

Kane Winwood
Team Leader Industry Assessments
Department of Planning and Environment
GPO Box 39
SYDNEY NSW 2001

Via email: Chloe.Dunlop@planning.nsw.gov.au

I refer to your email received 26 February 2019, which requested comment on SSD 7155 MOD 5, which seeks to modify conditions C 17 and B 23 (and B23A) of the development consent as follows:

The proposed modification proposes to:

- modify Condition C17 to offset costs for drainage works against the development contributions required (under Condition B23) for the Prestons Industrial Estate; and
- modify Condition B23 [and B23A] to specify a fixed development contribution amount payable to Council for the Prestons Industrial Estate which accounts for offsets for drainage works (under Condition C17) and indexation of contributions up to March 2017.

Council **objects** to the proposed modification. The reasons for Council's objection are detailed below.

Condition C17

As identified in the modification request, certain drainage works identified in *Liverpool Contributions Plan 2009* have been carried out by the developer. In the event a developer wants to undertake works identified in a contributions plan and seek to obtain credit against payable contributions, these must be undertaken in accordance with Council's Works In Kind Policy and only undertaken once a Works in Kind Agreement (WIKa) has been executed by Council. No WIKa has been executed between the developer and Council. Notwithstanding, the developer choose to undertake the works without a WIKa being executed.

Condition C17 gives Council the flexibility, whether or not to accept the drainage works completed by the developer as part or full recompense for development contributions as required by the *Liverpool Contributions Plan 2009*, according to Council's Works In Kind (WIK) policy. The WIK policy states in part:

***5.3 Assessment and determination of the application to undertake WIK
Council will assess the proposal with due regard to the provisions in
the contributions plan that applies to the site and determine
acceptability of the proposal.***

In assessing an application to reduce development contributions for WIK, Council will consider the current legislation, ministerial directions and the practice notes issued by the NSW Government.

Council will also consider the following matters:

a) The monetary value of the proposed WIK and the amount of 'credit' or offset sought by the developer;

b) The design concept of the proposed WIK;

c) The overall benefit of the proposed WIK to the current and future development in the area;

d) The timing of completion of the WIK;

e) The feasibility of constructing the proposed WIK within amounts budgeted in the contributions plan that applies to the site;

f) Financial implications for Council in accepting the dedication of the WIK involving any effects on the implementation of Council's adopted works programs; and

g) Financial implications for Council in accepting the dedication of the WIK in relation to ongoing management and maintenance of the WIK. Particular regard will be given to works such as open space embellishment and drainage facilities. In this regard it is advisable to discuss the scope of embellishments with Council prior to submission of the application for WIK (emphasis added).

Council staff have assessed the applicant's request for a WIK agreement and based on reasonable considerations, including the budget of Council funds set aside in the contributions plan for the works and the financial implications were Council to refund the developer an amount higher than that allowed for in the contributions plan. On this basis, Council staff have offered to enter into a WIK agreement with the applicant, and to credit the amount of \$970,029.00 (March 2017 CPI Rate). This amount will be subject to the current CPI quarterly adjustment.

Negative financial impacts to Council/ratepayers

Were the Department, as the consent authority, to modify condition C17 as requested by the applicant, this would give rise to financial implications for Council's local infrastructure program. The applicant's proposal for Council to offset an additional \$287,406, would be \$287,406 less that Council could spend on local infrastructure requirements elsewhere. The modification would also encourage other developers to seek a similar increase above that budgeted in the *Liverpool Contributions Plan 2009*, with potentially serious financial implications.

Conditions B23 and B23A

Conditions B23 and B23A require payment in full of development contributions owing according to the *Liverpool Contributions Plan 2009*. The conditions specified timeframes for payment of the contributions which have not been met by the applicant. The applicant stands in breach of these conditions. Council notes the incorrect assertion by the applicant that delays in the payment of the contributions has been caused by Council's failure to comply with Condition 17. As the Department is well aware, Council is not the consent holder and therefore has no responsibility to comply with conditions of consent of which it is not a party to.

The developer must provide contributions in accordance with the *Liverpool Contributions Plan 2009*, as is required of all other developments in the area. The applicant asserts that there was an IT system issue that prevented payment. Firstly, this is not correct as Council's record management system is completely independent of our financial system and would not prevent receipt of payment of any associated contributions. Further, the delay in payment appears to be related to the desire of the developer to get credit for the works described above, rather than any administrative issue on Council's behalf.

Consistent with clause 3.7.6 of the *Liverpool Contributions Plan 2009*, the value of all unpaid contributions is indexed according to the CPI each quarter. Conditions B23 and B23A clearly identify the applicant's liability for development contributions according to the requirements of the *Liverpool Contributions Plan 2009* (including quarterly indexation of amounts outstanding). Council should not be made financially liable for the applicant's unwillingness to pay development contributions in a timely manner.

Negative financial impacts to Council/ratepayers

Were the Department, as the consent authority, to agree to the proposed modifications to conditions B23 and B23A, it would have financial implications for Council.

Any variation of the conditions also has the potential to create an undesirable precedent that may encourage other developers to seek to challenge Council's authority to index unpaid contributions, which is permitted under the Plan, impacting the ability of Council to deliver the necessary infrastructure to support new and existing development across the city.

Should you wish to discuss this matter further, please don't hesitate to contact Graham Matthews, Senior Strategic Planner on 8711 7786.

Regards,

A handwritten signature in dark ink, appearing to read 'D Smith', with a stylized flourish at the end.

David Smith

Manager Planning and Transport Strategy