



UNIVERSITY OF SYDNEY - ABERCROMBIE PRECINCT

FURTHER INFORMATION FOR THE PLANNING ASSESSMENT COMMISSION

DEVELOPMENT CONTRIBUTIONS

Crown Authority Status

Clause 226(1) of the *Environmental Planning and Assessment Regulation 2000* provides that a development carried out by an Australian University (under the meaning of the *Higher Education Act 2001*) is a Crown development. The University of Sydney is listed as an Australian University under Schedule 1 of the *Higher Education Act 2001* and as the University is the applicant, it is a Crown development for the purposes of Division 4 of the *EP&A Act*.

Justification for Exemption from Development Contributions

(as used in the PPR for the project)

SMDA's Position

Whilst neither the Department nor the City of Sydney Council raised concerns around the section 94 exemptions being sought by the University at the time of the public exhibition of the project, it was raised by the SMDA as a matter of concern.

The SMDA did not support the exemptions sought by the University under the Redfern-Waterloo Authority Contribution Plan (CP) or the Redfern-Waterloo Authority Affordable Housing Contributions Plan 2006 (AHCP).

Redfern-Waterloo Authority Contribution Plan (CP)

The University requested that an exemption be granted under clause 6 of the contributions plan, on the grounds that the building is being carried out by a public authority for a research and education purpose.

Further, the proposal will not result in any significant increase in staff or student numbers, is not within or adjacent to the Redfern-Waterloo Authority state significant sites and the works in the Redfern-Waterloo Work Schedule have little, if any, nexus or relationship to the development.

The SMDA is not supportive of an exemption on these grounds on the basis that:

- the proposed Business School does not constitute public infrastructure as identified in clause 6 of the CP or the AHCP;

- whilst the CP identifies public infrastructure demands that will be generated by new residential and working populations associated with development on RWA Sites, this is not a consideration for levying contributions on development; and
- under the CP a contribution may be levied on development within the Operational Areas for which the Minister is the consent authority. It does not require a nexus to be established between the proposed development and the infrastructure on which the contributions are to be spent.

Redfern-Waterloo Authority Affordable Housing Contributions Plan 2006 (AHCP)

The SMDA has noted that it would only support the University's argument for exemption from the affordable housing levy on the housing component of the proposal under the RWA-AH-CP, subject to the following:

- the affordable housing as described in the proposal meets the Government's requirements for affordable housing;
- the affordable housing is managed by a bone fide affordable housing provider; and
- the affordable housing is not exclusive to students.

Accordingly, the SMDA sought a full contribution of \$6,509,720, being levying the full 2 per cent of the development cost (\$4,499,000) plus the full affordable housing contribution (\$2,010,720).

DoPI's Position (from Director-General's Assessment Report)

The Department agrees that some contributions should be paid, however disagrees with levying the full 2 per cent of the development cost (\$4,499,000) plus the full affordable housing contribution (\$2,010,720) for the following reasons:

- *while the development may not be considered as a traditional form of public infrastructure (school, hospital), it plays an important role in providing tertiary education to members of the public;*
- *the development will play a significant role in revitalising the Abercrombie precinct;*
- *the development will provide improved services for members of the public, including students and the local residential community;*
- *the development will provide enhanced opportunities for passive recreation via the construction of a new public pocket park, new pedestrian site permeability and a through-site link;*
- *the proposed 5,900 sqm student accommodation building would equate to approximately 78.6 per cent of the total affordable housing proposed to be provided under the AHCP; and*
- *the proposed student housing will contribute to approximately 13 per cent of City of Sydney's affordable housing target (note: student housing is included within affordable housing targets under City of Sydney's Affordable Rental Housing Strategy 2009-2014).*

For the reasons outlined above, the Department recommends that the contribution required under the CP be offset by the contributions applicable under the AHCP. Furthermore, the GFA of the student accommodation building should be excluded from the calculations of the AHCP contribution as

student housing will provide accommodation for a sector of the population in need of affordable housing (despite not technically being defined as affordable housing in the EP&A Act), thereby alleviating pressure on existing and future affordable housing stock within the RWA precinct. The calculation of the rate payable is provided in Table 7 of the Director-General's Assessment Report .

The \$4,499,000 contribution total represents a \$2,010,720 reduction in contributions under the two contributions plans . The Department considers the reductions to the levies payable under the plans to be acceptable taking into consideration the public benefits that the proposed development will offer, the education services provided and reduced pressure on the provision and demand for affordable housing.

