

4 December 2020

The Secretary  
Department of Planning, Industry and Environment  
Locked Bag 5022  
Parramatta NSW 2124

Dear Sir,

**Planning Proposal - Bull and Bush Hotel – PP\_2016\_THILL\_016\_00 – The Hills Council**

We act for the applicants and owner of the *Bull and Bush Hotel (Hotel)*, Baulkham Hills. The Hotel site is the subject of a Planning Proposal to facilitate the urban renewal of perhaps the most strategic site in the Baulkham Hills Town Centre. An urban renewal at this scale is too important not to support and we strongly urge the Secretary to do so for the reasons as set out.

We write and bring this to your attention noting that the Sydney Central Planning Panel (Planning Panel) was appointed by the Secretary of the Department of Planning, Industry and Environment (Department) to be the alternate planning proposal authority and that the Planning Panel has recommended to the Minister that the Planning Proposal not be made. Legal advice on the manner in which the Planning Proposal has been determined by the Panel has otherwise been sought.

In the first instance and in accordance with s 3.34 (7) of the *Environmental Planning and Assessment Act* we respectfully request the Secretary agree to an alteration of the Gateway Determination in order to extend the date for the finalising of the Planning Proposal from 31 December 2020 to 30 June 2021.

We would suggest there are no planning reasons why this should not occur. None of the matters mentioned in the Planning Panel's Decision are matters that cannot be resolved and none are matters which suggest that the actual rezoning sought, the density or height are not appropriate. Rather, the matters mentioned are all ones that are appropriately addressed through a Development Control Plan. There is no disagreement with that.

We in fact note, that the Department's own letter to the Panel dated 26 November suggests a number of ways in which the outstanding matters could be addressed up to June 2021. We support this further time noting that the Hills Council has in fact already resolved to enter into the Voluntary Planning Agreement (**VPA**) with the proponent and that all the matters of detail can be resolved through the Development Control Plan. This is the usual and proper process.

Extending the time in which to finalise the Planning Proposal is entirely consistent with supporting a good planning outcome; the urban renewal of a key site and a major investment in the Baulkham Hills Town Centre.

We otherwise do write to you with serious concerns about the manner in which the Planning Proposal has been considered by the Planning Panel, particularly in regard to the substance of the reasons for the recommendation that the Planning Proposal not be made and the absence of consultation with the proponent in regard to that decision which is undoubtedly a denial of procedural fairness. Such denial clearly raises issues of validity of the decision.

We are of the view that the decision of the Planning Committee of 3 December 2020, was **not** based on a proper consideration of the merits, including incorrectly linking the finalising of the Planning Proposal to a VPA

between our client and the Hills Council. A request to prepare a Development Control Plan by a Planning Panel is itself an unusual process and one that in the normal way would be subject to a public meeting by the relevant Council where they would consider and resolve to exhibit a draft Development Control Plan. Neither has happened and again its absence strongly suggests a lack of procedural fairness.

We do raise particular concerns with the linking of the finalising of the VPA with the finalising of the Planning Proposal. The Department in fact by way of letter to the Planning Panel dated 26 November 2020, states that *is the Department's view that the local contributions have not been agreed to and secured, and therefore the planning proposal is not supported.* We are of the view that this is at complete odds with the Department's own *Draft Planning Agreement Practice Note* dated April 2020 (VPA Practice Note) that expressly includes the following 'fundamental principles' to be adhered to by both planning authorities and developers:

- *'planning authorities should always consider a proposal on its merits, not on the basis of a planning agreement'.*
- *'the progression of a planning proposal or the approval of a development application should never be contingent on entering into a planning agreement'.*

Furthermore [at page 2] that:

*'A planning agreement cannot and should not purport to fetter a planning authority's exercise of statutory functions, in particular the function of a relevant planning authority in relation to a planning proposal'*

To reiterate, we believe there are good and proper planning reasons why the Planning Proposal should be supported and again, respectfully request the Secretary in the first instance, alter the Gateway Determination in order to extend the date for the finalising of the Planning Proposal from 31 December 2020 to 30 June 2021. There is nothing to suggest that the matters remaining to be resolved cannot be addressed during that time and our client intends to do so.

We say as a concluding comment that it will be a perverse outcome if a well progressed and meritorious planning proposal is required to be resubmitted and the process recommenced in circumstances where the State Government has responded to the COVID-19 economic circumstances by extending time periods for development consents and is fast tracking development approvals and rezoning across Sydney. The Planning Proposal will be a very significant investment in the Hills District and generate considerable jobs during construction and further employment opportunities once the commercial/retail component of the proposal is complete.

We look forward to an opportunity to discuss at your earliest convenience. I maybe contacted on 0400 413 701.

Kind Regards,



Mark Grayson  
**Director**  
Knight Frank Town Planning

CC:

Minister for Planning and Public Spaces – the Hon. Rob Stokes MP  
Brett Whitworth – Deputy Secretary  
Catherine Van Laeren – Executive Director Central River City and Western Parkland City