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15 August 2014

Regional Panels Secretariat
Port Macquarie-Hastings Council
GPO Box 39
SYDNEY NSW 2000

Attention: Panel Secretariat and Regional Panel Members

CHARLES STURT UNIVERSITY - PORT MACQUARIE (D/2014/120)
MAJOR INNES ROAD, PORT MACQUARIE
JRPP REFERENCE - 2014NTH003

This letter has been prepared on behalf of the applicant, Charles Sturt University (CSU) Port Macquarie, in response to Port Macquarie-Hastings Council's (Council) assessment report, and subsequent recommended conditions of consent.

As noted in Council's assessment report, the subject Development Application (DA) is a Crown DA. In accordance with Clause 89(1)(b) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) the consent authority must not impose a condition to a Crown DA, except with the approval of the applicant. We thank Council for providing the draft conditions to CSU for review and comment.

The draft conditions were received from Council on 1 August 2014, and response provided on 6 August 2014. Subsequently, Council have finalised their assessment report and recommended conditions and placed them on the Joint Regional Planning Panel (JRPP) website. A number of conditions recommended by CSU were not included in the final draft conditions of consent.

This letter sets out the suggested wording of conditions for consideration by the JRPP prior to discussion at the meeting on 20th August 2014, primarily relating to development contributions and a preferred the payment mechanism of development contributions by CSU. This letter has also been prepared to provide clarity on the intent of conditions. **Attachment A** to this letter, details the proposed amendments to the draft conditions of consent, for consideration by the Panel.

1.0 DEVELOPMENT CONTRIBUTIONS

The relevant contributions plan for the site is the *Port Macquarie-Hastings Council S94A Levy Contributions Plan 2007*, effective since December 2007.

Council's assessment of the application determines that the development is considered as 'commercial' and involves intensification or expansion of the site and the proposed value of works is \$100,000 or greater. Therefore Section 94A contributions are considered applicable to the proposal.

Clause 6.4 of the Development Contributions Assessment Policy, which establishes the criteria to assess contributions for developments, identifies exemptions of development contributions for non-profit organisations. Whilst educational establishments are not listed as a form of development that is eligible to receive an automatic exemption from paying contributions, the development proposed by CSU satisfies the requirements of this section of the Policy, namely:

- The educational establishment provides a public service that delivers a public benefit in the form of educational facilities;
- CSU was established on 2 June 1989 by the NSW Parliament as a not-for-profit statutory corporation under the *Charles Sturt University Act 1989*;
- The University is a charitable corporation under the *Income Tax and Assessment Act 1997* of the Commonwealth of Australia;
- CSU is not a 'developer' in the traditional sense – that is not for a commercial gain, noting resources are directly reinvested in education and its related services; and
- CSU relies heavily upon donations and other non-government funding to maintain and upgrade facilities on the site.

The proposed development by CSU will provide substantial public benefits to Port-Macquarie Hastings Council via its contributions to education and technology, facilities available to the public, and by community/educational outreach programs.

Additionally, the proposed Port Macquarie campus of CSU the subject of this DA will be a Commonwealth-funded building, specifically provided for the delivery of the campus in support of CSU's role in the provision of tertiary education.

In any event, Crown developments have, historically, been subject to no or reduced section 94 contributions, on the basis that they are not likely to require the provision of public services and amenities in the same way as developments undertaken with a commercial objective.

Exemption from contributions is supported by a longstanding Department of Planning Circular (Circular D6) relating to Crown Development Applications. The Circular (from 1995) is referenced in the Department's draft Development Contributions Guidelines 2009 as providing the "current limitations on the imposition of development contributions on public sector developments". The Circular provides a guide to Councils and Crown agencies as to which categories of section 94 contributions are applicable to Crown developments, stating that:

"Crown activities providing a public service or facility lead to significant benefits for the public in terms of essential community services and employment opportunities. Therefore, it is important that these essential community services are not delayed by unnecessary disputes over conditions of consent. These activities are not likely to require the provision of public services and amenities in the same way as developments undertaken with a commercial objective."

