

70

June 3, 1971

File
7078/A1

The Right Hon. the Lord Mayor
Ald. L. Emmet McDermott
Council of the City of Sydney
Town Hall
SYDNEY NSW 2000

My Lord Mayor :

Herewith, as requested, are three copies of a Brief for transmission to Mr Trevor Morling, QC and Mr Murray Wilcox, for their Opinions.

We request opportunity for a conference with Counsel and the City Solicitor, prior to Counsel's determination of Opinion.

Yours faithfully
URBAN SYSTEMS CORPORATION PTY LTD


George Clarke, Project Director
City of Sydney Strategic Plan

WD/mb
encls.



BRIEF FOR COUNSEL

1.
 - (a) The Council of the City of Sydney has commissioned a Consultant to prepare a Strategic Plan for the City.
 - (b) The proposed strategy is summarised in the document entitled "The Strategy Summarised", Document 'D' attached hereto. The passages marked in red are relevant to these matters.
 - (c) Council's Consultant preparing the City of Sydney Strategic Plan proposes that Council's policy on development control and floor space ratio indices and bonuses should be generally as set out in the document entitled "POLICY ON DEVELOPMENT CONTROL AND FLOOR SPACE RATIO INDICES AND BONUSES", Document 'E' attached hereto.
2. Opinion is requested as to whether :
 - (a) the Statement of "COUNCIL'S STATUTORY POWERS AND OBLIGATIONS", p. 3 - 5, Document 'E' attached hereto, correctly sets out the position.
 - (b) the legal position is in fact as set out in "MATTERS TO BE COVERED BY DEVELOPMENT CONTROL CODES AND PROCEDURES FOR THEIR ADOPTION AND REVISION", p.5 of Document 'E' attached hereto.
 - (c) there are any legal problems inherent in management by precincts as proposed in pp. 7 - 10 of Document 'E' attached hereto.
3. Opinion is also requested as to whether the Council, having in mind its obligation to consider every case on its merits, can adopt and implement a Code, the objects of which are :
 - (a) to give the Council a means of encouraging or discouraging development of a particular kind in any Precinct by :
 - (i) requiring that a specified proportion of the permissible floor space be developed and used only for certain designated purposes;



- (ii) by the giving of floor space ratio bonuses as incentives for the provision of space for certain specified uses; and
 - (iii) by specifying the uses for which the bonus floor space may be used.
- (b) to give a floor space ratio bonus for a public facility, such as a pedestrian subway or bridge, or a public convenience, provided by a developer as a condition of development consent or voluntarily with the approval of Council.
- (c) to give a floor space ratio bonus for an obligatory or voluntary contribution towards provision by the Council of a system of public facilities such as a system of public parking stations, such contribution to be paid into the Trust Fund and applied only to the purpose for which the contribution was made.
- (d) to permit the Council to fix a basic and maximum floor space ratio without attracting claims for compensation.
- (e) to permit the sale or transfer of an assumed floor space ratio from the site of a place or structure which it is desired to preserve to other approved sites in return for acceptable guarantees of the preservation and maintenance of the place or structure.

4. Copies of the following documents are attached :-

- A. Exhibited Draft City of Sydney Planning Scheme Ordinance -
Clauses 44, 45 and 46
- B. Suggested Amendments to the City of Sydney Planning Scheme Ordinance which were the subject of a further exhibition. Report to Height of Buildings Advisory Committee.
- C. Draft City of Sydney Planning Scheme Ordinance as submitted to the Parliamentary Draughtsman, March, 1971
- D. Paper entitled "The Strategy Summarised"
- E. Paper dated 27.5.71 entitled "Policy on Development Control and Floor Space Ratio Indices and Bonuses"
- F. Paper entitled "The Strategic Plan - First Objective Policy 3"

file legal

File Copy

DRAFT BRIEF FOR COUNSEL

2.6.71.

1. To assist the Council of the City of Sydney in the exercise of its powers and discretion under the Local Government Act and the City of Sydney Planning Scheme Ordinance, to positively prescribe the space about buildings, the height, floor space, use, design, external appearance or character of buildings to achieve Council's strategic planning objectives and policies, it is proposed to prepare and adopt a Floor Space Ratio and Development Control Code for each Precinct (being a defined sub-area of the City, lying mostly but not necessarily exclusively within one Zone) generally reducing the base ratio previously permitted but granting bonus ratios in return for action by developers to :
 - * provide a diversity of uses most appropriate for each Precinct
 - * construct (and maintain if so required) free of cost to Council specified public facilities or amenities to approved standards of location or design
 - * contribute financially to Council funds for the provision of specified public facilities or amenities
2. Opinion is requested as to whether the Council can adopt and implement a Code, the objects of which are :
 - (a) to give the Council a means of encouraging or discouraging development of a particular kind in any Precinct by -
 - (i) requirements that a specified proportion of the permissible floor space ratio can only be developed and used for certain uses as specified
 - and
 - (ii) by the giving of floor space ratio bonuses as incentives for the provision of certain specified uses;

- (b) to give a bonus for a public facility, such as a pedestrian subway or bridge, or a public convenience, provided by a developer as a condition of development consent or voluntarily with the approval of Council;
- (c) to give a bonus for an obligatory or voluntary contribution towards a trust account for the provision by Council of a system of public facilities, such as a system of public parking stations;
- (d) to permit the transfer of potential floorspace ratio from the site of a building or place which it is desired to preserve in return for the preservation of the building or place;
- (e) to permit the Council to fix a basic and maximum floor space ratio without attracting claims for compensation.

3. Copies of the following documents are attached :

- A. Exhibited City of Sydney Planning Scheme Ordinance
 - B. Suggested Amendments to the City of Sydney Planning Scheme Ordinance which were the subject of a further exhibition
 - C. Draft City of Sydney Planning Scheme Ordinance as submitted to the Parliamentary Draughtsman
 - D. Paper dated 27.5.71 entitled : 'Policy on Development Control and Floor Space Ratio Indices and Bonuses'
 - E. Paper entitled 'The Strategic Plan First Objective - Policy 3 '.
-