ETHOS URBAN

4 June 2020

16457
KB/CPo/MR

Jim Betts
Secretary
Department of Planning, Environemnt and Industry
Level 22, 320 Pitt Street
SYDNEY NSW 2000

Attention: Lauren Saunders – Senior Planner – Regional Assessments

Dear Mr Betts,

RESPONSE TO SUBMISSIONS – MOD 15 – MP 08_0238
1 DENISON STREET, NORTH SYDNEY

We write on behalf of Winten Property Group (Winten) in regard to the Section 4.55(1A) modification application being MOD 15 to Project Approval MP08_0238 relating to construction of a new commercial building at 1 Denison Street, North Sydney (the site).

MOD 15 to Project Approval MP08_0238 relates to amendments to Condition B6 of the Project Approval to redirect the 1 Denison Street 'public benefit' railway infrastructure monetary contribution to the provision of additional off-site public domain works on behalf of Council and significant upgrades to Berry Square. This alternative public benefit will deliver a significantly greater and more tangible benefit for the North Sydney Centre. The application was placed on public exhibition and received submissions from North Sydney Council (Council) and Transport for NSW.

1.0 Response to Submissions

1.1 Transport for NSW Submission

The Department received comments from Transport for NSW which objected to the proposal, in particular the redirection of funds resulting in a shortfall of railway infrastructure contribution that was originally committed to offset the cost of upgrade of railway infrastructure in North Sydney.

> *The following considerations have been taken into account in assessing the subject proposal:*
> *• The amount of monetary contribution of approximately $7.52 million is derived from the increase in commercial \ floor space as approved under MP 08_0238 MOD 10.*

The contribution was imposed as a condition to the original Project Approval, not as part of Modification 10. The specific amount has been adjusted over time based on changes to the GFA in the development as part of subsequent modifications.

> *• MP 08_0238 MOD 10 was exhibited in May 2018 and granted approval in October 2018. As noted in Section 5.2 of the Assessment Report for MP 08_0238 MOD 10, the modification (MOD 10) was assessed against the North Sydney Local Environmental Plan 2013 (NSLEP2013) and other relevant instruments.*

The original 2010 Project Approval and associated railway contribution condition was determined prior to the gazettal of LEP 2013. The site was deferred from LEP 2001, which contained an earlier clause requiring a railway contribution, and therefore there was no statutory obligation at the time to pay the contribution. It was the proponent who offered to pay it as a 'public benefit' in association with the development. Further under Section 75J(3) of the now repealed Part 3A legislation it stated that, 'In deciding whether or not to approve the carrying out of a project, the Minister may (but is not required to) take into account the provisions of any environmental planning instrument that would not (because of section 75R) apply to the

project if approved." Therefore, even if the clause had applied, the Minster was not required to impose it at the time consent was granted.

> *• Clause 6.5 (2)(b) of NSLEP2013, of which MOD 10 was assessed against, stipulates that development consent must not be granted unless "the consent authority is satisfied that the increase in non-residential gross floor area authorized under the development consent concerned when added to the increases (reduced by any decreases) in non-residential gross floor area authorized under all consents granted since 28 February 2003 in relation to land in the North Sydney Centre would not exceed 250,000 square metres." It is evident that the increase of commercial floor space approved in MOD 10 had been taken into account of the 250,000 square metres limitation that are accountable to paying the railway infrastructure contribution. In light of the above, Condition B6 is deemed essential in satisfying the objective of Clause 6.5 of NSLEP2013 which requires satisfactory arrangements to be made for the provision of railway infrastructure.*

Noting the comments above, the Mod 10 assessment did not have any specific regard to clause 6.5(2)(b) as suggested by TfNSW.

