Lawren Drummond

From: Geoff Mossemenear <Geoff.Mossemenear@northsydney.nsw.gov.au>
Sent: Tuesday, 10 March 2020 11:09 AM
To: Lawren Drummond
Subject: MP 08_0238 MOD 15
Attachments: PlaceBook_Summary_Brochure (1).pdf

Dear Lawren

Council provides the following comments in response to MOD 15.

MOD 15 proposes to modify condition B6 Railway Infrastructure:

> ***B6 Railway Infrastructure***
> *The Proponent shall enter into a Voluntary Planning Agreement (VPA) in accordance with the offer made on 21 December 2009 with the Minister for Planning to provide a Railway Infrastructure Contribution totalling $7,520,667.31 to be paid to the Transport Administration Corporation. Evidence of the Agreement shall be provided to the Certifying Authority prior to the issue of the relevant Occupation Certificate for the Commercial Tower, except in respect of the initial works*
> *The final contribution payable may be required to reflect the GFA approved as part of this approval. In this case, a report by an appropriately qualified Surveyor shall be submitted to and approved by the Secretary demonstrating the total amount of constructed GFA.*
> *Contributions will be adjusted at the time of payment in accordance with the quarterly consumer price index (All Groups Index of Sydney).*

Comments

The applicant is essentially questioning the applicability of the need to pay a Railway Infrastructure Contribution. In order to do this, it is important to understand where the initial need arose from and how it relates to the subject site. In 1997, Council commenced a comprehensive review of North Sydney Local Environmental Plan (NSLEP) 1989. As part of this review, Council investigated ways to accommodate increased job and housing targets set by the State Government. As part of these investigations, it was determined that the planning controls could be amended within the North Sydney Centre resulting in the ability to accommodate a theoretical increase of approximately 300,000sqm of commercial floor space within the North Sydney Centre. However, it was also recognised that there was need for a corresponding increase the patron capacity of North Sydney Railway Station to cater for the increased demand generated by the future incoming worker population.

Negotiations were then commenced between North Sydney Council, the Department of Planning, Transport for NSW, the State Rail Authority and the Office of the Coordinator General of Rail regarding how North Sydney Railway Station could be upgraded. In 2002, a direction for the upgrade of the Railway Station was reached between all parties. At the time, the upgrade was valued at approximately $88 million and was to be funded from increases in commercial floorspace up to a maximum of 250,000sqm additional commercial floorspace. It should be noted that the total cost of the upgrade of the railway station was not solely attributed to the demand generated by the additional 250,000sqm of commercial floorspace. The State Government agreed to fund a small portion of the total upgrade associated with the increased demand generated by residential development in the vicinity of the railway station.

On 28 February 2003, Amendment No.9 to NSLEP 2001 was gazetted. This Amendment sought to introduce planning controls for the North Sydney Centre, which had been deferred from NSLEP 2001 upon its commencement on 1 June 2001. As part of the amendment, new planning controls for development within the North Sydney Centre were incorporated within Division 4 to Part 3 of NSLEP 2001. The principle aims of the new controls were to:

- maintain the status of North Sydney as a major commercial centre;
- ensure that new railway infrastructure was provided to cater for the increased demand generated by additional non-residential floor space;
- encourage the provision of high grade commercial space;
- prohibit additional residential development within the core of the Centre;
- promote high quality environments; and

- protect the amenity of residential zones and open space within and nearby to the Centre.

Of particular note, Clause 28C to NSLEP 2001 limited increases in commercial floor space within the North Sydney Centre to 250,000sqm, and set a trigger for a review of Division 4 when an additional 200,000sqm of commercial floor space had been approved since the commencement of Amendment No.9.

These clauses were subsequently carried over into Division 1 to Part 6 of NSLEP 2013, which commenced operation on 13 September 2013. However, the subject site had been deferred from inclusion within Amendment No.9, in response to a number of unresolved issues following the public exhibition of the amendment. Therefore, NSLEP 1989 continued to apply to the subject site, despite the original intention to amend the planning controls on the subject site through Amendment No.9.

In late 2012, the trigger for a review was activated, after Council had approved a development application, which resulted in the total amount of non-residential floor space approved since 28 February 2003 exceeding 200,000sqm.

On 18 March 2013 Council considered a report, in response to the activation of this trigger. In particular, the report provided a background and recent historical overview of the Centre and outlined a scope for preparing a comprehensive planning review of the area. It was proposed that the results of the Review were to be used to recommend and inform any amendments to Council’s planning controls identified during the process.

On 14 October 2013, Council resolved to endorse the commencement of the North Sydney Centre Review (the Review), including the proposed structure and processes required to complete the Review. Following this resolution, a number of subprojects were completed including:

- Traffic and Pedestrian Management Study;
- Public Domain Review;
- Marketing and Promotion Strategy;
- Late Night Trading Review; and
- Capacity and Land Use Study/Strategy

Of particular relevance was the undertaking of the *Capacity and Land Use Study/Strategy*. The final Strategy was adopted by Council on 1 May 2017. The Study/Strategy recommended that as the State Government had committed to the delivery of a new Metro Station within the North Sydney Centre, thereby freeing up public transport capacity, there was the ability to further increase commercial floorspace within the North Sydney Centre to meet current jobs targets set by the State Government.

