

**Submission
No 7**

INQUIRY INTO THE APPROVAL OF THE DESIGNER OUTLETS CENTER - LIVERPOOL

Organisation: (on behalf of the McGill Street Residents)
Name: Ms Narelle Beattie
Telephone: 02 9560 3771 (h) 02 9219 2413 (w)
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Subject: Lewisham residents

Summary

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Submission to the General Purpose Standing Committee Number 4 Inquiry into the Approval of the Designer Outlets Centre

This submission is made by the residents of McGill Street, Lewisham. It focuses on the inconsistent treatment by the NSW state government in approving the proposed development at 14 McGill Street (DA-232-7-2002-i) while refusing to act to save the Designer Outlets Centre on Orange Grove Road. This submission particularly addresses term of reference (f): "Other relevant matters arising from the Government's planning policies and decisions."

Our submission deals with five distinct areas.

1. Dr Refshauge's (then Minister for Urban Affairs and Planning) reasons for deeming the McGill Street development to be of "State Significance".
2. The procedural issues identified by Ashfield Council.
3. Submissions to DIPNR, including opposition from McGill Street residents, Ashfield Council, and Marrickville Council.
4. Meetings with DIPNR and assurances made.
5. Meeting with Minister Beamer, assurances made, and subsequent comments by the Minister.

Introduction

In July 2001, Graphic World lodged a development application with both Ashfield and Marrickville Councils. Marrickville Council asked the applicant for further information before it could make a determination, while Ashfield Council rejected the application, because it did not comply with the zoning. Before the Marrickville application could be determined the then Minister for Planning, Dr Refshauge, declared the proposed development to be of State Planning Significance in January 2002.

1. State Planning Significance

Dr Refshauge's reasons for taking control of the development application for a relatively small printing operation have always been mixed. Certainly the haste of the calling in before due process had been completed at Marrickville Council is of concern. In an interview with the *Inner Western Suburbs Courier*, 28 January 2002, Dr Refshauge stated:

The redevelopment proposal crosses the Ashfield and Marrickville local government boundaries, so it is important for us to set up a co-ordinated decision-making process...The operation currently employs 88 people with a view to creating an extra 33 jobs should the redevelopment proceed. I want to ensure that residents and businesses throughout the Inner West are consulted in coming to a decision about this proposal.

On 6 March 2002, the residents of McGill Street (Greg Frith, Narelle Beattie, Rima Leas, Anne Steng, Tony Cripps and Lorraine Thomson), together with Michael Maloof (town planner) and George Shehadie (land and business owner), met with Dr Refshauge at his electorate office to discuss his calling in of the Graphic World development. We specifically discussed why it was deemed to be of "State Significance". Our street is

very small, the printing operations are relatively small, and it was very difficult for us to understand why this proposal could equate with some of the other large proposed developments called in by the Minister. We also knew that many other proposed developments must straddle local government boundaries – why was the Graphic World development seen to be so important?

Dr Refshauge informed us that the key reason for his declaration was the potential creation of 33 jobs. Please refer Attachment 1 – a statutory declaration to that effect from Michael Maloof, an independent town planner who attended the meeting with us.

Subsequent to this meeting, MP Lee Rhiannon questioned Dr Refshauge in Parliament about why such a small operation as Graphic World should be considered to be of “State Significance”. The Minister of Planning’s answers are confusing and only serve to “muddy the waters” rather than improving the transparency of Government planning policy and decision-making. Later, MP Sylvia Hale also tabled questions to the new Assistant Planning Minister Diane Beamer and in response to the question “on what grounds was the development deemed to be of significance”, the Minister replied:

The then Minister formed the opinion that redevelopment of the printing facility was of State environmental planning significance because the proposal involved two local government areas, retained existing jobs and had the potential to create additional jobs.

Copies of both sets of Questions and Answers are included at Attachment 2.

2. Procedural Issues

In July 2002, Ashfield Council advised Planning NSW of procedural issues relating to the declaration of “State Significance” and the advertising of the proposed development. From legal advice obtained Ashfield Council believed the declaration of “State Significance” was not in compliance with the relevant section of the Environmental Planning and Assessment Act. It appears the Minister called in the DA under the wrong section of the Act to avoid the need to prepare an Environmental Impact Statement and to hold a Commission of Inquiry.

In its submission to Planning NSW opposing the Graphic World development and subsequent correspondence with that body, Ashfield Council raised many unresolved issues which are summarised as follows:

- Incorrect procedures were followed with the calling in of the DA thus legal approval could not be given. Ashfield Council asserted that the proposal was declared “State Significant development” under the incorrect Section of the Environmental Planning and Assessment Act, 1979.
- Ashfield Council asserted that the declaration of “State Significance” did not clearly identify the affected site (address, lot or DP numbers) within Ashfield Municipality.

