

26 February, 2013

Major Projects Assessment
The Department of Planning and Infrastructure
NSW Government
plan_comment@planning.nsw.gov.au
helen.mulcahy@planning.nsw.gov.au

Dear Sir / Madam

Re: Application to Modify the DA for Mixed Use Development at 23-37 Lindfield Avenue, Lindfield ("Modification") by ANKA ("the Applicant"). Ref: MP08_0244 MOD 1

We refer to the above and write as the owners of shops 39 and 41 Lindfield Avenue and also as long term local residents.

We are opposed to the Modification for the following reasons:

- 1. Deletion of some 1850 sq ms of commercial and retail space from the approved plans**
Result is less commercial / retail space than currently exists.
Query: State significance and public benefit

On 27 January 2012, the NSW Planning Assessment Commission ("PAC"), approved the original application highlighting the "public benefit" as a significant criteria. In doing so, it recognised the importance of the Centre in (underline added):

renewing and consolidating the Lindfield Town Centre as well as improving retail servicing via an increase in retail floor space and the provision of a medical centre to meet the population growth in the locality and increasing employment opportunity.

The Modification has the result that:

- a. the importance of the Lindfield Town Centre as a shopping and commercial destination is reduced. This follows from the reduction in shops and commercial premises by some 1850 sq ms to that approved. The environmental assessment report does not provide any evidence or expert opinion to contradict this proposition.
- b. There is "no increase in retail floor area" to that currently existing. In fact, there would be a smaller commercial centre than currently exists by an estimated 1600 sq ms. The current building houses a second storey of commercial space which would no longer exist.
- c. There is no longer a medical centre for the benefit of a growing population and the employment opportunity would, we submit, be the same or less than currently offered. The existing arcade has a second storey which currently houses the Stella Music School as well as The Lindfield Yoga Club. Previously, it also housed the Lindfield Bridge Club. These amenities would be lost to the public as a result of the Modification.

Hence, each of the foundations on which the original project was considered to be of State significance and for the public benefit no longer exist and in fact there is a reduction in space and public amenity to what currently exists.

The Applicant admits that the Modification will be of limited public benefit and State significance on page 41 of its Environmental Assessment Report Dated Nov 12 ("EAR"):

a substantial proportion of customers of the supermarket and retail shops are likely to be residents of the proposed development.

This is in direct contradiction to what it said in its original Environmental Assessment Report dated Nov 2010 ("Original EAR") at 6.2:

The proposed development will make significant social and economic contributions to the Lindfield Town Centre and broader area. The proposed development will provide upgraded retail floor space within the town centre which will encourage increased economic activity in the locality.

To conclude, we believe that Section 75W should not be used to modify a project in such a way as to have the result that the development is no longer within the class of development properly considered State significant. That would not be a modification that would be permissible under s75W. It would be unreasonable for a development to enjoy concessions arising from a Part 3A consideration without it ultimately being a Part 3A type development. The Applicants should lodge another DA and it should be dealt with by Council.

2. The external design of the Centre has changed significantly.

There are also many other significant changes- A new DA is required.

Design changes include:

- a. Amendments to the height (extra storey) and shape (extra bulk) of the residential towers fronting both Lindfield Avenue and Havilah Lane.

The original proposal for the site (submitted as part of the Preliminary Environmental Assessment Report in December 2008) provided for a substantially taller and bulkier development, however it was subsequently reduced in response to comments received during the consultation period and the release of the then-draft controls in the Town Centres LEP and DCP.

Hence, it would now appear, that the Applicant has reverted to a taller and bulkier design, which by its own admission, is an inferior built form option - see the Original EAR at 6.5 "Built Form Options".

- b. The appearance of the Havilah Lane facade to present a building in its own right.

c. The ground floor retail podium has been changed to present a single storey frontage to both Lindfield Avenue and Kochia Lane.

d. The Kochia Lane frontage has been reconfigured to provide two smaller retail tenancies, a residential lobby and an entrance to the retail podium.

e. A change to the numbers and design of apartments (21 extra apartments) resulting in changes to the articulation of facades and approved setbacks.

f. The external finishes have been amended with a mix of different coloured wall cladding, wall painting, metal framing and sun shades.

