

09117  
9 February 2012

Ms Amy Watson  
Department of Planning and Infrastructure  
23-33 Bridge Street  
SYDNEY NSW 2000

Dear Amy

**RESPONSE TO SUBMISSIONS  
7 RAILWAY STREET, CHATSWOOD**

We write to you on behalf of Mirvac Projects Pty Ltd and thank you for the opportunity to respond to the submissions that were received in the relation to section 75W modification application (MP09-0154 Mod 1).

We note that submissions were received from the following authorities:

- Willoughby City Council;
- RailCorp; and
- Roads and Maritime Services (RMS).

Our response to the issues raised in the above submissions is provided below.

**1.0 RAILCORP**

RailCorp did not raise any objection to the proposal and considered that their issues were adequately addressed by the conditions already contained in the approval.

**2.0 ROADS AND MARITIME SERVICES**

**2.1 Condition E33 – Shared use of commercial parking spaces**

The RMS did not raise any objection to the proposed modification of condition E33 and the deletion of the reference to the shared use of the commercial parking spaces.

**2.2 Condition B2(g) – Loading manoeuvring space**

The RMS does however have concern in relation to the proposed amendment to condition B2(g) and the potential for vehicular conflict between reversing trucks exiting the loading dock and vehicular movements. The RMS does not consider that *‘the proponent has demonstrated how they intend to address this deficiency, and what measures will be put in place to ensure that access/safety to the car parking access area is not compromised’*.

Colston Budd Hunt and Kafes(CBHK) has provided the following additional comments as included in their letter at **Attachment A**.

A loading dock management plan is to be prepared which will ensure the safety movement of service vehicles within the basement. CBHK will prepare the management plan in association with Parking and Traffic Consultants Pty Ltd who will advise on measures to manage service vehicle activity.

The loading dock management plan will incorporate signs and warning lights (traffic light system) within the access driveway and basement car park, informing motorists when service vehicles are accessing or existing the loading dock.

At all times passing opportunities will be provided within the access driveway at Railway Street and within the basement car park, with clear sight lines to the traffic light system. The traffic light system will incorporate height beams at the access driveway and within the loading dock, which will be activated by service trucks when entering the site and exiting the loading dock.

The loading dock management plan will also incorporate the following measures:

- all vehicles entering and exiting the site will be required to enter and exit the site in a forward direction;
- service vehicle access to the site will be controlled by signs and warning lights (traffic light system) located within the access driveway and within the basement car park;
- hold bays and passing opportunities will be located within the access driveway and within the basement car park;
- the traffic light system will incorporate height beams at the access driveway and within the loading dock, which will be activated by service trucks when entering the site and exiting the loading dock;
- on entry to the service vehicle area, service vehicles will drive in a forward direction into the car park ramp and then reverse into the available loading bay;
- the access ramp to the basement car park has been designed with a maximum grade of 1 in 16 to allow service vehicle access;
- on exit, service vehicles will activate the traffic light system and drive out of the loading dock in a forward direction via the two-way access driveway onto Railway Street;
- when service vehicles are entering or exiting the site the traffic light system will be activated. The signalling system will warn other vehicles entering or exiting the car park to stop within the identified holding areas;
- traffic measures incorporated within the loading dock management plan will be designed in accordance with appropriate guidelines and the Australian Standards.

With the above safety measures in mind it is requested that the Department amend the condition as requested.

### **3.0 WILLOUGHBY CITY COUNCIL**

#### **3.1 Street trees and services in Railway Street**

As noted in the original submission there are no street trees within the footpath along the eastern side of Railway Street as can be seen in the aerial photo at **Figure 1**. Rather trees have been set back within the property boundary as can be seen in the photo at **Figures 2 and 3**. The provision of trees within the property boundary as opposed to the footpath will not have any discernable impact on the appearance of the streetscape as a green edge is still proposed within the site consistent with the remainder of the street.

During the development of the Epica and Altura buildings to the north it was discovered that a sensitive fibre optic cable is located under the footpath on the eastern side of Railway Street (refer to letter from WEBB Australia at **Attachment B**). Disconnection of this line causes lost revenue in the order of \$1 million per day as this is the cable that the fibre optic networks of Sydney and Brisbane.