As noted in the Circular, Crown developments, by their nature, provide community facilities and therefore in many instances it is unreasonable to levy developer contributions.

Regarding 'Educational Services', the only contributions relating to this application (under Circular D6) are for the upgrading of local roads and local traffic management, where works are associated with the site entrance. Specifically, on page 8 of the Circular D6:

"These may include contributions for bus lay-bys and towards the cost of kerb, gutter and footpath construction associated with the site entrance. It may also include traffic management facilities directly required to ensure safe access for the public. In some cases a contributions for half the cost of roadworks relating to the site entrance to the Crown development may be required, but there will be no contributions towards the widening of roads or other general traffic management improvements"

CSU is committed to providing appropriate contributions to Council as part of the delivery of the Port Macquarie Campus, which are consistent with Circular D6. The subject item of discussion is the mechanism by which contributions are to be made to Council for this DA. A summary of the intended contribution requirements recommended by Council, and the suggested arrangements by CSU are set out below.

1.1 Proposal and current draft conditions

In accordance with the proposal and current draft conditions of consent, the following works are required by be carried out in the delivery of the CSU Port Macquarie Campus. These items are all specified within the recommended conditions of approval.

- Provision of a paved and signed cycleway route in an approved location to Council's satisfaction along Major Innes Road and John Oxley Drive Road from Ellis Parade to connect to Wrights Road. (*Condition A25 – inconsistent with Circular D6*)
- Provision of a bus bay in accordance with Council's adopted AUSPEC Design and Construction Guidelines on the eastern side of Major Innes Road, and concrete footpath and shelter within public road reserve to connect the facility to the development site, in accordance with Council standard drawings. (*Condition A19 – consistent with Circular D6*)
- Provision of street lighting along the proposed route from the bus stop to the development (CSU) main entrance along Ellis Parade in accordance with AS1158 and compliance with the requirements of the electricity authority regarding provision of electricity to serve the development. (*Condition E12 – consistent with Circular D6*)
- Provision of a full width concrete footpath across the full road frontage of Ellis Parade. (*Condition A2-14 – consistent with Circular D6*)

Presently, the wording of the draft conditions requires that the works listed above (with the potential exception of the cycleway with may be considered as Works-In-Kind (WIK)) are to be provided in addition to the payment of development contributions in accordance with the S94A Contributions Plan - (Condition A3 (B010)).

The above (excluding the cycleway works) accords with the Circular D6 recommended position with respect to contributions. An additional contributions under S94A would be inconsistent with the direction and would involves the diversion of scarce government funds away from the delivery of education/research facilities to local infrastructure, without any nexus or apportionment to the proposed development.

1.2 Proposed conditions

The requested amendments to the draft condition of consent (as provided to Council on 6 August 2014) seek to redefine the arrangement of the delivery of the contributions, rather than to eliminate the need for contributions.

Amendments were made to the draft conditions to establish that all required works (as listed above) would be carried out as WIK in lieu of S94A Contributions (as otherwise required in accordance with the S94A Contributions Plan).

The proposed wording of the inserted contribution condition provided to Council is set out below.

In lieu of S94A Contributions (as otherwise required in accordance with Port Macquarie-Hastings Section 94A Levy Contributions Plan 2007), a range of works identified by Council will be carried out by CSU as Works in Kind to an agreed value. The cost/value of these works shall be verified by an independent Quantity Surveyor appointed by Council and reviewed by CSU prior to agreement by both parties.

The works identified will include:

- *Provision of a paved and signed cycleway route in an approved location to Council's satisfaction along Major Innes Road and John Oxley Drive Road from Ellis Parade to connect to Wrights Road*
- *Provision of a bus bay in accordance with Council's adopted AUSPEC Design and Construction Guidelines on the eastern side of Major Innes Road, and concrete footpath and shelter within public road reserve to connect the facility to the development site, in accordance with Council standard drawings*

- *Provision of street lighting along the proposed route from the bus stop to the development (CSU) main entrance along Ellis Parade in accordance with AS1158 and compliance with the requirements of the electricity authority regarding provision of electricity to serve the development*
- *Provision of a full width concrete footpath across the full road frontage of Ellis Parade.*

Should the value of the identified works specified above not achieve the value of the contributions otherwise as set out in the Section 94A Levy Contributions Plan 2007, the shortfall will be paid to Council as a cash contribution.