The above represents only some of the external design changes. There are many other significant changes dealing with non compliance with the FSR, deletion of basement car parks, loss of 34 parking spaces, deletion of commercial area, reconfiguration of windows and balconies. A summary of the changes are summarised in tabulated form over 3 pages in the EAR.

In assessing whether the Modification is a “mere” modification we believe that, being a 3A type development, one needs to do so within the context of the public interest. Hence, we respectfully request, that the Minister consider the nature of the changes as a whole i.e. over and beyond the design changes mentioned above and to take into account that:

- The proposed land use has changed. The development is no longer provides commercial and retail use to a level consistent with the town centre or can it be considered to be of State significance.
- There are additional environmental consequences of the changes. That is, there would be a resultant loss of public amenity in that the Modification proposes significantly less commercial space than currently exists and also less parking than in the approved DA.

Whilst a number of the design changes on their own may be modifications, taken together (as they should be), all of the changes cannot be described as a “mere” modification.

3. Redesign of Windows and Balconies on boundary

The Applicant, in its quest to accommodate a further 21 apartments, has redesigned its apartments such that windows and balconies are now located on or within 1.2 ms of the boundaries of all of the adjacent properties. This compromises the value and development of the adjacent properties as any development on those could not build to their boundary as the Applicant. To do so, would mean poor amenity between developments especially as to light and ventilation.

In its original DA, the Applicant was, in response to the DGRs, required to provide a viability statement to demonstrate the viability of the future development of surrounding sites.

In relation to 2 Kochia Lane, JBA Planning in the Original EAR states at 6.6:

*a blank wall would be provided at the shared northern/southern boundary between the sites
....and that this design will accommodate the future development of 2 Kochia Lane*

Similarly in respect of our properties at 39 and 41 Lindfield Avenue, the Original EAR states:

As the balconies to residential units in both Buildings A and B are generally orientated to the east and west with a blank wall provided at the northern facade for most of the building, sites to the north will be able to be developed in accordance with the Town centre LEP controls

The Applicant has totally ignored the DGR requirements of the original application and the development of the adjoining sites has been severely if not totally restricted. The Applicant's failure to mention these issues concern us.

4. Planning Controls

The Modification far exceeds any existing planning controls including the LEP. The EAR in part 3.1 and 3.2.1 seeks to dismiss the relevance of the existing and applicable controls on the building height and FSR by referring to a statement made by the PAC that heights of 7 – 9 stories are generally acceptable in town centres. That approach seeks to subvert the applicable legislative instruments to the general statements of an unelected body. The PAC observations are no justification for setting aside the height and FSR controls and to rely on them would be a fatal flaw in decision making in this matter. This is especially significant when one also considers that the height and FSR requirements for downstream developments are significantly less under the LEP.

The simple fact is that the proposed modification does not comply with any existing or draft height or FSR controls. An already excessive development is made even more excessive and the only justification given is that the PAC made a passing comment in a different context that 7 – 9 stories are acceptable in town centres.

5. Rights Of Way ("ROW")

The proposed modification will contravene the rights of way benefitting our properties.

First, how will the excavation of the residential car park and the development be constructed without interfering with the use of the ROW? Even the ROW itself is proposed to be updated / rebuilt. We have tenancies utilising the ROW and believe that this matter needs to be established in advance of any construction. A detailed construction management plan should be provided to us now to evidence how our ROW will not be interfered with. Alternatively, it should be a condition of any approval that the Applicant procures our consent prior to the issue of a Construction Certificate. Just as the Department did at first instance, we ask it to again recognise our legal interests.

Second, the intensification of use of the land is contrary to the intent of the rights of way and will present significant/dangerous conflict between its users.

