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Confidential

22 May 2025 Our ref: RIV24003

Nicholas Cavallo
Knight Frank Town Planning Sydney
Level 22, 123 Pitt Street
SYDNEY NSW 2000

Email

Dear Sir,

DA.2023.0635, 37 Tompsitt Drive, Jerrabomberra

Introduction

1 I refer to your request for advice in respect of the issues raised in the Council Assessment Report prepared by Queanbeyan Palerang Regional Council (**Council**) regarding DA.2023.0635 (**DA**), which is, or has been provided to the Southern Regional Planning Panel (**Panel**), as the consent authority for the DA.

Advice requested

2 The questions on which you have sought advice are:

2.1 whether the *South Jerrabomberra Regional Jobs Precinct Masterplan* published by the Department of Planning, Housing and Infrastructure in March 2025 (**Masterplan**) is matter for consideration under s4.15 of the *Environmental Planning and Assessment Act 1979* (**EPA Act**) when the DA is determined,

2.2 how the 186 emails in support of the DA should be considered pursuant to s4.15 of the EPA Act,

2.3 whether the Alcohol Plan of Management prepared by JSF Consulting dated 15 January 2025 (**APOM**) submitted on the NSW Planning Portal on 3 February 2025 to specifically respond to the concerns of the NSW Police was required to be referred to the NSW Police, and

2.4 whether the Panel can grant a partial development consent to Stage 1 of the DA.

Summary of Advice

3 The Masterplan is a public interest consideration pursuant to section 4.15(1)(e) of the EPA Act. Public interest considerations are not confined to matters in environmental planning instruments, but include policies and detailed plans.

4 As the Masterplan has been publicly exhibited and published by the State Government, it should be given significant weight: *Stockland Development Pty Ltd v Manly Council* [2004] NSWLEC 472. The fact that s7.27 of the LEP does not apply to require the consent authority to consider the Masterplan as a precondition to granting any consent does not negate the relevance of the Masterplan as a public interest consideration.

5 The 186 emails supporting the DA are submissions '*made in accordance with the Act*' and should be considered pursuant to s4.15(1)(d). In any event, even if they were not made in accordance with the Act, they would be relevant as a public interest consideration pursuant to s4.15(1)(e) of the EPA Act.

6 The NSW Police is not an approval body or concurrence authority for the DA and therefore the APOM was not *required* to be referred to be referred to it.

7 As the APOM was prepared to address and respond to the concerns raised by the NSW Police, and it forms part of the amended DA being considered by the Panel, it would have assisted for the Council to receive the NSW Police's comments on the APOM to confirm if its concerns were addressed. Irrespective of this, the Panel is required to determine for itself the likely impacts of the development, and consider the manner in which the APOM responds to previous concerns raised by the NSW Police.

8 It is open to the Panel to grant a partial development consent to Stage 1 of the development under the DA pursuant to section 4.16(4) of the EPA Act without approving or refusing Stage 2, so that the Panel may subsequent grant consent to Stage 2: see section 4.16(5) of the EPA Act.

Advice

Is the Masterplan a Matter for Consideration

9 Section 7.27 of the *Queanbeyan-Palerang Regional Local Environmental Plan 2022* (**LEP**) applies to the land the subject of the DA.

10 Section 7.27(2) requires that:

> *'Development consent must not be granted for development on land to which this clause applies unless the consent authority has considered the South Jerrabomberra Regional Jobs Precinct Masterplan published by the Department of Planning, Housing and Infrastructure in March 2025.'*

11 Section 7.27 of the LEP was inserted into the LEP by *State Environmental Planning Policy Amendment (South Jerrabomberra Regional Jobs Precinct) 2025* (**SEPP Amendment**).

12 Section 1.8A(2) of the LEP provides that:

> *'An amendment made to this plan by State Environmental Planning Policy Amendment (South Jerrabomberra Regional Jobs Precinct) 2025 does not apply to a development application made but not finally determined before the commencement of the amendment.'*

13 The DA was made but not finally determined before the commencement of the SEPP Amendment. Section 7.27 therefore does not apply to the DA to require the Masterplan to be considered as a precondition to the grant of consent to the DA.

14 However, that does not mean the Masterplan is irrelevant. The Masterplan should still be considered in respect of the DA under s4.15(e) as a matter of public interest, being a document containing planning policies relevant to the land to which the DA relates.

