

WILLOWTREE PLANNING



5 September 2022

REF: WTJ21 -118

Department of Planning and Environment
Locked Bag 5022
Parramatta NSW 2124
enquiry@planningpanels.nsw.gov.au

ATTENTION: SYDNEY CENTRAL CITY PLANNING PANEL (SCCPP)

PROPOSAL: DA/873/2021 - DEMOLITION, TREE REMOVAL AND CONSTRUCTION OF A 160 BED RESIDENTIAL CARE FACILITY

PROPERTY: 235-237 MARSDEN ROAD, CARLINGFORD (LOT 1, 2 AND 3 OF DP 5982)

Dear Sir/Madam,

This covering letter has been prepared by Willowtree Planning Pty Ltd on behalf of Opal HealthCare to provide further clarity on the Draft Condition Set, particularly Schedule 1 – Deferred Commencement Conditions No. 1 – 4 as provided in **Table 1** below.

This letter is accompanied by the following Appendices:

- **Appendix 1** – Henry and Hymas Letter dated 8.04.2022
- **Appendix 2** – Legal Advice Letter dated 3.08.2022
- **Appendix 3** – Response to Council Draft Set Matrix issued 3.08.2022

The following letter is provided to the Sydney Central City Planning Panel (SCCPP) to ensure an informed and complete decision is made for DA/873/2021.

Additional commentary to the deferred commencement conditions draft conditions is provided in **Table 1** below for the SCCPP's consideration.

ACN: 146 035 707 ABN: 54 146 035 707
Suite 4, Level 7, 100 Walker Street
North Sydney, NSW 2060

enquiries@willowtp.com.au
willowtreeplanning.com.au
02 992 9 6974



| Draft Condition | Proponent Response Submitted to Council (Appendix 3) | Additional Consideration for SCCPP |
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| Schedule 1 | | |
| <p>PAANSC Non-standard - Deferred Commencement</p> <p>1. In order to facilitate the relocation of the existing Transport for NSW (TfNSW) easement for drainage within the site and connection of stormwater drainage to the relocated easement, approval from TfNSW is to be obtained. The following information is required to be prepared and submitted to TfNSW prior to the issue of an operative consent:</p> <ul style="list-style-type: none"> a) Site survey (topographic and utilities) to establish the feasibility of the proposed relocation. b) If the relocation is feasible based on the survey a new easement must be created on the title along the new alignment. The new easement will have to have enough width (at least 3m wide) to allow for access of a maintenance vehicle. A turning circle may be required depending on the site geometry to allow the maintenance vehicle to reverse. c) No structures from the development are permitted along the new easement. d) The new easement may be created in favour of TfNSW or council depending on the portion of district drainage and in consultation with Council and TfNSW. e) A hydraulic assessment to be undertaken to establish the required sizing for the new drainage system. Following the hydraulic assessment, a new stormwater line and access pits have to be designed and constructed along the new easement in accordance with the stormwater drainage specifications of TfNSW. TfNSW may review the design and arrange surveillance on the construction to ensure it meets the required specifications. | <p>As provided in the accompanying Legal Advice at Appendix 1, it is not considered reasonable for the feasibility of the drainage solution to be assessed again prior to an operational consent being granted given the condition in entirety has been satisfied throughout assessment.</p> <p>It is requested that this condition be removed or amended to remove subclause 1(a) and (e) as this has been demonstrated throughout the assessment. Refer to Legal Advice letter at Appendix 2.</p> | <p>It is considered that the prepared package in response to the Draft Condition Set (dated 3.08.2022) was not reasonably considered by Transport for NSW (TfNSW) as it is understood Council has further consulted on the matter however no response has been received. It is requested that the SCCPP seek to defer determination until a time the attached package is provided due consideration.</p> <p>In accordance with Clause 277 (1)(b) of the <i>Environmental Planning and Assessment Regulation 2021</i> (EP&A Regulation) the following highlighted:</p> <p>(1) For the purpose of determining a development application, a local planning panel or a Sydney district or regional planning panel may obtain—</p> <ul style="list-style-type: none"> (a) assessment reports, in addition to an assessment report or other information provided by a relevant council, and (b) other technical advice or assistance the panel considers appropriate <p>In this instance, given the thorough and considered response provided by the proponent group, it is requested that the SCCPP exercise their discretion under Clause 277 of the EP&A Regulation to allow further consideration by TfNSW to the response to Draft Condition Set.</p> |



