

OUR REF: 4580

YOUR REF: MP 08_0195 MOD 5

28 November 2013

Mr Mark Brown
A/Team Leader
Industry, Social Projects and Key Sites
NSW Planning and Infrastructure
GPO Box 39
SYDNEY NSW 2001

Dear Mr Brown,

**SECTION 75W MODIFICATION TO THE CONCEPT PLAN APPROVAL FOR
MP 08_0195 AT 78-90 OLD CANTERBURY ROAD, LEWISHAM,
SEEKING APPROVAL TO AMEND CONDITIONS A3 and A20.**

I refer to your letter received by Council on 6 November 2013 seeking Council's comments on the above S75W application to amend Conditions A3 and A20 relating to the requirements for a voluntary planning agreement.

Council has actively and reasonably sought to negotiate a VPA but has not been able to come to terms due to the unpreparedness of Meriton to make reasonable contributions associated with the infrastructure demands that the development will create.

The proponent's unreasonableness is evidenced by its efforts to alter the operation of condition A20 of the concept plan approval from operating so that components of the VPA 'may off-set Section 94 Contributions' to providing that it 'must off-set' these contributions. The proponent asserts that the condition 'has created an unreasonable expectation from Council to not recognise any off-sets against the cost of works...'. No argument is put to support such a change other than that in the Director General's Assessment Report it was noted that 'the proponent agreed to pay Section 94 Contributions less than the value of works...'. Infrastructure provision was a major issue raised by Council in its representations to the PAC throughout the assessment of the development proposal. The use of the words 'may off-set' was deliberate as the PAC was aware of the complex infrastructure demands that the development would create and that off-sets would depend on the type of infrastructure being provided in the context of the operation of the Marrickville Contributions Plan 2004 (S94 Plan).

The failure to resolve a voluntary planning agreement to date is due to a combination of factors. These include the failure of the concept plan approval to distinguish between infrastructure and facilities that are required as a direct consequence of the development and those which are necessary to service the wider community. In this respect, the concept approval has enabled the proponent to seek to off-set the costs of direct infrastructure to the wider community.

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The amendments to the concept plan approval sought in the modification would embed the cost shifting sought by the applicant into the concept approval. For example, the proposed off-set of the open space land dedication and embellishment against the section 94 contributions does not recognise that the open space quantum on the site was necessary to create a planning rationale for the significant increase in density for the site under the land use controls in MLEP 2011 (further increased under the concept plan approval) and assist in the site operating as a transit orientated development. In addition, the Marrickville Contributions Plan 2004 (section 94 plan) open space contribution rate is calculated based on the embellishment cost of existing open space only and does not include an amount for land acquisition. This relates to the methodology of the Plan which was prepared when the LGA was experiencing population decline and there was no prospect of generating contribution amounts sufficient to acquire land. Accordingly, offsetting the full land dedication and embellishment amounts is "double dipping" and confuses the methodology of the section 94 plan with what is a major rezoning and which should have had its infrastructure demands quantified through a site specific section 94 plan.

It should be noted that the mechanisms to achieve the dedication and embellishment of the land as well as the other disputed infrastructure provision matters would have occurred through the Part 3 rezoning process and a site specific section 94 plan which Council was progressing prior to the matter being redirected for assessment under Part 3A. Council's master plan for the site anticipated dedication of the land to off-set the significant increase in development potential of the land. Consequently, at the most, any section 94 offset should be for the embellishment of the open space only.

Similarly, the amendment seeks to offset the costs of stormwater works against section 94 contributions. In this regard, Council's section 94 plan does not levy for stormwater and such a deduction would be at the expense of other types of infrastructure and facilities that are subject to the section 94 plan. This would not only be inequitable, it would undermine the operation of the section 94 plan in terms of the apportionment of costs for planned works between the new and existing community as a result of the loss of anticipated funds.

It is Council's view that the William Street and Brown Street footway and Hudson Street upgrades are a direct consequence of the development and should therefore not be off-set against ordinary section 94 contributions. Again, it is noted that the current section 94 plan does not levy for these works and off-setting these would be at the expense of other categories of infrastructure.

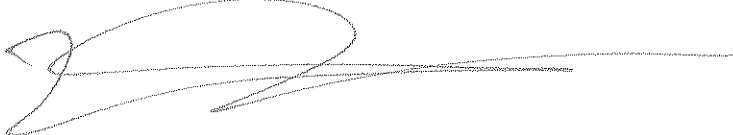
Accordingly, as the majority of the infrastructure works associated with the development proposal are required as a direct consequence of the development these should remain as conditions of the concept approval without the potential for an off-set. The other way of dealing with this may have involved the preparation of a precinct specific section 94 plan that addresses the cost and apportionment of infrastructure across the catchments areas. It should be noted that the opportunity for this approach may have passed with the approval of the adjoining Allied Mills site proposal and other development sites within the remainder of the McGill Street Precinct.

Council is therefore unwilling to enter into a voluntary planning agreement on the terms sought by the proponent as they represent the shifting of infrastructure costs directly associated with the development proposal onto the community. Given the role and function of voluntary planning agreements (i.e. that they need to be entered into voluntarily by both parties) Council's position means that the proposed amendments

be unworkable. To resolve the current disagreement Council would support an amendment to the concept approval requiring the payment of ordinary contributions pursuant to Council's S94 plan and that infrastructure and facilities required as a consequence of the development be separately conditioned without the potential for an off-set.

Thank you for the opportunity to comment. For further enquiries please contact Council's Manager Planning Services, Marcus Rowan, on 9335 2274.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Tim Moore', with a long horizontal line extending to the right.

Tim Moore
Director Planning and Environmental Services

TRIM NO: 88866.13