The timing of the payment of any cash/Works in Kind contributions is to be agreed by CSU and Council.

The standard condition regarding development contributions (present condition B3 of the draft conditions) is suggested to be retained to ensure the value of the contributions are obtained by Council, should the proposed WIK not achieve the monetary value of the contributions otherwise specified by the S94A Plan.

The intent of this condition is to clarify that CSU is to provide cash contributions only where a shortfall exists, not to provide Works in Kind (as identified above), plus a full S94A cash contribution.

Critically, the delivery of the identified works, particularly the cycleway, bus stop, lighting, and access path will provide a Material Public Benefit to the broader Community in addition to the students and staff of the proposed campus. Furthermore, the proposed works are consistent with the intended works schedule identified within the Contributions Plan.

2.0 CONDITION 18 – UPGRADE OF ELLIS PARADE

The current wording of draft condition A18 – required the upgrade of Ellis parade to a Collector Road standard, at no cost to Council. It is proposed to amend this condition to specify that the upgrade to Ellis Parade will only be required if demonstrated by Council that such an upgrade is required to service to the proposed development

CSU will be providing dilapidation report and bond as part of the standard conditions of approval. As per the response provided to Council on 28 July 2014, CSU would consider upgrading the road pavement if Council is able to demonstrate that the design strength of Ellis Parade would not meet the pavement specification for CSU's forecast operational traffic.

It is therefore suggested that this condition be amended, as set out below, to allow for the suitability of the existing road to be determined, and agreed by all parties, prior to the requirement for upgrade. As noted above, as per the standard conditions of Council, CSU will be required to repair any damage to Ellis parade during the construction process.

3.0 CONDITION A20 - CIRCULATION

Condition A20 relates to the design of the off street parking to be provided in accordance with AS 2890. As part of these conditions, additional requirements relating to circulation and aisle length have been recommended by Council. CSU intends to manage parking on the campus by means of signage, permits and infringement notices. In CSU's opinion there are no issues with the southern car park. The layout and design of the have been reviewed by the project Traffic Engineer and will be designed to comply with the relevant AS.

4.0 CONDITION A21 – MANAGEMENT OF TRAFFIC

Amendments proposed to the wording of Condition 21 (relating to the management of traffic) are set out at **Attachment A**. The amendment seeks to remove definitive works that may not ultimately be required, or be the most appropriate response to an as yet unquantified issue. The amendment seeks to provide inbuilt flexibility to address any traffic problems that may arise directly as a result of the operation of CSU on the subject site, whilst acting as an appropriate catalyst to allow for negotiation of the appropriate response between Council and CSU. The amendments seek to allow for the most appropriate work/actions to be considered relative to the impact/issue at hand, at the time.

5.0 CONDITION B2

Condition B2 lists a number of requirements to be prepared and delivered, prior to works commencing on the site. Items 12 to 14 this condition (B2) of this list related to the provision of a bus bay, cycleway, and concrete footpath across Ellis Parade. Whilst CSU has no objection to the provision of these items, it is recommended that the location of these conditions within the consent be moved to 'Prior to Occupation' rather than prior to works commencing. These works would typically be undertaken during the construction period, and completed prior to occupation.

We trust that the above information and recommended conditions attached will enable the JRPP to suitably amend the draft conditions prior to determination of the DA.

Should you have any queries about this matter, please do not hesitate to contact Hugh Irving at APP on 0421 328 688 (or Hugh.Irving@app.com.au) or me on 9956 6962 (sgouge@jbaurban.com.au).

Yours faithfully



Stephen Gouge
Senior Planner

Attachments

Attachment A - Recommended wording of proposed conditions