

Richard P

BY EMAIL

RECEIVED

14 MAR 2011

Director-General

Level 36, Grosvenor Place
225 George Street
Sydney NSW 2000
Australia

Blake Dawson

The Director General
Department of Planning
23 – 33 Bridge Street
SYDNEY NSW 2000

Dear Sir

**Graythwaite
Part 3A Application**

We act for Flomox Pty Limited, the owner of 33 Bank Street, North Sydney.

We are writing to alert you to certain legal flaws in the process concerning this Part 3A application, which would render any approval invalid.

In our view the process is flawed for the following reasons:

1. Invalid Concept Plan Application – the whole project was not included;
2. Environmental Assessment (EA) – failure to comply with Director-General's Requirements (DGRs)
3. Exhibition of EA – public participation process invalid.

We consider these in turn below.

1. Invalid Part 3A Concept Plan application

Whilst a project application may be made for part only of a project, the same is not so for a Concept Plan application. In the case of a concept plan application the whole project must be included.

The constraints map on page 18 of the EA indicates that there may be a possible intention to carry out further development in the south western area of the site. It indicates this area as "Potential Scope for Sensitive New Development"

Further, the landscape plan [Taylor Brammer LA.DA.002] evidences an intention to remove trees from this area.

If the proponent has plans for the development of the south western part of the site then it is essential, for the concept plan application to be valid, for these plans to be explicitly set out.

The submitted Concept plan application does not however make it clear what it intended for this part of the site.

Accordingly the application should not be processed any further, until and unless it is amended to include the whole project; that is the intended development over the whole site.

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11 March 2011

Partner

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2. Environmental Assessment does not comply with DGRs

Relevantly there are three requirements in the DGRs with which there has been a clear and comprehensive non-compliance namely:

- (a) the requirement for the EA to include an endorsed heritage conservation plan,
- (b) consequential non compliances with the Heritage Impact assessment and the Landscape Masterplan, and
- (c) public consultation.

(a) Endorsed conservation management plan

As you are aware DGRs are tailored specifically and individually for each project and the issues related to each individual site.

Here it is clear that one of the most important issues, if not the most important issues, is heritage. To use the language of the decided cases, it is of central relevance to the decision to be made on the application, and to not have regard to heritage would be a fatal error in terms of validity.

The importance of heritage is recognised in the DGRs in a number of respects, by requiring a certain level of assessment, consultation and endorsement for the conservation of the site, and then requiring certain other things to be based on that (see (b) below).

The DGR's required that the EA include a conservation management plan endorsed by the Heritage Council. However a draft conservation management plan only is included in the EA.

Whilst, that draft conservation management plan had been forwarded to the Heritage Council, it has only given some preliminary consideration to it in early February 2011, but it has not been endorsed.

This requirement is a result of consultation between government departments in the actual drafting of the DGRs.

It is not a requirement that would be waived lightly, especially having regard to the heritage values of the site, as referred to above.

Particularly, the DGRs recognised that due to these values, heritage should dictate the entire approach and rationale for the design process for the project, namely that an appropriate conservation management plan was required to be determined first, *and approved by the Heritage Council*, so as to guide the appropriate development on the site. It was clear that it absolutely essential that it occurs in this order, and not the other way around as the proponent apparently proposes.

(b) Consequential Breaches – No valid heritage impact assessment and no valid Landscape Plan

The absence of an endorsed conservation management plan is sufficient in itself to render the EA invalid. However it led to two further contraventions of the DGRs.

First, item 8 of the DGRs requires a statement of heritage impact, and importantly this statement must be prepared *having regard to the endorsed conservation management plan*.

As there was (and still is) no such endorsed plan at the date of the EA, any statement of heritage impact is invalid.

It could not reasonably be suggested that an EA for this site which does not contain an assessment of the impact of the project on heritage values is a valid EA.

Second, item 2 of the DGRs requires a Landscape Masterplan, and again this is required to have regard to the adopted conservation management plan.

As there was no such thing, the Landscape Masterplan is also invalid. Again it could not reasonably be suggested that an EA for this site which did not contain a valid Landscape Masterplan was a valid EA.

(c) Public Consultation

The DGRs expressly require consultation in accordance with the Department's guidelines.

The October 2007 published guidelines clearly require consultation with those directly affected including adjoining residents. There was none.

The only consultation that in fact took place was that the proponent invited two representatives of each of the Union, Edward and Lavender Precinct Committees to a private meeting at the school.

These Committees are in fact resident groups established by the Council and they have no legal status. They do not necessarily include representatives from any land adjoining the site.

At that private meeting a request for public consultation was made and this was refused by the proponent. The reason proffered by the proponent was that such a meeting would not further their objective.

Thus, the proponent has obviously and deliberately not carried out consultation in accordance with the Department's consultation guidelines.

No reasonable view could be taken that the EA was therefore prepared in accordance with the DGRs.

There is no reasonable argument that the EA satisfies the DGRs and it should be required to comply before any re-exhibition occurs.

3. **Exhibition Requirements**

Although there is no statutory requirement for direct notification of residents, this may be required in a particular case.

As is stated in the Department's publication titled "Major projects assessment system Fact sheet 2 October 2009" adjoining residents will be notified if required.

