**APPLICANT’S SUBMISSION ON THE DRAFT NOTICE OF DETERMINATION PREPARED BY COUNCIL**

1. **Deferred commencement consent conditions.**

It is submitted that the mechanism provided by section 4.16(3) of the EP&A Act is neither necessary or warranted in relation to the wastewater and potential contamination. Deferred consent conditions are usually applied when the decision-maker is unable to be satisfied that the issue to be addressed can be solved by the imposition of a normal condition.

The applicant suggests that the deferred conditions in relation to onsite wastewater management be a condition to be satisfied prior to the release of a Construction Certificate. Suggested wording for such a condition is provided below.

Similarly, the provision of a site investigation report, we believe, should be a condition that is satisfied prior to the commencement of works.

The ultimate outcome of both these conditions is that the environment be protected. It has been demonstrated by studies that the wastewater is able to be treated of via onsite disposal in a manner not dissimilar to the existing developments in the Five Mile precinct. Furthermore, the matter of site contamination from the operation of a former service station is one for which Councils routinely impose conditions as part of an operational consent.

The applicant is willing to accept the imposition of the condition in relation to an agreement with Council for potable water as a deferred commencement condition.

1. **Detailed site/investigation and Remedial Action Plan**

Thus far, none of the reports already lodged indicate any particular element of contamination on the land. The area has been in public use since 1932 and the history of the site does not reveal any unusual contamination. It is likely that there may be asbestos materials in the buildings to be demolished and possible fuel contamination around the bowser and tank area of the old service station. These elements are dealt with adequately in further (and expected) conditions throughout the document. While the Applicant does not object to the condition as it is presently worded, it need not be a “deferred commencement condition”.

1. **On-Site Wastewater Management**

The wording of this condition is acceptable to the Applicant except for numbered subparagraph 4. There have been alternate suggestions between the various specialist advisers as to the appropriate area for the effluent disposal system. For example, the recommendations of the revised Whitehead report do suggest a smaller effluent disposal area is possible. For this reason, the imposition of an arbitrary area as a condition is not supported and a preference for the actual on site soil conditions, determined after testing, to be used.

It is suggested that subparagraph 4 read:

“4. The effluent disposal area must be compliant and sized using a Design Irrigation Rate based upon the actual site soil conditions after testing and upon the report of an accredited environmental scientist.”

With the above caveat, the Applicant submits that the subject matter in this condition can be readily complied with and it does not require to be a “deferred commencement condition.”

1. **Condition 33 – Design Amendments**

With regard to the “redesign of the carpark”, the Applicant submits that the existing carpark plans should be retained because the entire carpark will be eventually needed as further stages of the works are developed and it is much better to have a fully integrated plan rather than a disjointed one. It is proposed that subconditions a. and b. be deleted from the conditions.

To specifically address the trees, their retention makes any long-term development of a full carpark extremely difficult, and the landscaping plan surrounding the carpark calls for the immediate planting of numerous more suitable native species in areas which augment the full design. The immediate planting of semi advanced trees as detailed in the landscaping plan will provide an opportunity for the trees to become established whilst the remainder of the site works are being undertaken. It will also allow supervision, including watering of the trees, as required and the immediate replacement of any less than optimal trees, if necessary. The trees that are identified by the condition to be retained do not add any visual, floral or biodiversity value to the area. Two of the trees are non native, with the third, a gum tree, being less than ideal for its placement within a carpark area due to unpredictability of limb drop. The balance of the conditions relating to the carpark are acceptable.

With regard to the detailed design for the wishing well associated with the Dog on the Tuckerbox statue, it is proposed to move the installation a short distance, retain and reinstall all of the historical accoutrements (such as signs and brass plaques) and redesign the “wishing well” pond. The applicant proposed that the second sentence of subparagraph 4 read:

“4. A detailed design … etc. The design must ensure that the size and design of the new wishing well is suitable for its intended purpose.”

1. **Condition 44 – Bank Guarantee**

The Applicant objects to this clause, which is unwarranted and harsh. The developer will not receive its final certification for this work from Council if the work is not done correctly. A normal defects bond at the completion of the work should be sufficient to meet Councils legitimate concerns. The condition ought to be deleted. The applicant is willing to enter into a defects liability bond with Council in lieu of this condition.

1. **Condition 45 – Archeological Assessment**

The ‘Limestone Inn ruins’ site to which this condition refers remains in public ownership at all times as a result of the subdivisions agreed between Council and the Applicant. There is no requirement for this assessment. Council will have a full role in formulating management plans for the site which ought to provide adequate protection of the ruins. The condition ought to be deleted.

With the above exceptions, the Applicant advises that (notwithstanding some repetition in the conditions) it accepts that the document is reasonable and proper.