



3 March 2014

Mr Sam Haddad
Director General
Planning and Infrastructure
GPO Box 39
SYDNEY NSW 2001

Dear Mr Haddad

Former Allied Mills site Stage 1 Modification 1

I refer to the Executive Director's letter dated 10 February 2014 referring the above modification application to the Planning Assessment Commission for determination under Ministerial delegation.

Ms Gabrielle Kibble AO and I constituted the Commission to consider and determine the application. I chaired the Commission.

We note that the key issue relates to the principle of applying a credit for the existing commercial floor space and the calculation of a reasonable credit for that space. Ashfield Council objected to the proposed modification as it considered credits should only be granted on a like-for-like base.

The assessment report found that neither the EP&A Act nor the Ashfield Section 94 limit contribution credits to be given only to development of similar use (ie like for like). The report also noted that the original approval for Stage 1 allows a credit for the commercial floorspace equivalent to 1.8% of the value of the existing space. It is therefore reasonable to amend the condition to allow a credit for the full existing commercial floorspace. It is recommended that the application be approved subject to conditions.

The Commission met separately with Ashfield Council, Planning and Infrastructure and the Proponent on 21 February 2014.

On 20 February 2014, the Commission received a written submission from DFP Planning Consultants on behalf of Ashfield Council which outlines in detail the reasons for Council's objection. (see Attachment 1) Briefly, Council agrees with the assessment report that any contribution should be calculated on the basis of an increase in demand for public infrastructure and services for which the s94 plan levies. However, Council is of the view that there was no existing demand generated by the site at the date of the application as there was no "actual" population on site. Hence there is no basis for a credit.

Reference is also made to the case law *Meriton Apartments Pty Ltd v Council of the City of Sydney [2011] NSWLEC 1294* to support council's position. A legal advice was also attached to the written submission. Council also advised that if a "deemed" population is to be used, it would be appropriate to use 75 office workers for the calculation as it is a figure quoted in the original application. This would result in a contribution of \$616,931.40, not \$447,408.91 as recommended in the assessment report. The discussion in the meeting focused on the issues raised in the written submission.

In the meeting with Planning and Infrastructure, the Commission sought clarification on the justification for the recommendation and the issues raised by the Council in terms of whether the site was abandoned.

The meeting with the proponent discussed issues in relation to the continuous use of the office building, the public benefits provided by the proposal, the Ashfield s94 Plan, all commercial floorspace offset to be dealt with in Stage 1. The Commission requested the proponent to confirm the issues discussed in the meeting in writing. (see Attachment 2)

Following careful consideration of the assessment report, views expressed at the meetings and written submissions provided by the Council and the proponent, the Commission finds that:

- It agrees with the Council and the proponent that all commercial floorspace offset should be dealt with in Stage 1. No further credits should be granted for office workers or office floorspace in any future development application.
- The evidence indicates that the office building may have been closed for a short period of time but has not been abandoned. It is being used by John Holland and Transport NSW as the administration offices for the construction of the extension of the Inner West light rail system. It is therefore reasonable to allow for a credit to be given for the commercial floorspace.
- The Ashfield s94 Plan provides a rate per square metre of commercial floor area, not on employee numbers.
- Council's calculation based on employee numbers is inconsistent with the rate provided in the s94 Plan.

Having regard to the findings above, the Commission is now satisfied that the assessment report's recommendation that the modification application should be approved subject to conditions is reasonable. The modification application is approved as recommended. The file and signed instrument of approval are returned.

Yours sincerely



Jan Murrell
Planning Assessment Commission

cc. Mr Brad Hazzard MP
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