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SYDNEY NSW 2000**

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4 December 2018

NSW Department of Planning and Environment
320 Pitt Street
SYDNEY 2000 NSW

Dear Sir / Madam,

SSD 7155 MOD 4 - SECTION 4.55(1A) MODIFICATION | 5-35 YARRUNGA STREET AND 36-36A KOOKABURRA ROAD, PRESTONS

1. INTRODUCTION

This Statement of Modification accompanies an application to modify State Significant Development (SSD) approval number SSD 7155 (as modified) pursuant to the provisions of the section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (the Act). The application is lodged on behalf of Logos Property (the proponent).

The subject site is located 5-35 Yarrunga Street and 36-36A Kookaburra Road, Prestons (Lots 33-35 and Lot 43 DP2359, Lot 20 DP117483 and Lot A-B DP408207).

2. PROPOSED MODIFICATION

This application seeks to modify conditions of consent related section 7.11 contributions.

To facilitate the proposed modification, administrative wording changes to the State Significant Development approval instrument are required, including updating the wording in Schedule B.

Schedule B is required to be modified as follows:

Condition C17 - Drainage

C17. If the carrying out of works to provide the drainage infrastructure set out in the Liverpool Contributions Plan 2009 is accepted in part or in full satisfaction of Condition B23, the works must be subject to a works-in-kind agreement executed in accordance with the provisions of the Liverpool Contributions Plan 2009 and Council's Developer Contributions Works In Kind Policy 2012.

Condition 17 is proposed to be modified to grant an offset / credit to the total payable development contributions for SSD7155. The credit splits the difference of the shortfall in Council's credit available to LOGOS Property for the Drainage Works. The 50-50 split of the credit to be allocated in Condition 17 as follows:

QS estimate	Council credit available	Difference	50% of difference	Credit available to offset Development Contributions
\$1,544,840.00	\$970,029.00	\$574,811.00	\$287,406.00	\$1,257,435.00

Comment

In accordance with Condition C15, an Independent QS has estimated that “the net cost for difference between the total cost of the [F8-F9] stormwater culvert works and the cost of the contribution plan 825mm diameter pipe (to be borne by the developer) works to be \$1,361,988 (Excluding GST)”.

Included in the above costing is the storage basin / swale and associated retaining along Bernera Road, instead of culvert construction which was originally planned in the section 94 plan for water storage. The storage basin has caused Logos to construct a retaining wall along Building 3 alignment costing \$182,852. Therefore, total cost is \$1,544,840.

The above scope, methodology and costing has been agreed and signed off by Council's Engineering Department as per the section 94 plan. However, Council have offered a contribution offset of \$907,029, which is a \$574,811 difference.

The drainage works were undertaken in accordance with the Contributions Plan and confirms that additional Drainage Works were undertaken provide a material public benefit and a credit must be provided in accordance with the Contributions Plan and the Liverpool City Council's Development Contributions, Land Dedication and Works in Kind Policy, in compliance with Condition C17.

The amount calculated in the Quantity Surveyor's Report is the relevant and appropriate costing of the drainage works and that Logos Property is entitled to a credit or offset from the total development contributions payable for the whole of the development under SSD7155.

Council's position is that the Contributions Plan provides for a maximum contribution of approximately \$970,029 and is unable to provide an offset for the remainder of the works. Council has not agreed to entering in a work in kind agreement in compliance with Condition 17.

Condition B23 and B23A - Contributions

B23. Within 6 months of the date of this consent and prior to the issue of an Occupation Certificate for any part of the development, the Applicant must pay contributions to Council in accordance with the Liverpool Contributions Plan 2009.

B23A. Notwithstanding Condition B23, within 6 months of the date of determination of SSD 7155 MOD 3, the Applicant must pay contributions to Council in accordance with the Liverpool Contributions Plan 2009 for the additional 13,719m² of Gross Floor Area associated with SSD 7155 MOD 3.

