



planning consultants

20 February 2014
Our Ref: 7479A.2KM.docx

Planning Assessment Commission
GPO Box 3415,
Sydney NSW 2001

By Email: pac@pac.nsw.gov.au

Dear Commission Members,

**Re: Section 75W Modification of Project Approval MP10_0180
Former Allied Flour Mills Site, Summer Hill**

1.0 Introduction

DFP has been commissioned by Ashfield Council to make representations to the Planning Assessment Commission (PAC) in regard to the abovementioned Section 75W application.

By way of background, DFP prepared the *Ashfield Section 94 Development Contributions Plan* (the Plan) and is therefore familiar with its provisions and more generally, the current legislation and Case Law with regard to Section 94.

Whilst we agree with Council's position that granting an allowance (sometimes unhelpfully referred to as a 'Credit') on a non-like-for-like basis is likely to result in an total contribution that may not truly reflect the demand from future development of the site, we agree with the Department of Planning and Infrastructure's (DoPI's) assessment that any contribution should be calculated on the basis of the increase in demand for public infrastructure and services for which the Plan levies.

However, we disagree that there was an existing demand generated by the site because at the date of the application there was no "actual" population thereon. Notwithstanding, if the PAC is of the opinion that a "deemed" population is to be used, we disagree with the methodology used by the Proponent and the DoPI to arrive at the allowance for existing development on the site.

Furthermore, we are concerned that if the Proponent's methodology were to be used for future stages, the end contribution would not truly reflect the increase in demand for public infrastructure and services arising from the predominantly residential development of the site and Council would be in the unenviable position of providing for a reduced level of service.

2.0 The Section 94 Plan

The Plan provides that an allowance for existing development will be made in the calculation of contributions and that "*Contributions will be levied according to the estimated increase in demand*" (Section 2.8) – that is, the net demand.

First and foremostly, the Plan includes base rates for determining development contributions on a per resident, per worker and per Daily Vehicle Trip basis (Page iii). These rates are to be applied to the proposed development and to relevant existing development on the site. The current rates (CPI's to the December 2013 quarter) are reproduced in **Table 1** below.



| TABLE 1: BASE CONTRIBUTION RATES REPRODUCED FROM THE ASHFIELD SECTION 94 DEVELOPMENT CONTRIBUTIONS PLAN (CPI'd to Dec Qtr 2013) | | |
|---|-------------------|--|
| CATEGORY | CONTRIBUTION RATE | |
| Local Roads | \$32.43 | per DVT |
| Local Public Transport Facilities | \$356.38 | per person (residential development) |
| | \$105.64 | per worker (non-residential development) |
| Local Car Parking Facilities | \$32,710.28 | per car parking space not provided on-site |
| Local Open Space and Recreation Facilities | \$6,267.09 | per person (residential development) |
| | \$4,109.83 | per worker (non-residential development) |
| Local Community Facilities | \$387.13 | per person |
| Plan Preparation and Administration | \$284.74 | per person (residential development) |
| | \$186.73 | per worker (non-residential development) |

For ease of use and understanding, the Plan converts these base rates to a rate per dwelling or bed type for residential development typologies and a rate per m² of GFA for non-residential development typologies. However, the per m² rate can be overly simplistic and does not always truly reflect the nature of and therefore demand generated by existing development.

Furthermore, the operating and employment characteristics of many older existing developments, such as the Allied Flour Mills, do not accord to the characteristics of modern employment generating development, particularly in terms of workers per m².

In such circumstances, the base rates (see **Table 1** above) specified in the Plan should be used, together with a reasonable estimate of the number of existing workers and the quantum of traffic (measured in DVTs) generated by the existing development.

The onus is typically on the Proponent to provide information with the application which demonstrates the existing worker population and traffic generation based on the lawful use of the site at the date of the application.

The Plan is premised on forecasts of future residential and non-residential development and estimates of public infrastructure and services to meet the demand of that future development, undertaken at the time of preparing the Plan (1 January 2010).

At that time, there was no “actual” population on the site because it was vacant and had been for many years and therefore the Plan calculations relating to the level of provision of existing public infrastructure and services and estimates of future service provision did not account for any existing demand from the site.

