

**Submission**

**No 25**

**INQUIRY INTO THE UTILISATION OF RAIL CORRIDORS**

**Organisation:** Willoughby Council

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## Willoughby City Council

- Achieving a good mix of retail, office and residential development at the Forum (but not at Chatswood);
- Better integration of bus and rail facilities;
- Providing for future capacity in rail expansion at the Forum where extra platforms were provided for and potential for new future services included (This did not happen at the Chatswood Interchange);
- Achieving a good architectural building form with good urban design at the Forum (but not at Chatswood);
- Improved pedestrian connectivity across the rail corridor.

Some of the challenges included:

- The difficulty of working with the various government agencies (RTA, SRA, Private and public bus service providers, Department of Planning, Rail Infrastructure, Transport Infrastructure Development Committee) and the private sector developers to resolve design and operational issues.
- Ensuring a good integration with the context of the sites in terms of building massing and relationship, complementing activities around the site, pedestrian linkages, bus services access and traffic impacts.
- The limitation of the Part 3A assessment process for the approval at Chatswood effectively isolating Council from the process that left many key issues unresolved. This led to subsequent changes being required, further approvals or certification for the private developer (who subsequently went into receivership). Omissions/oversights lead to design problems that have had to be retrospectively resolved at high cost. Litigation is still awaiting resolution.
- Leaving resolution of ownership and access arrangements over other properties unresolved until construction mandates resolution to comply with the BCA. Resolution of permanent neighbouring property/public domain impacts arising from the development being left till the end of the process.

The Council would also draw attention to several broader issues that are relevant to the development of rail corridors:

1. There appears to be a disconnect between Cabinet/ Treasury decisions to raise revenue by selling development potential over rail corridors with the bureaucracy responsible for processing and others then operating the infrastructure. This becomes critical during the approval and construction process with costly delays, excessive demands and obstruction. Delays occur in getting timely responses to issues as they arise. There is excessive reliance of agencies in obtaining legal advice for each issue or having their lawyers present at meetings when there is no need. This was most apparent when discussing the operational demands of the future rail facilities whereby the government agencies have sought to avoid any liability without any provision to cover a situation where the failure may be due to the error on the part of the agency. The process was hampered by the inability or reluctance to make decisions or involve those with the authority to make decisions. This resulted in matters not being resolved or being deferred for multiple meetings or until somebody else accepted responsibility or end in conditions on the future development that are unpalatable, impact viability and future management of the development

## Willoughby City Council

2. The development projects do not give sufficient consideration at the outset to the context in long term strategic planning for Sydney of transport planning preferring a short term revenue response and leaving a legacy for future generations to unravel. For example, the rail enclosure structure north of Chatswood Station has only width sufficient for four rail tracks. Should a Warringah line be considered in the future, there is no capacity for additional lines other than to tunnel below the current lines but at Chatswood Station, the three levels of basement car parking inhibits/obstructs the potential of a future rail line option under Chatswood Station. This was NOT the philosophy with the Forum development at St Leonards where additional platforms are available and RailCorp retain ownership of the corridor including the above ground and below ground space. The plaza and the central building 203 Pacific Highway are on leasehold title rather than being capable of disposal as strata or a stratum.
3. If new projects are to be investigated for development of rail corridors then the realities of enabling an actual development to occur need to be understood in selecting sites. This includes provision for on site parking, construction while maintaining operation of the rail services, creating an “address” for the private sector development at ground level that fits in with the public domain, taking account of the context of the site (is there a low scale conservation area adjoining, are there sensitive landscape concerns such as wildlife corridors, threatened species or a bushfire risk; will there be view impacts from existing properties overlooking the site?). Any project solution must integrate with its context and consider at the outset how the development will be built.
4. The economics of a rail air space development must be determined prior to a project opportunity being put out to expression of interest or tender. The cost of air space development and satisfying the requirements of maintaining the rail facility inherently means that a substantial, high density office, residential or mixed use project will occur. This may not be acceptable in all instances. Unless the “sums” are done understood prior to putting the project opportunity to the market then the response from property developers undertaking due diligence cannot be planned for. The developer will seek to achieve a “reasonable” return as well as cover the high risk of the venture by maximising the density. This means that the economics of a project as well as the planning controls need to be determined before a project is put to the market so that the parameters are defined. It also means that the outcomes can be properly anticipated and assessed in as strategic context before determining whether to proceed.
5. There needs to be commitment to the following matters in the site identification and design process for any rail corridor development:
  - I. Analysis of the site context and how development should work with and complement its surrounds by contributing to an area and not imposing itself on an area.
  - II. Acknowledgement of the role and direction for the location of the project in the long-term strategic planning of the area and subregion in establishing what

