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PRIVILEGED & CONFIDENTIAL

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Advice regarding DA Signage - Western Sydney Parklands Trust

1. We refer to the above and note that we have been instructed to prepare an advice for Western Sydney Parklands Trust (**the Trust**) in relation to a Crown development application for signage (**DA**) which has been referred to the Joint Regional Planning Panel (Western Sydney Region) (**JRPP**) for determination.
2. In particular, we have been instructed to provide advice to the Trust, addressing the following matters:
 - (a) the permissibility of proposed commercial billboard / advertising signage in the Parklands in accordance with:
 - (i) State Environmental Planning Policy (Western Sydney Parklands) 2009 (**WSP SEPP**); and
 - (ii) Western Sydney Parklands Plan of Management 2020 (**WSP POM**); and
 - (b) compliance of the proposed signage with Clause 16 'Signage' of the WSP SEPP.
3. We understand that a copy of this advice may be provided to the JRPP.

SUMMARY OF ADVICE

4. In our view:

Permissibility of proposed commercial billboard / advertising signage in the Parklands

- (a) The proposed signage is permissible with development consent pursuant to clause 11(2) of the WSP SEPP.

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- (b) In determining the DA, the consent authority must undertake a merit assessment in accordance with the requirements of the WSP SEPP and must:
 - (i) consider those matters set out in clause 12 of the WSP SEPP as are relevant to the application;
 - (ii) be satisfied that the proposed signage is "consistent with any signage policy" (clause 16, WSP SEPP); and
 - (iii) ensure that the DA has been referred to the RTA (now RMS) and take into account any comments received from the RTA.
- (c) While ultimately, the consent authority must undertake the relevant assessment and be satisfied as to those matters set out in the WSP SEPP, we do not agree that any income generating activities must be confined to uses such as cafes and bike hire nor that the proposed signage is inconsistent with the POM 2020 on the basis that it is not one of the examples listed used in the POM 2020.
- (d) Furthermore, an amendment to the POM 2020 has now been adopted by the Minister for the Environment (**Environment Minister**) which specifically provides for commercial billboards to be erected within the Western Sydney Parklands (**Parklands**). Therefore, the proposed signage is consistent with the POM 2020 (as amended).

Compliance of the proposed signage with clause 16 of the WSP SEPP

- (e) In our opinion, the proposed signage is not inconsistent with the Western Sydney Parklands Design Manual (**Design Manual**) on the basis that the Design Manual does not deal with the proposed billboards, particularly when the Design Manual and the POM 2020 (as amended) are read together.

BACKGROUND

5. We are instructed that:

- (a) On 1 February 2013, the Trust lodged a Crown DA with Fairfield City Council (**Council**) which proposes the construction of four advertising structures located within the Parklands, adjacent to the M7 Motorway corridor.
- (b) Council does not support the DA, among other things, on the basis of the consistency with the POM 2020, which is a matter of consideration under the WSP SEPP and has recommended that the DA be refused.
- (c) The DA has been referred to the JRPP for determination.
- (d) At the JRPP meeting on 24 October 2013, the matter was deferred. As set out in the minutes of the JRPP meeting:

The Panel directs the Council to obtain legal advice whether the application satisfies the legal requirements of Clause 16 of the SEPP, to ascertain how the provisions of s23e can be refined and enforced and to revise any conditions of consent necessary depending on the applicant's response.

6. The JRPP has also requested certain information from the Trust which is to be provided.
7. We are also instructed that the JRPP has clarified that "s23e" relates to Council's proposed condition 23e which provides that:

There shall be no display of advertisements that would result in a traffic hazard to motorists on the M7 Motorway. In this regard, advertising shall not contain messages that are distractive or otherwise inconsistent with road safety.
8. It is also relevant to note that on 2 March 2014, the Environment Minister adopted an amendment to the POM 2020 in order to reflect how the Trust can create a sustainable revenue base to achieve the POM 2020's vision (**POM Amendment**).
9. Of note, should the JRPP propose to refuse the DA (or proposes to impose a condition that is not agreed to by the Trust, such as condition 23e), the DA will need to be referred to the Minister administering the *Environmental Planning & Assessment Act 1979 (EP&A Act)* (**Planning Minister**).

ADVICE

Is the proposed signage permissible?