Specifically, we note that the Modification now provides for:

- a. 42 cars and 19 bikes to utilise the ROW at any one time. Currently, there are only 24 cars parked there and these are there for most of the day. The Modification has the ROW servicing the retail car park where there would be high movements per hour.

- b. trucks to service the loading dock via the ROW (currently IGA unload mostly from Havilah Lane);
- c. a shared pedestrian access over the ROW (currently no shared pedestrian access).

Importantly, the Modification fails to realise that:

- d. Our rights of way enable us to travel against the flow indicated in the Applicant's traffic plan and hence our trucks and cars could be travelling into oncoming traffic and pedestrians. This seems dangerous and many of the pedestrians would be elderly.
- e. As a result of a above, our vehicles would travel past the intersection point where vehicles enter and exit the lower car park. This seems potentially dangerous.
- f. The terms of our ROW allow us to stop temporarily in carrying out matters ancillary and incidental to the ownership of our properties. Hence, often a truck will need to stop to remove waste from the grease trap of the restaurant and so on. Apart from potentially causing a bank up, it would also be extremely unpleasant, as odours would waft from the grease trap and the waste truck throughout the vicinity.
- g. Vehicles exiting property no. 41 (perhaps no. 39 in the future) will do so in a backward motion into the ROW. Again, this seems potentially dangerous.

We would submit that the Modification not only contravenes our ROW but also presents a traffic disaster waiting to happen. No mention is made of any of this in the Applicant's Modification. We attach a letter from our solicitors in the above.

Whilst our ROW are valuable to us, we have always informed the Applicant, both expressly and verbally, that, if it wished, we would be pleased to see whether some resolution of their use, might be possible. That offer remains open and we have written to the Applicants today (copy attached) confirming this.

6. Ancillary Matters

- Fire Safety, BCA Requirements

We note that there are numerous breaches of the BCA in the above. We believe that these breaches should be addressed prior to the issue of any CC as we cannot see how they would not involve significant changes to the design / setback of the building.

- Reduction of 34 car spaces

The EAR notes there is a "shortfall in the provision of parking" and then provides its justification on page 41. We cannot agree with the justification and will leave it to others to raise.

- Dilapidation Report

Being adjacent to the development we believe that any Dilapidation Report should include a structural report and hence that condition D4 not be amended.

7. Conclusion

We believe that the Modification should be refused for the following reasons.

- a. The Modification reduces the importance of the Town Centre and results in a development which can no longer be classified to be in the public interest and of State significance.
- b. The Modification when considered as a whole is more than a "mere modification". We submit that the public interest requires the Modification to be considered as such.
- c. The placement of windows and balconies on adjoining boundaries contravenes a fundamental requirement of the previous approval. The development of neighbouring properties and their resultant amenity would be compromised.
- d. The Modification far exceeds any existing planning controls including the LEP. The Applicant does not provide adequate justification for these breaches.
- e. The Modification fails to consider our legal rights under the ROW and also to take any account of very important issues relating to the intensification of its use. The proposed intensification is, in our opinion, unquestionably dangerous.

Our view is that the local area is better served by the original DA. We did not raise any objection to the Applicant's original plans (except to request that 2 Kochia Lane be considered and our ROW be protected) and are reluctant to do so now except that we feel strongly that the Modification is not in the best interests of the community and adversely affects the future development of neighbouring properties.

We can see no reason why the approved development should not proceed and why it would not be viable. There is strong demand locally for commercial space and whilst there are a small number of commercial vacancies currently in the Lindfield Arcade, this is only because, as we understand, the Applicant is only offering short term (3 months or less) leases.

Yours faithfully


Linshop Pty Ltd

c/o.

