

06140  
20 April 2007

The Director-General  
Department of Planning  
23-33 Bridge Street  
SYDNEY NSW 2000

Attention: Mr Oliver Klein

Dear Oliver

**MACQUARIE UNIVERSITY PRIVATE HOSPITAL - PROJECT APPLICATION NO. MP 06-0172  
SECTION 94 DEVELOPER CONTRIBUTIONS**

This submission is made to the Department of Planning on behalf of the proponents of the proposed Macquarie University Private Hospital (MP 06-0172), Macquarie University and Dalcross Hospital Pty Ltd.

The purpose of this submission is to address the issue of Section 94 Developer Contributions, in particular, to respond to Ryde City Council's position (as stated in their submission dated March 2007) that the proposed hospital should be levied under Section 94 of the EP&A Act in a manner consistent with other *"commercial developments within the Macquarie University Research Park (MURP) and in keeping with Council's policy"* (assumed in this instance to be the Ryde Section 94 Contribution Plan No.1 (2003 Amendment)).

The submission relates only to the proposed hospital component of the project (Site 2). Section 94 Contributions for the existing approved building on Site 1, being No. 2 Technology Place, Macquarie University, were paid to Council by the proponent in November 2006 in accordance with Condition 33 of Development Consent No. LDA 676/2001. The contribution paid was \$201,799 (subject to CPI increase). As there is no proposed increase in the floor space of the approved Site 1 building, no additional contribution is payable for Site 1.

*Ryde Section 94 Contribution Plan No.1 (2003 Amendment)*, as modified 1 March 2007, applies to the subject land. Under this Plan, Council levies Section 94 contributions for "Residential" development, "Commercial / Industrial" development, and "Retail" development. The proposed private hospital comprises 18,190m<sup>2</sup> of GFA (being 17,670m<sup>2</sup> of 'hospital/ medical uses' and 520m<sup>2</sup> of retail). Stage 1 of the hospital construction will comprise a total of 15,901m<sup>2</sup> GFA including 15,381m<sup>2</sup> of hospital/ medical uses and 520m<sup>2</sup> of retail uses. The balance (2,289m<sup>2</sup>) will be constructed in Stage 2.

If it were to be assumed that the hospital constitutes a "Commercial / Industrial" use, **Table 1** below sets out the applicable rates and contributions for the 2 stages of construction of the hospital.

**Table 1:** Section 94 calculations (as at March 2007)

	Rate per m <sup>2</sup> GFA	Stage 1 contribution (\$)	Ultimate contribution (\$)
<b>Commercial/industrial</b>			
Public Space	\$30	\$461,430	\$530,100
Stormwater Drainage	\$39	\$559,859	\$671,460
Administration	\$3	\$46,143	\$53,010
Roads*	n/a	-	-
<b>Total</b>	<b>\$72</b>		
<b>Retail</b>			
Public Space	\$14	\$7,280	\$7,280
Stormwater Drainage	\$17	\$8,840	\$8,840
Administration	\$2	\$1,040	\$1,040
Roads*	n/a	-	-
<b>Total</b>	<b>\$33</b>		
<b>TOTAL</b>	-	<b>\$1,084,592</b>	<b>\$1,271,210</b>

\* Council's Section 94 Plan also nominates \$990,000 for road improvements associated with the establishment of the Macquarie University Research Park (MURP) within which the proposed hospital site is located. It is understood that monetary contributions have been paid or works-in-kind undertaken as part of previous commercial development within the MURP to in satisfaction this component of the Plan.

Council's position that the proposed hospital should be levied in accordance with the Ryde Section 94 Contribution Plan No.1 2003 Amendment)) as if it were a 'commercial development' is unreasonable for the following reasons:

- Council's Section 94 Plan does not permit the levying of Section 94 contributions for 'hospital' uses;
- Council's position is inconsistent with the Department of Planning's Circular No. D6 – *Crown Development Applications and Condition of Consent*;
- adequate open space and recreation facilities currently exist on site and therefore there is no nexus between the proposed development and the need for further contributions towards open / public space; and
- adequate stormwater drainage infrastructure to cater for the proposed development has already been constructed as part of the MURP and therefore it is unreasonable for substantial monetary contributions to be collected for stormwater drainage.

#### **Ryde Section 94 Contribution Plan No.1 (2003 Amendment)**

Council's Section 94 Plan (Ryde Section 94 Contribution Plan No.1 (2003 Amendment)) does not permit the levying of Section 94 contributions in this case as the proposed development is defined as a hospital and not as 'commercial' development and as noted, the Section 94 Plan only allows for the imposition of a Section 94 contribution for "Residential", "Commercial / Industrial" and "Retail" development. Whilst the Section 94 Plan does not include specific definitions for these uses, is reasonable to defer to the Ryde Planning Scheme Ordinance 1979 (PSO 1979) for the relevant definitions of these land uses:

**“Commercial Premises”** is defined within Ryde PSO 1979 as: *“a building or place used as an office or for other business or commercial purposes, but does not include a building or place elsewhere specifically defined in this clause or a building or place used for a purpose elsewhere specifically defined in this clause or for a roadside stall.”*

**“Hospital”** is defined in Ryde PSO 1979 as being *“a building or place used as a: (a) hospital, (b) sanatorium, (c) health centre, (d) nursing home, (e) home for infirm persons; incurable persons, or convalescent persons, where public or private, and include a shop or dispensary used in conjunction therewith but does not include an institution.”*

**“Industry”** is also separately defined under PSO 1979.

With the exception of the 520m<sup>2</sup> of retail, the proposed development is entirely consistent with the above definition of “hospital”. Therefore, by definition, the proposed hospital cannot be a “commercial premises” and as such would not be in accordance with and does not fall within the scope of “Commercial / Industrial” uses in Council’s Section 94 Plan.