The fibre optic cables are currently installed in their dedicated service pit within the road verge as shown on the plan at **Attachment B**. If these cables were to be relocated out of the approved tree trench area the only other location they could be placed is within the dedicated allotment for gas mains. This is unlikely to be approved by Telstra due to the potential for future conflicts with the gas authority and also the lost revenue whilst the cable is disconnected for several days.

Due to the sensitivity of these cables, it would be unwise for trees to be planted anywhere above or adjacent to the cables as the tree roots could cause damage to the Fibre Optic network. As they would be located on public property this would become the responsibility of Council as opposed to the owners corporation of 7 Railway Street. The revised scheme, which proposes the planting of trees above the basement carpark, would separate the proposed trees from the services in the street and would thus prevent such a situation from occurring.

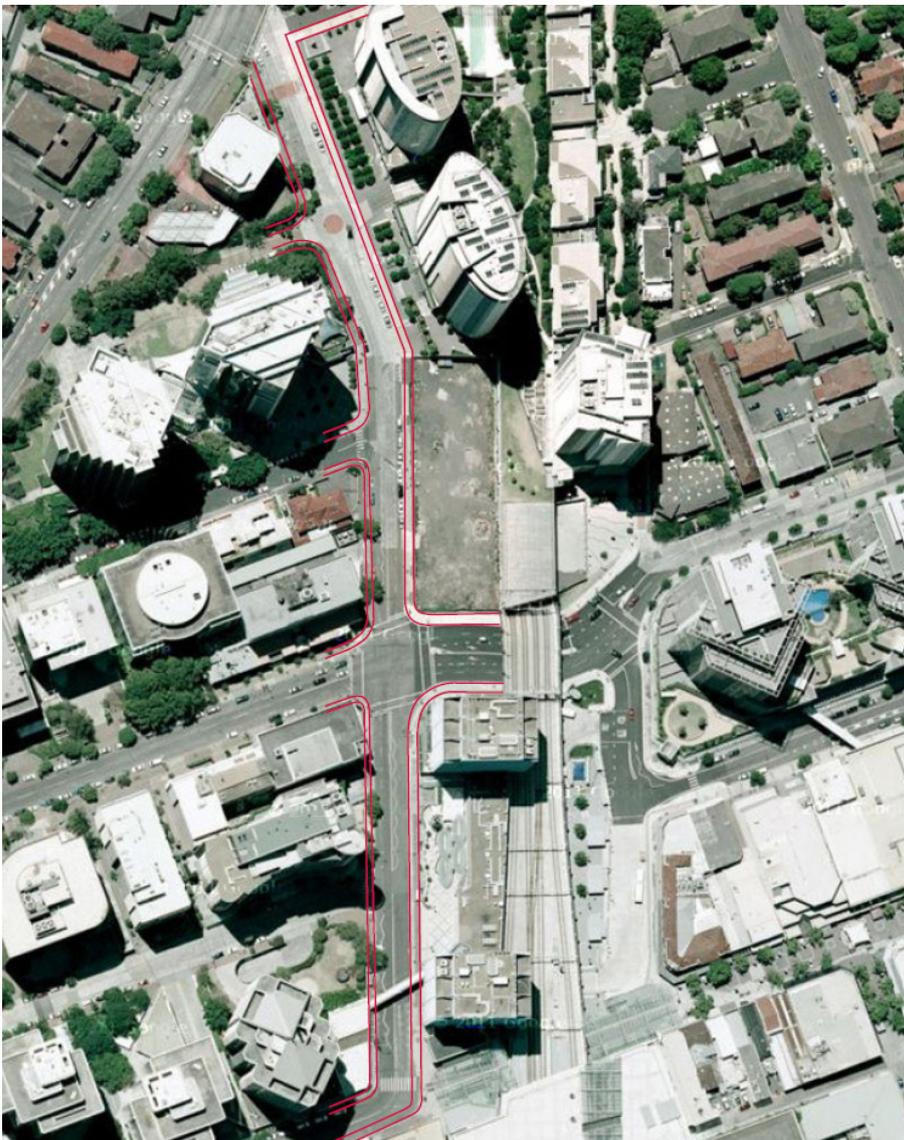


Figure 1 – Aerial photo of Railway Street



**Figure 2** – Photo showing trees behind property boundary line



**Figure 3** – Photo showing no trees the length of Railway Street looking towards the South

### 3.2 Wind mitigation

Council considers that insufficient information was submitted to justify the removal of the street trees at the corner of Help and Railway Streets. Windtech has prepared an additional statement (**Attachment C**) which outlines that the existing wind condition at that point will not be exacerbated by the proposed development and consequently trees are not required to manage wind in that area.