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| <p>f) The new system has to be handed over either to TfNSW or council following the TfNSW acceptance process.</p> <p>g) The cost of all the above activities has to be covered by the developer.</p> <p>h) The existing easement can only be extinguished after all the above steps have been completed to the satisfaction of TfNSW.</p> <p>Reason: To comply with TfNSW requirements.</p> | | <p>In light of the above, it is considered appropriate that this matter be deferred until a response from TfNSW is received.</p> |
| <p>DAA0002 #Interallotment Drainage Easement</p> <p>2. Pursuant to the provisions of Section 80(3) of the 006Environmental Planning and Assessment Act, 1979, the development application be granted a Deferred Commencement Consent subject to the completion of the following:</p> <p>Submission to Council of suitable documentary evidence issued by the Land Registry Services of NSW confirming the creation of an easement to drain water 3 metres wide over a downstream property or properties benefiting the subject lot 2 & 3, DP 5982 known as 235 & 237 Marsden Road, Carlingford and burdening the downstream properties until the drainage line meets Council's stormwater infrastructure in Mulyan Avenue has been registered with the Land Registry Services of NSW.</p> <p>A Copy of the Registered Dealings from the Land Registry Services of NSW shall accompany that evidence</p> <p>The above requirement(s) must be satisfied within 24 months of this determination or the consent will lapse.</p> <p>Advisory Note: Easements through Council properties (or Crown land managed by Council) can take up to 12 months to finalise.</p> | <p>The stormwater arrangement in its existing state already connects into the adjoining system.</p> <p>Through the proposed OSD tank, the proposed development ensures that post-developed flows do not exceed pre-developed values, which in turn mean that the capacity of the downstream stormwater system is in no way hindered by the proposed development. The requirement to upsize any stormwater pipes within downstream properties that has no hydraulic impact on the functionality of the proposed stormwater system within the subject Site is considered unreasonable. Refer to legal advice at Appendix 2 of this advice which notes Council cannot lawfully require Opal to carry out improvement works on the pipeline where there is no indication that Opal HealthCare development would create a need for any upgrade or improvement.</p> <p>This condition if imposed should only require the stormwater easement within the subject site to have the capacity to convey the 100yr flows from the OSD tank – which the design currently complies with. As above, the requirement to investigate the condition of stormwater pipes within adjacent properties and repair any defects is not considered reasonable. Repairs to existing stormwater pipes should be undertaken by the owner of said asset, not by any developer that benefits from said asset as it is demonstrated that flows have been minimised.</p> | <p>In addition to comments submitted to Council on 3.08.2022 it is reiterated that there are no fundamental changes to the stormwater drainage at the Site. Accordingly, it is considered that the creation of a downstream easement to Mulyan Avenue is not required. Additionally, for the reasons provided within the accompanying Legal Advice letter at Appendix 1, the extent of such a request is considered unreasonable in the circumstances of the case.</p> <p>It is requested that SCCPP accept the condition changes put forward by the applicant. Alternatively, defer this matter to allow further consultation with Council to be undertaken and the opportunity for Council.</p> |