State Environmental Planning Policy (Western Sydney Parklands) 2009

10. In our view, the proposed signage is permissible, with development consent, under the WSP SEPP.
11. The WSP SEPP provides that:
 - (a) a word or expression used has the same meaning as it has in the Standard Instrument unless it is otherwise defined in the WSP SEPP (clause 4(2)); and
 - (b) the *Fairfield Local Environmental Plan 1994* does not apply to the Parklands (clause 6).
12. Clause 11 of the WSP SEPP sets out the development which may be carried out within the Parklands and provides as follows:
 - (1) *The following development may be carried out on land in the Western Parklands without consent, but only if it is carried out by or on behalf of a public authority:*

amenity facilities; community facilities; depots; entertainment facilities; environmental facilities; environmental protection works; function centres; information and education facilities; kiosks; public administration buildings; recreation areas; recreation facilities (outdoor); restaurants or cafes; roads; signage (for directional, informative, or interpretative purposes); ticketing facilities.
 - (1A) *Development for the purposes of extensive agriculture, other than farm buildings, may be carried out on public land in the Western Parklands without consent unless the land is in an environmental conservation area as shown on the Environmental Conservation Areas Map.*

- (2) Any development not specified in subclause (1) or (3), or permitted without consent by subclause (1A), may be carried out in the Western Parklands only with consent.
- (3) *Development for the purposes of residential accommodation is prohibited in the Western Parklands.*
- (4) *In this clause:*
 - (a) *a reference to a type of building or other thing is a reference to development for the purposes of that type of building or other thing, and*
 - (b) *a reference to a type of building or other thing does not include (despite any definition in or applying to this Policy) a reference to a type of building or other thing referred to separately in this clause.*
- (5) *This clause is subject to the other provisions of this Policy.*

13. We are instructed that the proposed signage will be for third party use and not, for example, for directional, informative or interpretative purposes.

14. Under the Standard Instrument, "signage" means any:

sign, notice, device, representation or advertisement that advertises or promotes any goods, services or events and any structure or vessel that is principally designed for, or that is used for, the display of signage, and includes any of the following:

- (a) *an advertising structure,*
- (b) *a building identification sign,*
- (c) *a business identification sign,*

but does not include a traffic sign or traffic control facilities.

15. In our view therefore, the effect of clause 11 of the WSP SEPP is that:

- (a) development for the purposes of residential accommodation is prohibited within the Parklands; and
- (b) all other development is permissible with development consent, other than development specified in clause 11(1) and (1A) (which is permissible without development consent).

16. In determining whether to grant development consent however, the consent authority is required to carry out a merit assessment of the proposal, in accordance with the requirements of the WSP SEPP.

17. For example, clause 12 of the WSP SEPP provides that a consent authority must consider certain matters as are relevant to the development, including:

- (a) the aim of WSP SEPP;

- (b) the impact on the physical and visual continuity of the Western Parklands as a scenic break in the urban fabric of western Sydney;
- (c) consistency with:
 - (i) any plan of management for the Parklands, prepared and adopted under Part 4 of the *Western Sydney Parklands Act 2006*, or
 - (ii) any precinct plan that includes the Parklands;
- (d) the impact on surrounding residential amenity;
- (e) the impact on significant views.

18. Clause 16 is also relevant which provides that:

- (1) *This clause applies to signage that is visible from a public place.*
- (2) *Development consent must not be granted to the erection of signage unless:*
 - (a) *the consent authority is satisfied that the signage is consistent with any signage policy prepared by the Trust, and*
 - (b) *in the case of a road sign, the Roads and Traffic Authority has been given written notice of the development application and any comments received by the consent authority from the Roads and Traffic Authority within 21 days have been considered by the consent authority.*

19. The proposed signage is therefore permissible within the Parklands with development consent. In determining the DA however, the consent authority must:

- (a) consider those matters set out in clause 12 of the WSP SEPP as are relevant to the application;
- (b) be satisfied that the proposed signage is "consistent with any signage policy"; and
- (c) ensure that the DA has been referred to the RTA (now RMS) and take into account any comments received from the RTA.

