

26 July 2019

218139

Mr Jim Betts
Secretary
Department of Planning, Industry & Environment
GPO Box 39
Sydney NSW 2001

Attn: Tim Green – Planning Officer

**RE: RESPONSE TO SUBMISSIONS FOR SSD 9452 - MOD 1
THE AUSTRALIAN MUSEUM, 1 WILLIAM STREET, SYDNEY**

Ethos Urban has prepared this letter on behalf of the Australian Museum in response to your correspondence dated 24 July 2019, and the submission received from the City of Sydney during the notification period of SSD 9452 - MOD 1 relating to the Australian Museum.

The section 4.55 application seeks to remove Condition B15 relating to the payment of development contributions in accordance with the direction provided by the Department of Planning, Industry and Environment's Circular D6 and on the basis that the development is exempt from contributions under the *Central Sydney Development Contributions Plan 2013* (Contributions Plan).

A submission to SSD 9452 – MOD 1 was made by the City of Sydney Council stating that they do not support an exemption from development contributions for the approved works and requesting that Condition B15 be retained. Council's submission references a recently drafted (Nov 2018) Council guideline, the *Administrative Guideline for Exemptions in the Central Sydney Development Contributions Plan 2013* (the Guidelines), to support their position that a development contribution should be imposed. The Guidelines nominate development types which Council considers to be 'not-for-profit' and outlines specific criteria for a development to be considered as 'adaptive reuse' which has the effect of weakening the Australian Museum's eligibility for an exemption under the Contributions Plan.

It is noted that the Guidelines were drafted after the exhibition period of SSD 9452, which originally requested the exemption from development contributions for the Australian Museum project, and that the Guidelines were not publicly exhibited and have never been made available to the public or accessible from Council's website. In addition, the Guidelines were approved by Council's Chief Executive Officer rather than being endorsed by a meeting of Councillors.

The Guidelines hold no statutory weight and are not a matter for consideration for the purpose of this modification application. Section 61(5) of the *City of Sydney Act 1988* specifies that Council must not approve a contributions plan under the Act unless it has first obtained the concurrence of the Minister. Giving weight to the Guidelines would be subvert to the provisions of the *City of Sydney Act 1988* in that it would have the effect of modifying the current Contributions Plan authorised under Section 61 of the Act without the concurrence of the Minister. Recognising the Guidelines as policy is also inconsistent with objective (j) of the *Environmental Planning & Assessment Act 1979* (EP&A Act) which seeks to provide increased opportunity for community participation in environmental planning and assessment. Schedule 1 of the EP&A Act specifies mandatory community participation requirements, including a 28 day exhibition period for draft contribution plans.

It is concerning that Council is relying on internal guidelines, which have not been publicly exhibited or endorsed by a meeting of Council or the Minister, to amend the interpretation of a contributions plan constituted under the EP&A Act. It is noted that Section 1.4 of the Contributions Plan states:

*The City will review this Plan **in consultation with the community at least every 5 years** to ensure the Plan addresses community needs, contemporary strategic planning directions and priorities, integrated community facilities planning, the City's capital works program and legislative requirements.*

The Contributions Plan came into effect on 9 July 2013 and a review of this plan is now overdue. If Council wishes to amend their Contributions Plan, this should be undertaken in accordance with the applicable legislation and policies to ensure due process and necessary community input. Reliance on internal guidelines to change the interpretation of the types of works eligible for an exemption from development contributions undermines the objectives of the *EP&A Act*, the *City of Sydney Act 1988* and Council's own Contributions Plan. It is also contrary to the principles of best practice community participation.

For this reason, the Guidelines should be disregarded in the assessment of this application. Accordingly, the Australian Museum maintains that an exemption from development contributions for the approved works is entirely consistent with Council's endorsed Contributions Plan. As outlined in the original section 4.55 application, the Australian Museum is unambiguously a not-for-profit organisation, the works involve the adaptive reuse of a State heritage item and will deliver a material public benefit.

Notwithstanding Council's Contribution Plan (or their internal guidelines), and as detailed in our s4.55 application, Circular D6 provides clear direction that development contributions should not be levied on Crown works such as those approved under SSD 9452. While circular D6 refers specifically to section 94 (now section 7.11) contributions, the principles remain relevant to contributions under section 61 of the *City of Sydney Act 1998*. Crown activities provide facilities which lead to significant benefits for the public in terms of essential community services and employment opportunities and the activities are not likely to require the provision of public services and amenities in the same way as development undertaken with a commercial objective.

The Circular recognises the Crown's role in providing a community service, the cost of which is accountable to all taxpayers in the State. The Australian Museum Trust is a registered charity, registered with the Australian Charities and Not-for-profits Commission, which relies on government grants, donations, and community funding to provide new facilities and exhibitions for the public at large. The current use of the site and the approved improvements are of an inherently public nature, providing important educational, cultural and economic benefits to the State. The levying of development contributions on the works is inappropriate as it would deprive the Australian Museum of scarce funding relied upon and redirect \$575,517.64 of taxpayer and other donated funds to Council. Furthermore, it is noted that the Australian Museum is the type of infrastructure Council is seeking to support through a levy of funds under their Plan.

The payment of a contribution on the approved development is discretionary, and the Minister for Planning and Public Spaces, while empowered to impose a condition requiring the payment of a monetary contribution, is not required to under either the *City of Sydney Act 1998* or Council's Contributions Plan. Therefore, in accordance with Council's endorsed contributions plan and the direction provided by the Department of Planning, Infrastructure and Environment's Circular D6, Condition B15 of the consent does not represent a valid development contribution and should be removed.

We respectfully request that the Minister action the removal of the requirement to pay development contributions as soon as possible to allow the Australian Museum to continue to adhere to its development programme.

Should you have any further queries about this matter, please do not hesitate to contact me on 9409 4963 or cforrester@ethosurban.com.

Yours sincerely,



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