Accordingly, the Department has recommended appropriate conditions requiring the payment of the relevant contributions.

University's Position

The University maintains the view that there are several valid policy reasons why the Minister should not require contributions to be paid for this project under the CP and AHCP.

It is noted that the payment of any contribution on this development is discretionary, and that the approval authority, in this case the Minister for Planning and Infrastructure, while empowered to impose a condition requiring the payment of a monetary contribution is not required to under either the EP&A Act, the CP or the AHCP.

The University believes that:

- the project constitutes Public Infrastructure by the Crown which the Minister is empowered to exempt under the CP and the AHCP;
- the project directly achieves in itself the underlying objectives of the urban renewal for the RWA; and
- the student housing component of the development (whilst not strictly defined as affordable housing) will provide an affordable accommodation option for students, and will relieve the pressure on existing affordable accommodation in the locality.

We note the DoPI has agreed to effectively exempt the requirement for any payment under the AHCP, leaving only a full contribution under the CP. Accordingly, we have only addressed the CP contribution in this supplementary information to the PAC.

Redfern-Waterloo Authority Contribution Plan

The project is considered eligible for full exemption from payment of contributions under the CP.

Whilst university developments do not form one of the express exemptions under the CP, the list of exemptions is not closed, and the Minister could reasonably form the view that the project should be fully exempt under the CP.

A full exemption is considered appropriate on the following grounds:

- The project is for the provision of Public Infrastructure by the Crown, and so is, subject to the Minister /PAC agreeing, within one of the express exemptions under the CP (ie. ‘...other public infrastructure approved by the Minister’);
- The University has a public character and is open to the public as a non-gated, accessible and permeable precinct which presently provides a number of material public benefits such as sports facilities (e.g. pools), open space, libraries, cultural spaces and venues, and retail outlets;
- The Abercrombie Precinct project (as part of the University) reinforces permeability and the extension of material public benefits by including the publicly accessible pocket park, new through-site link and pedestrian permeability throughout the precinct, footpath and road upgrades, infrastructure upgrades, relocation and upgrade of a child care facility and upgrade of the Darlington Public School;
- The project in itself contributes to the urban revitalisation and renewal of the area, and accordingly, the proposal directly achieves some of the core objectives of the establishment of the RWA. The CP is a mechanism which is intended to achieve and support this renewal, however the University will achieve this directly without the need to pay contributions under the CP;
- The University is not a developer and is a not-for-profit public institution which relies on significant grants, donations, and external funding to provide new facilities for both the University community, and the wider community at large;
- The levying of contributions on projects that are funded by external sources including Commonwealth Government grants is simply diverting a portion of funds for an educational purpose to local services without any direct nexus to the development;
- The payment of Development Contributions and levies would consume resources which should be devoted to the University’s core business of teaching and research;
- The University provides a wide range of social, cultural, and recreational public benefits and contributions to LGA and its resident and worker population, in addition to the subject development;
- In any event, Crown developments have, historically, been subject to reduced or no section 94 contributions, on the basis that they are not likely to require the provision of public services and amenities in the same way as developments undertaken with a commercial objective;
- Exemption from contributions is supported by Planning Circular (Circular D6) relating to Crown Development Applications. The Circular (from 1995) is referenced in the Department’s draft Development Contributions Guidelines 2009 as providing the ‘current limitations on the imposition of development contributions on public sector developments’. The Circular provides a guide to Councils and Crown agencies as to which categories of section 94 contributions are applicable to Crown developments, stating that:
 - “Crown activities providing a public service or facility lead to significant benefits for the public in terms of essential community services and employment opportunities. Therefore, it is important that these essential community services are not delayed by unnecessary disputes over conditions of consent. These activities are not likely to require the provision of public services and amenities in the same way as developments undertaken with a commercial objective.”
- As noted in the Circular, Crown developments, by their nature, provide community facilities and therefore in many instances, it is unreasonable to levy developer contributions. Notably, Circular D6 does not require Crown Developers for Education Services to pay s.94 contributions for open space, community facilities, parking, or roads out of acknowledgement of the facilities typically

provided by universities. The University provides a range of open space and other facilities for residents, students and staff, as well as the general public.

In the case of the proposed development, the project involves the provision of a public education facility and increased public access in and through the site. Future students and staff using the Abercrombie Precinct will, in most circumstances, be using existing University infrastructure, and so will not generate demand for additional infrastructure.

In light of all these circumstances, it is considered that the requirement to pay the contributions would not satisfy the test of reasonableness.