### 3.3 Ventilation and services enclosure

The encroachment on Help Street was a minor drafting error and has now been rectified on the plan PPR 1008 Rev 5 at **Attachment D**.

The ventilation and services enclosure has been integrated into the proposed landscaping scheme.

### 3.4 Changes to commercial floor space

Council has noted a drafting error on the ground floor plan with regards to the omission of an access door to the commercial tenancy in the south-east corner of the building. The plan has been revised which now shows a door providing access into that tenancy from the main commercial lobby. The door will also ensure that the tenancy has an accessible path of travel and that the occupants of the tenancy will have access to the shared amenities. Refer to drawing PPR 1008 Rev 5 at **Attachment D**.

### 3.5 Shared use of commercial car parking and care share spaces

During the preparation of the Preferred Project Report (PPR) the Proponent offered the shared use of the commercial parking spaces outside of standard business hours for the purposes of visitor parking. At the time of amending the application the Proponent envisaged that the commercial office space would be occupied by a single entity, such as a Vodafone, where spaces would not be allocated but rather used on a first in first served or shared basis.

However the above situation has not eventuated. Rather the initial sales of the commercial tenancies have been bought by individual tenants each requiring a car space. The use of the spaces is therefore not as flexible as was originally envisaged.

Further to the above the Proponent has also undertaken further research and has received legal advice (**Attachment E**) regarding the logistics of sharing the spaces and being able to enforce residents to remove their cars from the commercial spaces during business hours. The following is noted:

- Under NSW law it is illegal to remove a car or wheel clamp a car notwithstanding that it is parked illegally within private property.
- The building will not have a concierge, consequently there will not be someone on site 24 hours a day to manage the use of the shared spaces.
- The shared use of the spaces does not allow commercial tenants start work early or finish late as it is likely that the car space would still be occupied by a residential visitor.
- The terms of the parking restriction would only bind Owners and Occupiers of the building and can only require these Owners and Occupiers to use 'best endeavours' to ensure visitors do not use the commercial car parking spaces during standard office hours.
- There is no way to practically enforce the breach of a covenant as the abuse of the space could not be linked back to a specific residential allotment.
- The breach of the parking restriction and, if applicable, positive covenant, can only be enforced by Council – this is unlikely to occur on a regular basis, if at all.

The removal of the vehicle prior to the commencement of business hours will be of paramount importance to owners and occupiers of the commercial lots and the inability to ensure the vacation of these spaces with limited or no recourse will be untenable for the owners of the commercial lots.

We understand that the key objective for the provision of visitor parking is to ensure that residential developments do not dominate on-street parking in the area, thereby affecting local businesses. However in this instance the predominant land use is commercial and during core business hours on-street parking is subject to time restricted parking. Outside of business hours there is not a strong demand for on-street parking, with many spaces vacant in the evening and overnight. There is therefore significant capacity within the surrounding road network to accommodate any demand for visitor parking generated by the approved development.

Further to the above we again stress that the site is within a highly accessible location with both rail and bus transport less than 100m away from the site.

We would like to clarify that consent is not being sought for the deletion of the car share spaces as implied in Council's submission. These will be retained in the scheme as approved.

### **3.6 Truck manoeuvring**

Refer to previous response to this issue at section 2.2 of this letter.

### **3.7 Residential apartments**

No objection is raised by Council with regard to the proposed changes to the residential scheme.

### **3.8 Drainage easement**

Council raises no objection to this amended subject to the 88b Instrument being approved in writing by Council's Engineering Services prior to registration. The applicant raises no objection to this requirement.

### **3.9 Certification of slip resistant services**

Council objects to the proposed amendment to this condition. The intention of the amendment was to avoid duplication of the testing of products which have already achieved a slip resistant classification under wet and dry conditions. In situ testing will be conducted on applied surfaces where the finish of the original product is proposed to be altered by way of a sealant or the like.

