

2 December 2020

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Dear Sir

**Alex Avenue Public School - State Significant Development - Application
Number SSD_9368 ("SSD_9368")**

Modification Application MOD 3

Introduction

1. We refer to the letter of Brett Moss, Bridges Lawyers dated 24 November 2020 (Bridges Letter) and sent on behalf of Schofields Nominees No. 5 Pty Ltd ("SNN5").
2. We write to make submissions in response to the matters raised in the Bridges Letter.
3. At the outset we note that the matters raised in the Bridges Letter primarily relate to commercial arrangements between SNN5 and the Department of Education (Department) and are not matters for consideration in determining the modification application.
4. Nonetheless, we seek to assist the Department of Planning in providing this response to the matters raised in the Bridges Letter.

Extension of operation of Easement A

5. It is important to note that the Bridges Letter is suggesting that the development and operation of the Public School be put on indefinite hold until SNN5 is able to procure a rezoning and development consent for redevelopment of its lot, and consequential construction of roads and services over registered instrument AN888805W (Easement B). The Bridges Letter explains that registered instrument AN888804Y (Easement A) is not extinguished until Public Road Access to Easement B is activated.
6. Condition D11, which is the subject of the modification application, provides as follows;

D11. Prior to the commencement of operation of Stage 1, the Applicant must submit evidence to the satisfaction of the Planning Secretary that the temporary access and services easement has been extinguished in accordance with the terms of the easement and any legal agreement entered into between the parties which are subject to the easement.

7. The Bridges Letter suggests that Easement A cannot be extinguished until Easement B is activated, and that this cannot occur until the roads and services over Easement B have been built and dedicated to Council. In these circumstances, the operation of the School will be put on indefinite hold waiting for Easement A to be extinguished should condition D11 remain unamended. The Bridges Letter confirms that SNN5 cannot build the roads and services pending the rezoning and development consent being granted for its land and the roads/services built. With respect to SNN5, indefinitely halting the development of the approved School is not orderly and economic development, and is not considered in the public interest.
8. The above would suggest that the amendments proposed to condition D11 are entirely appropriate. To approach this matter in the manner advanced by the Bridges Letter would prejudice the ability for the School to open for students for Term 1, 2021.

Safety and Operational Concerns

9. SNN5 state that it still has significant work to do in terms of rezoning and thereafter obtaining consent for redevelopment before it can develop their site.
10. The appropriate time to consider safety and operational concerns caused by the redevelopment of that site would be at the time the site is approved for redevelopment. Any safety hazards caused by that redevelopment may be addressed by conditions of consent imposed on SNN5.
11. The Bridges Letter suggests that the School development cannot proceed until after SNN5 is approved for redevelopment due to safety concerns from the redevelopment of that site.
12. SNN5 asserts that it 'intends' to use Easement A for 'heavy vehicle' movements during school hours. However, in the absence of approval for the development of SNN5's land, we do not understand the purpose for which heavy vehicles will be accessing the site, and how and when the alleged conflict and safety issues will arise.
13. The Department of Education has taken every conceivable step to ensure the proper and orderly development leading to the operation of the School. Once school operation commences, the Department of Education will implement traffic management safety measures until such time as Easement A is extinguished.
14. The Department of Planning cannot consider hypothetical safety issues from redevelopment of the neighbouring property prior to any consent for that redevelopment being granted.
15. The Department has taken every possible step to ensure safety and operational concerns are addressed but cannot foresee what will be developed on SNN5's lot or how that development consent could operate.
16. With respect to SNN5, this modification application is not a matter of mismanagement being addressed, it is a matter of practicality in the development of the School in circumstances where redevelopment of the SNN5 lot is uncertain and will not occur prior to the opening of the School.

17. The likelihood of trucks utilising Easement A as asserted, and therefore purportedly posing a risk to the School/members of the public accessing the school across Easement A, will not arise in the manner suggested. As shown in the attached photographs, Easement A is nevertheless trafficable and with the management arrangements to be implemented upon opening of the School, will operate in a way so as to remove any public safety risks.