In the event that the PAC (as delegate of the Minister) is not inclined to grant an exemption for contributions under the CP, a Commitment has been made to separately negotiate contributions with the relevant authorities. Refer to the project's Statement of Commitments.

Supplementary Strategic justification

The requirement for S94 Contributions is derived by a submission from the Sydney Metropolitan Development Authority (SMDA). The SMDA was established as a government authority charged with the urban renewal of two precincts – Redfern-Waterloo and Granville. However we are advised that the SMDA will cease to exist from 21 December 2012 onwards.

SMDA will be assumed by Landcom to create the new UrbanGrowth NSW authority. We are not aware of any exhibited strategic objectives or commitments by UrbanGrowth NSW for the Redfern-Waterloo precinct, or of and precinct capital project/works requirements and/or reliance upon S94 contributions for this precinct.

The NSW Government has to date released the following major strategic documents for NSW:

- A. The NSW Government Green Paper – A new Planning System for NSW
- B. Draft Metropolitan Strategy for Sydney
- C. Draft NSW Long Term Transport Master Plan
- D. Draft State Infrastructure Strategy 2012 – 2032

None of the above mentioned draft strategic documents identify Redfern-Waterloo as a strategic growth centre requiring infrastructure and/or development implementation or upgrade. In particular Redfern-waterloo is not identified in the Draft State Infrastructure Strategy 2012 – 2032 prioritised Summary of capital works Recommendations.

Consequently any application of S94 Contributions should effectively be directed back to the University of Sydney precinct itself.

Contributions by other Universities

It should be noted that despite existing Circulars (eg Circular D6 as mentioned above) being in place, there is no consistency in how the DoPI or Councils apply these, and how contributions are calculated and levied. This has been a significant concern of all universities for some time. JBA is aware of (having undertaken numerous projects with and for Macquarie University, UNSW, UWS,

and UTS as well as the University of Sydney) multiple submissions having been made by these institutions to Councils, and also by the NSW Vice-Chancellors' Committee to the DoPI, seeking a consistent approach which also provides for certainty, rather than a case-by-case approach.

These submissions have provided detailed (and consistent) commentary on the following - as stated above in justifying an exemption for this project:

- A university is not a developer in the usual sense of the term and is a not-for-profit public institution.
- University projects rely on significant grants, donations, and external funding to provide new facilities, including research buildings. Without this assistance some developments simply wouldn't happen.
- Development Contributions and levies consume resources which should be devoted to university core business of teaching and research.
- Universities typically are ATO registered charities and "the advancement of education" is a recognised category of charitable purposes under common law.
- Universities continue to provide a wide range of social, cultural, and recreational public benefits and contributions to Council areas within which they sit and to the area's resident and worker populations.
- The levying of contributions on projects that are funded by external sources including Commonwealth Government grants, is simply diverting a portion of funds for an educational purpose to local services (often without any direct nexus to the development).
- Section 94A contributions (or contributions with upper limit fixed levies) do not require a nexus, meaning part or all of the % collected may go towards infrastructure improvements that have no connection to university or its environs.
- Universities often appear to be contributing the bulk of contributions collected in some centres, given exemptions afforded to other projects and the size of university projects from a capital investment value perspective / basis.
- The prevailing DoPI principles underlying the levying of contributions for Crown Development and education facilities projects are not applied, and if applied, are applied inconsistently.

A review of Part 3A approvals at UNSW in particular revealed that anywhere from 0% to 1% has been levied, with no strict rationale or logic as to what is fully exempted or what pays a concessional rate or a full 1% rate. The recent High Street (Gate 2) Student Housing Part 3A project was subject to a full 1% contribution, whilst the Lowy Cancer Research Centre Part 3A project was fully exempted. In between, other research building developments (also Part 3A projects) were subject to 0.1% and 0.2% contributions. Randwick Council similarly has sought a full 1% payment, or a concessional rate with an additional element of public domain or infrastructure works for other recent developments on the Campus.

The table provided as part of this package sets out these and other projects across a number of university projects (including the University of Sydney) that JBA has been involved with. It clearly highlights the need for a consistent approach and recognition of the status of universities as Crown authorities that provide public and social good in the same manner that TAFEs or schools do.

The table highlights, putting the UNSW experience to the side, that commercial aspects to university development are generally required to pay contributions of one type or other, whereas academically focussed projects are more often than not fully exempted. The current condition of approval requiring payment of a contribution to the SMDA for this academic project would be at odds with the vast majority of decisions made on contributions for similar projects of this nature.