15 The Courts have held that:

15.1 nothing in the EPA Act stipulates that environmental planning instruments are the only means of discerning planning policies or the public interest. A consent authority may consider a wide range of material: *Terrace Tower Holdings Pty Ltd v Sutherland SC* [2003] NSWCA 289 at [81],

15.2 the breadth of matters that can be taken into account as an element of '*the public interest'* is '*considerable*': *Maygood Australia Pty Ltd v Willoughby City Council* [2013] NSWLEC 142, and

15.3 the public interest '*must extend to any well-founded detailed plan adopted…even if it is not formally adopted as a development control plan*': *Stockland Development Pty Ltd v Manly Council* [2004] NSWLEC 472.

16 The Masterplan is a detailed plan that applies to the land the subject of the DA.

17 In *Stockland Development Pty Ltd v Manly Council* [2004] NSWLEC 472, the Court considered the weight to be given to policies which are not development control plans. McClellan J held that:

> *'[i]f the policy has been generated with little, if any, public consultation and was designed to defeat a project which is known to be under consideration by a developer for a particular site, it may be given little weight'* but *'…the position would be markedly different if the policy is the result of detailed consultation with relevant parties, including the community and the owners of affected land, and reflects outcomes which are within the range of sensible planning options.'*

18 As the Masterplan has been publicly exhibited and published by the State Government, we consider it should be given significant weight.

19 As set out below, the Court has given weight to draft masterplans. It cannot be the case that when it was in draft, and prior to section 7.27 being inserted into the LEP, the Masterplan was relevant, but now that it has been made, and section 7.27 inserted into the LEP, it is irrelevant. That would be an absurd reading of the EPA Act and LEP. The Masterplan has continuing relevance to the DA under s4.15(e) of the EPA Act.

20 Cases where the Court has given weight to draft masterplans, emphasise the importance of the Masterplan as a public interest consideration.

21 In *Concrite Pty Ltd v South Sydney City Council* (1998) 101 LGERA 170, Sheahan J held that a draft masterplan was relevant to the '*circumstances of the [particular] case'*, and it was arguably in the public interest for the consent authority to

> *'take into account that which the public has already considered in respect of possible future changes in the direction of planning in the relevant area.'*

22 In *Aldi Foods Pty Limited v Holroyd City Council* (2004) 139 LGERA 259, Talbot J considered a draft masterplan as a matter of public interest and had regard to the following matters:

22.1 the quality of the masterplan,

22.2 the public exposure that the masterplan has received,

22.3 the time frame for, and likelihood of, implementing the masterplan,

22.4 the impact of the masterplan on the development potential of the site, and,

22.5 the extent of inconsistency between the proposal and the masterplan.

23 When the Masterplan is considered as a matter of public interest, it is clear that the DA has been designed and will contribute a land use that has regard to the vision and structure planning for the land to which it relates contained in that document, which has been publicly exhibited and published by the State Government.

24 As stated in *Concrite Pty Ltd v South Sydney City Council* (1998) 101 LGERA 170, the Masterplan contains what the public understands to be the change in direction in planning for the area.

Consideration of the 186 emails in support of the DA

25 The Council's Assessment Report states at page 55 that:

> *'186 emails of support were also received. In accordance with Council's Community Engagement and Participation Plan these are not characterised as a formal submission given they were not accompanied by a donations or gifts disclosure.'*

26 The Council's Community Engagement Participation Plan (**CPP**) requires at 3.4 that a person wishing to lodge a submission *'must disclose donations or gifts made to Councillors or Council staff. This is required under s10.4 of the EP&A Act*'.

27 Section 10.4(5) of the EPA Act requires:

> *(5) A person who makes a relevant public submission to a council in relation to a relevant planning application made to the council is required to disclose the following reportable political donations and gifts (if any) made by the person making the submission or any associate of that person within the period commencing 2 years before the submission is made and ending when the application is determined—*
>
> *(a) all reportable political donations made to any local councillor of that council,*
>
> *(b) all gifts made to any local councillor or employee of that council.*
>
> *A reference in this subsection to a reportable political donation made to a local councillor includes a reference to a donation made at the time the person was a candidate for election to the council.*

28 Both section 10.4(5) of the EPA Act and the Council's CPP do not require a relevant public submission to include a statement as to *whether* <u>*or not*</u> a reportable political donation and gift was made.

29 A person making a relevant public submission is only required to make a disclosure if <u>they have</u> made a reportable political donation and gift.