In *Meriton Apartments Pty Ltd v Council of the City of Sydney* [2011] NSWLEC 1294, Tuor C found (para 129) that:

“... if a population was not counted as part of the existing population (to determine demand for specific public amenities and services in the Plan) then it should not be used to determine whether a former population is 'present' or 'deemed to exist' (for the purpose of determining a credit).”

Accordingly, there no allowance for existing development should be given in this instance as there was no existing demand being generated by the site.



Notwithstanding, if the PAC is of the opinion that an allowance should be granted we have prepared calculations hereunder which provide for an allowance based on the “deemed” population being the Proponent’s estimate of the number of workers formerly on the site and our estimate of the number of DVTs arising from the existing development.

3.0 Calculation of Allowance for Existing Development

3.1 The Proponent’s Position

The Proponent’s Section 94 calculations are included in the DoPI’s Environmental Assessment Report and are not reproduced herein but equate to an allowance of \$487,882.32 and a total contribution of \$447,408.91.

The planning submission dated on 26 August 2013 which accompanied the Section 75W Application claimed an allowance for 1,674.5m² of commercial (office) GFA for only one of the existing buildings on the site within the bounds of the Stage 1 Project Application. This building was known as the Technical and Baking Centre and no information has been provided by the Proponent relating to the nature of its internal floor space or how it was once used.

If it is accepted that the entire Technical and Baking Centre building was office accommodation (which has not been proven), based on the occupancy rate for modern office accommodation of 1 worker per 15m² which is used by the Plan, this might be construed as equating to 112 office workers.

However, this far exceeds the information in the Environmental Assessment Report (the EA Report) submitted by the Proponent with the Concept Plan which indicated that the previous use of the Flour Mills site included 49 mill staff and 75 office staff.

This discrepancy highlights the variance between older employment generating land uses and modern office buildings and reinforces that the demands of each are not directly comparable.

We note that the EA Report was signed by the Proponent’s consultant planner on 6 May 2011 under the declaration that the EA Report “*is true in all material particulars and does not mislead nor by presentation or omission of information materially mislead*”. The same consultant planner signed the Section 75W submission for this modification on 26 August 2013. Accordingly, we trust that the Proponent’s earlier information and declarations hold true and that 49 mill staff and 75 office staff can be taken as a true estimate of existing development prior to the use ceasing on the site (i.e. the “deemed” population).

3.2 Council’s Position

Notwithstanding the finding of Tuor C in *Meriton Apartments Pty Ltd v Council of the City of Sydney [2011] NSWLEC 1294*, if the PAC is of the opinion that an allowance for existing development is to be granted, it should be granted on the basis of an estimate of existing workers on the site rather than a crude retrospective calculation using GFA. Based on the Proponent’s own information (i.e. the EA Report for the Concept Plan) this equates to 75 office workers and 49 mill staff.

The Proponent has not provided any information demonstrating where the 75 office workers were accommodated although based on our review of the Concept Plan and Project Application documentation, there were three possibilities as follows:

1. The Technical and Baking Centre (within proposed Stage 1);
2. The Weighbridge Office and Amenities Building (within proposed Stage 2); and
3. The main Mill building – as ancillary office (within proposed Stage 3).



In the absence of any further detailed information in this regard, our calculations hereunder allocate all 75 office workers to the Technical and Baking Centre in Stage 1. If this methodology is accepted, no further allowance for existing development in the form of office workers should be granted to Stages 2 or 3. Only an allowance for the 49 Mill staff could be granted as part of the Stage 3 application.

Table 2 sets out our calculations for Stage 1 - the current application.

| Typology | Proposed | | Allowance for Existing | | Rate per dwelling / GFA / worker / DVT | Total |
|---|-----------|------------|------------------------|---------------------|--|---------------------|
| | Dwellings | GFA | Workers | DVTs | | |
| Residential Accommodation less than 60m ² GFA | 3 | - | - | - | \$9,702.85 | \$29,108.55 |
| Residential Accommodation between 60-84m ² GFA | 5 | - | - | - | \$14,882.55 | \$74,412.75 |
| Residential Accommodation greater than 84m ² GFA | 36 | - | - | - | \$21,197.09 | \$763,095.30 |
| Retail Shops | - | 443 | - | - | \$193.93 | \$85,909.96 |
| Commercial (Office) | - | - | 75 | - | \$4,402.20 | \$330,165.30 |
| | - | - | - | 167.45 ^A | \$32.43 | \$5,429.87 |
| TOTAL | 44 | 443 | 75 | 167.45 | N/A | \$616,931.40 |

Note:

A. The Transport Management and Accessibility Plan (TMAP) lodged with the Concept Application is unhelpful as it estimates the traffic generation of the former uses based on the potential maximum FSR yield of the site rather than any actual data on previous traffic generation. Accordingly, in the absence of traffic counts of the former development, DVTs above have been calculated based on 1,674.5m² of GFA at the rate of 10 DVTs per 100m² for offices, as per the RTA Guide to Traffic Generating Development (2002).