It is noted that if Ryde Council were the consent authority for the application, any condition imposed by Council along the lines suggested by Council would be in breach of Section 94B of the EP&A Act 1979 which states that: *“A consent authority [other than the Minister] may impose a condition under section 94 or 94A only if it is of a kind allowed by, and is determined in accordance with, a contributions plan (subject to any direction of the Minister under this Division).”*

### **Consistency with Circular No. D6 – Crown Development Applications and Conditions of Consent**

*Circular No. D6 – Crown Development Applications and Conditions of Consent* was introduced in 1989 and updated in 1995. One of the purposes of the Circular is to provide policy direction regarding appropriate conditions of consent, in particular, Section 94 conditions for Crown Development Applications (DA) that propose an ‘essential community service’ ie education health care, community services etc. The Circular provides guidance to Councils as to the categories of contributions that should be, and should not be levied on Crown DAs.

Whilst it is acknowledged that the proposal does not technically constitute a ‘Crown DA’, for the purposes of the EP&A Act, the joint proponent, Macquarie University, is legally defined as a Crown agency. The proposed project, which combines health / medical services with academic and research activities, will provide a significant public benefit to the wider community. The facility will complement the establishment of the Australian School of Advanced Medicine (ASAM), which is currently located in temporary premises on the Macquarie University Campus and is consistent with the University’s Charter.

With respect to Section 94 Contributions, Circular No. D6 states:

*“Crown activities providing a public service or facility lead to significant benefits for the public in terms of essential community services and employment opportunities. Therefore, it is important that these essential community services are not delayed by unnecessary disputes over conditions of consent. These activities are not likely to require the provision of public services and amenities in the same way as developments undertaken with a commercial objective.”*

With respect to health services, Circular No. D6 suggests that contributions should only be sought for drainage and specific local road upgrades / traffic management upgrades. It also suggests that no contributions should be collected for open space, community facilities, parking, and general local and main road upgrades. In this regard, Council's request for significant contributions (ie ~ \$530,000) for public space is inconsistent with the Department of Planning's Circular No. D6.

Moreover, significant amounts of accessible open space and recreation facilities (ie swimming pools, gymnasiums etc) already exist on the University Campus well in excess of what would typically be required under Section 94. This open space and facilities will be available for use for the employees of the hospital. As such, there is no real nexus between the proposed development and the need for further contributions towards open / public space.

The Department of Planning agreed with this position (that no open space contribution is required) in its mediation between the University and Council of the Section 94 contributions relating to the DA for Stage 2 of the Student Housing Project (a Crown DA). In this instance, Council defined the development as 'residential' for the purposes of Section 94.

The Department took the same view with respect to the University's (Crown) DA for the Aquatic and Leisure Centre which is currently under construction. In this instance, Council defined the facility as a 'commercial development', however, the Department agreed with the University's position that no open space or stormwater drainage contribution was warranted.

#### **Adequate stormwater drainage facilities exist**

As part of the establishment of the Macquarie University Research Park (MURP), substantial stormwater drainage and on-site detention works were constructed by the University to mitigate any downstream impacts. Development generally of the scale proposed on both Sites 1 and 2 was factored into the capacity of these works (refer to Boyden Partners Stormwater Reports dated September 2006 and March 1999 included at Appendix 6 of the Environmental Assessment). As Boyden Partners confirm that the proposal will not exacerbate flooding or drainage impacts, it is reasonable that the monetary contribution for stormwater drainage (ie ~ \$670,000) is discounted to reflect that substantial stormwater drainage infrastructure to cater for the proposed development has already been funded and constructed by the University.

#### **Conclusion**

If Ryde Council had been the consent authority for the subject application, any condition imposed by Council treating it as a 'commercial development' would be in breach of Section 94B of the EP&A Act. Whilst it is acknowledged that the Minister is not bound by Section 94B, for the purposes of calculating Section 94 developer contributions, it is unreasonable to treat the Macquarie University Private Hospital as a typical commercial office development for the following reasons:

- Council's Section 94 Plan does not permit the levying of Section 94 contributions for 'hospital' uses;
- Council's position is inconsistent with the Department of Planning's Circular No. D6 – *Crown Development Applications and Condition of Consent*;
- adequate open space and recreation facilities currently exist on site and therefore there is no nexus between the proposed development and the need for further contributions towards open / public space; and

- adequate stormwater drainage infrastructure to cater for the proposed development has already been constructed as part of the MURP and therefore it is unreasonable for substantial monetary contributions to be collected for stormwater drainage.

**Table 2** below sets out the proposed Section 94 contributions for the project. In summary, no open space contribution is applicable to the hospital / medical component of the project, the contribution for stormwater drainage is discounted 50% to reflect the on-site infrastructure that has already been constructed, and the retail component is levied as per Council's Section 94 Plan. The condition of approval should be structured to reflect the staged construction of the project.

**Table 2:** Proposed Section 94 Contributions

	Rate per m <sup>2</sup> GFA	Stage 1 contribution (\$)	Ultimate contribution (\$)
<i>Hospital/ medical uses</i>			
Stormwater Drainage	\$19.5*	\$299,929.50	\$344,565
Administration	\$3	\$46,143	\$53,010
<i>Retail</i>			
Public Space	\$14	\$7,280	\$7,280
Stormwater Drainage	\$17	\$8,840	\$8,840
Administration	\$2	\$1,040	\$1,040
<b>TOTAL</b>		<b>\$262,595.50</b>	<b>\$414,735</b>

\* 50% of \$39

Should you have any queries about this matter, please do not hesitate to contact the undersigned.

Yours faithfully



Bernard Gallagher  
*Partner*

cc Mr Robert Kelly - Macquarie University  
Mr Carl Adams - Dalcross Private Hospital