P.O. Box 299

Roseville, 2069


Pankarn Pty Ltd

Maddocks

Lawyers
Level 21, Angel Place
123 Pitt Street
Sydney New South Wales 2000 Australia
GPO Box 1692
Sydney New South Wales 2001
Telephone 61 2 8223 4100
Facsimile 61 2 9221 0872
info@maddocks.com.au
www.maddocks.com.au
DX 10284 Sydney Stock Exchange

Email Letter

From Patrick Ibbotson	Date 25/02/2013	
Direct 02 8223 4169	Email patrick.ibbotson@maddocks.com.au	
To Ivo Porfiri	Organisation Linshop Pty Ltd	Email porfiri@bigpond.com

Our Ref PNI:5899593

Dear Ivo

Right of way affecting properties at 39 and 41 Lindfield Avenue, Lindfield

1. You have instructed us to address two questions (set out below) in relation to the above land.
2. Linshop Pty Ltd (**Linshop**) is the owner of the property at 39 Lindfield Avenue, Lindfield Lot D in DP 347906 (**Linshop land**).
3. Pankarn Pty Ltd is the owner of 41 Lindfield Avenue, Lindfield Lot C in DP 347906 (**Pankarn land**).
4. ANKA (Civic Center) Pty Ltd owns the property at 23-37 Lindfield Avenue, Lindfield (**ANKA land**). ANKA has obtained an approval (**Part 3A Approval**) under Part 3A of the *Environmental Planning and Assessment Act 1979* (**Planning Act**) for a multi storey residential development (**ANKA Development**). The development will be built on land described as 23 – 37 Lindfield Avenue and 11 Havilah Lane, Linfield which comprises the following titles:
 - 4.1.1 Lot A DP 418801
 - 4.1.2 Lot 11 DP 713206
 - 4.1.3 Lot 101 DP 1067930
 - 4.1.4 Lot 102 DP 1067930
 - 4.1.5 Lot 103 DP 1067930
 - 4.1.6 Lot 3 DP 713505
5. A number of those titles (the burdened land) are affected by rights of way:
 - 5.1.1 an 'L shaped' right of way benefitting the Linshop land (the L shaped right of way) (**the Linshop Right of Way**)

- 5.1.2 a 'U shaped' right of way benefitting the Pankarn land (**the U shaped right of way**).

The result of this is that there is a potential conflict between the ANKA Development and these rights of way

6. The Part 3A Approval is subject to conditions requiring that the conflict be resolved by agreement (or court order).
7. ANKA has now sought to change its development. (The changes are substantial and raise a question as to whether they can properly be considered a modification but we do not address that here). One of the changes sought is to remove the requirement to obtain agreement with Linshop and Pankarn in respect of the rights of way. The result of this change would be that there is a conflict between the rights of way and the Part 3A Approval.
8. You have asked us to advise you on the following questions:
- 8.1.1 Can Linshop use the Linshop Right of Way in both directions?
- 8.1.2 Can ANKA interfere with the Linshop Right of Way to construct the ANKA Development? and
- 8.1.3 If ANKA proposes traffic as a one – way flow, can that be binding on Linshop?

Summary

9. In our opinion:
- 9.1 The terms of the Linshop Right of Way plainly indicate Linshop is permitted to use the Linshop Right of Way to both enter and exit the Linshop Land.
- 9.2 The ANKA Development as changed will still conflict with the rights of way – in particular during construction. Without agreement from Linshop and Pankarn, the only way ANKA could interfere with the Linshop Right of Way in order to construct the ANKA Development is to obtain an order from the Court pursuant to section 89 of the *Conveyancing Act 1919*. In our opinion ANKA has poor prospects of obtaining an order under s89.
- 9.3 The ANKA proposed traffic management plan cannot be implemented as a one-way traffic flow is contrary to the terms of the Linshop Right of Way.
10. The main reason for the answers to the questions are:
- 10.1.1 the terms of the Linshop Right of Way make it clear access both into and out of the Linshop land is created by the Linshop Right of Way; and
- 10.1.2 in respect of s89 the rights of way are in use and have on our instructions not been abandoned. We understand they are necessary for access to the rear of the shops on the Linshop land and Pankarn land. In that situation we do not think it likely that a Court will form the opinion that the rights of way are redundant.

