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NSW DEPT PLANNING
SSD - MAJOR PROJECTS
Assessment Teams 28 December 2023

att: Mr Roger Roppolo and ors.

A QUESTION OF COMPLIANCE re s2.23 CLM ACT 2016

Royal Randwick Racecourse – SSD-38019507

HOTEL PROPOSAL as-lodged 16 March 2023

Dear Mr Roppolo,

The above State Significant Development application SSD- 38019507 was recently exhibited on the NSW Planning Portal, but only now brought to my attention. I see that involves a mixed use hotel at Royal Randwick Racecourse (RRR), which of course is Crown land – my area of concern for years now.

Having looked at the information as available on the weblink, there is reason to suspect that, under the legal structure that governs NSW Crown Land, the project did not have the proper authorisation for lodgment, ie to even commence any SSD assessment - and this despite any 'owners consent' rule in the EP&A Act re delayed, or even pre-consent, provision

In this regard, let me draw your attention to the very recent Land and Environment Court (LEC) decision (13 Dec 2023) in the case of Save Bungendore Park Inc v Minister for Education and Early Learning (DoE). In this, the Minister for Planning was the second Respondent, being responsible for signing what the LEC found to be **jurisdictionally deficient** in not having one vital "**prerequisite**" – namely Crown Land Minister's Consent.

In effect, this LEC judgement upholds the Crown Land Management Act 2016 and sets aside SSD Consent 14394209 of 24 Jan 2023, with full costs awarded to the applicant, a small community group known as SBP, against both DoE and Planning.

To the best of my knowledge, this is the first such court challenge involving the 'new' CLMA. It is a landmark decision and definitively confirms that Crown Land law prevails over EP&A Regulations when it comes to owner's consent re DA's for CL reserves and dedications.

No doubt SSD Team Leaders are getting underway with update training re the above LEC Decision, possibly even with CLMA info sessions for Major Project Directors like yourself, highlighting a need to be ultra-aware when anything with a CL aspect hits your desk.

However, SSD- 38019507 for RRR is under active assessment right now. So the following information may be of immediate and urgent relevance as to whether Crown Land Minister's consent-to-lodge was, and IS, needed.

Having read all 52pp of the SBP Decision, I think it is.

SUMMARY

On the Planning Portal for SSD-38019507 right now I can find just ONE mention of any Crown land identity – this on p.10 of the Scoping doc, para 2.2.2 re management by Randwick Racecourse Trust, as leased to ATC. After that, nothing. No consideration of what this might mean re Crown Land considerations, or the CLMA, not even in the Appendix on "Compliance". For an SSD, this seems a major omission.

Not only is the Royal Randwick Racecourse Trustee (as Lessor) required under the Merger Act 2010 to obtain consent from the Minister for Racing and Gaming, but, given RRR is Crown Land, the Trustees are also required by **s.2,23(5) of the CLMA 2016** to obtain **owner's consent-to-lodge** from the Minister for Crown Lands for SSD-38019507. As the Bungendore decision makes abundantly clear on more than one occasion – CL Minister's approval re lodgment is a "**pre-requisite"**. As such, it is also quite separate from any other "owner's consent" that might be required, for instance, by the EP&A Act.

Also crucial is the fact that, as specified in the 1863 Deed of Grant (and retained in 1873, and 2008, and in the Merger Act 2010), the sole role of the RRR Trustees **is to be the CL Lessor** (not 'owners') managing this Crown Land site in compliance with that Deed, whereby Randwick Racecourse is 'set aside" for racing, training and "associated activities", plus a few specific sporting activities, like cricket. Some form of "entertainment" is possible – but with a big IF !! None of these are remotely related to casino/gaming and hotel accommodation.

This "public purpose" still defines the activities which the Trustees can condone – and thus also controls the category and content of development to which they can, as Lessors, give legal permission. As Lessee, the Australian Turf Club has no power to exceed or ignore the above public-purpose in its Lease-terms – and certainly not without that key Crown Land owner's consent, as in s.23.2(5) – ie to lodge a DA the first place.

Remember too, that under the CLMA, the Crown Land Minister cannot allow lodgment of an "illegal" DA – that is, development or use which itself would be a breach of the CLMA. To do so is quite simply 'beyond power'. Nor does a Planning Minister have power to sign-off in consent to any such illegality - a factor which must now be taken into account when assessing this RRR proposal. There are two key questions –

1. does an open-access major hotel, with facilities not limited to ATC members or staff meet the very specific limitations in the controlling Deed of Grant?
2. are the proposed Gaming/Casino operations permissible as '**associated activities**' in regard to RACING, as required by that Deed of Grant?

It is worth noting that in its wording, the Deed of Grant seems to assume that the racing activities will be self-supporting, and also, that while there are a few avenues whereby the Trustees can re-define some uses, none are nominated as fund-raising purposes.

With apologies that this comes after the exhibition period, but the SBP ruling is barely a fortnight old, and far too important to ignore, I predict it will prove to have systemic CL significance for NSW Planning at large, not just for the RRR proposal.

Thank you.

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