

BEATTY LEGAL

Lisa Mitchell
Team Leader
Department of Planning
GPO Box 39
SYDNEY NSW 2001

By email: information@planning.nsw.gov.au

11 December 2015

Dear Ms Mitchell

**RE: Submission by Way of Objection to the Proposed Modification 4
New CBD and South East Light Rail Project (the "Project")**
Our ref: [162/2015]

We act for Foundation for Education and Training Limited, the owners and occupiers of the land comprising 36 High Street and 38 High Street, Randwick NSW, on which are conducted the businesses known as Creston College and Kenvale College respectively.

We annex our client's summary submission by way of objection to that part of Modification 4 for the Project which will directly affect their land and businesses on High Street.

In short, the materials prepared in support of the Project exhibit:

- a) a failure to adequately consult our client (possibly arising from a mistaken belief that our clients are in some way affiliated with the University of New South Wales);
- b) a fundamentally inadequate assessment of the major impacts on our client's land and businesses;
- c) manifestly inadequate descriptions of critical project parameters such as land dimensions, distances, and the like; and
- d) a failure to explain or justify the reasons for the proposed modification in circumstances where, in a proper planning exercise, there has been no attempt to understand or balance our client's interests with the interests of others.

The first of the four concerns is especially egregious given that the need for the modifications is said to have arisen by reason of "ongoing design development and stakeholder consultation".

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The proposed modification to the Project will, as our client's summary submissions make clear, have a seriously adverse impact on the use and amenity of its land and the businesses conducted on that land.

The proposed effective denial of access to a main road and the inadequately explained and described "alternate" arrangements are likely to have the effect of substantially sterilizing our client's land and diminishing the ongoing viability of its businesses.

Given the very short timeframe permitted for the making of submissions, our client reserves the right to make further submissions, including through experts on traffic, noise, vibration and other issues.

Please acknowledge receipt of this submission and confirm to us the latest date by which the Department will receive supplementary submissions on the Project.

Yours faithfully



Andrew Beatty
Director
Beatty Legal Pty Limited
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Encl.

Foundation for Education and Training Limited (FFET) Submission for Proposed Modification 4 CDB and South East Light Rail Project

1) Relationship with UNSW

We would like to clarify at the outset that FFET, holds the title to the freehold property for 36 and 38 High Street and is completely independent of UNSW. In our consultation with Department of Planning and NSW Transport it was implied that this property had a relationship with UNSW. The trading entities Creston College, 36 High Street and Kenvale College, 38 High Street have no formal relationship with UNSW.

2) We object to the modifications of the existing approved project for the reconfiguration of the UNSW High Street stop design from one island platform to two separate platforms, either side of the light rail tracks

We dispute the changes to the existing project and disagree with the reconfiguration of the UNSW High Street stop arrangement.

We are happy with the current plan approved by the Minister of Planning with the UNSW High Street Stop being located in the centre of High Street, approximately 40 metres from Wansey Road, which is in front of both Creston College and Kenvale College to the east of the intersection of High Street and Wansey Road. This stop comprised an island platform configuration. Under the approved Project we had street access and were comfortable with the left-in-left-out road access. We prefer to maintain the single east and westbound traffic lane on either side of the light rail alignment along the length of High Street between Wansey Street and Botany Road

3) Lack of Clarity of the Width of the width of the Northern Platform

The proposed design modification states that northern platform currently in front of Creston College and Kenvale College will be approximately 6 meters wide. We have real concerns about this lack of clarity and the word “approximately”. This is vague and can have serious implications. Light Rail is said to carry five times as many passengers as buses. There will be many more people alighting in front of our premises. In Peak periods approximately 400 people (maximum capacity 466 people) will be alighting a four carriage train. In our consultation meeting with NSW Transport on December 10, 2015 we were informed that the footpath will be 1.5 meters and the platform 3.5 meters, which only totals 5 meters. There are no calculations of the number of people that the road level platform will take before there is an overflow onto the footpath which blocks the entrances to our premises. NSW transport knows the trams will be arriving every 8 minutes they should have the data to calculate this impact.

4) Impact on the value of the property

The justification for the change clearly acknowledges a higher volume of customers: “providing segregated boarding and alighting allowing for flexibility to accommodate higher volumes of customers” This increased volume of passengers alighting directly adjacent to our property along with no road access is going to impact on:

a) FFET property value

- b) The presentation of our street frontage including the Marketing of Creston and Kenvale will be obscured
- c) Our front entrance will be limited now via car and foot (with the stop and all the people alighting and some waiting)
- d) It will be noisy and dirty
- e) With the proposed new entrance in Arthur Street and two access points into our property we estimate we will lose at least five carparks, four in the back carpark and the parking bay at the front of the property next to the High Street Driveway. This will have a negative impact on valuation as car spaces in the Eastern Suburbs are valuable. In comparable suburbs one parking space can have an incremental value on the property of between \$100,000-\$200,000. This will be further impacted by the loss of 32 parking spaces in the area due to the Light Rail construction
- f) Garbage collection for Creston College

Given the tight timeline for the consultation and submission process a property valuers report will be forthcoming

5) Little evidence in the proposal on the justification for change being safety for passengers

One argument for the justification of the proposed modification to the UNSW stop as a way to improve the safety for customers during peak periods and that moving the morning peak disembarking platform towards the northern pedestrian footpath removes the need for large numbers of customers to wait on the island platform before crossing High Street to the UNSW campus. There is no evidence for this. There are no calculations. No specific issues regarding safety with the current approved project are spelled out.

