

Light Horse Business Centre

Application No: 06_0139

Proponent's Response to Submissions (PR7) to DOP during the Exhibition Period

Submitter: Blacktown City Council

Executive Summary

Blacktown City Council (**Council**) sent a letter dated 17 February 2009 to DOP (Agency Submission A).

The Council resolved at its Ordinary Meeting held on 4 February 2009 not to oppose the Project, instead providing "in principle" support on the strict proviso that the Project does not have any adverse impact upon the residents of Minchinbury. At Attachment A to its letter, Council includes conditions that is asks the DOP to impose should the DOP approve the Project.

The Proponent agrees in principle to the imposition of the Council's suggested conditions, subject to the following objections/amendments.

At page 2 of Attachment A Council states:

"Local Infrastructure Contributions

*.....with regard to the levying of contributions of the lands to be included within the Voluntary Planning Agreement (VPA), Council expects that a VPA or contributions be levied for the **entire operational area** of the proposal as identified in Plan No. 6 in the final EAR submitted with the Application. Any suggestion by the Proponent to defer the payment of contributions over the quarry void until it is filled and rehabilitated is unreasonable as the Applicant will be operating the quarry void as a commercial landfill and as such the operation is a development in its own right warranting the levying of contributions over its entire developable area accordingly. Further, in the exhibited proposal, the Proponent now proposed to bond developer contributions generally in accordance with "the draft contributions plan published by Council". It is noted that Council has not yet published or prepared a draft Contributions Plan for the precinct. Therefore, in order to provide Council the opportunity and certainty that local infrastructure contributions are collected equally amongst all Stage 3 Precinct landowners, it is requested that **the Proponent enter into a VPA with Council prior to the issue of any Construction Certificate.**" (Emphasis ours)*

Several issues arise and are dealt with separately below.

Lack of ability of Council and DOP to require contributions and levies

At present, no Special Infrastructure Contributions under section 94ED of the *Environmental Planning & Assessment Act, 1979 (EPAA)* can be levied on the Project as the land the subject of the Proposal is not within the Special Contributions Area as defined in the *Growth Centres (Development Corporations) Act, 1974*.

Further, no section 94 contributions can be levied under the EPAA as there is no adopted Section 94 Contributions Plan for the Eastern Creek Precinct. Council has provided the Proponent with a draft contributions plan for the precinct and had advised that it expected to have its Contributions Plan finalised and exhibited by the end of calendar year 2008. This has not occurred.

The draft plan provided to the Proponent in 2007 by the Council included the following table.

The contribution required for the whole of the Proponent's land is shown below.

<i>Net development area (m2)</i>	<i>735,828</i>
<i>Drainage Works Cost + 40%</i>	<i>\$12,674,799</i>
<i>Drainage Land Cost + 20%</i>	<i>\$13,266,080</i>
<i>TOTAL</i>	<i>\$25,940,879</i>
<i>Road Works Cost</i>	<i>\$7,413,502</i>
<i>Road Works Land Cost</i>	<i>\$ 942,001</i>
<i>TOTAL</i>	<i>\$8,355,503</i>

**Net Development Area excludes areas designated for riparian areas, drainage land, conservation reserves, zone substation land.*

The Proponent's gross land area is, according to Council, approximately 937,700 square metres.

As the DOP is aware, the Proponent proposes to undertake a boundary realignment to achieve a realignment of title boundaries. When this realignment is finalised, according to the Proponent's surveyors, the Net Developable Area

will be 194,100 square metres. Applying the Council contribution rate of \$46.60 per square metre, the contributions payable, if a valid section 94 contributions plan was in place, would be \$9,045,060.

The Proponent is prepared to accept as a condition of Project approval that it provides a bond of \$9,045,060 in respect of the Project. The Proponent proposes to enter into a VPA either with the DOP or Council or both to fund infrastructure requirements on this basis.

Contributions to be levied over entire developable area

The Proponent does not accept this submission by Council. With respect, section 94 of the EPAA provides that if the Minister is satisfied that the Project for which approval is sought will or is likely to, increase or augment the demand in the Blacktown Local Government Area for public amenities and/or public services, the Minister may grant project approval subject to a condition requiring:

1. The reasonable dedication of land free of costs; or
2. The reasonable payment of monetary contribution; or
3. Both.

The Proponent has demonstrated that there will be no additional impact on the roads structure as a result of the granting of consent to the Proposal and the proposed use will be less intense than the previous quarry use.