We understand that a requirement to notify adjoining residents was imposed in this case. However not all adjoining owners received letters advising of the proposal.

This fact has been accepted by your Department and it has decided to attempt to correct the situation by deciding to send out a second tranche of letters. Whilst further letters were subsequently sent, these letters are in error in that they specify the original date for closure of submissions, which had by that date been extended. Clearly the correct date for closure of submissions should have been stated.

Furthermore, because the letters indicated that the recipients had only until the end of February to make any submission, this was only approximately 2 weeks after the date of the letter which is inadequate in terms of section 75H(3) which requires the EA to be publicly available for at least 30 days.

As you are aware the Court takes a very strict view of public participation in the planning process and this is confirmed by the terms of section 75X(5), to the effect that the public exhibition of the environmental assessment is absolutely mandatory.

In our view once a decision was taken to notify residents, this had to be done correctly, and it simply was not.

Due to the irregularities in notifying adjoining residents of the EA, it should be re-exhibited.

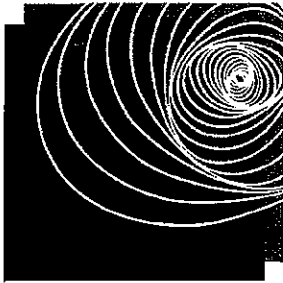
Conclusion

We suggest that you give serious consideration to obtaining legal advice in relation to the matters raised in this letter with a view to either rejecting the application or suggesting to the proponent that it make and pursue its application in accordance with the law.

Yours faithfully



Mark Brennan
Partner



Received

24 FEB 2011

The Hon. Tony Kelly MLC

February 13th 2011

The Hon. Tony Kelly, MLC
NSW Minister for Planning
Parliament House
Macquarie Street
Sydney NSW 2000

Dear Minister Kelly,

Re: MP 10_0149 Graythwaite Concept Plan

I am writing to ask you to request a public enquiry into the proposed Graythwaite Concept plan.

When I moved my family to Bank Street several years ago we were struck by the serenity of the street, so close to the CBD of North Sydney. As our home faces west, we spend most of our waking hours in the eastern (backyard) part of our house that faces Graythwaite. The proposed stages 2 and 3 of the concept plan will put a 20 m tall by 35 metre long building, some 15 metres from our back fence with direct view over our backyard, kitchen, laundry, dining room and 2 of our 3 bedrooms. Clearly the prying eyes of 500 adolescent boys, is not what anyone would want looking over the majority of their house.

I feel a public enquiry into the proposal is justified on three major grounds:

- 1) Graythwaite still represents a site of immense significance to the people of NSW and Australia (being one of the few locally based ANZAC sites of significance) and is held under the National Heritage List. Indeed the proposal does not even mention the WWII bunkers that still exist under the grounds!
- 2) The proposed development will eradicate 80 trees, 3 heritage protected Port Jackson Fig trees (which are over 150 years old) and the subterranean excavation will affect one of Australia's oldest and largest water cisterns.
- 3) Shore school failed to inform the local residents of the proposal, as they are obliged to do under the Planning Act. We as local residents received no information about the submission until it was already lodged.

Minister Kelly, I understand that Shore school privately owns the land. However, I feel strongly that the site can still be protected whilst allowing the Stage 1 upgrade to the Graythwaite House and surrounding buildings.

I urge you to please request a public enquiry into the project, so that it can be scrutinised to provide the best outcome for both Shore School and the people of NSW and Australia.

Dr Nirimal Patel

Clinical Associate Professor
MBBS(Hons)(S), FRACS(NSW)

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Suite C, Level 6
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Affiliated Hospitals

Royal North Shore Hospital
North Shore Private
The Mater
Hunters Hill Private
Norwest Private
Sydney ENT Day Surgery

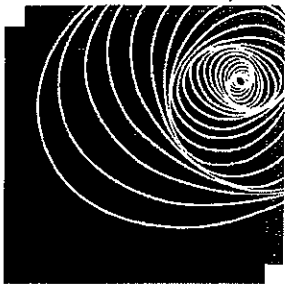
Affiliated Institutions

University of Sydney
Northside Hearing Centre
Macquarie University
SANAMI

www.norwestent.com
www.northsidehearing.com.au
www.sanami.com.au



Children & Adult ENT Disease
Hearing & Balance Surgery
Facial Nerve Disorders
Skull Base Tumours
Baha & Cochlear Implantation



I keenly await your reply.

Yours Respectfully,

Dr Nirmal Patel
Clinical Associate Professor of Surgery

Dr Nirmal Patel

Clinical Associate Professor
MBBS (Hons Gyn) FRACS (NSW) (UKSW)

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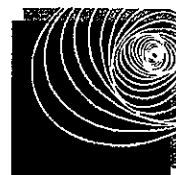
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10th March 2011.

Dear Mr. Kelly,

I am very concerned about the Part 3A application that is currently in at the Dept. of Planning regarding the Graythwaite Site in North Sydney.

As a North Sydney resident I am asking for an inquiry into this proposal and set out my reasons in the enclosed submission.

Thankyou for your help.

Regards.

Angela Arnold

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