The project has now been transitioned to State Significant Development. As a section 4.55(1A), in determining this Modification the Department is required to take into consideration the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application. Section 4.15(1) requires the Department to consider any environmental planning instrument that applies at the time of determination. LEP 2013 (as amended) has no requirement to pay the Railway Contribution. <u>Therefore, the relevant EPI at the time of determining this modification, and thus the statutory framework in which the Department has to consider this Modification, has no requirement to pay the contribution.</u>

> *As informed by the Railway Contribution Report prepared quarterly by North Sydney Council where bank guarantees have not been received in relation to the approved MOD 10. The statement of "sufficient funds collected" as claimed in the modification report of MOD 15 is therefore not evident to correctly reflect the situation, noting that the increase of commercial floor space approved in MOD 10 was included in the limitation of 250,000 square metres of non-residential gross floor area allowable under the then-NSLEP2013 and the associated railway infrastructure contribution has not been paid.*

The referenced report is not a public document and there has never been any public transparency in relation to the collection of the funds or the need for those funds. More relevantly, whether 'sufficient funds were collected' did not appear to be a specific consideration in Council's Planning Proposal or DPIE Assessment, which removed the Railway Contribution on the basis that it was a barrier to the key strategic objective of facilitating deliver of commercial floor space in the North Sydney CBD and that the Metro would provide the necessary transport capacity the previous capacity limit was protecting. As a result, it appears that whether sufficient funds were raised was immaterial in the final consideration to remove the clause. Finally it is noted that the consent was first granted in 2010 and took over 7 years before construction commenced on the commercial tower. Therefore there was no certainty that the project ever would have been completed and the contribution paid.

> *In light of the above, <u>TfNSW objects to the subject proposal (MP 08_0238 MOD 15</u>) as the proposed redirection of funds will result in a shortfall of railway infrastructure contribution that was originally committed to offset the cost of upgrade of railway infrastructure in North Sydney.*

Whilst TfNSW are understandably not supportive of the redirection of funds from them to Council, as demonstrated above there is no statutory obligation, nor has there ever been, for them to receive the contribution, and in light of the significant alternative public benefit being offered in the order of $9.475m million in public domain upgrades, it is strongly in the public interest that it be supported in this instance.

1.2 North Sydney Council Submission

The Department received comments from Council which raised concerns with the proposed modification. Winten has worked with North Sydney Council to address their primary concern relating to the mechanism for the delivery of the public benefit and the issues with the timing of delivery associated with the Sydney Metro. In line with Council's request the proposed changes to Condition B6 have been amended so that the $6,275,000 contribution is now a monetary contribution paid to Council for the purposes of delivering open space projects in the CBD in line with its Public Domain Policy.

As noted by Council the Berry Square upgrade was the proponent's choice. However, Berry Square is a publicly accessible public space in the heart of North Sydney that is mapped in Council's LEP as a 'Special Area'. The significant $3.2m upgrade to this important public space does deliver a major public benefit regardless of whether Winten elected to do it. Following further discussions with Council, we understand that Council is now prepared to recognise the upgrade to Berry Square does have a public benefit and therefore can be attributed a partial value as part of the proposed redistribution reflected in Condition B6 below.

2.0 Updated Modified Conditions

The above response to submissions necessitates minor updates to the condition B6 in (as lodged) to reflect the amended modification application. The amendments to these conditions are shown with **~~bold strike through~~** and words to be inserted are shown in ***bold italics.***

~~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).~~

B6 Additional Public Domain Upgrades

The Proponent shall contribute a further $6,275,000 as a monetary contribution to North Sydney Council towards public domain works in the North Sydney CBD being undertaken in accordance with its Public Domain Policy.

Evidence of the payment of the contribution to North Sydney Council shall be provided to the Certifying Authority prior to the issue of an Occupation Certificate for Levels 11 - 36 of the Commercial Tower.

The Proponent shall also undertake the upgrade of Berry Square, with works to an approximate value of $3,200,000. The design of Berry Square will be completed in accordance with the approved Landscape Plan and in accordance with Condition B38. Evidence of the completion of the works shall be provided to the Certifying Authority prior to the issue of the final Occupation Certificate.

3.0 Conclusion

Winten, and its expert project team have considered the submissions made in relation to MOD 15 to MP 08_0238. In response to these submissions the application has been amended.

The proposed modifications to the application do not alter the original assessment against the relevant plans, policies and guidelines. The proposal will deliver a significant and more tangible public benefit that will contribute to the amenity of the North Sydney centre for visitors, residents and the rapidly expanding number of workers and therefore should be approved.

We trust the above information is sufficient to allow a prompt assessment of the modification. Should you have any queries about this matter, please do not hesitate to contact me.

Yours sincerely,

Michael Rowe
Director
0403043345
mrowe@ethosurban.com