30 Provided that the authors of the 186 emails did not make reportable political donations and gifts, then those emails will be '*submissions <u>made in accordance with [the EPA Act]</u> or the regulations*' and are required to be considered pursuant to section 4.15(1)(d) of the EPA Act.

31 Irrespective of this, the 186 emails are public interest matters for consideration pursuant to s4.15(1)(e), noting again the breadth of matters that may be taken into account as an element of the public interest.

32 In *Gloucester Resources Limited v Minister for Planning* [2019] NSWLEC 7, Preston CJ stated at [378]:

> *'As noted in Telstra v Hornsby Shire Council at [192], in determining the nature and scope of amenity and the impact of a proposed development on*

*amenity, the consent authority may consider the community responses to the proposed development as set out in the submissions made to the consent authority. **The community responses are aspects of the public interest**.*

… As the NSW Court of Appeal noted in Warkworth Mining Ltd v Bulga Milbrodale Progress Association Inc (2014) 200 LGERA 375; [2014] NSWCA 105 at [295]:

> *"**Likewise, we consider that community responses to the project were relevant to the public interest**. As his Honour pointed out, at [430], the evidence of the community responses was relevant to a consideration of noise impacts, air quality, visual impacts and more generally, the social impacts on the community. All of those factors were aspects of the overall public interest."*

*[**our emphasis**]*

The Alcohol Plan of Management

33 The Council's Assessment Report records at page 50 that the Council received advice from the NSW Police on 22 March 2024, 26 November 2024 and 6 December 2024.

34 The APOM formed part of the amendment to the DA submitted via the NSW Planning Portal on 3 February 2025.

35 The amendment of the DA was approved by the Panel on 11 March 2024 pursuant to section 38 of the EPA Reg.

36 Once an amendment to a DA is approved under s38 of the EPA Reg, the consent authority must, for a DA that is integrated development or development requiring concurrence:

> *as soon as practicable after approving the amendment, give a copy of the amended development application to **the approval body or concurrence authority** through the NSW planning portal.*
>
> *[**our emphasis**]*

37 However NSW Police is neither an approval body nor a concurrence authority for the DA.

38 As such, there was no *legislative requirement* for the Council to provide the APOM to the NSW Police.

39 Notwithstanding this, it clearly would have assisted for the Council to receive the NSW Police's comments on the APOM to confirm if its concerns were addressed.

40 The Panel is required to determine for itself the likely impacts of the development when considering the matters specified by s4.15 of the EPA Act.

41 In that regard, on 3 December 2024 the NSW Police provided a letter setting out concerns in respect of the DA. One concern was that a robust Plan of Management must be submitted by a person holding a current security licence that addresses various matters.

42 We cannot see where the Assessment Report assesses the APOM.

43 The APOM has been prepared by Jason Fullerton of JSF Consulting, who is a licenced security consultant with Licence No. 000204393, and holds qualification in security risk management.

44 We note that the APOM addresses the NSW Police's concerns raised on 3 December 2024 insofar as it:

44.1 clarifies the proposed operating hours of the club,

44.2 is a Plan of Management prepared by a person holding a security licence that addresses the matters raised by the NSW Police including compliance with licence conditions and liquor laws, the responsible service of alcohol, minimising neighbourhood disturbance, management and deployment of staff to address security and safety, and ongoing consultation with NSW Police,

44.3 provides procedures for crime scene management and proactive engagement with the NSW Police, and,

44.4 identifies how patrons will be managed to minimise disturbance to the neighbourhood, as well as incident management and security measures to address concerns regarding public safety and crime.

Granting a Partial Development Consent

45 Section 4.16(4) of the EPA Act permits a consent authority to grant development consent:

> '*(a) for the development for which the consent is sought, or*
>
> *(b) for that development, except for a specified part or aspect of that development, or*
>
> *(c) for a specified part or aspect of that development.*'

46 Section 4.16(5) of the EPA Act then provides that:

> '*The consent authority **is not required to refuse consent** to any specified part or aspect of development for which development consent is not initially granted under subsection (4), **but development consent may subsequently be granted** for that part or aspect of the development.*'
>
> *[**our emphasis**]*

47 The effect of this is that the Panel could legally grant development consent to Stage 1 only of the DA, and Stage 2 is then held in abeyance, and a separate development consent may be granted for Stage 2 at a later stage.

48 If you would like to discuss any aspect of this advice or require any further assistance, please do not hesitate to contact Megan Hawley on 02 8235 9703 or Katie Mortimer on 02 8235 9716.

Yours Sincerely,

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