

The Office of the General Manager

18 May 2012

The Hon. Charles Casuscelli RFD MP
Committee Chair
Committee on Transport and Infrastructure
Legislative Assembly
Parliament of New South Wales
Macquarie Street
SYDNEY NSW 2000

Attention: Dr Carolyn Littlefair

Dear Dr Littlefair

Re: Inquiry into the Utilisation of Rail Corridors

I refer to your letter of 13 April 2012 requesting response to additional questions following Council's submission to the Inquiry and attendance at the Inquiry on 26 March 2012.

The following comments are provided to the specific questions. Also, as noted at the Inquiry, the Committee is welcome to review Council files from its association with a number of developments within the North Shore rail corridor through Willoughby LGA including The Forum, Chatswood Transport Interchange, rail land north of St Leonards Station developed by Meriton Developments and rail land north of Chatswood Station developed by Mirvac Projects.

The Council's submission states (page 2) that there were 'excessive demands and obstruction' during the approvals and construction process for rail corridor developments. What kinds of demands were made that Council considered to be excessive? Can you provide any specific examples of how agencies were obstructionist?

Every project involving rail corridor land that Council has experienced has had moments of demands and difficulties dealing with State agencies. This varies depending on the extent of work in the project that is associated with replacing or rebuilding rail or other State infrastructure. In general the more of the project that involves alterations to State infrastructure the more difficult and time consuming the process will be. The fundamental complexity that Council has observed is that while there may be a broader Government desire to capitalise on its land assets in rail corridors, State Rail/RailCorp, have a view that any development within a corridor is subservient to the rail infrastructure rather than being an interaction and interrelationship of a development with the rail infrastructure and having to work together. It follows that dialogue with State Rail is more a case of meeting its demands rather than an interaction to resolve issues. The following is provided in summary of some examples:

Willoughby City Council

Initial Decision to Dispose of Railway Land at St Leonards

The railway land at St Leonards consists of the Forum site and land north of the station along Herbert Street that was developed by Meriton. The east side of St Leonards Railway Station is in part still in Rail Corp ownership, a small part is owned by Council and the larger holding is owned by the Altomonte Group.

The decision to close the sidings at St Leonards, rezone and develop was pre-empted by a Local Environmental Study prepared by Planning Workshop Pty Ltd and Sinclair Knight and Partners in 1980 and the St Leonards Traffic and Parking Study 1989 prepared by Ove Arup Transportation Planning in association with Christopher Hallam and Associates. There were a number of key elements of those studies that formed the basis for rezoning railway land at St Leonards including but not limited to provision of a traffic link connecting Chandos Street to Herbert Street over the railway. The recommended road proposals reflected the traffic demands of the increasing development density proposed for the St Leonards area on rail corridor land. A further study commissioned by State Rail for the rezoning and sale of its land confirmed the recommendations of the earlier studies. The link was not provided as part of redevelopment of the area despite undertakings. The failure to provide the link created increased congestion in Christie Street and Pacific Highway and adverse impact on residential streets in Naremburn as traffic sought ways to avoid the congestion and link to Herbert Street. The land was sold by State Rail with no commitment to provide the link or the passing on of the obligation to future developers as part of the sale.

Development of rail land along Herbert Street

Early development consisted of commercial offices at 31 to 35 Herbert Street and a warehouse building at 37 Herbert Street (corner of Ella Street). The early planning intended commercial development with a 4 metre road widening along the full frontage to Herbert Street. Site specific controls in Development Control Plan 7 (1988) were developed under a St Leonards centre zoning in Local Environmental Plan 35 (since superseded). More recently the redevelopment of the land north of St Leonards Station has been carried out as three large residential developments by Meriton setting aside the previous intention for commercial development. These are known as 19 to 27 Herbert Street, 15 and 15A Herbert Street and 7 to 13 Herbert Street.