## Willoughby City Council

the appropriate development options are and what development standards should apply.

- III. Ensuring there is sufficient land either side of the corridor or at least one side to provide for an address, visibility and entrance to the development, basement car parking and loading access, space for the structural design of a building. This is a particular issue noting that RailCorp does not accept that the rail infrastructure should provide the support for a building requiring separation from the rail corridor for structural support, acoustic and vibration impacts.
- IV. Acknowledgement that the rail infrastructure is a potential hazard (bomb, train crash, fire) that needs to be separately considered to the emergency/fire safety requirements of the proposed development. For example, the fire exits of the development need to deliver people to safety at ground level separate to the rail infrastructure. Moreover, escape exit doors need to have a secondary frontage and not be forced onto the primary frontage because of lack of space resulting in a dead wall length of fire escape doors and lack of an active street frontage.
- V. Ability to still provide good public access and visibility of the rail transport services and to give a profile to the rail facility as the primary site function.
- VI. Providing adequate and integrated space for provision of modal transport changes – bus stands, taxi stands, bicycle facilities.
- VII. Proper assessment and resolution of the impacts of a rail corridor development on an area, for example, traffic generation, new population demands on local social and recreation services, demand for convenience type retail facilities by commuters, impact of large scale waste collection services for the private development occurring through local streets at late hours.
- VIII. Applying an understanding of how the development and the rail infrastructure is to operate together on the same site with an appropriate specification for maintenance management of public spaces, renovations in the future, additions in the future, changes of use and emergency evacuation requirements.
- IX. Subdivision of the site – who owns what, how do the cross easements work, what is the voting structure to ensure that future owners have a fair say in the future of the development along with the responsible rail agency (RailCorp or similar). The Forum and Chatswood Interchange have complex subdivision and management arrangements to identify and define obligations and entitlements. The Forum's was staged and well planned; Chatswood Station is still the subject of litigation. Firstly the purchaser of the shopping centre, the Precision Group, took issue with the form of shopping centre development that they had contracted to purchase not being the delivered outcome as contracted. The proceedings were between the Precision Group (the applicant), the respondent developer (in receivership) and Transport Construction Authority (TCA). That was settled by a reduction in the purchase price.

Secondly the purchaser and proposed developer of the residential towers, Galileo Group, had issues with the subdivision and cross easements which

## Willoughby City Council

did not work. The hearing in these proceedings was completed last year and the parties are still waiting for the final judgement to be handed down which was hoped to be the end of January 2012 but to our knowledge they are all still waiting. The proceedings were between the respondents, that is, the Receiver for the developer, TCA and the Precision Group and the applicant, that is, the Galileo Group.