Extinguishment of Easement A

Pre-condition to extinguishment of Easement A

18. The issue raised by SNN5 concerning operation of Easement A and B are, with respect, commercial matters between SNN5 and the Department of Education.
19. Nevertheless, our interpretation of Easement A is that it is extinguished when there is construction and appropriate dedication of public road access to Easement B. This means that, once Pelican Road is completed and dedicated to Council, Easement A can be extinguished. SNN5 can subsequently develop services and roadway over Easement B prior to it being dedicated to Council.
20. Construction of Pelican Road and Farmland Drive is being carried out by a third-party developer. Construction is well underway and Easement A will, in due course, be able to be extinguished. However, development of the School should not be halted as suggested by SNN5 until this occurs, as Easement A may be relied upon as a temporary easement until Pelican Road is completed and dedicated. The amendment to D11 proposed merely extends the timeframe by which Easement A may be extinguished. It is not an indefinite circumstance.

Easement B and Construction of Public Road Access

21. The operation of Easement B means that extinguishment of Easement A will not land lock the SNN5 lot. The Department of Education has sought to negotiate an additional point of access to the SNN5 lot over adjoining Council land to the south. Council has confirmed its willingness to grant a licence for such access to the benefit of SNN5. The Department of Education has negotiated this additional point of access with Council solely for the benefit of SNN5.
22. Once Easement A is extinguished, Easement B is intended to be utilised to access the SNN5 lot. Whilst it is understood that Easement B won't be developed with roads and services until the lot is rezoned and redeveloped, that is a matter for SNN5 to address. There will be a clear point of access via Easement B once Pelican Road is built up to that Easement and dedicated, completing the public access.
23. Condition D12 requires the eventual building of permanent access and services across Easement B, but there is no timeframe for this to occur. It is a matter for SNN5 to complete within its own timeframes. It is not a matter for

- the Department of Planning in determining the modification application.
24. Compliance with D12 should not put the redevelopment of the School on indefinite hold as suggested by SNN5.

Easement Management Concerns

25. As set out above, compliance with D12 is not time limited and can occur at any time, when SNN5 is ready to build the services and road.
26. The Department of Education is not intending to construct the services and road. The Department notes again that Easement A will be extinguished once Pelican Road is constructed and dedicated providing public road access to Easement B which can then be developed by SNN5. Providing the extension to D11 simply ensures there is sufficient time to enable the finalisation of Pelican Road construction and dedication and the steps to be taken to extinguish Easement A.

Drainage Easement

27. The land which includes Easement B is owned by the Department of Education. As land owner, the Department may develop the land in a manner which does not interfere with the easement rights enjoyed by SNN5 over Easement B.
28. Condition D45 requires an easement to be registered between two lots, both of which are owned by the Department, and would therefore be of no practical effect. It is therefore seen as appropriate to amend this condition.
29. In assessing and determining the modification application, regard should not be had to submissions made by SNN5 which (as stated by SNN5 in its submission) seek to protect legal rights under commercial agreements negotiated with the Department of Education. The completion of the construction of the School and its operation cannot be delayed pending the development of SNN5's land, the timing and nature of which are, at this point, uncertain.

Additional Matters

30. The issues raised concern matters which have been addressed in the SSD Report and are the subject of the SSD_9368 approved by the Department of Planning. We do not therefore respond to these matters as they are irrelevant to the Department's consideration of the modification application.

Modification Application Process and Conclusion

31. Notification process is a matter for the Department of Planning. Having regard to the above paragraphs we would submit:
- The proposal as modified does have minimal environmental impacts, it merely ensures as a matter of practicality that the development can

proceed without awaiting sign off on the extinguishment of Easement A which in our view will be shortly capable of extinguishment with the completion of Pelican Road;

- b. The proposal as modified is substantially the same as the development as approved, it merely alters the timeframes approved marginally;
- c. The proposal as modified does satisfy applicable planning controls and policies, the Bridges Letter does not establish any controls being breached with this modification;
- d. The proposal as modified does provide acceptable social and economic impacts. Should the Bridges Letter interpretation of the operation of the easements be accepted and their submission that the modification be rejected be undertaken then the Alex Avenue development would be put on indefinite hold until they can develop Easement B with services and road access as part of an overall redevelopment of their site. This is clearly not an acceptable social and economic impact;
- e. The proposal as modified does not affect the suitability of the site for redevelopment; and
- f. The proposal as modified is in the public interest. Indefinite delay for the development of Alex Avenue school or otherwise sterilisation of the Alex Avenue school site in awaiting the rezoning and redevelopment of the SNN5 lot is clearly not in the public interest.

32. We thank you for your consideration of our response, please do not hesitate to contact us to further discuss.

Yours sincerely



Jim Lewis
Project Director
Schools Infrastructure NSW



