



The Secretary
NSW Department of Planning and Environment
23-33 Bridge Street
Sydney 2000

Attn: Ben Lusher - Director – Key Sites Assessments

7 April 2016

Re: 2-32 Smith Street, Summer Hill MP10_0155 – Concept Approval

Dear Ben,

1. Introduction

This correspondence, and attached documentation, forms an application to modify Concept Approval MP10_0155 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 While the previous Part 3A provisions of the EP&A Act 1979 have been repealed, transitional arrangements included in Schedule 6A of the EP&A Act 1979 maintain Section 75W associated with modification of existing approvals.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 amend:

- The project description to delete reference to dedication of open space and clarify that all roads will remain as private roads;
- Delete the reference to dedication of public open space and roads in the Development Description at A1
- Delete the reference to dedication of local roads in condition 11 of the Future Environmental Assessment Requirements
- Delete condition 23 of the Future Environmental Assessment Requirements relating to dedication of public open space

The request arises from the decision of Ashfield Council on 9 February 2016 when Council resolved that it did not wish to receive into public ownership any roads or public open space. Council's preference is that all open space and internal roads to the Summer Hill flour mill redevelopment remain in private ownership but be publicly accessible via easements in favour of Ashfield Council.

A copy of Council's correspondence and report to Council is provided at Attachment 1.

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

2. Background

The Concept Approval was issued and required the dedication of 4,806m² of open space to Council (condition 23) as well as the provision of 5,287m² of open space which would be publicly accessible via easements in favour of Council (condition 24).

Condition 11 contemplated the dedication of the roads servicing stages 1, 2 and 3 as public roads, while the road serving stage 4 which crosses the Hawthorne Canal was always intended to be a private road.

Council's resolution of the 9th February 2016 has confirmed that they no longer wish to have land or roads dedicated to public ownership.

Accordingly the roads serving stages 1, 2 and 3 will remain private roads that will be publicly accessible. The terms of existing condition 25 already cover the mechanism for these additional private roads to be publicly accessible.

To conform with Council's resolution, it is proposed that condition 23 requiring the dedication of 4,806m² of land be deleted and that this quantum of land be added to condition 24 with the condition amended to require the provision of 10,093m² (4,806 + 5,287) of open space as publicly accessible open space. Again existing condition 25 provides the requirement for the provision of the mechanism to ensure public access to these spaces which will be via an easement for access in favour of Ashfield Council.

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

Concept Approval MP10_0155 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 amend Concept Approval is a Section 75W modification.

4. Proposed Modifications

The modification the subject of this request seeks to amend the Concept Approval in the following manner (the requested revisions to the description and conditions are in red with red strikethrough where text is to be deleted).

Schedule 1

Part A: Particulars

Project:

Mixed use, residential, retail and commercial development incorporating:

- Residential, retail and commercial floor space
- Basement car parking
- Publicly ~~dedicated and~~-accessible open space;
- New ~~local private~~ streets and road works at the intersection of old Canterbury Road and Edward Street and Smith Street; and
- Off site pedestrian upgrades.

Schedule 2

Part A – Terms of Approval

Development Description

A1 Concept approval is granted to the development as described below:

- Adaptive re-use of the existing Mungo Scott Building, silo structures and 3 other buildings and 12 new building envelopes;

- Staged construction over 4 stages;
- Up to 360 dwellings and up to 33,500m² GFA;
- Up to 4,000m² of commercial floor space;
- Up to 2,500m² of retail floor space;
- A floor space ratio of 1.4 – 1.6:1;
- Up to two levels of basement car parking and 35 on-street car parking spaces;
- ~~4,806m² of public open space to be dedicated to Council and an additional 5,287m² provision of 10,093m² of publicly accessible open space;~~
- New ~~local streets~~ private but publicly accessible streets serving the development
- Road works including a roundabout at Edward Street and Smith Streets as part of Stage 1 and a signalised intersection at Old Canterbury Road as part of Stage 3; and
- Off-site pedestrian upgrade works in the surrounding area and to Summer Hill Village.

Schedule 3

Future Environmental Assessment Requirements

Local Streets and servicing

11. Future applications shall provide for design of the two new ~~local~~ private streets in the western portion (including road carriageway, footpath and tree planting) to the satisfaction of Council in accordance with Council's engineering guidelines/standard designs for local roads. The design shall provide for traffic calming and pedestrian safety measures where appropriate to provide a slow speed safe environment for pedestrians. ~~The roads shall be dedicated to Council at no cost to Council.~~

12. The new local streets serving ~~Building 1A of~~ the development shall be designed and constructed in accordance with Sydney Water and Council requirements and maintained in private ownership with on-going maintenance the responsibility of the future body corporate.