- Insufficient information and errors were submitted in the application, thus hampering a complete assessment of the proposal. (NOTE the applicant was never required to correct these issues prior to the DA being approved).
- Non-compliance with Ashfield Council's LEP 1985 and DCP, State Environmental Planning Policy No. 1 and No. 55 and the Code for Development in Industrial Areas.
- Conflict of the DA with the zoning of the area. Half of Hawthorn Canal - zoned 5(a) - Special Uses (drainage), 120C Old Canterbury Rd, Summer Hill, Lot 1 DP 817359 - zoned 5(b) - Special Usage (Railways), Lot 1 DP 540201 - zoned 5(b) - Special Usage (Railways). (NOTE the DA approval did not resolve this issue of zoning conflict).
- Impact on residents' amenity and the local environment was not in any meaningful way addressed by the DA.

For details of the above issues refer to Attachment 3: Ashfield Council Municipality report 10 May 2004 (which contains summaries of the submission) and Attachment 4: Ashfield Council correspondence between Ashfield Council's Executive Manager Planning and Building Services, Ashfield Council's legal firm and DIPNR's Major Development Assessment Branch.

Clearly the argument from Ashfield Council was not strong enough to stop the Minister and Planning NSW from determining the Graphic World development proposal. In response to the criticism from Ashfield Council, a spokesman for Dr Refshauge told *The Sydney Morning Herald* on 16 October 2002:

The development had been called in partly because it was better to have a single authority deciding upon it when it straddled two council areas, because it would provide 120 jobs on completion and because the minister would be able to ensure greening of the canal continued.

3. Submissions to Planning NSW (now DIPNR)

In August 2002, the residents of McGill Street, Michael Maloof (town planner), Ashfield Council and Marrickville Council each made submissions to Planning NSW. All of these submissions were highly critical of the Development Application. Copies of these submissions are included at Attachment 3 Ashfield Council, and at Attachments 5 – 7. Planning NSW gave the applicant an opportunity to respond to this wealth of criticism by providing further information about its proposal. This additional information did not in any way mitigate the issues previously raised. The response and summary of unaddressed issues provided by the residents is included at Attachment 8.

All of these submissions provide evidence to the Committee of the overwhelmingly inadequate nature of Graphic World's DA. And yet without change and only minimal conditions of consent this same application was approved in March 2004 (refer point 5 below). Unlike the issues with the Orange Grove Designer Retail Outlets, clearly with the Graphic World DA the Minister and DIPNR were willing to sweep all problems aside in the desire to approve the application.

4. Meetings with Planning NSW (DIPNR)

During the review process resident representatives, councillors, and other parties trying to resolve the issues met with DIPNR staff on four occasions. We should note that it was only through Clover Moore's intercession with Dr Refshauge that we were given access to DIPNR.

Minutes of the following meetings are included at Attachment 9:

21 February 2003; 26 May 2003; 11 June 2003 (residents and DIPNR minutes); and 9 October 2003.

During these meetings the fundamental problems with the DA were discussed and acknowledged by DIPNR. Note in the minutes to the meeting on 26 May 2003 with so many negatives about the proposed development being put forward, DIPNR staff could only name as a benefit the possible creation of an extra 36 jobs.

At the final meeting with DIPNR it was agreed by Mr Sam Haddad (Executive Director Sustainable Development) that the DA process would halt, while Graphic World's compliance with its current conditions of consent was monitored for a period of 6 to 12 months by a committee made up of representatives of DIPNR, the residents, Marrickville Council, Ashfield Council and Graphic World. If at the end of the monitoring period Graphic World was unable to demonstrate an ability to comply with conditions of consent the DA would be rejected. As the next section documents this never happened and the DA was approved in apparent haste early in 2004.

5. Meeting with Minister Beamer and Subsequent Comments

On 15 October 2003 representatives of the residents (Marc Carter, Penny Miles, and Greg Frith), Michael Maloof (Town Planner) and Ashfield Councillor Emma Brooks-Maher met with Minister Diane Beamer, Michael Meagher (Minister Beamer's Chief of Staff) and Gordon Kirby (Manager of Manufacturing and Rural at DIPNR).

At the meeting the issue of non-conformance with LEPs and other planning standards was discussed. The issue of Graphic World's non-compliance with current conditions of consent was also discussed which demonstrated grave concerns with the ability of the company to comply with DIPNR's proposed conditions to restrict the activities of the Graphic World Printing Group.

