



Director-General  
NSW Department of Planning and Infrastructure  
23-33 Bridge Street  
Sydney 2000

Attn: Mark Brown, Senior Planner - Metropolitan and Regional Projects South

26 August 2013

**Re: 2-32 Smith Street, Summer Hill MP10\_0180 – Project Approval**

Dear Mark,

**1. Introduction**

This correspondence, and attached documentation, forms an application to modify Project Approval MP10\_0180 under Section 75W of the *Environmental Planning and Assessment Act 1979* (EP&A Act 1979). While the previous Part 3A provisions of the EP&A Act 1979 have been repealed, transitional arrangements included in Schedule 6A of the EP&A Act 1979 maintain Section 75W associated with modification of existing approvals.

The application seeks to rectify a calculation error in the implementation of the Ashfield Section 94 Contributions Plan in determining the applicable contributions. The terms of Condition C4 are requested to be adjusted to reflect the correct implementation of the credit for existing development on the site

The modification application is discussed in detail below under item 5 below.

**2. Background**

The Project Approval was issued on 11 June 2013 and included at Part C condition C4 the required Section 94 contributions to be paid prior to the issue of a Construction Certificate.

The monetary contribution requires the payment of \$926,350.00. The condition acknowledges that a credit has been included for the 1,674.5m<sup>2</sup> of existing commercial floor space within the administration building to be demolished.

As will be detailed below the method of calculation has incorrectly applied Part 2.8 of the Ashfield Section 94 Contribution Plan (S94 Plan) adopted 9 November 2011 and in force from 16 November 2011.

As detailed in the accompanying work sheets the contribution should be \$447,408.91, accounting for the application of the credit in accordance with the S94 Plan and utilising the contribution rates of the current financial quarter supplied by Council and adjusted to CPI.

### 3. Ashfield Section 94 Contribution Plan

The Ashfield S94 Plan was adopted on 9 November 2010 and came into force on 16 November 2010. Consistent with the *Development Contributions Practice Notes–July 2005* prepared by the then Department of Infrastructure, Planning and Natural Resources, the plan includes a provision requiring the provision of a credit against existing development on the site.

Specifically Part 2.8 of the S94 Plan states:

#### *2.8 Allowances for existing development*

*Contributions will be levied according to the estimated increase in demand. An amount equivalent to the contribution attributable to any existing development on the site of a proposed new development will be allowed for in the calculation of contributions. All estimates of future development within this Plan have been calculated allowing for existing development. That is, estimates of growth only relate to the additional development projected for the LGA.*

The S94 Plan establishes base rates for development contributions which are indexed on a quarterly basis.

The relevant rates as at 19 August 2013, as provided by Ashfield Council in a GIPA request are:

Element	Contribution rate
Residential accommodation less than 60m <sup>2</sup> GFA	\$9,527.25
Residential accommodation between 60-84 60m <sup>2</sup> GFA	\$14,613.25
Residential accommodation greater than 84m <sup>2</sup> GFA	\$20,813.53
Retail shops (per m <sup>2</sup> )	\$190.42
Commercial (per m <sup>2</sup> )	\$291.36

Table 1: Ashfield Section 94 Contribution rates as at 19 August 2013

A copy of the current rates provided by Council is included at Attachment 1.

### 4. Modification under Section 75W Environmental Planning and Assessment Act 1979

Project Approval MP10\_0180 is a Part 3A Project identified as Transitional Project under the transitional arrangements for Part 3A projects, contained in Schedule 6A of the *EP&A Act 1979*. Section 75W of the *Environmental Planning and assessment Act 1979*, providing for the ability to modify project approvals, continues to apply.

The mechanism to correct the error in the calculation of the S94 contributions is therefore a Section 75W modification.

### 5. Proposed Modification

The modification the subject of this request seeks to amend condition C4 by requiring a monetary contribution of \$447,408.91 in lieu of the \$926,350.00 imposed in the Instrument of Approval for MP10\_0180 dated 11 July 2013.

The extract provided by Council at Attachment 1 sets out the method of calculating the relevant s94 contribution, including the ability to adjust the contribution by providing a credit for existing development.

This approach and method of calculation is replicated in Table 2.

Element	Base Unit	Proposed	Existing	Net difference	Rate	Contribution
Residential accommodation less than 60m <sup>2</sup> GFA	units	3	0	3	\$9,527.28	\$28,581.84
Residential accommodation between 60-84 60m <sup>2</sup> GFA	units	5	0	5	\$14,613.25	\$73,066.25
Residential accommodation greater than 84m <sup>2</sup> GFA	units	36	0	36	\$20,813.53	\$749,287.08
Retail	GFA	443	0	443	\$190.42	\$84,356.06
Commercial	GFA	0	1674.5	-1674.5	\$291.36	-\$487,882.32
<b>Total</b>						<b>\$447,408.91</b>

Table 2: Section 94 Contributions assessed in accordance with Ashfield S94 Plan

Using the same method as in Table 2, the contribution for the proposed development, with no offset for existing development, would be \$935,291.23. On this basis, the credit that has been allowed for in the current consent condition is \$8,941.23 (\$935,291.23 – \$926,350.00). This equates to a credit of \$5.34/m<sup>2</sup> for the existing 1,674.5m<sup>2</sup> administration building located on site.