Can Linshop use the Linshop Right of Way in both directions?

11. We have **attached** for ease of reference a copy of the terms of the Linshop Right of Way. Relevantly extracted, it provides:

and at all times hereafter at his her or their will and pleasure to pass and re-pass with or without horses or other animals carts carriages engines and Motor cars laden or unladen over and along the said piece of land coloured pink for all purposes whatsoever...

12. You have instructed us that Linshop frequently has cause to utilise the Linshop Right of Way. This includes use by vehicles to deliver goods to Linshop and then exit the premises.
13. The terms of the Linshop Right of Way plainly indicate Linshop is permitted to use the Linshop Right of Way to both enter and exit the Linshop Land.

Can ANKA interfere with the Linshop Right of Way to construct the ANKA Development?

14. The Linshop Right of Way is a proprietary right. That right cannot be interfered with without:
 - 14.1.1 Linshop agreement; or
 - 14.1.2 An Order of the Court.
15. ANKA possesses neither of the above.
16. We are instructed that there is no agreement between Linshop and ANKA in respect of the Linshop Right of Way.
17. In these circumstances the only other option for ANKA is to obtain a Court Order which varies or deems obsolete the Linshop Right of Way.
18. Section 89 of the *Conveyancing Act 1919* permits a Court to order the removal or modification of the rights of way. The relevant point is that the Court could only make the order if it is satisfied as to one of the matters listed in sub-section (1). The most relevant of these would be (1)(a) which requires that the court be satisfied that the right of way:

ought to be deemed obsolete, or that the continued existence thereof would impede the reasonable user of the land subject to the easement, profit à prendre, restriction or obligation without securing practical benefit to the persons entitled to the easement or profit à prendre or to the benefit of the restriction or obligation, or would, unless modified, so impede such user,
19. There are a number of examples where the Supreme Court has indicated that it will not interfere with property rights in particular where the lot burdened has knowledge of the impediments to its proposed development, being an existing right of way or other easement.
20. Section 89(1)(a) provides the basis to extinguish an easement on two independent bases connected with changing circumstances:
 - 20.1 Firstly, that by reason of the change in use of the land having the benefit of the easement or in the character of the neighbourhood, the easement ought to be deemed obsolete; and
 - 20.2 Secondly, that the continued existence of the easement would impede the reasonable user of the land subject to the easement without securing any practical benefit to the persons entitled to the easement.
21. Slattery J's decision in *Rosedale Farm (NSW) Pty Limited* [2010] NSWSC 1321 (22 November 2010) provides a helpful outline of the Court's approach to the assessment of section 89(1)(a) (in particular at [60]).
22. In the circumstances of this matter, there is plainly no change to the neighbourhood in the types of terms the Court generally considers relevant and the Linshop Right of Way is plainly not obsolete given its present use.
23. In relation to the second basis, that involves an assessment of whether or not the continued existence of the Linshop Right of Way would impede reasonable use by ANKA without securing practical benefit to Linshop. In order to demonstrate this it must be shown that no reasonable use of the land is possible unless the easement is modified or extinguished.

Maddocks

Clearly the ANKA land can be utilised in many ways that are consistent with the use of the Linshop Right of Way.

24. One recent example is that of *Betty Campbell v Peter Douglas Baigent & Ors* [2010] NSWSC 1348 (30 November 2010) where the applicant sought an order to modify the relevant right of way to exclude massive sandstone boulders on an escarpment which formed part of the right of way. The Court determined the right of way should not be modified and confirmed the position that the "law is reluctant to allow deviation from the original grant of an easement" [at 110].
25. In the present circumstances ANKA acquired the land with full notice of the rights of way. ANKA has without any agreement of Linshop (or as we understand it Pankarn proposed a development that will impact on the ability of Linshop and Pankarn to use their rights of way. The proposed changes will reduce the long term impacts on the rights of way but will still have substantial impacts – in particular during construction. As long as the rights of way are in use and needed for access to the rear of the shops on the Linshop land and the Pankarn land in our opinion ANKA would have poor prospects of obtaining an order under s89 removing the rights of way.