Open Space/Public Access

23. Deleted

24. Future applications shall provide for the embellishment of a minimum of ~~5,287m²~~ 10,093m² of publicly accessible open space to be maintained in private ownership by the future body corporate.

The requested modification is supported by a proposed open space plan prepared by Hassell which has proposed the conversion of the land identified for dedication in the approved plan (sheet 6 of 11 – copy attached) to be incorporated in to the land to be publicly accessible open space.

Consistent with the long term intention of the management of the publicly accessible open space areas these spaces will be owned and managed by the future body corporate/s for the site. Access to the public will be facilitated by a right of way or similar in favour of Council.

The terms of the modification requested retain the intent of public accessibility through and into the site to utilise the proposed open space while also satisfying Council's desire not to be the landowner of the open space assets.

While the open space and road assets will not be transferred into Council ownership, the original intent of the provision of access into and through the site will be maintained providing access to open space areas and the Lewisham West light rail stop.

The alternate tenure and provision of public access remains consistent with the project intent for greater permeability of the site but accords with Council's clear position that they no longer wish to have land assets transferred into their ownership.

5. Conclusion

This s75W modification application seeks to amend the terms of the Concept Approval to remove any proposed dedication of open space or roads to Ashfield Council.

The open space and roads will still be provide but remain as private facilities that will be subject to easements in favour of Council granting public access. The open space and roads remaining in private ownership with private on-going responsibility accords with Ashfield Council's resolution of 9 February 2016, a copy of which is submitted with this modification request.

The modification does not alter the Statement of Commitments relating to the dedication of affordable housing dwellings to Marrickville Council.

Approval is sought for the modification as the terms of the current Concept Approval will not be able to be satisfied as Council has clearly adopted a position whereby they will not accept any dedication of land. To avoid any impasse the alternate position of private ownership of the open space and roads is proposed to avoid any complications at Occupation Certificate stage and the applicant being unable to have demonstrated that the Concept Plan has been able to be satisfied.

The Concept Approval intended that a minimum of 10,093m² of open space would be publicly accessible through a mix of public open space and publicly accessible open space. The modification as proposed will instead allow access to the minimum required quantum of open space that no longer includes a component of land that is in public ownership.

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 – Ashfield council resolution 9 February 2016
- Attachment 2 – Approved open space plan
- Attachment 3 – Proposed open space plan
- Attachment 4 – Owner's consent

Attachment 1 – Ashfield council resolution 9 February 2016

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SJB Planning

SJB Planning (NSW) Pty Ltd ACN 112 509 501



Ashfield Council

Contact: Phil Sarin
Phone: 9716 1960

4 March 2016

Mr Grant Flannigan
EG Funds Management
Governor Philip Tower, Level 21
1 Farrer Place
Sydney NSW 2000

Dear Grant,

ADDRESS: 2-32 SMITH STREET, SUMMER HILL
RE: DEDICATION OF ROADS AND OPEN SPACE

I advise that the Council, at its meeting held on 23 February 2016, confirmed its previous decision on 9 February 2016 to advise EG Funds Management of its preference for the open space and internal roads within the Allied Mills site redevelopment project to be retained in private ownership but publicly accessible via an easement to the Council. As you would be aware, the 9 February Council decision was subject to a rescission motion which was heard and dealt with at the subsequent Council meeting on 23 February 2016.

Attached for your information is a copy of the report that went to Council on the matter (minus the attachments) and relevant extracts of the minutes from both meetings. You will note that the Council has given delegation to the General Manager to put into effect this decision.

As you have noted in recent correspondence to the Council it is likely that amendments will be required to the original concept plan approval and other early development application stages to address this modification. It may also be necessary for these applications to be determined by the Sydney East Joint Regional Planning Panel. I would suggest that you discuss this issue with your planning consultant, SJB. The Council is happy to work with your consultants to have any required modification applications dealt with expeditiously.

Please contact me if you have any queries or wish to discuss the matter.

Yours faithfully

Phil Sarin
Director Planning and Environment

Subject	ALLIED MILLS SITE - LAND DEDICATIONS
File Ref	Allied Mills
Prepared by	Phil Sarin - Director Planning and Environment
Reasons	Update Council on land dedication for the Allied Mills site
Objective	For Council to finalise its response on the land dedication issue

Overview of Report

This report provides an update on the status of land dedications for the Allied Mills site.

