



# Ashfield Council

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Mark Brown  
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NSW Department of Planning & Infrastructure  
GPO Box 39  
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Dear Mark

## **2-32 Smith Street Summer Hill – Stage 1 Project Application Approval Proposed Modification for Condition C4 - Section 94 Contributions**

I refer to your request to comment on the above modification and advise as follows:

The Stage 1- Project Application was approved by the Department and Condition 4 was applied requiring a contribution of \$926,350 to Ashfield Council in the event the development of the Stage 1 site proceeds and a Construction Certificate is issued.

The applicant seeks a reduction of the amount required to be paid in Condition - C4, proposing instead that \$447,408.91 should be paid. This is on the basis that there should be a direct credit given for the existing office space against the proposed new development, despite the approved development being mostly a residential use with a small component of retail space, and the residential part being a different building type and use to that of office (commercial) space. Council strongly rejects the 'non like for like credit' criteria suggested by the applicant, does not support the method used to arrive at the new figure and considers that Condition C4 should remain unchanged.

Allowance calculations are made where one gives a credit for existing development. The 'like for like' criterion Council uses for determining when a monetary credit will be allowed is programmed into the Section 94 calculator supplied to the Department (which arrived at the \$926,350 figure). The 'like for like' concept, which is derived from Council's Contributions Plan, is explained below.

The general criteria used for the formula in the Section 94 calculator is that only 'like for like' building type/uses may be credited. This is explained as follows:

- where there are existing residential dwellings (and so resident population), this will be credited against any new residential dwellings (new resident population). For example, this is because it is the infrastructure demand for new residents (such as open space), for which contributions are taken.
- where there is existing commercial/retail space (worker population), this will be credited against new commercial/retail space (worker population).

The applicant is suggesting that a 'credit' should be applied against the net difference in commercial/retail floor space between the current situation and that in the proposed redevelopment for the Stage 1 scheme. If one were to apply this approach to a site with a much larger existing commercial component then theoretically we could have a scenario where no developer contributions would be required where an existing commercial site were to be redeveloped for residential purposes. This is certainly not the intention of Council's Contributions Plan and is not consistent with the 'like for like' credit criteria applied in Council's Section 94 calculator.

In addition, please note the following general comments regarding the matter.

- (i) The Concept Plan application put forward a 'mixed use' land use concept to meet the planning strategies identified in the Inner West Sub Regional Strategy, including maintaining and increasing the provision of employment generating floor space. Therefore, the Concept Plan approval makes allowance in Condition A5 for 4000m<sup>2</sup> of commercial floor space (the existing office building has approx 1675m<sup>2</sup> of floor space). There is therefore an expectation that the provision of commercial floor space will eventuate on this very large site, in addition to that which already exists (Condition A5 also makes allowance for 2500m<sup>2</sup> of retail space).
- (ii) The Stage 1 Project Application is an approval for a small part of the 2.5 hectare site, with the entire site currently being in the one ownership and development applications for Stages 2 and Stage 3 yet to be determined. Therefore, there is ample opportunity to apply for 'like for like' credits for commercial development on other parts of the site, such as in Stages 2 and 3 within the Ashfield LGA.
- (iii) The Stage 1 Project Application approval only has a small amount of private open space provided, which is well below the 25 percent communal open space recommended in the Residential Flat Design Code. Noting the approval is for 44 dwellings, it can be expected that there will in the range of 100 new occupants on this site, who will naturally require open space and facilities generated under the normal outcomes of a 'Contributions Plan'.
- (iv) The site owners agreed in the Statement of Commitments to Council's Section 94 rates. As far as Council is aware, at no time did they formally seek to have a meeting with Council to discuss any complexities that might arise from this, such as the staging of development and building construction on the site. For example, no 'Voluntary Planning Agreement' or alternative approach was put forward to determine how the various Section 94 payments would be assigned to the different development stages (the applicant does not address the staging issue in the modification submission).
- (v) Credits should not be given for any 'abandoned' existing commercial floor space.

The Department should also note that the need to holistically address the open space issues for the entire site (and that there is no loss of Section 94 funding to Council), is reinforced by the various complexities associated with the site, as previously explained to the Department. For example, it should be noted that within the site there is a further need for the care and maintenance of the public access way to the light rail station from Smith Street, and that the applicant proposes to dedicate various streets to Council, which will create a future burden of maintenance costs for Council. Other externalities have been identified in previous reporting to the Department.

In summary, Council reinforces its view that the current contribution identified in Condition C4 for the Stage 1 Project Application is correct and has been applied in accordance with Council's Contributions Plan.

Yours faithfully,



Phil Sarin  
**Director - Planning & Environment**