

18 June 2025

Our Ref: PLM:GEO007/4001

110 George Street Pty Ltd
ATF 110 George Street Unit Trust
Level 8, 171 Clarence Street
SYDNEY NSW 2000

By Email:
gary.bowtell@corval.com.au

Dear Gary

110 George Street Parramatta redevelopment DA/327/2024: developer contributions

We understand you have lodged development application No. DA/327/2024 (**DA**) in respect of 110 George Street, Parramatta (**Site**) for a two lot subdivision of the Site and construction and operation of two new mixed use tower developments. One tower will be build-to-rent (**BTR**) residential accommodation tower with a retail and amenities podium fronting Phillip Street and the second tower will be a commercial tower with a retail and commercial podium fronting George Street. The two towers will share a three-level basement.

Council has prepared draft conditions of consent in respect of the DA and draft condition 18 requires a monetary contribution of approximately \$29 million payable in accordance with section 7.12 of the *Environmental Planning and Assessment Act 1979 (EP&A Act)* and *Parramatta City Centre Local Infrastructure Contributions Plan 2022 (Amendment No. 2) (Contributions Plan)* and which must be paid "prior to the issue of any construction certificate".

You have asked whether the Sydney Central City Planning Panel (**Panel**) as the consent authority can lawfully impose a condition that requires payment of this contribution over staged construction certificates.

In our view the Panel can in its discretion lawfully condition payment of the monetary contribution in stages in accordance with staged construction certificates. Our reasons are outlined below.

The consent authority can impose contributions as per the EP&A Act and the regulations

Section 7.12 of the EP&A Act authorises a consent authority to impose conditions requiring monetary contributions. Section 7.12 (1) provides:

(1) A consent authority may impose, as a condition of development consent, a requirement that the applicant pay a levy of the percentage, authorised by a contributions plan, of the proposed cost of carrying out the development.

Section 7.13 of the EP&A Act further clarifies the power to impose such a condition and provides:

(1) A consent authority may impose a condition under section 7.11 or 7.12 only if it is of a kind allowed by, and is determined in accordance with, a contributions plan (subject to any direction of the Minister under this Division).

(2) However, in the case of a consent authority other than a council—

(a) the consent authority may impose a condition under section 7.11 or 7.12 even though it is not authorised (or of a kind allowed) by, or is not determined in accordance with, a contributions plan, but

(b) the consent authority must, before imposing the condition, have regard to any contributions plan that applies to the whole or any part of the area in which development is to be carried out.

...

The *Environmental Planning and Assessment Regulation 2021 (Regulation)* provides further requirements on the imposition of contribution conditions. Section 207 provides for the indexation process and section 208 provides for how the cost of the development is to be determined including allowance for adjustment of costs up until payment, and provision of an estimate of costs by a professional for a consent authority's consideration.

The Land and the development in the DA is subject to the Council's Contributions Plan

The Land and the Development is subject to *Parramatta City Centre Local Infrastructure Contributions Plan* (Amendment No. 3) adopted 13 December 2024. However, given Amendment No. 3 came into effect on 13 December 2024, the Contributions Plan confirms that Amendment No. 2 provisions apply to applications after 29 April 2024 and prior to 13 Dec 2024. And therefore Amendment No. 2 of the Contributions Plan applies. We note that this version of the Contributions Plan is referenced in draft condition 18.

The Panel is not bound by the Contributions Plan but must take it into consideration

Under section 7.13 of the EP&A Act the Panel as the consent authority is not required to impose a condition consistent with a Contributions Plan but it must have regard to the provisions of the Contributions Plan in making its determination.

The Contributions Plan does not prevent payment on staged construction certificates

In our view, the Panel can reasonably form the view that it is consistent with the Contributions Plan for a condition to be imposed that requires payment of developer contributions (calculated and indexed as per the Contributions Plan) in stages that aligns the cost of construction with a construction certificate stage. For example, the condition could include the following wording:

The contribution is to be paid in two tranches to Council prior to the issue of any construction certificate:

- 1. for the residential accommodation tower (BTR) including all demolition, the entire basement and associated public domain/external works. The amount payable is to be a portion of the total payment amount due that reflects a portion of the construction costs for these elements as verified by the Estimated Development Cost (EDC) breakdown prepared MBM dated 4 June 2024; and*
- 2. for the commercial tower (excluding the basement) and associated public domain/external works. The amount payable is to be the remainder of the total amount payable.*

If the commercial tower construction certificate is issued first, then the commercial tower will include the demolition and basement costs.

We say this because:

1. The Contributions Plan provides (such as on page iv and v) that the contribution is payable at a percentage rate based on the development cost and as verified in a Cost Summary Report. The condition as worded above contemplates reliance on a Cost Summary Report which has already been provided by MBM.
2. Where a contribution is payable, the Contributions Plan provides at page v that "Council will include a condition in the development consent" and it is to be payable with a construction certificate. Page v of the Contributions Plan reads: "In the case of a development application,

the condition of consent requiring the contribution will require the contribution to be paid prior to the issue of a construction certificate. ... Payments cannot be deferred beyond this.”

3. This is not a request for deferred payment but for staged payment aligned with construction certificates. Deferred payment would be moving it out to issue of an occupation certificate (see page 8 of the Contributions Plan) which is not what is sought.
4. As noted on page 1 of the Contributions Plan, contributions are aligned with and meant to support future workers and residents. There will not be a situation where those workers or residents are there before the contributions are paid.

The staged payment is consistent with the objects of the EP&A Act

Even if the Panel forms the view that the suggested staging is not consistent with the Contributions Plan, the Panel still has the discretion to stage the payments because it is not strictly bound to only impose conditions as per the Contributions Plan under section 7.13 of the EP&A Act.

In the alternative therefore, we consider that there are reasonable grounds for Panel to exercise its discretion to permit the payment in two tranches it being consistent with the objectives of the EP&A Act and aligned with the intent of development contributions.

We note that this DA could have been the subject of two separate development applications which would have obviated the need to request that the contributions be paid in two stages. With the one DA Council and the consent authority have had an opportunity to consider the wholesale and integrated development of the Site. The applicant should not be disadvantaged by taking such an approach.

The staging proposal provides for two simple payments that aligns with each tower. It is uncomplicated and brings forward payment of costs for the basement even though it partially relates to the office tower.

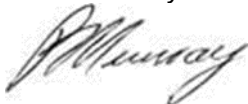
It is not consistent with the EP&A Act objective to “promote the orderly and economic use and development of land” to burden the land with unfeasible levies for both towers at the commencement of construction. Given physical limitations of the Site and workers safety both towers cannot be built at once. There will always be an inevitable delay to the construction of the second tower.

To condition payment at the beginning of both towers could prevent the Site from being developed at all given the financial effects on development feasibility and noting the monetary payment is a significant amount being almost \$30million.

The request is not to defer to payment to occupation but to construction of each tower.

There is no risk to Council because Council is assured that contributions will be paid because of section 46 of the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021* which prevents a certifier from issuing an occupation certificate for a development that costs more than \$10million unless Council has provided a certificate confirming contributions have been paid.

Yours faithfully



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