively responsible for the design and delivery the Mid-Block Intersection.

4. Proposed new drafting for Condition 13

For the reasons set out above, the Applicant has invited its planner to prepare a revised Condition 13 for Council’s consideration:

Prior to an occupation certificate being issued for the final stage of works, the Applicant is to:

- a) *Undertake detailed pedestrian modelling of the local and regional impacts to pedestrian movement and performance as a consequence of creating a new mid-block pedestrian signalised intersection across Waterloo Road between Road 14 and Road 16 to identify and apportion the demand contributed by the Applicant’s development against the overall demand for the proposed intersection; and*
- b) *Pay to Council, having regard to the apportionment of demand referred to in (a), an equitable monetary contribution for the delivery of the proposed intersection in accordance with its letter of offer dated 16 October 2020 to vary the existing planning agreement between the Applicant and Council dated 31 August 2018, as varied on 13 February 2020.*

A proposed methodology for the calculation of the "equitable contribution" referred to in the proposed new condition 13 is set out at **Attachment 5**.

5. Payment of Equitable Contribution

To overcome the current issue of there not being a contributions plan to authorise the imposition of a condition of consent requiring the payment of these contributions, the Applicant suggests that the parties agree a minor variation to the current VPA to add the proposed equitable monetary contribution as an additional public benefit to be provided by the Applicant. Subject to Council's views, this could be achieved by way of exchange of letters or, if required by the Council, a formal variation deed.

The Applicant proposes that the methodology at **Attachment 5** will allow the parties to determine the Applicant's equitable contribution to the cost of delivering the Mid-Block Intersection, having regard to:

- a) the proportion of users of the Mid-Block Intersection for the primary purpose of accessing the Applicant's developments proposed under the Concept DA as a percentage of the overall use of the Intersection; and
- b) the overall cost of delivering the Mid-Block Intersection as determined by an appropriately qualified quantity surveyor.

Once the equitable contribution has been determined, the Applicant will pay this amount to Council in accordance with the relevant provisions of the existing VPA.

As the Applicant has agreed to carry out the preliminary modelling and design works required to inform the construction costs of the Mid-Block Intersection, the Applicant expects that these expenses will be taken into account in the determination of the Applicant's equitable contribution.

For the purposes of the revised condition of consent, this letter should be taken as an offer to vary the VPA and may be referred to in condition 13, per suggested amendments in item 4 above.

We trust that this presents an acceptable solution to this issue and look forward to receiving confirmation that the draft conditions will be amended accordingly before being provided to the Panel in sufficient time to allow determination of this development application in 2020.

As more than two and a half years have passed since the Concept DA was lodged, the Applicant is eager to ensure that there are no further delays to the construction of a project which will generate considerable local jobs, both during construction and in occupation.

If you have any queries, please contact the undersigned.

Yours faithfully



Mark Crudden
Development Director
John Holland Macquarie Park Land Custodian Pty Ltd

Attachment 1 – Revised Draft Conditions of Consent

Attachment 2 – Letter from TfNSW to Council dated 19 August 2020

Attachment 3 – Email from Peggy Wong of Council to Jennie Buchanan of Ethos Urban dated 20 August 2020

Attachment 4 –Letter from Ethos Urban to Council dated 22 May 2020

Attachment 5 – Proposed Methodology for an Equitable Contribution to the Delivery of the Mid-Block Intersection

