



NORTHBRIDGE
PROGRESS ASSOCIATION

Working for the advancement of Northbridge since 1919

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July 21 2008

Mr Martin McCurrich
Chairman, Reference Committee
Northbridge Plaza and Council Car Park Masterplan
c/ Willoughby City Council.

Dear Martin,

Attached is a paper dated July 6, 2008 written by the Association's Public Officer. It has been approved by the committee of the Association for submission to the Reference Committee (RC) and for consideration by the Technical Review Committee (TWG) as part of Stage 1 of the Masterplan process.

The paper raises matters and issues that are important to the Association, the Northbridge community it represents and the broader Willoughby community. We request that they all be considered and appropriately acted upon by members of the RC and TWG.

Among the many issues raised by the paper, the Association has a number of specific requests to make of the RC and TWG:

- The paper advises that officers of Council on TWG should "reject for consideration any proposals that offend the terms of the Council's resolution limiting the expansion of commercial retail space to more than approximately 10%". Additionally, the paper suggests that "all members of the TWG and RC are bound by Council's terms of reference to consider only development plans that come within the purview of the about 10% limit." We ask that legal advice be sought by the RC and TWG on this serious issue, and that it be forwarded to members of the two committees for their consideration.
- The paper draws attention to the existence of an equitable constructive trust in favour of the Public in Council's Northbridge car park which has not been considered by the TWG. Mallesons lawyers gave advice to Council about that matter in August 1998. The report issued by Independent Assessor Neil Ingham in January 2004 raised further issues on the interest of the public in the car park following a public hearing on the proposed re-classification of the car park from 'community' to 'operational' land. The Association's Public Officer has made detailed comment on those findings. We believe his recommendations raise further issues that should properly now be researched

and addressed by the RC and the TWG. The community's rights in the car park would materially impact upon any possible future plans for its development by Council or third parties. We request that the RC, in consultation with its members seek Advice of Senior Counsel on the nature and extent of the public's interest in Council's Northbridge car park. We ask that counsel's advice take into consideration the matters raised by the Association's Public Officer; the Neil Ingham report, an updated advice from Council's lawyers Mallesons; the impact (if any) of the recently enacted NSW Government planning laws; and any other relevant matters.

- We request that the updated Mallesons advice and the Association Public Officer's paper be used by RC to prepare a Brief to Advise for Senior Counsel. In regard to the Council car park, in particular, Senior Counsel should be asked:

Is there a constructive trust in favour of the public?

What are the classes of members of the public who are the beneficiaries of that trust?

Are employees of Plaza tenants members of the public and included in the class of beneficiaries of that trust?

Do members of the public extend to include residents and businesses in the wider Willoughby and North Sydney communities?

How should the public be consulted in regard to possible affectation of their rights in the use of the car park (such as building over the land)?

And any other matters deemed advisable.

- The Association agrees with its Public Officer that the equitable rights of the public are "an essential ingredient to TWG technical deliberations and ultimately the feasibility of any proposed redevelopment of the Plaza shopping centre and the Council's owned car park." Furthermore, the legal work requested comprises research, which properly falls under Stage 1 of the Masterplan process. The Association believes that it is not possible to proceed to Stage 2 of the Masterplan process without such legal research being completed and considered.
- TWG should review and modify its paper "Statutory Planning Overview" after receipt of Mallesons' updated advice and Senior Counsel's Advice, for review by RC.
- Lastly, the Association's Public Officer advises NPA to secure a further survey of residents in Willoughby to ask them the simple questions listed in paragraph 27. We request that RC and TWG give due consideration to such a survey at an appropriate time after the legal advice above is obtained.

Yours sincerely,

Malcolm Lye

NPA representative, Reference Committee

Attach:

"Comment on Northbridge Plaza Masterplan process and review of proposed reclassification of its car park in 2004", Michael Conder, July 6 2008.