Council endeavoured to salvage the Chandos Street link to Herbert Street in the context of the 15 and 15A Herbert Street approval. The development site in that case was on the east side of the rail line with access from residential streets including Dalleys Road and Talus Street. The capacity of those roads was not adequate to meet the additional demands of the high density residential proposed. It resulted in access to the site being provided from Herbert Street via a bridge over the railway line. In the design of the bridge Council still sought achieving the link from the end of Chandos Street to relieve traffic congestion in Naremburn on residential streets. The solution to the link design required that it would run parallel to the rail line from an extended Chandos Street and connect to a roundabout and the new bridge to be constructed. Although requiring two

Willoughby City Council

right-angled turns rather than a straight link across from the end of Chandos Street the link was still seen as necessary. The developer was required to build the bridge as part of the high density residential redevelopment that the link would also utilise. The bridge was designed in consultation with State Rail and became part of an extension to Herbert Street that was transferred to Council as a public road in 1994.

Council has since found that its structural design is inadequate for use as a by-pass. In fact the bridge was inadequate for the residential traffic to 15 and 15A Herbert Street. Council has had to carry out major repairs to the bridge in recent years totalling more than \$100,000 in cost. The link land being a strip 14 metres wide and 167.5 metres long of which 69 metres is in stratum for connection to the bridge was handed over to Council in 1999. The structural inadequacy of the bridge means Council can no longer pursue the achievement of a separate link from Chandos Street to Herbert Street. Council has resolved to not proceed with the Chandos Street/Herbert Street link.

The Forum Development

The Forum development at St Leonards railway station was first approved as twin commercial office towers, plaza, bus interchange above a new railway station in accordance with WDCP 7 noted above and 4m road widening in Herbert Street with an overhead bridge link to the Hospital. The development was commenced but stalled when the development went broke. For a number of years the site remained a hole in the ground and the temporary rail station on the south side of the Highway continued to operate.

After some the delay following the failure of the developer and litigation, the site at the rail station again became available for development. The planning controls for the site were reviewed in collaboration with the new purchaser Winten Developments and State Rail. Council adopted a new site specific Development Control Plan in 1996 for the site that provided for a mixed use development with a new station and internal public plaza. At the time the uncertainty of achieving the Chandos Street link was already known such that road widening for the bus interchange in Pacific Highway was increased to also allow for a double right turn bay out of Pacific Highway into Herbert Street to relieve congestion of traffic exiting Christie Street. The Forum was approved by Council in Development Consent 1996/316. Meetings with State Rail during the processing of the development application were hard work as numerous State Rail staff would attend plus State Rail solicitors which meant that much lengthy debate occurred even including whether or not State Rail would hand over to Council as a public road the nib extension of Chandos Street to provide public road access to the public car park on the site and the loading dock.

Difficulties arose with State Rail in the design and operation of the new railway station. At the time Council was told that it was government policy that State Rail must retain ownership of the air space above and below the rail infrastructure. (See later discussion – that was not the policy for the Chatswood Transport Interchange). As a result the internal plaza and the central office building fronting Pacific Highway (203 Pacific Highway) had to be in leasehold title. This created lengthy debate and dialogue

Willoughby City Council

between the developer, Council and solicitors to resolve the manner in which the development would operate and how it could be subdivided in the future. A Plaza Deed or contract was created that would bind all owners within the complex to the shared operation and maintenance of the complex. The development predated amendments to subdivision legislation in 2008 that facilitated the use of Building Management Statements. Council provided for acknowledgement of the Plaza Deed methodology in the conditions of consent (as amended).

Furthermore State Rail wanted no obligation to staffing levels or an emergency evacuation plan for the station. As the station was adjacent to and below more than 700 units, shops, restaurants and 38,000m² of office Council was particularly concerned regarding emergency evacuation to the surrounding streets as the central plaza could not be considered safe as it sits above the station and internal to the site. It required that The Forum development and the Station be separated in the design imposing on the developer and the development the provision of a separate link to Herbert Street, additional emergency fire doors and separate evacuation procedures.

Chatswood Transport Interchange

There is much that can be provided on Chatswood Station Interchange development but the discussion on this project is too lengthy to provide in this letter. It is also noted that the site is still the subject of litigation. Therefore, only brief points are provided in this letter:

The project was managed by a specially set up corporation of Government initially that "evolved" in its power and role during the project with consequent changes in management and staff involved in the project – Parramatta Rail Link Corporation became Transport Infrastructure Development Corporation and is now Transport Construction Authority. This agency was separate to the operating rail agency of Rail Corp.