- X. Acceptance by the rail infrastructure agency (RailCorp) that it is an active party in a development not a reluctant passenger with all care and no responsibility.
- 6 Council submits that there should be avoidance of the “big brother” approach to the process of development. The local Council does have a role and most Council’s are capable of managing the approvals process and construction monitoring. Developers will look for ways of reducing costs and taking short-cuts. One approach is to play the respective levels of government off against each other so that there is no clear oversight and management to protect the public interest and push a simplified construction program through. This inevitably leads to errors, breach of consent conditions, waste of time and resources, increasing cost and poor outcomes. Council is able to provide information about how this occurred through the construction of the Chatswood Interchange project that has resulted in a plethora of legal proceedings between the developer (and the receiver), purchasers of the development components and Transport Construction Authority. None of this occurred at the Forum. Council was the consent authority and worked collaboratively with the developer, the developer’s architects, neighbouring Council’s and government agencies to achieve and award winning outcome.
7. A project involving an operational rail line will need to undertake a detailed project management exercise to determine how the construction process is to be managed – is it to be staged? What will be the sequence? Will the rail line have to operate continuously during construction? Will parts of the development be subdivided and be occupied before parts are finished? How is that to be managed?
- This process is much more complicated than an ordinary private development, particularly as it relies on the participation of multiple agencies and approval bodies.
8. There are some locations where development of air space over rail corridors is not suitable for environmental reasons and therefore sites should only be identified as part of a comprehensive strategic analysis of the entire rail network corridor enabling a selection of a few appropriate sites. For example in the Willoughby area, the Artarmon Station is not a suitable site for major air space development because of its location adjoining a Conservation Area, the already high density of the residential development precinct to the west and the lack of a suitable building footprint available for a project to be constructed upon.
9. The development of new rail corridors that provide public transport connections to urban release areas is an opportunity to create new centres of employment,

## Willoughby City Council

housing and commerce in conjunction with railway stations. The significant investment in rail infrastructure could be supported by the Government introducing a system to capture the development potential of the rail corridors/stations to fund additional public transport improvements. The principles of value capture through up-zoning and sale of development rights is not a new planning tool and has been used effectively internationally to deliver public benefits through the development process. Such a system requires a clear strategic plan for where the development should occur to create new activity centres, assessment of the economic, environmental and social implications of the new centres, addressing probity issues for the transparent use of value capture/ sale of FSR mechanisms, ensuring that the projects are delivered efficiently and ensuring that the return from the value capture is hypothecated back to public transport rather than simply transferred to consolidated revenue.

### Part 2. Impact on Ecological Values

- 1) Council has conferred with other Northern Sydney Councils about the implications of potential Rail Corridor development on the significant landscape value of the contiguous ecological linkages afforded by the existing North Shore Railway Line corridor.
- 2) Council requests that the Committee consider the following matters in its Inquiry.
  - Local Government and other land management agencies are being increasingly proactive in the conservation of our natural heritage and its biodiversity (AMBS 2011, Ku-Ring-Gai Council 2009, Perkins 1997). There are many challenges that face these managers but a very significant issue is that of ensuring connectivity within and between habitats (Kerwell 2010, Parsons 2006, White 2001 and 2006). This issue is significant as it allows movement of fauna through habitat types and differing climatic ranges, provides potential escape routes and temporary refuge during major disturbance and allows the exchange of genetic material of a wide range of organisms thus ensuring greater long term genetic health and biodiversity (Bentley 1997, Blair 1996, Cooke, Lindenmayer 1993 and 1994, Simberloff 1992, Soule 1991, Van der Ree 2000). Maintaining a viable network of ecological linkages is also vital for ensuring the long-term biodiversity of our indigenous plants, animals and other organisms in the current context of climate change (Australian Government, Department of Sustainability, Environment, Water, Population and Communities 2012).
  - Currently, land within the rail corridors of the Greater Metropolitan Area of Sydney, including the Hunter and Illawarra provides some unique opportunities for many indigenous plants and animals to survive and spread (ABC News 2012, Burton 2004, Hochuli 2004 Parsons 2006, White 2006). Although rail infrastructure, including fencing, can pose a significant impediment to the movement of some medium to large terrestrial faunas, many fauna species can benefit from the presence of these narrow linear areas of vegetation, especially in modified urban and peri-urban

landscapes (see attachment 1 - Long-nosed bandicoot returns to inner Sydney. ABC News 2012). These types of areas, varying from relatively intact remnant vegetation to highly degraded and/or significantly modified vegetation are still widely recognised as functional ecological linkages (in some contexts) as well as safe havens for increasingly rare natural heritage particularly in urban and peri-urban areas (Greenway Project Team a, b 2011, Kerswell 2010, Van der Ree 2000, White 2006 B). **This value of the rail corridors of the Greater Metropolitan Area of Sydney appears to have been entirely overlooked in the proposed terms of reference for the Committee's Inquiry into Utilisation of Rail Corridors.**

- 3) With this submission, Council is suggesting that the matters to be considered in the Inquiry should also include how the rail corridors can and should continue to contribute to the protection and maintenance of existing habitats and habitat linkages within and adjoining the corridors. More specifically the terms of reference of the Inquiry should include the assessment of the impact of development within rail corridors on the environmental values of habitats and habitat linkages as well as identifying measures to mitigate impacts and better manage areas of significant habitat value.