In response to this discussion Minister Beamer proposed that a decision on the DA be delayed for 6 -12 months while a compliance period was set in place to assess and measure that the operations of Graphic World could comply with current (and in turn future) conditions. The residents agreed that this compliance period would be a beneficial way to better evaluate a determination of the DA. Furthermore Minister Beamer suggested that a meeting be set-up with DIPNR, residents and the applicant to discuss other possible remedies.

Resident's left the meeting with the Minister's assurances that the compliance period would be implemented and that residents would be involved in this process and kept

abreast of the DA through DIPNR and a subsequent meeting with DIPNR and the applicant would be called (see attached Statutory Declarations for meeting attendees confirming the details as above – Attachments 10 - 12).

Residents sent a letter to Minister Beamer on 21 October 2003 (Attachment 13) to confirm the outcome of meeting.

Despite phone calls made to various staff at DIPNR, residents heard no further information regarding Minister Beamer's proposals. No further correspondence was received from DIPNR or the Minister's office until after the granting of consent for the Graphic World DA.

On 15 March 2004 (5 months after the meeting with Minister Beamer) Michael Meagher phoned one of the residents to inform them that the Minister had granted consent for the Graphic World application and had signed off on the DA. The following press release (Attachment 14) was emailed to the resident (in draft format) on request and was later made available on the DIPNR web site. None of the assurances that Minister Beamer made to residents had been instigated. When questioned by a resident in a phone call Michael Meagher denied that any assurances had been made.

The press release by Minister Beamer dated 16 March 2004 (available on the DIPNR website) begins as follows:

Assistant Planning Minister, Diane Beamer, has announced approval for an extension to the Graphic World printing facility at 14 McGill Street, Lewisham.

"The extension means a \$2.5 million investment boost for Lewisham, 36 new permanent jobs and important social and economic flow-ons for local families and businesses," Ms Beamer said.

This gives a clear indication as to why the Graphic World DA was considered to be of such importance, of such "State Significance". These were the points the Government wanted to emphasise at the time of approving the DA.

Now, five months later, and with criticism being squarely laid at its door over its lack of action to resolve the Orange Grove Designer Outlets Centre debacle, the Government is choosing a different slant.

On 23 July 2004, Premier Carr denied that the 36 jobs in Graphic World Development Application were of "State Significance" and went on to say "the only reason the State Government took control was because it straddled two local government areas". He said "the site at Ashfield wasn't subject to rezoning", however, the development was rejected by Ashfield Council because it didn't comply with the zoning (refer section 2 above). The lack of compliance was over-ridden in order to approve the DA.

Similarly on 23 July 2004, Minister Diane Beamer on the Stateline program said the Graphic World Development Application was not called in because of the 36 jobs. But the creation of jobs has been the consistent theme from Dr Refshauge's press

statements to DIPNR meetings with residents to Minister Beamer's media release announcing the approval.

Minister Beamer has been invited to a public meeting on 23 August 2004 to be jointly sponsored by Ashfield and Marrickville Councils. At that meeting some of the key questions outlined above will be asked again and if the Minister is serious about transparency of process and consistency of decision-making these questions will be answered:

Why was the Graphic World development of "State Significance"?

How many DAs which straddle two local government boundaries have been declared to be of "State Significance"?

Why were the procedural issues raised by Ashfield Council never satisfactorily addressed?

Why has the creation of jobs always been a key factor in any defence of the Graphic World DA and of its "State Significance" and yet in the weeks post-Orange Grove this factor has been constantly denied?

Why did Minister Beamer rush through the development despite assurances to residents and an Ashfield Councillor of due process and a monitoring compliance period?

Conclusion

Clearly the Graphic World DA was called in for reasons other than the development site crossing local government boundaries. Despite all of the problems with the DA from lack of compliance with Ashfield LEP to additional traffic congestion and noise in the Old Canterbury Rd area to a significant compromise of the natural environment, the economic benefit and in particular the "36 jobs" have always been held to justify first its calling in and then its approval.

There is a complete lack of consistency between the Government's treatment of the Graphic World development and the Orange Grove Designer Outlets Centre zoning issue. This, despite the much larger operations and job numbers at Orange Grove.

We are grateful for the opportunity to make this submission to the Committee and hope that your recommendations can help to ameliorate the current inconsistencies and lack of transparency in the Government's planning policies and decisions.

If required we would be happy to propose a representative to act as a witness to the Committee hearing.

N Beattie 10/8/04
Narelle Beattie (on behalf of the McGill Street residents)
15 McGill Street
Lewisham 2049
Telephone: 9560 3771 (h) 9219 2413 (w)