

21 October 2010



NSW Department of Planning
Infrastructure Projects
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Attention: Dinuka McKenzie

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Dear *Dinuka*,

RE: MP 10_0092 PART 3A EXHIBITION NORTH SYDNEY ZONE SUBSTATION

We refer to the Part 3A exhibition of the Environmental Assessment for the North Sydney Zone Substation at 3 -11 Ward St North Sydney.

This submission is made as the future owner of 136 Walker St, which lies immediately to the east of the proposed Zone Substation.

Winten No 44 Pty Ltd has exchanged a Contract for sale with Castle Constructions Pty Ltd to purchase 136 – 140 Walker St North Sydney. The existing owner Castle Constructions has granted Winten approval to lodge applications and submissions on this property.

We request the Department's consideration of the following matters in support to our claim that justifies amendments that should be incorporated.

Approved DA 136 Walker St

Castle Constructions was granted approval on 22 October 2008 DA 195 /08 to construct a 22 storey mixed use building on 136 -140 Walker St.

On 21 May 2010 after significant legal action against Energy Australia, Castle Constructions wrote to the Minister / Department of Planning setting out the issues related to the approved DA for 136 Walker St. At that time the planning issues raised in relation to the proposed substation and the then current approval were as follows:

"In essence, the EnergyAustralia assessment completely failed to consider the form and location of the Approved Development. In this regard, please see the attached affidavits of an expert planner, Mr Terry Byrnes, and an acoustic consultant, Dr Renzo Tonin, which summarise the position.

Mr Byrnes concluded (see paragraphs 36-40):

"In summary, in my opinion, any person having knowledge of the spatial relationship between the Approved Development and the Proposed Substation, acting reasonably, would conclude (and I do conclude) that:

(a) the Proposed Substation generates significant impacts on the amenity of the Approved Development;

(b) the primary outlook from the living areas 10 units in the Approved Development via their only terraces in at least 10 is confined to a view of the wall of the eastern elevation of the Proposed Substation. The outlooks from the living rooms of those units are severely to completely obstructed by the Proposed Substation;

(c) a more detailed assessment of shadow impacts was required than that depicted in the REF;

(d) an assessment as referred to in the preceding subparagraph would have revealed that there are no existing shadows upon the land at 136-140 Walker Street at relevant times;

(e) the modelling of shadow impacts in the REF is flawed and understates the extent and impact of the shadows generated by the Proposed Substation;

(f) the Proposed Substation generates significant environmental impacts upon the Approved Development;

(g) the circumstances were such as to call for an specialist assessment of whether and if so, to what extent, noise reverberation off the proposed wall impacts the units and terraces opposite;

(h) such an assessment would have revealed that the Proposed Substation has a significant impact on the amenity of the Approved Development in terms of noise reverberation."

In addition and most importantly, the Energy Australia proposal was challenged on the basis that the site area available for the substation development is excessive for a building the size of the footprint as proposed and therefore resulting in a residual site area for development independent of the substation needs. That being the case, a justification was sought for the proposal in its current form and why the vacant area could not be adjoining the residential development of 136 – 140 Walker Street. On the conceptual basis that the proposal starts from the middle of the site with a *progressive enlargement of the existing substation that is to be maintained initially*. Therefore asking why demolition could not form the last stage of the development, after the new generators have been successfully commissioned. In essence starting in the middle of the site and working south towards Berry Street.

Whilst the exhibited Environmental Assessment tries to validate the overshadowing impact against an alternative use of 3-11 Ward St, the impact of the proposed zero setback remains valid. The zero setback to the boundary with 136 Walker St also heightens by proximity the impact of EMF's on the mixed use.

Therefore, the current application continues to justify the staging of the development and the ultimate location of vacant land within the site, at the same time confines the issue of the impact of 136-140 Walker St to one of overshadowing impacts. While ignoring the significance of the remaining issues related to EMF's impacts and the lack of an articulated façade, beyond a superficial patterning in two dimensions.

As demonstrated by the need of redesign the lower floors of 136-140 Walker St. completely the claim that "Construction of the proposed substation would have minimum impacts on the approved development at 136-140 Walker St." is completely misplaced and demonstrably unjustified.

External Design

In the Environmental Assessment Main Volume Part 1- Table ES1.1 Summary of Key environmental issues- Observer location 5 Page 19– the Applicant asserts that design has been subject to "a series of discussions" with adjoining owners and North Sydney Council's Design Excellence Panel. We would suggest this is overstating the consultation and due regard to any comments of the previous approval.

'Technical requirements and the configuration of equipment do not allow the eastern wall to be articulated or modulated' Accepting that opinion of the applicant (as stated in response to impacts on 136 – 140 Walker Street) on its face value, it does not mean that the consequences of that observation should be considered acceptable.

But there can be no validity in the contrary claim by Energy Australia that mitigation has been achieved by a brickwork pattern. If anything that patterning see Figure 5.1 of photo montage illustration, exaggerates the scale of the building by its uniform application to the entire building volume.

By comparison, "appropriate articulation and modulation" is identified in the applicant's own assessment (under Appendix E part 2) to be the treatment afforded the scale of the development as observe from Berry St and Ward St. which is in stark contrast to the attempts along the common boundary with 136-140 Walker St. and where the impacts are no less immediate. Even the skillion roof, as it slopes to the common boundary, provides virtually no articulation of scale and massing of the roof when compared to the views from Ward St.

We support the position of North Sydney Council and their Design Excellence Panel in requesting that the proposed façade treatment be amended or substantially change to reduce the visual impact of the proposed substation. The level of articulation is at best providing poor visual amenity to 136 Walker St. The proposed banding offers a token relief from a 23m high blank wall with zero boundary setback.