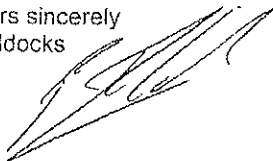
If ANKA proposes traffic as a one – way flow, can that be binding on Linshop?

26. We understand that ANKA now proposes access for vehicles over the Linshop Right of Way in a one-way direction only. This is contrary to the terms of the Linshop Right of Way which allow access both in and out of the Linshop land and is in conflict with how Linshop currently use the Linshop Right of Way.
27. Further the proposed changes in the use of the servient land cannot interfere with the Linshop proprietary rights in the Linshop Right of Way. There may come a point in time when the change in use of the servient land is so substantial as to interfere with the ability to pass and re pass that it constitutes substantial interference. In the event that the ANKA use, causes substantial interference, Linshop may be entitled to make an application to prevent such interference (see for principles on such an application: *Middleton v Arthur* [2002] NSWSC 627).
28. For these reasons in our opinion it is unlikely that the ANKA proposed traffic management plan, in particular the one – way flow of traffic, can be implemented..

Conclusion

29. Linshop can plainly use the Linshop Right of Way in both directions.
30. The only way ANKA could interfere with the Linshop Right of Way in order to construct the ANKA Development in present circumstances is to obtain an order from the Court pursuant to section 89 of the *Conveyancing Act* 1919. In our opinion ANKA has poor prospects of obtaining an order under s89.
31. The proposed traffic management plan cannot be implemented as it is contrary to the terms of the Linshop Right of Way.

Yours sincerely
Maddocks



Transmission authorised by:
Patrick Ibbotson
Partner

26 February, 2013

Mr A Boyarski
ANKA Property Group
Email:

Dear Mr Boyarski

Re: Modification to Approved Plans at Lindfield Avenue, Lindfield ("Modification")

We refer to the above and regret to say that we object to the Modification and wish to inform you, as a courtesy, that we have written to The Department of Planning on this.

Please note that we do not raise our objection lightly as we are in favour of appropriate development in Lindfield. Hence, you will see that we did not raise any objection to your original DA, except in relation to our rights of way and the inclusion of 2 Kochia Lane into the development.

We believe that your existing DA provides a better outcome for Lindfield and we reiterate, as we have in the past, should you wish to discuss the issue of the rights of way (or any related matter) with us, we would be pleased to do so with you.

Yours faithfully

Ivo Porfiri
Linshop Pty Ltd

Vince Tesoriero
Pankarn Pty Ltd

4 March, 2013

Major Projects Assessment

The Department of Planning and Infrastructure

NSW Government

plan_comment@planning.nsw.gov.au

helen.mulcahy@planning.nsw.gov.au

Dear Sir / Madam

Re: Application to Modify the DA for Mixed Use Development at 23-37 Lindfield Avenue, Lindfield ("Modification") by ANKA ("the Applicant"). Ref: MP08_0244 MOD 1

I refer to the above and to our letter of 26 February in the above and enclose a small addendum to the legal opinion contained therein. That addendum simply confirms that Pankarn Pty Ltd (41 Lindfield Avenue) enjoys the same rights as Linshop Pty Ltd does to utilise the right of way in both directions.

Also, as to our objection under "5. Rights of Way", we have endeavoured to raise some of the apparent conflicts in the ROW, however, we are not sure whether we need to supply a report from a traffic consultant on this or whether it is something that The Department will deal with. Could you please advise us if this is required.

For example, whilst looking further at the Applicant's traffic flow plan, we have noticed other apparent conflicts resulting from the two way traffic flow. That is, parked vehicles would be forced, with limited vision, to exit across the path of our vehicles. We feel that there could be many other issues that we may not have identified.

