

13 January 2008

Mr Andrew Smith  
Team Leader – Urban Assessments  
Department of Planning  
23-33 Bridge Street  
SYDNEY NSW 2000

Dear Andrew,

### **MP 07\_0149 - Response to Marrickville Council Submission (IKEA Tempe project)**

This letter has been prepared on behalf of our client Valad Property Group, the Applicant for the IKEA Tempe Major Project.

We have received a copy of Marrickville Council's submission as part of the exhibition phase. After reviewing the submission, we wish to provide a response to the Department of Planning specifically on the part relating to section 94 contributions. If necessary, a separate response will be prepared to address the other matters raised in Council's submission.

Our response to Council's section 94 commentary within its submission is outlined below.

### **Section 94 Contributions**

#### *Background*

Issue 6 of the Director-General Environmental Assessment Requirements (DGEARs) requires the applicant *to address public benefit, services and infrastructure having regard to the Councils Section 94 Contribution Plan and/or details of any Voluntary Planning agreement.*

The Environmental Assessment (EA) report stated that discussions had already commenced with Council with a view to entering into a VPA if time permitted. What eventuated following two separate meetings with Council (prior to the application being placed on public exhibition) was that agreeing to the existing Section 94 contribution levies was an easier and quicker approach. Furthermore, as a Statement of Commitments is required to be prepared, any additional agreed works could be included to form a condition of consent as part of the Statement of Commitments.

The Marrickville Council capital works plans that apply to the proposal are as follows:

- Road Works for the Bellevue Street/Swap Road area.
- Traffic Management and Road Works -
  - Local Area Traffic Management (recouping funds from works either already completed throughout LGA or planned up to 2013)
  - Traffic Amenity Works (general works)
  - Pedestrian Safety Works (general works)
  - Bicycle Facilities (general works)
- Plan Administration (all development)

### *Agreed Contributions*

As outlined above, we worked constructively with Council in meeting and phone discussions with the aim to agree to the contribution figures prior to the close of submissions. This was achieved in respect of the above three contribution plans.

Therefore we advise the Department of Planning of our clients' acceptance of the following contributions:

- Works in Kind contribution of \$2,031,294 – for the proportion of costs to upgrade Bellevue Street.
- A Traffic Management contribution of \$1,454,948.13 as a contribution to the various capital works projects listed above.
- A Plan Administration contribution of \$83,669.80 (being 2.4% of the combined monetary total of the above two plans)
- Total Section 94 Contributions of **\$3,569,941.93**

### *Rejected Contributions*

Item 4 in Council's letter calls for an additional contribution of \$148,823.22 *for the increased demand that the development will place on open space and recreation facilities within the Marrickville LGA.*

This request for further contributions is strongly rejected by our client.

We refer the Department to the following facts.

The Marrickville Council Section 94 Contributions Plan 2004 (as amended) clearly acknowledged that development was likely to occur in the "Tempe Lands" (including the subject site) in the next 5 to 10 years. It even states that:

*In the upcoming years, industrial development is likely to occur primarily in the area commonly referred to as the Tempe Lands.*

*With limited existing activity in this area [Tempe Lands], Council is seeking to make sites available for a range of light industrial uses with particular interest in bulky goods retailing and new industrial units (page 7).*

The Marrickville Council Section 94 Plan does not however have any provision as Council suggests to review the open space and recreation needs of the community for this form of development. Therefore the Department must reject this request for additional contributions the following reasons:

- **No legal basis** – the Section 94 Contributions Plan (2004) does not levy any form of "commercial" or "industrial" development to contribute to either the Open Space; Park, Infrastructure and Sports Facilities or the Public Libraries and Community Recreation Facilities Plans. Consequently the 2004 Plan does not demonstrate the nexus for Council to seek monetary contribution for any commercial (retail or business) or industrial workforce on the above listed open space and recreation facilities. If Council was of the opinion that a clear nexus was apparent, the Plan would say so. Furthermore, Council has provided no evidence to illustrate that a similar approach has been applied to bulky goods rezoning's that have taken place along Princes Highway in recent years.
- **Reliance on Leichhardt Council's Contribution Plan is without basis** – Since Council has not identified the nexus of workforce demand on open space and recreation facilities, it is entirely unreasonable and without legal entitlement for Council to adopt the provisions of Leichhardt Council's Contributions Policy.
- **The 2004 Plan did contemplate intensification of use on this site** – As quoted above, Council did acknowledge that the site would have a more intense development, as at the time it owned the land and was preparing it for sale. Given this, if Council considered that future more intense use of

the land would in fact create additional quantifiable demand on its open space and recreation facilities, Council could have amended the plan to capture levies specifically for the “Tempe Lands” in the same manner as the Road Works Plan which is very specific. Even if there was a recent change in Council policy in levying for commercial and industrial development, such changes could have been incorporated into the June 2006 or a more recent separate amendment of the Contributions Plan. Therefore Council is in no position now to seek monetary contributions under the current Contributions Plan on the basis that they did not or could not reasonably contemplate a future more intense use of the site.