1.0 Background

In December 2014, the Council considered a report on the proposed open space dedication for the former Allied Mills and resolved that the General Manager investigate the matter further and prepare a follow up report (refer to **Attachment 1**).

Over the past year further negotiations have taken place between Council officers and the project proponents (EG Funds Management) and more detailed information has been provided on landscaping and the proposed road dedications.

In the interim, the applicant has commenced construction of Stages 1 & 2 and has recently lodged development applications for Stages 3 & 4.

Councillors may recall that officers had expressed reservations regarding the proposed open space dedication given the location of a two level café in the central area of this space, potential issues with longer term access arrangements through the open space to service the retail/commercial area in the Mungo Scott building and the fact that an additional 80 dwellings (making for a total of 380 dwellings on the site) had been approved through the concept plan amendment (without any increase in open space provision) making this area even more essential for the future occupants of the site.

2.0 Further Information

Internal Roads

Stage 3 and 4 development applications have now been lodged and involve conversion of the 'four-pack' silos and new attached apartment building, basement car parking, conversion of the Mungo Scott building into retail/commercial use and a new apartment building on the Marrickville Council side of the Hawthorne Canal with access from Smith Street.

ALLIED MILLS SITE - LAND DEDICATIONS

The more detailed planning and design for these stages, particularly in relation to Stage 3, has revealed that more basement car parking has been required and this car parking will encroach under a new road originally intended to be dedicated to the Council. The intention now is for this road to be retained as part of the development site with public access being provided through an easement and right of way.

Given these changed circumstances and issues Council officers have had with the applicant's design of the two new internal roads, which connect with Smith and Edward Streets, it is the view of officers that all 'internal roads' providing service access to various uses and basement car parking within the site should now be retained as part of the development site with public access provided through easements and rights of way.

The advantage for the Council is that these roads, which just service the subject site, will not become part of the Council's local road network and therefore a future maintenance liability. The applicant still wishes for Council to manage on street parking within these roads, which is a reasonable request, and this can be addressed through a future agreement. Council's waste collections services for the subject site will be provided through these road links.

Open Space

As advised previously, officers are of the view that it would be preferable for the open space area to be retained as communal open space within the development site for the following reasons:

- Council's original preference was for this space to be unencumbered, however, the concept plan approval granted to the developer by the Planning Assessment Commission allowed the provision of a two level cafe to be erected in a central location within this space.
- The cafe would, in the view of Council officers:
 - compromise the integrity of the space
 - create potential access and servicing difficulties
 - restrict important public vistas to the light rail station through the open space
 - obstruct the view to the Mungo Scott building from Smith Street
 - fragment the space and therefore undermine its 'useability' for general open space purposes.
- The open space has also been designed to act as an overland flow detention basin in major rainfall events thereby compromising its suitability for open space purposes.
- The layout of buildings and land use allocation in this area would potentially make it difficult to define public/private boundaries - an important consideration in terms of future maintenance obligations.
- With the number of approved dwellings on the site increased from 300 to 380 this space is of greater benefit and value to future occupants of the site.

ALLIED MILLS SITE - LAND DEDICATIONS

3.0 Next Steps

In December 2015, senior Council officers met with the project proponents to discuss ongoing issues the developer was having with the Council over the land dedications and it was agreed that the issues of concern officers had raised were not readily resolvable. It was therefore agreed that the future management of residential and retail/commercial uses on the site would be better served by retaining the open space for communal use of future residents and the two new roads as internal roads to service the site, subject to public access being allowed through these areas.

4.0 Conclusion

Given that a more resolved design has now been progressed for all stages of the former Allied Mills site, it has become evident the site is likely to be managed more effectively through retention of the open space and internal roads as part of the development site.

It is therefore recommended that Council advise EG Funds Management of the preference for the open space and internal roads to be retained in private ownership but publicly accessible via an easement to the Council.

ATTACHMENTS

Attachment 1	Previous Report	4 Pages
Attachment 2	Land Dedication Map	1 Page

RECOMMENDATION

- 1 Council advise EG Funds Management of the preference for the open space and internal roads to be retained in private ownership but publicly accessible via an easement to the Council.**
- 2 Council grant delegation to the General Manager to put into effect the above outcome.**

PHIL SARIN
Director Planning and Environment

**DRAFT MINUTES OF ORDINARY MEETING
TUESDAY 9 FEBRUARY 2016**

For the Motion

Councillors Cassidy PSM, Mansour, Wang, Drury, M Raiola, Raciti and Passas.

