

11 April 2022

Our Ref: 2022/199784
File No: R/2021/8/A
Your Ref: DA 21/13182

Lucinda Craig
Planning Officer, Planning and Assessment
Department of Planning and Environment

By email: Lucinda.Craig@dpie.nsw.gov.au

Dear Lucinda

Response to Submissions - Glebe Island Silos Signage - DA 21/13182

Thank you for your correspondence dated 21 March 2022 inviting the City of Sydney Council (“the City”) to comment on the Response to Submissions (RTS) for the abovementioned application.

In previous correspondence dated 27 October 2021, the City expressed our ongoing opposition for the extension of the display of third-party advertising on the Glebe Island Silos. The rolling modification applications and consents, and now the subject application for a further extension, continues to erode the temporary basis for which the signage was approved. A notable amount of time has passed since the NSW Government’s bid for the 2000 Olympic Games. Since then, the signage has perpetuated a permanent blight on the Sydney skyline and has completely undermined the relevance of time limited consents. The City’s position remains unchanged and accordingly, ***maintains its objection*** to the proposal. Any extension to the display of third-party advertising is not in the public interest and the third-party advertising must come to an end.

The City’s correspondence also remarked that should the consent authority be minded to grant consent for the application, the signage display should be restricted to a maximum 3 years in accordance with the Glebe Island Silos Advertising Signage DCP 2004 (Signage DCP).

The RTS is accompanied with documentation, including legal advice prepared by Norton Rose Fulbright, in response to the City’s objection to confirm the statutory application of the Signage DCP and State Environmental Planning Policy 64 – Advertising and Signage (SEPP 64). Overall, the legal advice provided by the proponent concludes that under SEPP 64, the Minister for Planning (the Minister) has no discretion to grant consent for 3 years and must permit the signage for 10 years.

The RTS letter, prepared by Urban Concepts, also outlines amendments made to the application having regard to the submissions made “by government agencies, local councils, special interest groups and members of the public”. One amendment involves the reduction of the duration of the consent from 10 years to 8 years, taking into consideration to the forecasted 2030 completion date of the Bays Metro Station. The City submits that this amendment is a blatant contradiction to the proponent’s own legal

advice and is an acceptance by the proponent that the Minister indeed has a discretion to grant consent for a period less than 10 years. The City submits that the amendment voids the proponent's initial contention of permitting an extension to the display third party advertising in accordance with SEPP 64 in the first place.

Despite the above, the City makes a separate comment to the relevance of the Signage DCP and the relevant instrument respectively. It is acknowledged that SEPP 64 was the relevant instrument in force at the time the application was made, and when the proponent's legal advice was prepared. However, on 1 March 2022, SEPP 64 was consolidated with several other SEPPs to form State Environmental Planning Policy (Industry and Employment) 2021 ('IESEPP'). By virtue of the commencement of the IESEPP, SEPP 64 ceased to have effect. This change has an effect to the proponent's legal advice.

The proponent's legal advice makes the following assertions in relation to relevant provisions of SEPP 64:

- Clause 21(3)(a) of SEPP 64 only provides a discretion to permit a period of less than 10 years if a policy has been adopted and is in place, and the consent is consistent with that document. The legal advice finds that the Signage DCP is not an environmental planning instrument made under the EP&A Act, and as such, the provisions of this sub-clause are not applicable.
- Clause 21(3)(a) of SEPP 64 also requires the policy to be adopted prior to the commencement of the part of the SEPP. The legal advice concludes that the Signage DCP does not satisfy this requirement because it post-dates the commencement of the part.
- Clause 21(3)(b) of SEPP 64 is not relevant because the only document that should rightly be considered under this limb is the Bays West Place Strategy, which is not an environmental planning instrument.

However, the relevant instrument is now IESEPP. Having regard to the provisions of the IESEPP and the reasoning set out by the proponent in their legal advice as it relates to SEPP 64, the City makes the following comments:

- Clause 3.19(3)(a) of IESEPP does not require the consent authority to have adopted an environmental planning instrument, it requires the consent authority to adopt a policy. If the legislature had intended that the consent authority was to have adopted an environmental planning instrument, they would have used that language, just as they have done in Clause 3.19(3)(b). It is broadly accepted that a DCP is a policy. The Signage DCP is a policy that was adopted by the Minister in 2004 and requires consideration to this part of the IESEPP.
- The City acknowledges that the IESEPP contains Clause 1.4, which addresses the issue of transferred provisions, the words of the IESEPP also need to be given their ordinary meaning, particularly where they are clear and unambiguous as is the case here. That is, when Clause 3.19(3)(a) refers to a policy adopted prior to the commencement of the part, it is arguable that it is referring to the commencement of the part in the IESEPP, not the part in SEPP 64. If this is the case, then the Signage DCP was adopted in 2004, which is prior to 1 March 2022, being the commencement date of the IESEPP. Therefore, the Signage DCP can be relied on by the Minister to grant development consent for a period less than 10 years.

Given the above, it is the City's view that the Signage DCP was adopted prior to the commencement date of Part 3 of the IESEPP, being 1 March 2022. Accordingly, the

Minister has the discretion under Clause 3.19(3)(a) to grant development consent for a period less than 10 years. Rightly, that period should be 3 years, in accordance with the Signage DCP. Whilst the City opposes the continuation of signage display for third party advertising for any given period of time, permitting a 3-year temporary time period is a better public policy outcome.

Should you wish to speak with a Council officer about the above, please contact Reinah Urqueza, Senior Planner, on [REDACTED] or at rurqueza@cityofsydney.nsw.gov.au

Yours sincerely,

Handwritten signature of Andrew Thomas, consisting of the letters 'A', 'T', and 'J' in a stylized, cursive font.

Andrew Thomas
Acting Director
City Planning | Development | Transport