Applying a credit for the existing development of \$5.34/m<sup>2</sup> is contrary to the provisions of the S94 Plan at Part 2.8 which states:

*An amount equivalent to the contribution attributable to any existing development on the site of a proposed new development will be allowed for in the calculation of contributions.*

As noted in correspondence with the Department prior to the determination of the application, there is no other development on the site that is subject to an offset against the S94 Contributions to be levied for the redevelopment of the entire site. All credits for existing development are dealt with in the Project Application for Stage 1. All subsequent stages will require direct imposition of conditions in accordance with the Ashfield Section 94 Contribution Plan and in the case of Stage 4 the Marrickville S94 Contributions Plan.

## 6. Conclusion

This s75W modification application is to correct an error in the imposition of condition C4 relating to the imposition of monetary development contributions. The Ashfield S94 Contributions Plan has been prepared having regard to the *Development Contributions Practice Notes–July 2005*. The Practice Note confirms that it is accepted practice that a credit equal to that of existing development on a site should be taken into consideration. The Practice note states that a Section 94 Contributions plan should include a

specific policy on credits for existing development. In the case of the Ashfield Section 94 Contributions Plan the policy for credits is contained in Part 2.8 of the S94 Plan. Part 2.8 is unequivocal in stating that any credit is to be an amount equivalent to existing development on a site. The S94 plan does not include any provision for adjustment of the credit that would support the rate of \$5.34/m<sup>2</sup> that has been effectively adopted to calculate the offset in the current condition imposed.

It appears likely there is an error in the calculation template utilised by Council to determine contribution rates. We have made requests for the provision of electronic copies of the calculator under the *Government Information (Public Access) Act 2009* to Ashfield Council. Despite the requests, we have not been furnished with a copy of the calculation tool which would allow an examination of the input formula's to determine where the error may have arisen. The conclusion for there being an input error is that there does not appear anywhere in the S94 Plan a rate of or close to \$5.35/m<sup>2</sup> relating to commercial development.

In accordance with Part 2.8 of the S94 Plan, any offset for existing commercial floor space must be calculated at the current contribution rate of \$291.36/m<sup>2</sup>. The offset for the existing commercial floor space must be \$487,408.91 (\$291.36 x 1,674.5), not the \$8,941.23 that has been allowed for.

In conclusion, the requested modification to correct a calculation of the monetary contribution has planning merit and seeks only to apply the relevant S94 Plan in accordance with the applicable provisions as intended by the Statement of Commitments. The modification will not in any way diminish the quality of the approved development or the intent of the relevant Concept Plan Approval and Project Approval. Accordingly, it is requested that Condition C4 be amended to require a total contribution for Stage 1 of \$447,408.91 as set out in this submission, and accounting for a proper offset for existing development calculated in accordance with the Ashfield S94 Contributions Plan.

The approval being sought from the Department of Planning & Infrastructure is a reasonable and appropriate outcome.

Should you have any queries, please do not hesitate to contact me on (02) 9380 9911 or by email at sbarwick@sjb.com.au.

Yours sincerely,



Scott Barwick  
Associate Director

Encl.

- Attachment 1 – S94 rates as at 19 August 2013

	Base Unit	Proposed	Existing	Net Difference	Total Contribution
Dwelling House / New Lot	dwelling/lot	1		1	\$ 20,988.65
Residential Accommodation less than 60m2 GFA	units	1		1	\$ 9,527.28
Residential Accommodation between 60-84m2 GFA	units	1		1	\$ 14,613.25
Residential Accommodation greater than 84m2 GFA	units	1		1	\$ 20,813.53
Seniors Housing (self-care)	dwellings	1		1	\$ 11,222.58
Residential Care Facility	beds	1		1	\$ 327.36
Hotels/Motels/Serviced Apartments	beds	1		1	\$ 725.06
Boarding Schools/Colleges/Hostels/Boarding Houses/Hospitals	beds	1		1	\$ 1,057.42
Retail Shops	GFA	1		1	\$ 190.42
Bulky Goods Retail	GFA	1		1	\$ 35.14
Commercial	GFA	1		1	\$ 291.36
Number of <b>deficient</b> car parking spaces (non-residential only)	car space	1			\$ 32,118.38