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Confidential

12 October 2012

Our ref: LAN00807

Frances Wilmore
Manager Legal
Landcom
PO Box 237
PARRAMATTA NSW 2124

Email

Dear Frances,

UWS Campbelltown Development – Advice re Consistency with Zone Objectives

Introduction

- 1 I refer to your email to me on 5 October 2012 and Peter Lawrence's email to you on the same date.
- 2 You have requested advice on whether Stage 1 of the residential development proposed at the UWS Campbelltown site (**Development**) is consistent with one or more of the objectives of Zone 10(a) - Regional Comprehensive Centre Zone (**Zone 10a**) under the *Campbelltown (Urban Area) Local Environmental Plan 2002 (LEP)*.
- 3 I have reviewed the relevant provisions of the LEP, the statement of environmental effects for the Development (**SEE**) and the *University of Western Sydney DCP 2008 (DCP)* which applies to Development.

Summary of Advice

- 4 In my view, for the purposes of cl28(2) of the LEP, it is open to The consent authority to form the opinion that the carrying out of the Development would be consistent with one or more of the objectives of Zone 10a and therefore it is open to the Consent authority to grant consent to the Development.
- 5 In particular, it would be not antipathetic to and would be consistent with:
 - 5.1 the objective of encouraging employment and economic growth by creating jobs during the construction phase of the Development, and by increasing the number of residents in the area who frequent the Macarthur Square shopping centre and local shops.
 - 5.2 the objective of encouraging a variety of forms of higher density housing in locations which are accessible to public transport, employment, retail, commercial and service facilities by:

lindsaytaylorlawyers
Level 9, Suite 3, 420 George Street, Sydney NSW 2000, Australia
T 02 8235 9700 • F 02 8235 9799 • W www.lindsaytaylorlawyers.com.au • E mail@lindsaytaylorlawyers.com.au
ABN 15 695 894 345

Principal

Dr Lindsay Taylor

Practice Directors

Megan Hawley

Accredited Specialist
(Local Government & Planning)

Stuart Simington

Accredited Specialist
(Local Government & Planning)

- 5.2.1 proposing a range of lot sizes from 300m² to 1499m² (nearly 60% of which are less than 600m²) which are not the least dense form of housing permissible in Zone 10a,
- 5.2.2 creating 5 superlots which will be further subdivided for small lot or medium density housing, and
- 5.2.3 facilitating the ultimate construction of housing within walking distance to Macarthur railway station and Macarthur Square shopping centre.
- 5.3 the objective of encouraging a high quality standard of development by proposing landscape treatment of Goldsmith Avenue, which is the main entry to the Development and UWS, and regrading of the Development site to ensure that the Development is aesthetically pleasing, functional and relates sympathetically to the adjoining UWS.

Relevant LEP provisions

- 6 The objectives of Zone 10a are (see cl28(2) of the LEP):
 - (a) *to provide land for the City of Campbelltown and the Macarthur region's largest centre of commerce, and*
 - (b) *to encourage employment and economic growth, and*
 - (c) *to accommodate tertiary education and hospital facilities for the City of Campbelltown and the Macarthur region, and*
 - (d) *to accommodate a wide range of cultural, entertainment and like facilities, and*
 - (e) *to permit limited industrial uses that are compatible with the proper operation of a major regional centre, and*
 - (f) *to encourage a variety of forms of higher density housing, including accommodation for older people and people with disabilities in locations which are accessible to public transport, employment, retail, commercial and service facilities.*
- 7 A further objective is 'to encourage a high quality standard of development which is aesthetically pleasing, functional and relates sympathetically to nearby and adjoining development'.
- 8 Of importance, clause 28(2) of the LEP provides that:

Except as otherwise provided by this plan, consent must not be granted for development on land within this zone unless the consent authority is of the opinion that carrying out the proposed development would be consistent with one or more of the objectives of this zone.

The Development

- 9 The Development is Stage 1 of a multi-stage residential development by the University of Western Sydney (UWS) and Landcom and is described in the SEE as having a capital investment value of \$29.5 million. It involves:
 - 9.1 subdivision to create 238 standard residential allotments comprising 9 lots with an area of 300-499m², 130 lots with an area of 450-599m², 83 lots with an area of 600-799m² and 16 lots with an area of 800-1,499m²,
 - 9.2 creation of 5 superlots which will be further subdivided at a later stage for small lot or medium density housing,

- 9.3 construction of the lead-in road (Goldsmith Avenue) and internal road network and new intersection to Gilchrist Drive,
- 9.4 civil works including cut and fill,
- 9.5 stormwater drainage infrastructure, and
- 9.6 landscape works.