Contrary to the applicant’s suggestion, the Study/Strategy did not conclude that sufficient funds had already been collected from private development to offset the upgrade of the railway station. It did however, acknowledge that the total floor area cap had almost been reached and that any short fall in floor space was minor.

The Study/Strategy recommended that a planning proposal be prepared to amend NSLEP 2013 and give effect to the Study/Strategy, including removing limitations to future commercial floor space. A Planning Proposal was subsequently prepared, which included the removal of the railway infrastructure contribution requirements. The intent of the Planning Proposal was given effect on 26 October 2018 when Amendment 23 to NSLEP 2013 was made (not amendment No.17 as cited by the applicant). The removal of the railway infrastructure contribution requirement was agreed to, in consultation with Department of Planning, Transport for NSW, the State Rail Authority and the Office of the Coordinator General of Rail.

Whilst the Railway Station upgrade had been completed in 2009, the commercial cap that was assisting in funding this infrastructure had yet to be reached (approximately 73,000sqm of additional commercial floor space). Therefore, there was a clear need to still impose a requirement to pay a railway contribution on certain developments, such that the upgrade was appropriately funded.

When the subject Part 3A application was first approved in 25 February 2010, only NSLEP 1989 applied to the subject site and therefore was not technically subject to the requirement to pay a railway infrastructure contribution. However, as the proposed development sought to significantly increase the level of commercial floorspace on the site (and well over that permitted under NSLEP 1989) it was likely to result in a significant increase in demand on the use of the railway station.

In response to this issue, the applicant at the time, Eastmark Holdings, as part of its statement of commitments for the original project to pay a monetary contribution toward the railway infrastructure. This offer was consistent with the original intent to apply such a requirement to all development within the North Sydney Centre, despite the subject site being deferred from the application of NSLEP 2001. This offer was then translated in to Condition B6 of the Project Approval, which requires a monetary contribution of approximately $7.52 million towards the railway infrastructure, to be paid prior to the issue of the relevant OC for the commercial tower and subject to CPI at time of payment.

The condition B6 is consistent with the objective of former clause 6.5, requiring satisfactory arrangements being made for the provision of railway infrastructure to satisfy the needs that arise from development in North Sydney Centre. The Department accepted the proponent’s written guarantee to pay the contribution on the same basis as other developments adding floor space to the North Sydney Centre.

It should be noted that the payment of the contribution is to the Transport Administration Corporation and not Council. It is therefore up to TAC to advise if sufficient funds had been received and they no longer require the payment. At the time the condition was imposed on the original consent in early 2010, approximately 158,000sqm of additional commercial floorspace had been approved (including the subject development), well short of the need to commence the review of the North Sydney Centre controls under NSLEP 2001.

The applicant has incorrectly assumed that the railway contributions required under the former LEP clauses was to go towards the delivery of the new Metro Station. This is clearly not the case, as the railway deeds entered into were for the upgrade of the existing North Sydney Railway Station only. Furthermore, whilst the North West Metro had first been announced as a shovel ready project in 2008, there was no indication or endorsement regarding its potential future expansion south of Chatswood. This did not occur until 2014. Therefore, the imposition of the condition for railway contributions was well founded at the time.

If the Department were of a mind to remove the requirement to pay a railway infrastructure contribution, Council would be concerned of a precedent being created, such that other recently approved developments would also seek a similar treatment and request a refund of their contributions.

Council does not concur with the costs shown for “works in kind” by the proponent. The proponent is required by the conditions of the consent to carry out the works particularly adjacent to the street alignment boundaries. Council is negotiating to contribute towards some of the public domain upgrades. Additional bonds may be necessary from the proponent to cover the costs of works required to be completed prior to Occupation Certificate but are unfinished due to the Metro and over station development construction.

It is noted that the Berry Square upgrade is part of the site and the design and amount of upgrade was the proponent’s choice. The upgrade was not a requirement of Council.
Should the Department decide not to require the money to be paid to the State, it should be redirected to Council for the purposes of delivering public domain outcomes across public land in the CBD, not the proponent. With the Metro and Victoria Cross over station development construction over the next 4 years, it is unlikely that the public domain works required under the Major Project consent can be completed. The consent already requires work to be completed at the cost of the proponent or works in kind.

It is correct that the North Sydney Station upgrade has been completed. Since then, there has been a number of planning studies LEP modifications and the commencement of the Metro to allow for further expansion of the CBD and therefore placing greater demands on the public domain.

There would be more public benefit in contributing to Council to deliver on the open space projects in the CBD in line with our Public Domain Policy. These projects would directly benefit the proponent’s building and tenants. Please find attached a brochure relating to the strategy.

Please contact me should you have any queries concerning the above comments.

It is noted that MOD 16 has been lodged but Council has not been notified for comment.

Regards

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