Against the Motion

Councillors Stott, Wangmann, Lofts and McKenna OAM.

The Substantive Motion was Carried.

The foreshadowed motion was not addressed.

INVESTMENT REPORT DECEMBER 2015

CM 10.8

Councillor A Raiola returned to the meeting at 8.28pm.

RESOLVED: Mansour/Stott

That the Investment Report for December 2015 be received and noted.

ALLIED MILLS SITE - LAND DEDICATIONS

CM 10.9

RESOLVED: Lofts/Stott

- 1/2 That Council advise EG Funds Management of the preference for the open space and internal roads to be retained in private ownership but publicly accessible via an easement to the Council.
- 2/2 That Council grant delegation to the General Manager to put into effect the above outcome.

A division was called and the voting was as follows:-

For the Motion

Councillors Stott, Wangmann, Wang, Lofts, Drury and McKenna OAM.

Against the Motion

Councillors Cassidy PSM, Mansour, A Raiola, M Raiola, Raciti and Passas.

The vote was tied. The Mayor used her casting vote in favour of the Motion.

The Motion was Carried.

Note: A Notice of Rescission was lodged on 09 February 2016, with regard to Item CM10.9 – Allied Mills Site: Land Dedications, and will be considered at the meeting of Council on 23 February 2016.

**DRAFT MINUTES OF ORDINARY MEETING
TUESDAY 23 FEBRUARY 2016**

MOTION: SUSPENSIONS

NM10/2016

MOTION: Passas/Raciti

That Notice of Motion NM10/2016 – Suspensions, be withdrawn and resubmitted to the next meeting of Council.

The Motion was Lost

Councillors Passas and Raciti left the meeting at 10.47pm and did not return.

**ASHFIELD IS WHERE WE LIVE: THIS IS WHAT WE STAND FOR, ADDRESSING
FREDERICK ST PARKING AND TRAFFIC PROBLEMS**

NM9/2016

RESOLVED: Drury/Stott

That Ashfield Council writes to the Minister for Roads to advise him that our community does not want advertising trailers continuously parked alongside Hammond Park and we need his department to work with Council to resolve this issue.

EXTENSION OF TIME

RESOLVED: Mansour/Lofts

That the meeting be extended by 15 minutes, the time being 10.50pm.

ALLIED MILLS SITE - LAND DEDICATIONS

NR7/2016

MOTION: Cassidy/Mansour

That resolution of Item CM10.9 – Allied Mills Site – Land Dedications, passed at the Ordinary meeting of Council held on 09 February 2016, be rescinded.

A division was called and the voting was as follows:-
For the Motion

Councillors Cassidy PSM and Mansour.


Against the Motion

Councillors Stott, Wangmann, Wang, Lofts, Drury and McKenna OAM.

The Motion to Rescind was Lost.

Attachment 2 – Approved open space plan

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 **NSW GOVERNMENT**
Planning

