

David Koppers
Independent Planning Commission NSW
Level 3, 201 Elizabeth Street
SYDNEY NSW 2000

Sent by email: [REDACTED]

Re: SSD 7155 (MOD 5) — Prestons industrial

Dear Mr Koppers,

I refer to State Significant Development 7155 (MOD 5) which proposes the following:

- Delete Condition C16 which requires the applicant to enter into an agreement with Liverpool City Council (Council) regarding the payment of drainage works required for the development;
- Modify Condition C17 to offset costs for drainage works against the development contributions required (under Condition B23) for the development; and
- Modify Condition B23 to specify a fixed development contribution amount payable to Council for the development which accounts for offsets for drainage works (under Condition C17) and indexation of contributions up to March 2017.

The Department of Planning, Industry and Environment (DPIE) have recommended that the proposed modification application be approved. On account of Council's objection to the amendment, the matter will be determined by the Independent Planning Commission (IPC).

Council reiterates its objection to the proposed modification application, which would increase Council's development contributions liabilities in excess of \$1.25 million. Council's original letter of objection is attached for reference.

It is Council's understanding that the DPIE's assessment of the proposed modification application was informed by a Response to Submissions document provided by the applicant. Council was not provided a copy of the Response to submissions document and was not requested to provide additional comment, prior to the Department finalising its assessment and recommendation.

Council requests that the IPC take account of Council's written objection to the proposed modification application, provided to DPIE in its letter dated 19 March 2019. In addition, Council makes the following points in response to the commentary in the Response to submissions document and the DPIE's assessment report.

Logos Response to submissions document

The Response to submissions document makes a series of arguments in support of the modification as detailed in the following paragraphs.

It is the position of Logos Property that as the drainage works completed by them to convey stormwater from Kurrajong Road to Bernera Road constituted a public benefit pursuant to Clause 7.11 (6) of the *Environmental Planning and Assessment (EP&A) Act 1979* and that Council must be liable to pay the developer's cost in completing the works, even though a Works in Kind Agreement (WIKA) was not finalised with Council prior to the works being undertaken.

At no time has Council sought to suggest that the required drainage works did not provide public benefit. As noted by Logos, the drainage works are accounted for in the Liverpool Contributions Plan 2009.

However, SSD 7155 condition of consent C17 states:

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 shall 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.

Council's Works in Kind policy provides a Procedure for Works in Kind at section 5 of the WIK policy. Section 5.8 Construction, states that:

Construction can commence on completion of Steps 5.1 to 5.7 of this policy, and any other preliminary requirements under the WIK agreement.

Steps 5.1 to 5.7 of the WIK policy were not completed and it is undisputed that the drainage works were constructed without the applicant having finalised a WIKA with Council. According to both the existing conditions of consent and Council's WIK policy, Council is therefore not liable to provide any WIK credit for the drainage works.

Nevertheless, Council has offered to provide a WIK credit for the full value of the cost of the drainage works as allowed for in the Liverpool Contributions Plan 2009. In making this decision, Council has considered all matters detailed in section 5.3 of the WIK policy including:

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

As noted in Council's original comments provided to DPIE, were Council to agree to offset the cost of the drainage works in excess of that provided for in the Liverpool Contributions Plan 2009, the additional cost would create an unfunded liability for Council in completing its works program in the vicinity of the subject site.

The Response to submissions goes on to make arguments that are immaterial to the matter at hand including assertions that the development has "provided Council with ratepayers that financially benefit Council in addition to over \$5 million worth of infrastructure for which a credit has not been sought."

In fact, Council rates are levied on the unimproved value of land. Development of the subject site makes no material difference to the rates levied by Council.

In addition, the “\$5 million worth of infrastructure”, highlighted by the applicant includes necessary upgrades to the public domain in the vicinity of the subject site, all of which have been made necessary in order for the applicant/the applicant’s tenants to carry out the day-to-day activities of a warehousing distribution centre.

Council would nevertheless wish to see a speedy and fair resolution to its dispute with Logos Property with regard to a WIK credit for the drainage works completed at the site and has therefore offered to credit the maximum amount for the works as detailed in the Liverpool Contributions Plan 2009, in spite of the fact that the applicant completed the works not in accordance with condition of consent C17 and Council’s WIK policy.

Specification of a fixed contributions amount

In its assessment of SSD 7155 (MOD 5) the DPIE agreed with the argument put by Logos Property and agreed that a WIK credit of \$1,256,000 should be provided for the drainage works constructed on site. It further agreed with the applicant’s argument that indexation of outstanding development contributions (as per clause 3.7.6 of the Liverpool Development Contributions Plan 2009), should be frozen at the 2017 value, as this was the time the developer lodged its notice of dispute with DPIE.

The DPIE has recommended that condition B23 and B23A, which specify the need for the developer to pay development contributions as per the Liverpool Development Contributions Plan 2009, be replaced with a requirement that the applicant pay \$5,019,522 to Council within 6 months of the determination of the modification application, in lieu of the development contributions due.

Calculations by Council estimate that the total contributions outstanding for the project amount to \$7,257,173 as at the March quarter 2019. The adjusted amount funded by the Liverpool Development Contributions Plan 2009 for the subject drainage works would amount to \$1,003,147. The adjusted liability based on Council’s calculation is therefore \$6,254,026.

Should the DPIE’s recommendation be accepted, this will create an unfunded liability of \$1,234,504 against Council’s ability to fund necessary infrastructure to support development in the precinct.

As noted in Council’s letter of objection to DPIE:

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.

Council therefore requests that serious consideration be given by the IPC to the DPIE’s recommendation to reduce development contributions liable for the subject project by

more than \$1.2 million. Making this determination would leave Council with a substantial shortfall in its ability to fund infrastructure for the ongoing development of the Prestons industrial precinct. That combined with the undesirable precedent this decision would create, is likely to place Council in an invidious financial position.

Council requests the opportunity to meet with IPC members prior to determination to elaborate on Council's concerns regarding this matter.

Should you wish to discuss this matter further please don't hesitate to contact Graham Matthews, Senior Strategic Planner on [REDACTED] [REDACTED] or via email at [REDACTED]

Yours sincerely



David Smith
Acting Director City Economy and Growth

Attachment: letter objection to DPIE dated 19 March 2019