Since the proposal was thin on facts and evidence, yet so much is hinging on this justification to support the modification, we approached UNSW seeking evidence. We thought UNSW would have this data given that in previous consultations with NSW Transport they raised safety concerns for their students. In our discussions with UNSW they were also surprised by the lack of evidence in the proposal and they were expecting NSW Transport to have undertaken this research.

Most of the people using the light rail and alighting at the stop will be UNSW students. It would make more sense to locate the platform on the UNSW side of the road, thus decreasing pedestrian danger of having to cross High Street.

6) Opportunities and benefits favour other parties at the expense of FFET

The proposal outlines the opportunities and benefits of this modification as:

- reduced impact to the main UNSW campus to the south of High Street
- improved compatibility with the overall UNSW campus masterplan for the precinct
- potentially reduced conflict between the light rail and sensitive equipment utilised by the UNSW, in particular the Lowy Cancer Research Centre.

All these opportunities and benefits seem to favour UNSW at the expense of FFET.

7) Little Evidence provided for the justification of the modification to improve Electromagnetic interference

Section 5.6.2 states under vibration that “the potential vibration impact at the UNSW Lowy Cancer Research Centre is likely to decrease due to increased setback distance from the light rail tracks to this building”. This is a vague statement of a decision which would heavily impact on FFET property. However, no evidence is provided as to how this impact will be remedied.

It appears that this justification is based on preliminary data: “A preliminary survey of UNSW campus undertaken by Enotrac (2014) identified a set of equipment potentially sensitive to external EMI. This included a magnetic resonance imaging and nuclear magnetic resonance equipment, an electron microscope, single molecule microscope and quantum computing Lab. Other equipment identified as having a potential to be impacted included audio induction loop(s), a magneto-spectrometer, X-ray equipment and a laser scanning microscope. Distances between the approved Project and the nearest room containing sensitive equipment was estimated to be approximately 15 to 20 metres. Of particular importance was equipment located within the Lowy Cancer Research Centre immediately adjacent to the approved Project on High Street” But this is only a preliminary survey and states **potentially** rather than actual sensitive equipment.

Therefore, the following need to be addressed:

- What are the facts?
- How does one measure the decrease?
- What is the precise significance of the shift of the UNSW platform on the equipment in the Lowy and the Wallace research centres?
- There are mobile phone antennas on top of Lowy building. These emit electromagnetic radiation. Why have not these been removed if the instruments are so sensitive?
- Has the University also removed all other sources of electromagnetic radiation from the Lowy building? Has it for example removed WIFI? It would be good to check as both interfere with delicate instruments and if it were really a problem then these instruments would already be shielded through the use of faraday cages.
- If equipment sensitivity is supposed to be caused by vibration then why don't these same instruments currently get interference from heavy traffic eg. buses and heavy trucks that travel along High Street? To our knowledge there are no current restrictions on High Street to prevent its use by heavy traffic.

Given the proposal provided so little evidence for the justification that EMI is factor leading to the modification to the approved plan we approached UNSW for the facts and the evidence. UNSW informed us they are also waiting for this testing and evidence.

We would also argue that the University has supported the light rail project from its inception. Both the Lowy and Wallace Buildings have been very recently built or refurbished. Would not UNSW have foreseen the EMI impacts of the light rail when they were designing these buildings?

We will finally argue that if the Light Rail does in fact impact the EMI on sensitive equipment why not insulate to protect this sensitive equipment or relocate the equipment given the size of UNSW campus rather than impact FFET's property.

8) Inadequate detail of the Arthur Street access lane

The proposal is light on detail regarding the Arthur street lane. The current lane is a single vehicle lane. The written submission said that lane will be widened to approximately 6 meters (once again another vague statement) leading to a widened 'hammer head' area of approximately 8 metres wide along rear boundaries of the affected properties. We operate a commercial teaching kitchen on this property and we have daily delivery trucks from a range of suppliers. Currently we have a parking bay in front of 38 High Street for delivery vans and trades people. This parking bay will be lost in the proposal as it is close to the High Street and will be difficult to access. The proposal states that a new access lane will provide access to existing car parking spaces, however there was no consultation of the implication of this access. We have been given two entrances from Arthur Street lane into the property. We have studied the matter and at least four car park spaces will be lost from the back carpark and one car park space in front on High Street.