In order to achieve certification a product must meet certain standards no matter what location and usage pattern. The way the condition is currently worded is onerous and unnecessary and it is requested that the condition be amended as proposed.

### **3.10 Timing of easement for public access**

Council does not support the proposed change to condition E45 on the basis that many developments do not obtain a final occupation certificate and thus it is hard to enforce all the requirements imposed as conditions of consent.

Whilst we understand Council's position, Mirvac are also aware that landscaping will be the last stage of the development to be completed so as to ensure it is not damaged during construction and thus this condition as currently worded has the potential to delay the issue of interim occupation certificates and also the staged delivery of the project.

A compromise is therefore proposed which maintains the requirement of lodging the easement for public access prior to the issue of any OC but that the enjoyment and use of that space is only available at the satisfactory completion of the approved landscaping works. An alternative wording of the condition is provided below.

#### **Easement in Gross**

E45. Prior to any occupation certificate, an easement for public access in gross for the public to enter, pass, repass, use and enjoy the publicly accessible landscaped area and through site link and tunnel is to be registered over the land in favour of Willoughby City Council.

***The rights granted under this easement for Public Recreation Purposes are subject to completion of construction of the landscaping and walkways forming part of the Easement Site by the Grantor.***

The terms of the easement are to be approved by Council prior to the issue of any Certificate of Subdivision or registration of the approved Plan of Subdivision.

#### **3.11 Common areas**

Mirvac no longer wish to press the amendment to condition E36 of the approval.

#### **3.12 Separate development consents**

The intention of the proposed amendments to condition F13 was to ensure that the base building elements such as inter tenancy walls and toilets can be constructed and installed by Mirvac prior to the settlement of the sale of each commercial tenancy. In light of this Mirvac have taken on board the comments made in Councils submission and propose the following amendment to the condition. This will give both Council and the Department comfort that the occupants of those tenancies will be required to seek further approval for the use and fitout of the individual tenancies. The plans at **Attachment H** show the indicative layout of the commercial tenancies. It is noted that the size of the tenancies will be dependent on the individual requirements of each tenant and therefore may vary in location from that shown on the plan (i.e. may be larger or smaller). However, no tenancy will be smaller than 30m<sup>2</sup>.

It is thus requested that the condition be amended to the following:

#### **Separate Development Consent – Various Uses**

F13. The initial use and fit-out of the all the commercial and retail premises, ***apart from the construction of inter-tenancy walls, bathrooms and kitchenettes*** in the development shall be the subject of separate development applications to Willoughby City Council.

#### 4.0 AMENDMENT TO COMMON OPEN SPACE AREA TO ACCOMMODATE ENLARGED CHILDCARE AREA

As a gesture of good neighbour relations, Mirvac has agreed to annex a portion of the landscaped area on top of the RES to enable an expansion of the Childcare centre in the Cambridge strata plan.

In order to accommodate this amendment Council has requested that Mirvac amend the project approval relating to 7 Railway Street such that it reflects the expansion of the childcare centre. Consequently it is requested that the DPI amend the approval such that part of the RES is excluded from the application area as shown on the attached documentation at **Attachment F**. As can be seen in the correspondence attached Council is supportive of the proposal. The land to be excised has an area of 111.16m<sup>2</sup>. An amended stratum subdivision plan to accommodate the excise of land for the childcare centre is provided at **Attachment G**.

Should you have any queries about this matter, please do not hesitate to contact me on 9409 4944 or [jbuchanan@jbaplanning.com.au](mailto:jbuchanan@jbaplanning.com.au).

Yours faithfully



Jennie Buchanan  
*Principal Planner*

- Attachment A – Colston Budd Hunt Kafes Letter regarding Condition B2(g)
- Attachment B – Information regarding services within Railway Street
- Attachment C – Wind Statement prepared by Windtech
- Attachment D – PPR 1008 Rev 5 revised ground floor plan
- Attachment E – Legal Advice regarding shared use of commercial parking spaces prepared by Corrs Chambers Westgarth
- Attachment F – Childcare Centre DA documentation
- Attachment G – Revised Stratum Subdivision Plans
- Attachment H – Commercial level tenancies indicative layout