Council proposes that the following heads of consideration should apply as part of any recommendations from the Inquiry:

- **Wildlife habitat [connectivity]**

***Determine the value of both land to be developed and adjoining areas, and impact of development on these values and assessment of how land to be developed may contribute to the larger contiguous linkage.***

Issues to be considered should include:

- Identifying existing habitat of the area to be developed.
- Identifying existing habitat of adjoining.
- Identifying potential habitat linkage between these areas.
- How removal of existing vegetation or changes in vegetation management will impact existing habitat.
- Specific impacts of additional infrastructure including physical barriers (fences, walls and buildings), lighting, sound and altered surfaces.
- Most effective and appropriate habitat remediation works to be carried out post development.

- **Meeting appropriate environmental standards**

***Assessed in consultation with local land managers and concerned community groups.***

As the rail corridors do not exist in isolation from the lands they cross (they are managed by a range of public agencies) it is essential developments are



## Willoughby City Council

done in consultation with these agencies and the local communities. It is imperative that this consultative process goes beyond just the consideration of infrastructure management and that it addresses environmental issues of concern to the local agency and resident community.

- **Managing existing threatened plants, plant communities and or animals.**

Remnant areas of native vegetation along the length of the rail corridors of the Greater Metropolitan Area of Sydney, the Hunter and Illawarra (even some of the more degraded areas) include threatened plant species and communities (Brownlie 2007, Pound 2011, Powel 2011, Wilkes 2011) that must be managed in accordance with the Threatened Species and Conservation Act 1995.

- **Maintaining and enhancing wildlife corridors.**

Existing vegetation, even in a degraded state, along rail corridors provides connectivity between existing conservation/habitat areas external to the rail corridor (Parsons 2006, Powel 2012). The protection and appropriate management of these areas for their habitat potential has local and regional significance. Changes to these areas through the removal of key vegetation structure/type or the addition of impediments (such as lighting) in these functional areas may greatly reduce wildlife passage potential on a local and regional scale.

- **Providing funding for new or existing ecological linkages.**

Funds generated from the development of Rail Corridor Land should also be considered to be allocated to the enhancement of existing or creation of new ecological linkages between adjoining habitat areas in consultation with appropriate local land managers and more pro-active management of these significant natural heritage features and in accordance with the threatened species act where applicable.

### Concluding Comments

There are two aspects of rail corridor utilisation that are relevant to the Inquiry that Council has highlighted in this submission. First is the planning and delivery of development within and above rail corridors; the second is the ecological values attributable to existing corridors that need to be taken into account in considering future utilisation.

It is appropriate for the Government to investigate opportunities to maximise the value of these public assets however there needs to be clarity for the purpose of realising this value through development.



## Willoughby City Council

Council submits that a Community or Public Benefit Test should prevail and be the overarching principle for development over rail corridors which are public lands. The benefits should be identified through a strategic planning process involving Councils, key government agencies, communities and the property industry. These then become the basis for assessing any proposal in each particular case. The "benefits" may include protection of significant habitats, sustainable urban renewal of an area, funding of new public transport infrastructure, housing and jobs delivery in appropriate locations and utilising rail facilities to reduce urban sprawl.

Not all corridors or railway stations will be suitable for development and the strategic planning process to identify sites and the approvals process should address heads of consideration that are endorsed and understood by Government and its agencies as well as other stakeholders before any project is contemplated.

Council requests that the Committee take into consideration this submission in its deliberations.

Thank you for the opportunity to make a submission on the Inquiry.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Nick Tobin', followed by a long horizontal line extending to the right.

Nick Tobin  
GENERAL MANAGER





**CHATSWOOD BUS/RAIL INTERCHANGE AND MIXED USE DEVELOPMENT**



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