Advice

- 10 It is clear that the Consent authority cannot grant development consent unless it forms the opinion that the Development would be consistent with one or more of the objectives of Zone 10a.
- 11 The phrase '*consistent with*' has been the subject of a substantial amount of judicial consideration.
- 12 In one line of cases, the Courts have held that development will '*generally be "consistent with" the objectives if it is not antipathetic to them: it is not necessary to demonstrate that a development promotes or is ancillary to these objectives, not even that it is compatible with them*' (see *New Century Developments Pty Ltd v Baulkham Hills Shire Council* (2003) 127 LGERA 303, citing *Coffs Harbour Environment Centre Inc v Coffs Harbour City Council* (1991) 74 LGRA 185 and *Schaffer Corporation Ltd v Hawkesbury City Council* (1992) 77 LGRA 21).
- 13 However, that interpretation of the words '*consistent with*' has been criticised in other cases where the Courts held that the words should have their '**ordinary and natural meaning** of "*agreeing or accordant; compatible; not self-opposed or self-contradictory; consistently adhering to the same principles, course etc.*" It did not mean "*not antipathetic*" (see *Gillespies v Warringah Council* (2002) 124 LGERA 147; *Addenbrooke Pty Ltd v Woollahra Municipal Council* [2008] NSWLEC 190).
- 14 On either interpretation of the words '*consistent with*', in my view, the Development would be '*consistent with*' the objectives in clause 28(2)(b) and (f) of the LEP and the further objective of encouraging a high quality standard of development, for the reasons discussed below.

Clause 28(2)(b): to encourage employment and economic growth

- 15 The Development, having a capital investment value of \$29.5 million and involving subdivision works including the construction of roads, civil works, stormwater drainage and streetscape works would, during the constructing phase promote jobs and contribute to economic growth in the area. Being a residential subdivision, further employment and economic activity would be encouraged by the subsequent construction of dwellings and other residential development on the lots created.
- 16 Once established, the increased number of residents in the area could reasonably be expected to contribute to the economic growth of the area such as by them frequenting the nearby Macarthur Square shopping centre and other local shops.
- 17 It follows that in my view, the Development is not antipathetic to encouraging employment and economic growth and in fact promotes and is consistent with that objective.

Clause 28(2)(f): to encourage a variety of forms of higher density housing, including accommodation for older people and people with disabilities in locations which are accessible to public transport, employment, retail, commercial and service facilities

- 18 Whilst the Development primarily involves subdivision to create 238 standard residential allotments, in my view this is not antipathetic to, and is consistent with this objective because:
 - 18.1 the Development itself proposes a range of lot sizes, to accommodate different densities of housing. It therefore encourages a variety of housing,
 - 18.2 'higher density housing' is not defined in the LEP or the DCP. The standard residential allotments created in the Development which range from 300m² to 1499m² are not the least dense form of housing permissible with consent in Zone 10a envisaged by the DCP, and therefore could be considered as encouraging *higher density housing*. In that regard, nearly 60% of the proposed standard residential lots will be under 600m² and the DCP allows lots for 'standard detached dwellings' up to 2000m² and lots for 'large detached dwellings' over 2000m². I also assume, although I do not know, that the lots proposed will be higher density than what is generally found in the area at present,
 - 18.3 the Development includes the creation of 5 superlots which will be further subdivided for small lot or medium density housing, which can also be considered as 'higher density housing',
 - 18.4 the housing which will ultimately be constructed on the allotments will be within walking distance to Macarthur railway station and Macarthur Square shopping centre and UWS.

Clause 28(2): to encourage a high quality standard of development which is aesthetically pleasing, functional and relates sympathetically to nearby and adjoining development

- 19 The SEE provides that the Development will include landscape treatment of Goldsmith Avenue, which is the main entry to the Development and UWS. It states that 'Goldsmith Avenue is to be a signature avenue/boulevard with a planted central median and triple row of trees' and 'the tree planting concept for Goldsmith Avenue will comprise mature/advanced tree species capable of connecting canopies over carriageways to deliver different planting themes...'
- 20 The SEE also provides that the subdivision civil works including earthworks and construction of retaining walls responding to the hilly and steep terrain will achieve lot access and amenity and create a slope grade that will appeal to prospective land purchasers.
- 21 In my view, Goldsmith Avenue landscaping and the works to regrade the site will enable the Development to be aesthetically pleasing, functional and relate sympathetically to UWS. There would presumably be other arguments that could be made regarding the high quality standard of the Development, based on the SEE. The Development can therefore be argued to be not antipathetic to, and consistent with the further objective in cl28(2).
- 22 In respect of this objective, if the 'not antipathetic' interpretation was applied, then unless the Development was clearly not of high quality or aesthetically pleasing, the objective would be met.

23 It follows from the above that in my view, it is open for the Consent authority to form the opinion that the carrying out of the Development would be consistent with one or more of the objectives of Zone 10a.

24 Please do not hesitate to contact me if you have any questions.

Yours sincerely,



Dr Lindsay Taylor

Direct: 8235 9701

Fax: 8235 9799

Mobile: 0417 997 880

Email: lindsay.taylor@lindsaytaylorlawyers.com.au