In addition to the above reasons, the following matters are also raised in support of our position that the agreed contributions of the Applicant are fair and reasonable.

- **The quantum of monetary contributions agreed is fair and reasonable** – If Council did not have specific capital works plans that were applicable to the proposal and therefore having to rely on the Section 94A 1% levy provision, would have only captured \$1,200,000 in developer contributions, some \$2,369,941.93 less than currently agreed to be paid by the Applicant.
- **The proposal will deliver substantial public benefits over and above the monetary contributions** – The proposed development will have an overwhelming benefit to the community. The additional public benefits of the proposal are outlined below:
  1. Cycleway Extension
    - Construction of a shared pedestrian and cycleway along Princes Highway between Smith Street and Bellevue Street, to extend and enhance Council’s regional cycleway plan.
  2. Road and Intersection Works (conservatively estimated at approximately \$7.5mill)
    - Princes Highway
      - Dedication of site area for the creation of a slip lane in and out of the site in order to retain three southbound lanes on the Highway as required by the RTA.
      - Construction of a new intersection to provide direct signalised access to and from the site for vehicles as well as a pedestrian crossing.
    - Bellevue Street
      - Upgrading Bellevue Street including the intersection at Princes Highway, for the benefit of adjoining landowners.
  3. Heritage Preservation and Reuse
    - The adaptive reuse and preservation of the historically significant “Ateco” showroom and clock tower building that is currently vacant.
    - Relocation of a mature Morton Bay Fig tree to be positioned within a new open space for staff, at a cost of approximately \$258,000 to enhance open space amenity.
  4. Open Space and Landscaping
    - The proposal will significantly improve the current aesthetic and amenity of the former tip site. The development will incorporate substantial landscape planting throughout designed to withstand the contaminated soil and overhead aircraft conditions. Features include a soft ‘green edge’ to Princess Highway, tree plantings in the car park as well as designated generous open spaces for staff.
  5. ESD Measures
    - The development will be environmentally responsible by implementing a wide range of Environmental Sustainable Design (ESD) measures (outlined in the EA report) that will be incorporated into the construction and ongoing management of the site (worth between \$5mil to \$10mil) to set the benchmark for environmental performance for bulky goods developments in Australia.

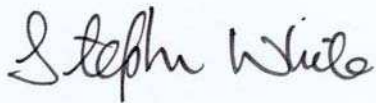
## 6. Social and Economic Benefits

- The development will reuse the former Tempe Tip for an employment generating use. The project will create approximately 600 ongoing jobs, plus some 550 jobs during construction. This will provide opportunities for local residents wishing to work within the Marrickville LGA.
- The proposal will renew a significant portion of the Princes Highway corridor from an unsightly sterile place to a highly active public environment will have an appreciable public benefit. This investment will be a catalyst for further renewal to achieve the state and local government objectives in this region.
- Finally, in addition to providing a wider range of shopping alternatives for bulky and homemaker goods for the surrounding population, the IKEA store will become a place of public gathering. It will incorporate uses such as a restaurant, food market, children's indoor play area into the development. No such community facilities exist in premises fronting Princes Highway within the LGA hence the development will provide a welcome shopping and meeting destination for residents of the municipality.

For the reasons outlined above, Council's request for additional monies over and beyond that entitled under its Section 94 Contribution Plan is without basis and unjust. The Applicant has proactively sought to engage with Council to discuss contributions, in good faith, to ensure the best outcome for all parties could be achieved so the substance of their claim is somewhat disappointing. When considering the current quantum of monetary contributions agreed by the Applicant for the development together with the wide range of "additional" social, environmental and economic benefits of the proposal will generate, the proposal is unquestionably positive and a fair and reasonable monetary contribution will be captured by Council.

If you would like clarification on any matter discussed in this letter, please don't hesitate to contact me.

Yours sincerely,



Stephen White  
Associate Director