Conditions B23 and B23A is proposed to be deleted and replaced with the following condition that requires fixed development contributions to paid for each Stage of development, as follows:

Stage	Contribution value	Due date
SSD 7155 (original Consent) Lot 33 DP2359; Lot 34 DP2359; Lot 35 DP2359; Lot 43 DP2359; Lot 20 DP1173483	\$6,275,530.00 (original DA contribution rate plus indexation to March 2017 when drainage credit finalised by QS)	Within two months of the date of the grant of the Proposed Modification.
SSD 7155 MOD 3 Lot A DP408207; Lot B DP408207	\$1,414,527.00	Within two months of the date of the grant of the Proposed Modification.
SSD 7155 MOD 6 Lot B DP416483	\$2,255,713.00	Within two months of the date of the grant of the Modification 6.

Comment

Conditions B23 and B23A require development contributions to be paid prior to the issue of an Occupation Certificate for any part of the development. Logos Property have attempted to pay contributions with respect to the occupation of Warehouse 6 and were advised by Council that this was not possible to do so due to the exigencies of their administrative file management systems.

Logos Property have regularly met with the Department of Planning and Environment (Department) since shortly after the Consent was granted in order to reach agreement in accordance with the conditions of Consent. Compliance with Condition B23A has been frustrated as a result of the protracted delays caused by Council's unwillingness to comply with Condition 17.

As a consequence of the delay, the quantum of indexation for development contributions is exceeding the cost of the works required by the Contributions Plan. Logos have made all reasonable efforts to reach agreement with respect to this issue, that the delay has been caused by Council's failure to comply with conditions of the Consent and to insist on indexation is unreasonable in the circumstances.

The intent of the condition is maintained i.e. relevant contributions will be paid.

2.1. JUSTIFICATION FOR THE MODIFICATION

The above modifications have merit for the following reasons:

- Logos Property has made reasonable and persistent attempts to reach agreement on the outstanding issues and has offered a compromise that benefits both Logos and Council.
- Council has failed to comply with Condition C17 and has not been willing to reach agreement with respect to the Drainage Works.
- The proposed resolution requires Logos Property to contribute \$1,064,752.00 more than lawfully required contribute under the Contributions Plan. Further, Logos Property has undertaken to contribute a further \$5,468,000.00 towards public infrastructure over and above the contributions required by the conditions of Consent.

3. SECTION 4.55(1A) ASSESSMENT

Approval of the proposed modification is sought in accordance with the provisions of section 4.55(1A) of the Act. The following assesses the modifications to SSD 7155 against the relevant threshold tests of section 4.55(1A), which demonstrates that they are of minimal environmental impact and are substantially the same as approved.

3.1. SUBSTANTIALLY THE SAME DEVELOPMENT

The proposed modification does not alter the built form, drainage design or land uses of the approved development. The proposal as modified is substantially the same as approved.

3.2. MINIMAL ENVIRONMENTAL IMPACT

The proposed modification does not result in any additional impacts.

4. SECTION 4.15 ASSESSMENT

4.1. LIVERPOOL LOCAL ENVIRONMENTAL PLAN 2008

The modified development remains generally consistent with the LEP.

4.2. DRAFT ENVIRONMENTAL PLANNING INSTRUMENTS

There are no draft environmental planning instruments applicable to the site.

4.3. DEVELOPMENT CONTROL PLAN

The modified development remains generally consistent with the DCP.

4.4. REGULATIONS

There are no regulations relevant to this proposal.

4.5. SUITABILITY OF THE SITE

The modified development does not hinder the ability of the site to be suitable for the approved development and land uses.

4.6. SUBMISSIONS

This application is not expected to be placed on public exhibition. Liverpool City Council is expected to provide comment to which the Proponent will respond accordingly.

4.7. PUBLIC INTEREST

The proposal remains in the public interest given the level of modification is minor and will not increase the environment impacts already assessed and approved under the original DA.

5. CONCLUSION

As demonstrated within this report and the attached documentation, the modified scheme is considered to be acceptable under the relevant considerations of Section 4.15 of the EP&A Act. It is therefore recommended that approval be granted to the proposed modifications.

If you have any questions, please don't hesitate to contact me on (02) 8233 7631.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "R Macindoe".

Ryan Macindoe
Senior Consultant