Issued under the Environmental Planning and Assessment Act 1979

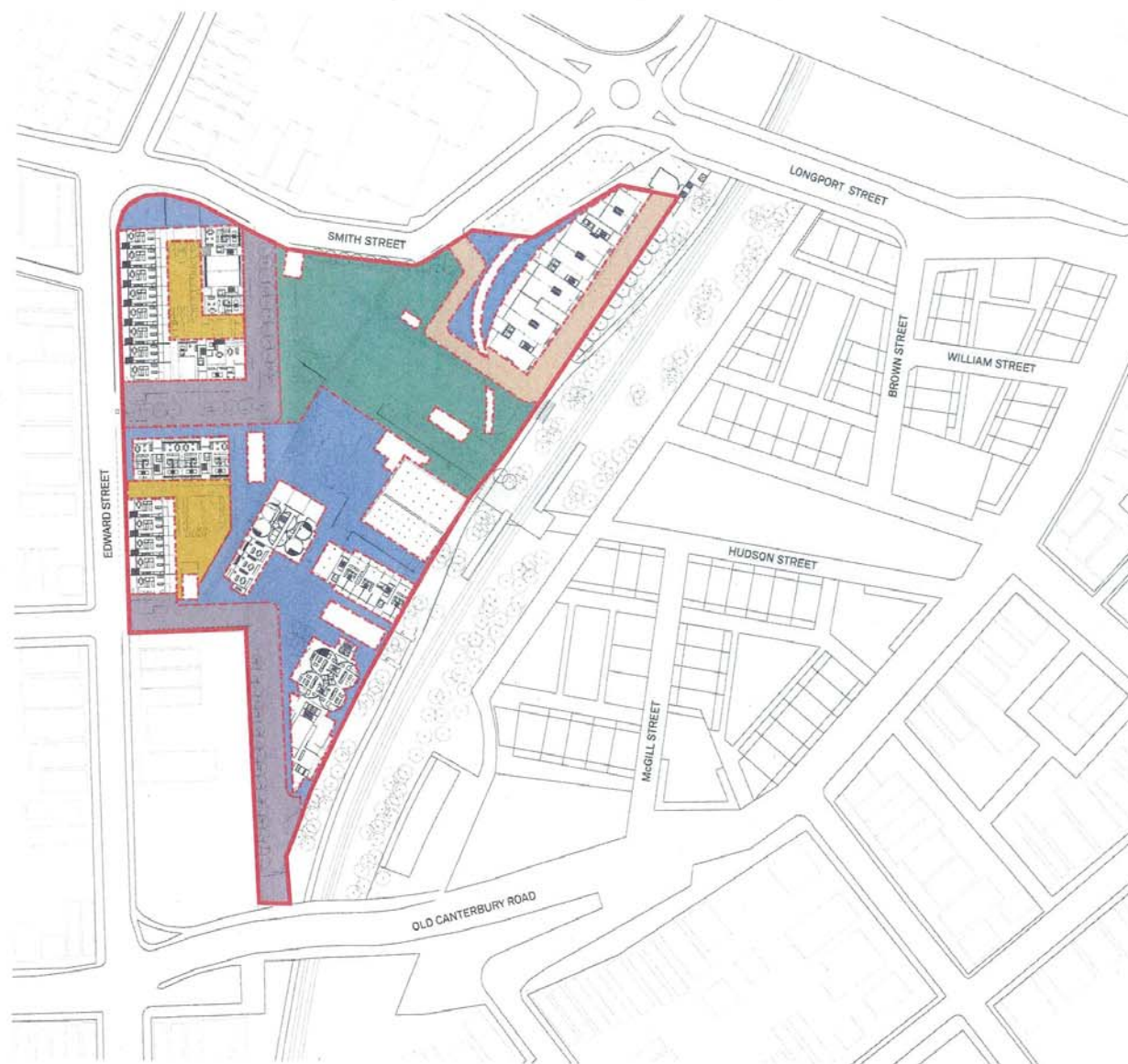
Approved Application No. 10-0155

granted on the 07/12/12

Signed AW

Sheet No. 6 of 11




- Public streets dedicated to Council
(Area 3,530 m²)
- Public open space dedicated to Council
(Area 4,806 m²)
- Publicly accessible open space (privately owned)
(Area 5,287 m²)
- Publicly accessible streets (privately owned)
(Area 1,415 m²)
- Communal open space
(Area 1,390 m²)



Attachment 3 – Proposed open space plan

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Proposed open space plan

-  **Publicly accessible open space (privately owned)**
(Area 10,354 m²)
-  **Publicly accessible streets (privately owned)**
(Area 5,186 m²)
-  **Communal open space**
(Area 1,297 m²)



Attachment 4 – Owner’s consent

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SJB Planning

SJB Planning (NSW) Pty Ltd ACN 112 509 501



Australian
Executor Trustees

22 March 2016

ASHFIELD COUNCIL
260 Liverpool Road,
Ashfield NSW 2131

Dear Sir or Madam,

RE: S96 APPLICATION AUTHORITY
ADDRESS: 2-32 SMITH STREET, SUMMER HILL NSW

We confirm that Australian Executor Trustees Limited ATF Summer Hill Ownership Trust ("AETL") is the registered owner of 2-32 Smith Street, Summer Hill NSW 2130.

We wish to advise that AETL authorise the following signatories from EG Funds Management, to consent to the lodgment of the Section 96 Modification of a Consent Application Form ("S96") and a Section 75W Modification of a Consent Application Form ("S75W") in respect of the Property.

- Grant Flannigan, Development Director
- Raja Jamal, Development Manager
- Adam Geha, CEO

The Common Seal of Australian Executor Trustees Limited ACN 007 869 794 was affixed with the authority of:

..... (signed)
Yvonne Kelaher..... (print name)
Authorised Officer
..... (signed)
MARJORIE HORTINELA..... (print name)
Authorised Officer