The Consolidated User Requirements that was prepared early in the project that was to identify all stakeholder needs/requirements including Council was never developed beyond the requirements of Rail Corp notwithstanding that other stakeholders including Council provided input to the document. The MOU that was proposed with Council was never formalised despite repeated requests although the MOU predated the compulsory acquisition by Government of approximately 3,500m² of Council land at the station. The compulsory acquisition was the subject of litigation in 2008.

The public private partnership (PPP) development that was approved was significantly different to the reference scheme for Chatswood Transport Interchange that was approved as an amendment of the Parramatta Rail Link approval in December 2004 but the rail link approval was never revisited. The reference scheme for the PPP tender process was developed after detailed design development including traffic analysis. Nevertheless the variations were dealt with by way of a "Consistency Report" that despite requests Council has not seen.

Willoughby City Council

The mixed use shopping centre/residential development of the PPP, that is, CRI Chatswood Pty Ltd (in receivership), when lodged as a development application with the Department of Planning included land that was not part of the site and impacted on land not part of the site. This led to various further incremental compulsory acquisitions of land and easements as problems were “discovered” affecting other land owners as well as Council. These matters should have been anticipated and should have been avoided in the design rather than the on going patch up to accommodate the design as it was being built.

The development has included freehold a large stratum of land under the railway in the PPP in the development (unlike The Forum). This means that should future further rail development be proposed at Chatswood for say a rail line to Warringah, a connection below to the existing station (above is not possible with the approved development) will have to be separated and below the freehold stratum making such a possibility more difficult to achieve notwithstanding that as public transport link it represents appropriate planning of the future transport needs of Sydney.

As the rail line passes through the development the requirements of Rail Corp in the operation and maintenance of the rail line limit the ability of the public space in the development to be flexible in its use (kiosks, seating etc) and layout over time which is an essential requirement to maintain a dynamic shopping centre. The subdivision locks in the constraints. The terms of the subdivision covenants remove any liability of operation of the rail corridor (noise vibration, electrolysis) by Rail Corp without the standard limitation to cover where a breach may be caused by an error/failure of Rail Corp or its staff/agents.

The Council submission suggests (page 5) that government should provide clear oversight and management to protect the public interest in the construction phase of a development project. Who do you consider should be responsible for this? Do you think that the local Council is best placed to provide this oversight?

It is considered that not all local Council have the expertise on its staff to be best placed to provide the oversight of these complicated projects. Willoughby Council is one of the fortunate Councils in this regard. However, it is considered that the local Council must be an integral part of the management of the project not a bystander.

It is considered that a management body needs to involve as well as the local and State Government representatives experienced representation from the development industry. This would include developers, architects, surveyors, engineers actually experienced in delivering complex projects. It may be that this knowledge is channelled via a representative being from the Property Council and the Urban Development Institute. The essence of the management is to provide the balanced view of all the issues and to have the ability to find the compromise position when required such that the integrated nature of these projects be managed.

Willoughby City Council

Has there been a measurable financial benefit to Council from the St Leonards Forum development? Do you consider that there has been sufficient income generated for Council to cover the costs of providing services?

The Forum at St Leonards set out to provide a landmark development that would give a focus to St Leonards which is the meeting point of three Councils. This is considered was achieved by the development. The Forum maintained the pedestrian link under Pacific Highway for access to the station, it provided a long day care centre, a bridge link over Herbert Street that when the RNS hospital redevelopment progresses can provide a direct pedestrian link from the station to the hospital, a bus interchange in Pacific Highway and widening of Herbert Street. These are all benefits to the local community including the Willoughby, Lane Cove or North Sydney communities.

The income from these developments in terms of rates barely covers the needs of providing services to the development. Rate pegging has meant that income from rates has not kept pace with demands and costs of meeting those demands. The services that are demanded by developments like The Forum are not just road and road lighting maintenance and rubbish collection by Council but also access to open space and recreation facilities in the area which are provided and maintained by Council, stormwater management and maintenance of the trunk stormwater system, community services such as aged care support or multicultural advice and support and so on.