4.0 Conclusion and Recommendations

On behalf of Ashfield Council we have considered the Proponent's application requesting a modified Section 94 Condition and we have considered the DoPI's corresponding assessment report.

We are of the opinion that there was no existing demand for public amenities and services generated by the site and that no allowance for existing development should be granted. This is because at the date of the application there was no "actual" population on the site and this position is supported by the findings of Tuor C in *Meriton Apartments Pty Ltd v Council of the City of Sydney [2011] NSWLEC 1294*.

Notwithstanding, should the PAC be of the opinion that a "deemed" population is to be used for calculating an allowance for existing development, the Proponent's details of the worker population of the former mill (i.e. 75 office workers and 49 mill staff) and an estimate of traffic generation should be used rather than a crude retrospective calculation using GFA.

Accordingly, if the PAC is of a mind to approve the Section 75W application, the total contribution for Stage 1 should be **\$616,931.40** and no further allowances should be granted for office workers or office floor space in any future development application.

To assist the PAC, we have prepared a modified Condition C4 in this regard which is enclosed at Attachment 1 which could be substituted for the DoPI's proposed Schedule 2.



We trust that this submission is of assistance to the PAC in reaching a determination and should you have any queries, please do not hesitate to contact the undersigned.

Yours faithfully

DFP PLANNING CONSULTANTS

A handwritten signature in black ink, appearing to read 'K. Mackay', written in a cursive style.

**KENDAL MACKAY
PARTNER**

kmackay@dfplanning.com.au

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Reviewed: _____

Encl. Attachment 1 – Replacement Condition C4

Attachment 1 – Replacement Condition C4

C4. SECTION 94 CONTRIBUTIONS

In accordance with Section 80A(1) of the *Environmental Planning and Assessment Act 1979* and the Ashfield Council Development Contributions Plan, the following monetary contributions (taking into consideration the proposed development and providing an allowance for the existing office uses on the entire Flour Mills site equating to 75 Office Workers and 167.45 Daily Vehicle Trips) shall be paid to Council prior to issue of a Construction Certificate to cater for the increased demand for community infrastructure resulting from the development:

| <u>Community Infrastructure Type</u> | <u>Contribution</u> |
|--|---------------------|
| Local Roads | \$10,352.94 |
| Local Public Transport Facilities | \$35,895.22 |
| Local Car Parking Facilities | \$0.00 |
| Local Open Space and Recreation Facilities | \$502,297.59 |
| Local Community Facilities | \$45,568.96 |
| Plan Preparation and Administration | \$22,816.69 |
| TOTAL | \$616,931.40 |

Note: No further allowance/credit for former commercial (office) activities will be granted as part of any future application for development of the former Allied Mills Site.

If the contributions are not paid within the financial quarter that this consent is granted, the contributions payable will be adjusted in accordance with the provisions of the Ashfield Development Contributions Plan and the amount payable will be calculated on the basis of the contribution rates applicable at the time of payment in the following manner:

$$\$C_C = \frac{\$C_P \times CPI_C}{CPI_P}$$

Where:

\$ C_C is the amount of the contribution for the current financial quarter

\$ C_P is the amount of the original contribution as set out in this development consent

CPI_C is the Consumer Price Index (Sydney – All Groups) for the current financial quarter as published by the ABS.

CPI_P is the Consumer Price Index for the financial quarter at the time of the original consent.

Prior to payment of the above contributions, the applicant is advised to contact Council's Planning Division on 9716 1800. Payment may be made by cash, money order or bank cheque.

Council's Development Contributions Plan may be viewed at www.ashfield.nsw.gov.au or a copy may be inspected at Council's Administration Centre.