20. This interpretation is consistent with Council's comments at page 10 of its report to the JRPP. However, in the Council's view:

- (a) the proposed development would have an unacceptable impact on the physical and visual continuity of the Western Parklands as a scenic break in the urban fabric of western Sydney;
- (b) the proposed development would not be consistent with the POM 2020 "and associated precinct plans";
- (c) proposed sign 4 would have unacceptable impact on residential amenity and significant views;
- (d) the proposed development does not meet the provisions of the Design Manual; and

- (e) the proposed development is not in the public interest.
21. These objections go to a merit assessment of the proposal against the provisions of the WSP SEPP, rather than to the permissibility of the proposal.
22. We understand that some amendments have been made to the DA in order to address concerns in relation to residential amenity. We therefore understand that this may no longer be an issue.

Consistency with the Western Sydney Parklands Plan of Management 2020: Objective 3

23. In addition to Council's concerns in relation to the impacts of the proposal, including on visual and residential amenity, the Council also appears to be of the view that the scale and type of activity proposed is not within the contemplation of the POM 2020. In particular, Council's report at page 22 states:

It is acknowledged that Objective 3 ...encourages the development of new business and opportunities to support the management and further development of the Parklands. However, the Plan of Management clarifies the intended minor income generating opportunities to be explored and includes land uses such as cafes, bike hire/shelter and the like. Therefore it is considered that the proposal may be inconsistent with characterisation of uses and is of a greater scale than that described or intended under this objective.

24. In this regard, the POM provides that (page 21):
- (a) the Trust is a self-funded agency and is developing an income stream of \$10 million per annum within the 10 year life of the POM 2020. In order to achieve this goal, a "significant portion of income will be derived from developing long term leases for business purposes on 2 per cent of its land over the long term"; and
 - (b) the Trust will also supplement its income through recreation activities "such as tourism, and venue and bike hire".

25. In addition, Objective 3 of Parklands Development and Management (page 38) is to:

Develop new business opportunities to support the management and further development of the Parklands

Key actions:

1. Develop business hubs in appropriate locations in the Parklands.

.....

3. Improve the Parklands income base by moving from small, short term lease assets to longer term, high-yield lease assets.

*4. Develop and explore minor income generating opportunities **such as** cafés...*

5. Develop partnerships with government and non-government entities to encourage investment in environmental, recreational, cultural or agricultural programs and shelter and bike hire.

26. Lastly, section 2.4 of the POM 2020, provides that the Land Use Framework is also relevant which provides for the identification of "business hubs", for example, on sites with low environmental and recreational values.
27. In this regard, as mentioned above, since Council's report was prepared and the DA was initially considered by the JRPP, the Environment Minister has adopted the POM Amendment as an amendment to the POM 2020 under section 27 of the *Western Sydney Parklands Act 2006 (WSP Act)*.
28. The POM Amendment reflects the identification of the 9 business hubs within the Parklands which will comprise a maximum of 2% of the Parklands (see 3.5, POM Amendment). Relevantly, the POM Amendment has identified 3 business hubs within the Fairfield local government area (at 3.6): Horsley Park (Precinct 9), Horsley West (Precinct 9), and Wallgrove Road (Precinct 11). Furthermore, the POM Amendment states that (at 3.7):

The Trust has identified ten locations throughout the Parklands for commercial billboards sites. The billboards are located on the edge of the Parklands adjacent to major arterial roads. The locations of these billboards are of low environmental and scenic landscape value and in areas which do not detract from the recreational values and facilities for the Parklands.
29. We are instructed that the signage proposed by the DA is to be located in these identified locations.
30. It is therefore clear that income generating activities envisaged by the POM 2020 (as amended) are not confined to uses such as cafes and bike hire. The proposed signage is consistent with the POM 2020, particularly in light of the fact that the POM Amendment specifically provides for commercial billboards as an income generating activity in the Parklands.
31. In our view therefore, as required by the WSP SEPP, the proposed signage is consistent with the POM 2020 (as amended by the POM 2020 which has been adopted by the Environment Minister in accordance with the WSP Act).

Compliance with clause 16 of the WSP SEPP

32. Under clause 16 of the WSP SEPP, Council must be satisfied that signage is consistent with any signage policy prepared by the Trust".
33. Council's report notes that:

Clause 16 requires that any signage within the Parklands that is visible from a public place must be consistent with any signage Policy prepared by the Trust for the Parklands. In this instance, the relevant Policy is the Design Manual for the Western Sydney Parklands.

