

## LOWY INSTITUTE OF INTERNATIONAL POLICY

RE: REDEVELOPMENT OF LAND AT 33 BLIGH STREET, SYDNEY

### MEMORANDUM OF OPINION

1. My instructing solicitor is the Solicitor Development, Development and Asset Management, Westfield Limited. Westfield Limited is interested in premises known as “The Lowy Institute of International Policy” located in the former New South Wales Club building at 31 Bligh Street, Sydney.
2. Energy Australia has recently purchased land adjoining the Lowy Institute, known as 33 Bligh Street, Sydney.
3. On 20 September 2009 a Concept Plan Approval was issued by the Minister for Planning, pursuant to Part 3A of the *Environmental Planning and Assessment Act* with respect to a project known as “the Sydney City Grid”.
4. Energy Australia, as I am instructed, proposes redeveloping No 33 Bligh Street, Sydney, with a view to constructing a mixed use development above a new substation at ground level and an upgrade to cable infrastructure below ground.
5. Pursuant to condition 1.3 of the Concept Plan Approval, the Concept Plan was defined in specifically identified components. Stage 1 is not relevant to the present question; however, Stage 2, described as “the balance of works required for the Concept Plan” (being a balance after the construction of the Belmore

Park Zone Substation and a commercial/retail development on the corner of Pitt, Campbell and Hay Streets) comprised five individual stages, including the following:

“(i) Stage 2A, being the construction and operation of the City East Zone Substation in the vicinity of Phillip, Bent, Bligh and O’Connell Streets.”

6. I am instructed that Energy Australia has elected to “split” Stage 2A into two stages as follows:

“(i) Demolition, bulk earthworks, and subsurface works to facilitate the construction of the City East Zone Substation. The application is also seeking consent for a building envelope on the site that includes the substation and an office tower.

(ii) Separate project application to be lodged seeking consent for the construction of an operation of the substation and associated commercial tower, including details of built form, following design and review process.”

7. In my opinion, that process is beyond the terms of the present Concept Plan Approval.

8. Firstly, the Concept Plan Approval does not contemplate a subdivision of already defined stages into further stages. Clause 1.3 of the Concept Plan Approval makes it clear, in my opinion, that the particular stages of the Concept Plan are as defined in 1.3(b).

9. This position is corroborated by reference to clause 2.3 which, insofar as it refers to separate applications, contemplates a separate application for each substage, but not proponent-elected substages of each substage.

10. As s. 75D(2) of the EP&A Act requires adherence with conditions of an approval, the process of creation of additional substages would in my opinion be outside the parameters of the conditions of the concept approval.
11. Secondly, there is a serious issue in my opinion as to whether any commercial redevelopment of the property at No 31 Bligh Street can be the subject of an application for project approval as part of Stage 2A.
12. According to its terms, condition 1.3(b)(i) contemplates within Stage 2A “the construction and operation of the City East Zone Substation in the vicinity of Phillip, Bent, Bligh and O’Connell Streets”, but makes no reference to any commercial redevelopment which arguably is not related to a substation, let alone a substation as part of a broad precinct defined by that condition.
13. This observation is particularly apparent when the parameters of Stage 2A are contrasted with the parameters of Stage 1, in which, as part of Stage 1A, the substation aspect is identified, and then as a separate stage (Stage 1B) a “commercial/retail development” is specifically contemplated.
14. Accordingly, in my opinion there is serious doubt as to whether the Concept Plan Approval extends to a commercial tower redevelopment on the subject site, or as part of stage 2A, pursuant to the existing terms of the Concept Approval.
15. Even if it does, there is, in addition, a requirement in the Concept Approval, within clause 3.2, for the design of any substation to be the subject of a design review process, which is to be based on the principles of the design review competition of the Sydney Local Environmental Plan 2005, and include consultation with Council. Unless the relevant components of those principles are relied upon in the design review process contemplated by condition 3.2, then any project application lodged in relation to Stage 2A will arguably be in breach

of that condition.

16. Finally, although strictly a matter of merit, it is to be noted that Stage 2A(i), as formulated by Energy Australia, contemplates "... consent for a building envelope on the site that includes the substation and office tower ...". That site, namely 33 Bligh Street, is immediately adjacent to a heritage listed building at 31 Bligh Street, being the former New South Wales Club building. In circumstances where a proposal for redevelopment of land immediately adjacent to a heritage building is being proposed, the view has been expressed that proceeding by way of building envelope is "... the worst possible first step in planning [a site's] redevelopment", and that where the major issues are the impact on a heritage listed item and a heritage streetscape, building envelopes are not sufficient to make a proper assessment: *Anglican Church v Sydney City Council* (2003) 139 LGERA 231 at [62], and [59].
17. Although those views were expressed by Commissioners of the Land and Environment Court in determining a development application (and not a Part 3A Project Approval), as matters of merit, they are of equal relevance in the current project application. In this respect, to the extent that I have been provided with montages of the envelopes, they, equally, do not greatly assist in determining the impact of the proposed built form upon the heritage item.

19 August 2010



**ADRIAN GALASSO SC**

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