The suggestion (see Observer Location 3 Table ES1.1) that landscaping in the approved 136 Walker St should provide a visual barrier is a transfer of responsibility for proper design. We understand Council has previously requested design improvement when Energy Australia self approved the previous approval, but no response to Council's concerns were made.

We consider that the Energy Australia City North Zone substation in Sussex St building is more unobtrusive and better addresses its context than the proposed design through proper articulation of the facade, surely that would be more appropriate.

New DA 136 Walker St

In recognition of the impact of the sub station, it required a fundamental redesign of the proposal for 136 – 140 Walker St. at the levels that would be otherwise adjoining the blank façade as proposed for the Energy Australia proposal. Consequently Winten Developments has lodged a subsequent Development Application for 136 Walker St with North Sydney Council (316/2010) on 19 August 2010.

This Development Application (copy attached) is being processed and is due to go to JRRP in the few weeks. The submitted Development Application seeks to address the not insignificant issues created by the overshadowing and lack of a setback created by the proposed Zone Substation. Should this Development Application be approved it will in part mitigate the loss of amenity on 136 Walker St. It will not mitigate the loss or affectation as a result of the transgression of EMF's across the boundary to 136 Walker St.

Should this Development Application not be approved then we maintain the position as outlined in Castle Constructions letter dated 21 May 2010.

Noise

Given the activities within the substation are likely to be carried out 24hours a day 365 days a year, then the two vertical louvers on the eastern elevation should be relocated from this adjacent elevation.

We would expect that the Department can otherwise condition the approval to provide for suitable noise attenuation to address adjacent residential uses.

EMF Safeguards

As the purchasers of the site at 136 – 140 Walker Street, the Winten Property Group accepts the need for a sub-station on the proposed site to ensure continuity of supply. Just as the proponents of that facility must accept the equally legitimate proximity of residential development arising from the adjoining Mixed Use zone and the development on 136 – 140 in response to that zoning.

In the absence of sufficient clearance between the adjoining residential uses, safeguarding against the potential impacts from the generated Electromagnetic Field becomes a risk management issue that must be otherwise managed. Eliminating the potential safeguarding due to separation must mean a heightened risk if nothing else is substituted in its place.

For that reason the independent conclusion of the report by EMR Surveys Pty Ltd (as attached) *should be upheld and that suitable magnetic shielding be installed to reduce the magnetic fields along the eastern boundary.* As a condition of consent the level should be 4 milliguass (0.4 microtesla) as a recommended maximum level.

We also advise that it is highly likely that we will be constructing 136 Walker St at the same time as Energy Australia and a scaffold over our property will impact our construction programme. An alternative façade solution that assists the conflict should be found, also delivering a more considered external treatment to the building.

Conclusion

This application under Part 3A is a part rationalization of a previously inadequate Assessment of Environmental Factors undertaken by Energy Australia. Originally any impact at all on a development approval at 136 – 140 Walker Street was ignored completely and the site depicted as un-redeveloped. Under this current application an elaborately documented assessment of the proposal and its impact still concludes a result that is favourable in all respects with no changes warranted.

Despite implying the unqualified support of North Sydney Council and the Design Excellence Panel it is the fact that neither body supports the brick bonding pattern of the building above podium level. But this two dimensional patterning is all that is offered as mitigation of the overly imposing blank common boundary wall to be endured from balconies no more than 2.8 metres away (and in some instances closer) for floors 5 to 8 and a not much better outcome for the units at level 9 opposite a vast skillion roof.

The extent to which there is strong disagreement with Energy Australia's own conclusion is ultimately demonstrated by the reluctant conclusion on the part of Winten No 44 that a redesign of the approved 136 – 140 Walker Street proposal was the only option open to overcoming the sub-station building design shortcomings. Having now contributed all that could be done to reconcile the two developments the fact remains that Energy Australia still has to contribute to a successful outcome and go beyond stubborn rationalization without further changes.

Likewise, more deserves to be done to have the design address its wider context with less impact of unmitigated bulk, in all directions. The limitations of the current concept for development is further demonstrated by the definition of the site of the sub-station, depicted as only the area beyond the existing sub-station. The existing sub station is initially integral to that proposal and ultimately said to be redeveloped, although illustrated only as a landscaped area. Despite the obvious advantages there is no attempt to address how the site development could be staged differently, beyond an unsubstantiated claim that the proposal is all that can work. This objection was raised initially and still not been addressed.

The influence of the artificially generated Electro Magnetic Field normally resolved by setback separation is not improved by the intention to locate the building onto the boundary that is shared 24 hours a day, seven days a week, with residential occupants: an essential outcome of the proposal therefore being imposition of a condition to shield the Electro Magnetic Field impacts below a maximum specified level of safeguard.

In essence, while the augmentation of the current sub-station facility is acknowledged as a necessary outcome it is not demonstrated that the current proposal is the only feasible outcome. Certainly it is not an outcome that provides adequate Electro Magnetic Field safeguard in its present form. Fundamentally the design as a concept requires further resolution. Despite the significant *contribution necessitated by the redesign of adjacent development most directly affected to accommodate as much as it can the adverse consequences of the Energy Australia proposal.*

We look forward to the Departments due consideration of the matters raised in our submission.

Should you have any queries or require more information please contact the writer.

Yours faithfully,



CHRIS RYAN
DEVELOPMENT MANAGER

Attachments:

EMF Surveys letter dated 20 October 2010
136 Walker St DA 316 /10 Drawings