Does the Council's local area have sufficient community infrastructure to support the increased population these developments bring?

As development in rail corridors is sometimes not known until it starts to happen Council is unable to plan for the demands of the development. This was the case for Chatswood Transport Interchange. This was not the case for St Leonards railway land where there was the planning and traffic studies and rezoning that occurred before the development enabling Council to make some preparation for future demands albeit that the development that occurred was not in accordance with that originally intended (see previous discussion).

The Mirvac development of railway land north of Chatswood Station originally was planned co-operatively with Council and rezoning occurred. This was until Mirvac took the last building on the site, more than doubled its size and reduced the office component in favour of residential and had it approved as a Major Project MP 09_0154 in February 2011. As a result the amount of residential on the Pacific Place site significantly exceeds expectations and the jobs generation floor space has reduced from more than 1,400 jobs to around 150. This has removed Chatswood's ability as a compact major centre in the Sydney region to achieve its future job targets required by the State Government's *Metro Strategy* and the *Metropolitan Plan 2036*. It is impossible for councils to plan for these situations.

Would the Council consider that including a requirement to provide an affordable housing and community facilities component in a rail corridor development to be feasible

Willoughby City Council

and desirable? Would the costs of rail corridor projects preclude a social component in the development?

Willoughby Council has an affordable housing program that was given statutory recognition in SEPP 70 in 2002. Through its affordable housing program it has a number of units that are managed on its behalf by the Community Housing Association. The units are available to low income residents of Willoughby City and key workers who would otherwise have to commute long distances to the Willoughby area.

This program is associated with a rezoning for higher density residential development whereby the land affected by the rezoning becomes a precinct for the purposes of affordable housing and is required to provide 4% of the total floor space of new dwellings as affordable housing. The scheme will continue in Council's new Standard Template form LEP that is about to be re-exhibited.

In addition where Council has disposed of its own land, it has required the provision of affordable housing in the terms of the sale. While this may impose a constraint on a future development that is reflected in the sale price of the asset, Council still pursues the achievement of more affordable units for its program for its community. Examples include the sale of its plant nursery site in Willoughby and more recently the sale of the Thomas Street car park site in Chatswood CBD. A future development of Council land that will be required to provide affordable housing is on land Council owns in Barton Road Artarmon.

In addition Council negotiates the provision of child care facilities on site in larger developments rather than a contribution pursuant to s94 of the EP&A Act 1979 for Council to provide the child care spaces in its own centres. It also seeks to ensure that road intersections and pedestrian connections are upgraded to meet the demands of a development. Pedestrian desire lines and conflicts with traffic have resulted in a number of pedestrian overbridges being provided in conjunction with redevelopment in Chatswood CBD. Council has secured premises for community facilities such as Chatswood multicultural information and activity centre (MOSAIC) in Brown Street Chatswood in redevelopment of 10 Railway Street and a Youth Centre as part of Council's car park development in Albert Avenue.

Therefore, from Willoughby Council's actions and policy it's view is that it is essential that some affordable housing and complementary community facilities are achieved as part of rail corridor development. Each development needs to be considered and assessed on an individual basis depending on the type of development proposed, the needs of the development and the context of the site. Council made submissions to Government that affordable housing and child care should be incorporated into the Chatswood Interchange development. While a monetary contribution was made to Council to provide the child care spaces off site Council would have preferred to see a facility within the development to cater for the needs of the 550 residential units and workers in the 12,000m² shopping centre. No affordable housing is to be provided in the Chatswood Interchange development.

Willoughby City Council

Whether or not the cost of incorporating affordable housing and community facilities into a rail corridor development will affect the feasibility of the development depends on the scale and form of the development. The fact is that it should be an essential component of any rail corridor development and its provision should be accommodated and planned for in the feasibility. State Government is very ready to make policy announcements on various social and housing initiatives and it is only appropriate that it leads the way with its actions.

Yours faithfully

Nick Tobin
GENERAL MANAGER