Another analysis shows that s94 contributions are leviable upon "land" and not upon airspace. On the basis of this analysis, only the land at surface and the land at the base of the quarry is presently leviable as the quarry itself will not represent "land" until it has been filled at which time further levies may be required as a consequence of any future proposed change of use.

The Proponent also points out that the Director-General's own recommendations indicate that section 94 contributions should not be levied on land below the 1:100 year flood level. On this basis the land at the base of quarry (about 1 hectare) should also be excluded from s94 and/or other infrastructure contributions liability at this time.

The Council has also asked for details of the bitumen all weather sealing to be provided along the entire route to the quarry void and to the temporary stockpile area designated for after hours deliveries with stockpile areas /work floor areas being in a suitable all weather surface (as shown highlighted on the site plan) to mitigate potential dust problems are to be submitted to the certifying authority.

For clarity, the Proponent proposes to all weather bitumen seal all road at surface level including to the quarry void but not within the quarry void itself which would be an unsuitable surface to do so.

At page 3 of Attachment A the Council states:

“Traffic Issues

6. Based on the trip generation forecast in the traffic report, it is considered that the traffic generated by the proposed development can be accommodated within the existing road network capacity provided the following improvement works are undertaken:

Traffic Signals at the intersection of Old Wallgrove Road and the existing right-of-carriageway....

Whilst it is noted that this intersection will eventually be signalised as a part of the Precinct Section 94 Contributions Plan and future development of the Australand property on which the ROC is situated, a traffic safety solution in the form of traffic signals is required in the interim. It is expected that vehicles turning in and out of the right-of-carriageway will face longer delays than previously experienced. This could lead to an unsafe situation when frustrated drivers attempt to force their way and may cause collision with traffic already on Old Wallgrove Road. In order to avoid this happening, on safety grounds, the Proponent should be required to install traffic signals as a part of this application”.

The Proponent does not agree to the imposition of this condition for the reasons set out below. The Project's EA proposes to deal with the right of carriageway as follows:

“Existing Registered Right-of-Carriageway (ROC)

The road proposed under this Project to enter and exit the facility is the existing road which is located as shown on the architectural plans within Annex C. This existing roadway lies within the registered ROC connecting to Old Wallgrove Road and is a heavy duty bitumen sealed ‘industrial style’ roadway. The roadway is some 8.0 metres wide, within a ROC some 10.5 metres wide, and is relatively straight and level (slight downgrade towards the east). The roadway, which has been well maintained and is in good condition, has a number of speed control devices (speed humps) which act to constrain undue vehicle speeds and has suitable sight distances to enable safe overtaking of slow heavy vehicles if necessary.”

It is apparent that this section of roadway will be appropriate and suitable for the Project (ie heavy vehicles and public access). The roadway has been subject to constant use, including heavy vehicles, for many years without any apparent operational or safety problems.

Council has recently expressed the view to the DOP that the ROC only be used until such time as the alternative Precinct Plan road is constructed through the Australand land.

The Proponent supports this view and understands that Council has approved a Voluntary Planning Agreement with Australand which generally encompasses this outcome.

The Proponent notes that collector roads are generally to be provided as part of subdivision works funded by developers and are not included in S94 Contributions Plans. Also, the Proponent has received correspondence from Council indicating that it was expected that the cost of the installation of traffic lights at the intersection of Old Wallgrove Road and the ROC (private road) or the road which replaces it will be included as part of the costs encompassed by a VPA or the s94 Contributions Plan expected to be published in early 2009.

Given that the proposed traffic usage of the intersection of Quarry Road and Old Wallgrove Road is likely to be significantly less than it was when quarrying was in full operation there is no credible evidence that there has been deterioration in safety at the intersection.

Second, the obligation to construct a collector road through the Australand site is an obligation that should, rightly, be placed upon the landowner, Australand. Australand has already entered a funding agreement with Council. There is no rational justification therefore for placing a cost burden on the Proponent to install traffic lights on a ROC (not a road) to which they have no obligations.

Third, Australand has not yet revealed where precisely across its land the proposed collector road will traverse. It may or may not be along the line of the existing ROC. There is therefore a significant likelihood that the point at which the two roads intersect may well not be the place at which the ROC and Old Wallgrove road intersect. It would be an unreasonable and unnecessary burden to inflict this condition upon the Proponent and one which should only be imposed as part of a s94 Contributions Plan upon all of the landowners and users.

The Proponent suggests that an adequate interim traffic control measure at the intersection pending the construction of the Collector road would be the installation of stop signs.