*The Western Sydney Parklands Design Manual outlines the vision for the Parklands and its relationship to infrastructure planning, design, and implementation. **The Design Manual does not specify any standards/requirements other than for infrastructure and directional signage associated with the Parklands and there are no statements or provisions within the Design Manual that anticipate or envisage the type of advertising structures proposed by this application. On this basis it is considered that the proposal is inconsistent with the Design Manual and therefore does not meet the requirements of this Clause.***

34. The Council has been directed by the JRPP to seek legal advice as to whether the DA satisfies the requirements of clause 16 of the SEPP.
35. "Signage policy" is not defined in the WSP SEPP. As Council has mentioned however, the Trust has prepared the Design Manual.
36. Section 5 of the Design Manual deals with signage. However, the Design Manual only relates to "a hierarchy of identification" within the Parklands, for example, identification of the Parklands and activity hubs within the Parklands. The Design Manual does not contain any guidance on the type of signage proposed in the DA. On this basis, Council appears to be arguing that the DA is inconsistent with the Design Manual and therefore does not satisfy the requirements of clause 16 of the WSP SEPP.

Meaning of the term "consistent with"

37. The application of the term "consistency" has been addressed by the Land & Environment Court (**Court**) on a number of occasions and was found to mean "not antipathetic, nor incompatible or inconsistent with".¹
38. In *Dem Gillespies v Warringah Council*², for example, after having surveyed a number of decisions which considered the meaning of "consistent" in clauses in planning instruments that required an opinion by the consent authority that a proposed development be "consistent with the zone objectives", Bignold J found that word "consistent" (as it appeared in the clause in question) "assumes its ordinary and natural meaning".
39. The *Macquarie Dictionary* defines "consistent" as:
*1. agreeing or accordant; compatible; not self-opposed or self-contradictory.
2. constantly adhering to the same principles, course, etc.*
40. Further, in *Residential Lifestyles Pty Ltd v Warringah Council*³, Nott C regarded "compatibility" as a synonym of "consistency" and applied the primary ordinary meaning of "compatible".
41. The *Macquarie Dictionary* defines "compatible" as:
1. capable of existing together in harmony. 2. capable of orderly, efficient integration of other elements in a system...
42. Having regard to the meaning of "consistent" and "compatible", it is clear that the DA and the signage envisaged in the Design Manual are not self-contradictory or self-opposed and are capable of existing together. This is because, for example:
 - (a) the Design Manual states that it outlines the general approach to planning and implementation of "park infrastructure" within the Parklands (see introduction);
 - (b) the Design Manual does not state that only the types of signage anticipated or allowed within the Parklands are those described within the Design Manual; and

¹ *Mackenzie v Warringah Council* [2002] NSWLEC 131 (8 August 2002).

² [2002] NSWLEC 224 (26 November 2002).

³ [2005] NSWLEC 250


(c) the Design Manual and the POM 2020 (as amended) are intended to work together as overall guidance documents for the Parklands.

43. It is also relevant to note that, as already identified, clause 11 of the WSP SEPP states that signage for directional, informative or interpretive purposes may be carried out within the Parklands (by or on behalf of a public authority) without development consent. The signage guidelines in the Design Manual relate to signage for directional, informative or interpretive purposes. This suggests that the signage guidelines in the Design Manual are aimed at providing general parameters for which the directional, informative or interpretive signage is to be implemented within the Parklands and appears to be relevant to this type of signage only.
44. Furthermore, it is clear that the Design Manual is not to be read in isolation and forms part of a suite of documents which guide and direct improvements and the management of the Parklands, including the POM 2020 (as is recognised at section 1.1 of the Design Manual). Therefore, having regard to the overall vision and strategy for the Parklands in POM 2020 (as set out above) and the POM Amendment which specifically provides for a range of commercial activities within the Parklands, including commercial billboards, we do not consider the proposed signage to be inconsistent with the Design Manual.
45. Lastly, the Design Manual overall, only deals with "park infrastructure" and does not deal with all types of development envisioned within the Parklands, as set out in the POM 2020 and the POM Amendment. For example, cafés are mentioned in the POM 2020, but are not specifically dealt with in the Design Manual. On the face of Council's reasoning, as cafés are not mentioned in the Design Manual, then they are not contemplated by (and therefore not consistent with) the Design Manual. In our view, this is not logical.
46. Should you have any queries in relation to this advice or require further assistance, please do not hesitate to contact us.

Yours faithfully



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