Our view is that the ROW would not be able to accommodate all of the potential thoroughfare i.e. the development's 61 vehicles, trucks, pedestrians, cars exiting from spaces, as well as our cars and trucks that may have to stop or that may be travelling in the opposite direction. It is only 5.105 m wide in part and has right angle turns.

Could the legal addendum and the point raised above about the ROW be kindly added to our letter of 26 February? Please note that we emailed last Friday (1 March) noting that this further letter would arrive today and seeking permission to lodge it one business day past the official close date.

Yours faithfully

Ivo Porfiri
Linshop Pty Ltd

Vince Tesoriero
Pankarn Pty Ltd



Maddocks

Contact Patrick Ibbotson
Direct 02 8223 4169
Email patrick.ibbotson@maddocks.com.au
Our Ref PNI:5899593

Lawyers
Level 21, Angel Place
123 Pitt Street
Sydney New South Wales 2000 Australia
GPO Box 1692
Sydney New South Wales 2001

Telephone 61 2 8223 4100
Facsimile 61 2 9221 0872

info@maddocks.com.au
www.maddocks.com.au

DX 10284 Sydney Stock Exchange

4/03/2013

Ivo Porfiri
Director
Linshop Pty Ltd
PO Box 299
ROSEVILLE NSW 2069

Dear Ivo

Advice on Right of Way

We refer to our letter of 25 February 2013.

I notice that we have inadvertently referred to an old title, Lot C in DP 347906 as being owned by Pankarn. The correct title reference is Lot 4 in DP 713505. Pankarn's right of way applies to the benefit of Pankarn's land (No. 41) and it allows Pankarn to pass and repass and is not restricted as to the direction of travel.

Yours sincerely

Patrick Ibbotson
Partner

Helen Mulcahy - 23- 27 Lindfield Avenue, Lindfield. MP08_0244 MOD1

From: "ivo porfiri" <porfiri@bigpond.com>
To: <plan_comment@planning.nsw.gov.au>, <helen.mulcahy@planning.nsw.gov.au>
Date: 3/13/2013 11:52 AM
Subject: 23- 27 Lindfield Avenue, Lindfield. MP08_0244 MOD1
CC: <broyal@kmc.nsw.gov.au>

Dear Sir / Madam

Re: Ref: MP08_0244 MOD 1
Council Submission in respect thereof.

I am writing to mention that I have reviewed Council's submission in the above ("Submission"). Yesterday, I also spoke with Mr. Royal, Team Leader Urban Design at Council, who, I understand, prepared the Submission.

I discussed with Mr. Royal Council's response to the Applicant's request to delete Conditions C3, C4, F15 and F16 of the approved DA (consent of the owners of 39 & 41 Lindfield Avenue).

The Submission states that it has " no objection" to the deletion as it is a civil matter and in any event its deletion would not remove the need for the Applicant to procure our consent.

I asked Mr. Royal whether it might be possible to substitute the words " no objection" for "no comment" to remove any inference that Council might in some way be construed as supporting the deletion of the Conditions. Mr. Royal understood the nuance and assured me that the statement was not intended to, in any way, support the removal of the Conditions, rather it was meant to be a recognition of the fact that it was not a matter for Council but rather between the shop owners and the Applicant only. He noted that it was too late to substitute the words as the report was going before Council yesterday evening.

I asked Mr. Royal whether he would mind if I sent these notes to The Department for the sake of clarification and he had no objection to that. I copy him in as verification.

This matter is very important to us because we wish to avoid a situation where the Applicant proceeds to construction notwithstanding our rights, with the risk that we could lose our tenants and potentially be sued by them and also are also forced to instigate expensive injunctive action in the courts to protect our rights.

I know this email falls outside of the time for comment however as it is in response to Council's submission and relates to a matter that was canvassed in our initial objection I hope that it can be received.

Yours faithfully

Ivo Porfiri Vince Tesoriero
39 and 41 Lindfield Avenue, Lindfield