9) Noise Impact

- a) The proposal states that stakeholders were consulted on the impacts of airborne and ground noise. We were never consulted regarding noise impacts. Both Creston College and Kenvale College will have additional noise impacts due to the proposed change.
- b) We dispute Section 5.6.1 in the proposal: "however not likely to significantly change the overall noise impact or the receiver's perception of the construction activities. It is therefore considered that the existing MCOAs and previously proposed mitigation measures identified as part of the approved Project would be sufficient to manage the potential impacts associated with the modification". The proposed light rail will be closer to an education institution: 38 High Street and a residential property 36 High Street and this will undoubtedly have a noise impact.
- c) In section 5.6 no consideration was given in the proposal to the impact of noise during the construction of the Arthur Street lane access on the educational functions of Kenvale College, 38 High Street.
- d) In section 5.6.2 why was 38 High Street as an educational institution not considered in airborne noise impacts? The applicable noise trigger level for an educational building will most likely be exceeded.
- e) Evidence that the expected vibration levels at this location are anticipated to be below the prescribed trigger levels and are therefore not likely to trigger any significant additional vibration impacts on the residential properties on the north side of High Street is required and has not been provided.
- f) Table 5.6 indicates Ground-borne noise this is significant for Creston College especially the front bedrooms.

Due to the short consultation and submission period further data on noise and vibration will be forthcoming

10) Negative socio and economic impact for FFET

- a) The change of property access will have negative socio and economic impact for FFET
- b) Creston College will have significant utilities and services impacts. The service area of this college of 25 residents is located on the High Street end of the building. Therefore, **Garbage collection, food and other suppliers deliveries and grease trap servicing require direct access from High Street.**

- a. Garbage is stored near High street and there is no access from their current location next to the service area through the property to the hammer head from Arthur Street. In our consultation with NSW Transport on December 10, we were verbally informed that Randwick City Council will not come up the access lane to collect garbage. We totally object that Creston College, 36 High Street, garbage, 8 bins every week, be transported from High street where the service areas are all the way to Arthur Street.
- b. Creston College's service area is close to High Street. Food deliveries and other suppliers for a residential college of 25 people have no direct access to hammer head at Arthur Street access.
- c. The requirement to create a path for garbage and food and supply deliveries for Creston College will create a security problem as Creston College is completely isolated from the back part of the property.
- d. Creston College's grease trap is on High Street, near the service area
- c) We dispute section 5.8 with respect to potential economic impact, that the changes associated with the modification are not anticipated to result in any substantial changes to the economic impacts during construction that were identified in the approved CSELR EIS (Transport for NSW, 2013). There will be impacts on both Kenvale College and Creston College
- d) We strongly dispute Section 5.8.2 With respect to potential economic impact, the proposed modification is not anticipated to result in any substantial changes to the economic impacts during operation that were identified in the approved CSELR EIS (Transport for NSW, 2013) Table 5.10 Mitigation may be required for the economic impacts on Creston Residence (loss of income from residents not wanting to move in due to the noise) and Kenvale College (Commercial and marketing impacts) and FFET Property value

11) Privacy

- a) We dispute that the proposal in Table 5.1 that states that the modification has no impact in regards to the environmental aspect of privacy. The privacy of both Kenvale College and especially Creston College will be significantly compromised and impacted with access into the property from both High Street and Arthur Street.
- b) Creston College is totally enclosed. If garbage and food services need to come from Arthur street access the current privacy will be compromised
We also foresee security issues for both properties

12) Visual Impact

We dispute Table 5.10 "No noticeable changes to the visual impact of the approved Project at the UNSW High Street stop." There will be visual impact on Creston and Kenvale

13) The Consultation Process

- a) The proposal states that consultation took place with Kenvale College and Creston College. However Creston College was only called in the last 10 minutes because Kenvale College called them to attend the meeting not NSW Transport. Creston was assumed to be part of the UNSW. The proposal makes no mention of the garbage collection implications and the grease trap problems for Creston that were discussed at that

consultation meeting. No documentation was provided at this meeting so we could not commence study on the proposed impacts of this modification.

- b) We were told that there will be more consultation during the planning process but there was silence for a full four weeks after we met on October 28, 2015. We asked for the timing of the consultation process but were not given any clear parameters. Only when we contacted JBA did we find out this tight two week timeframe from when the proposal was available to submission. Department of Planning informed us that the submission date was to meet legislation requirements but why was the modification proposal released to the public so late
- c) There is in error in the proposal. Kenvale College was not present at the meeting with Tiggers Honeypot Childcare centre
- d) What is really disconcerting is that the consultation for this proposed change started March 4, 2015. UNSW was present at this meeting and the potential impacts of privately owned properties associated with UNSW High Street stop change was discussed at this time. However we were not invited or informed and we were not brought into the conversation until October 28, 2015 yet the change does affect us significantly. Then we had to wait over 4 weeks to receive anything in writing and then were only given two weeks to make a submission.