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| | <p><i>It is reiterated that the Site is unique in that an existing easement traverses through the property, which in its existing state, connects to the downstream pipeline. As identified within the accompanying Legal Advice Letter at Appendix 2, David v. Hornsby Shire Council [2017] NSWLEC 1025, recognises that a downstream easement was not required to establish an acceptable point of discharge.</i></p> <p><i>Refer to detailed discussion within Appendix 2 of accompanying letter which discusses demonstrates the unreasonableness of Council's request.</i></p> | |
| <p>DAANSC Non-standard - Deferred Commencement</p> <p>3. Non-standard conditions – Deferred Commencement</p> <p><i>Submission to Council of suitable documentary evidence and revised plans that demonstrate the following:</i></p> <ul style="list-style-type: none"> <i>• The pipe within the existing easement has the capacity to convey the following: all runoff from the development site, emergency overflows of the OSD system in all storms up to and including the 100-year ARI storm event, additional flows from sites that are currently directed into the easement.</i> <i>• CCTV footage and subsequent report by a qualified person, of the existing pipe within the downstream easement shall demonstrate the design functionality and is of good condition. Any structural cracking shall be repaired and certified for 50 years.</i> <p>Reason: <i>To demonstrate the site can drain to a legal discharge point.</i></p> | <p><i>For reasons outlined above and within accompanying Legal Advice Letter at Appendix 2, it is not considered necessary for the establishment of an easement on downstream properties to establish an acceptable point of discharge given the existing Site conditions and existing easement through the Site.</i></p> <p><i>Additionally, it is noted that the proposed stormwater system within the subject site has been modelled and sized appropriately, thus it can be demonstrated that stormwater runoff has been controlled and minimised and the disturbance and impacts of stormwater runoff on adjoining properties consistent with Clause 36 of the State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 is satisfied.</i></p> | <p>As provided within the response submitted to Council, the resultant flows from the development have been demonstrated to be no more than the existing scenario.</p> <p>Additionally, it is considered that the prepared response, including legal advice, has not been appropriately considered by Council and which would inhibit the successful delivery of this specialised aged care development.</p> <p>It is requested that SCCPP adopt the requested condition change made by the applicant or defer this matter to allow further consultation with Council to be undertaken.</p> |
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DAANSC Non-standard - Deferred Commencement

4. Non-standard conditions – Deferred Commencement

Submission to Council of suitable documentary evidence and revised plans that demonstrate the following:

- All plans are revised to demonstrate that all areas of the site drain to the legal discharge point, in particular the southeast portion of the site.
- Revised OSD calculations with correct storage volumes. Due to the downstream flood level at 110.4, the provided OSD storage is insufficient. An equivalent flow to the (Stormwater Filter) SF chamber outflow shall be reduced from the Permissible Site Discharge (PSD) in the OSD calculations, and the orifice size shall be adjusted to account for the flow through the SF chamber.
- Revised Music Model for the entire site including Bypass area that demonstrates compliance with the Water Management controls listed in section 3 of Councils DCP.

Reason: To demonstrate the site can drain to a legal discharge point.

Upon compliance with the above requirements, a full Consent will be issued subject to the following conditions:

It is requested that this condition is removed.

*Previous responses from Henry and Hymas as attached at **Appendix 3** clarify this issue and identifies reasoning for why, in this instance, it is best practice for a small section of the site in the south east corner to bypass the piped stormwater system within the Site. It should be noted that this small area will discharge across the eastern boundary and into the grated drain within the adjacent property as per the current arrangement. Additionally, it is noted that there is no downstream flood level as the site is not affected by mainstream flooding. It is unclear where this level of 110.4 been established. The DRAINS model previously submitted to Council showcases that the OSD tank functions as per the intended design (to reduce post-developed flows to pre-developed values). Accordingly, it is considered that the OSD storage provided is sufficient.*

*As detailed above and within accompanying legal advice at **Appendix 2**, it is considered that the existing Site conditions are unique in that the Site is currently burdened by an existing TfNSW stormwater easement as an acceptable point of discharge for the development.*

Refer to detailed response provided to Council on 3.08.2022 which outline the unreasonable nature of the imposition of Condition 4.

It is requested that the SCCPP accept the condition changes or defer this matter to allow further consultation with Council to be undertaken.

Draft Conditions - DA/873/2021

235-237 Marsden Road, Carlingford (Lot 1, 2 and 3 DP 5982)

The additional commentary provided to the SCCPP above is considered necessary in this instance to ensure the final development consent is suitable and able to be executed by the applicant to ensure the successful delivery of this specialised residential care home. Accordingly, we request the SCCP's determination of the application to be deferred until the proponent group is given the opportunity to reach an acceptable resolution with Council on matters raised above.

Should you wish to discuss the contents of this letter in further detail, please contact the undersigned.

Your sincerely,



Andrew Cowan
Director
Willowtree Planning Pty Ltd

