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November 22, 1971

Ald. Andrew Briger
Council of the City of Sydney
Town Hall
SYDNEY NSW 2000

File A1
7078/A3/A40

Dear Ald. Briger :

re : Queries by Ald. David Griffin re FSR Bonus
 Elements 5 and 6, received on 19.11.71

A. re FSR Bonus Element 5 for Contributions to
Council's Car Parking System

1. Draft answers by Mr W.A.C. Dale to Ald. Griffin's questions. Three copies are enclosed, for Ald. Griffin, Ald. Port and you.
2. We have obtained copies of Judgements by Mr Justice Hardie in cases involving unsuccessful Appeals against levies for car parking by Parramatta and Blacktown Councils. Twelve copies are enclosed. These Judgements by Hardie support the legal conclusions drawn by Morling, Wilcox and your Consultants.

B. re FSR Bonuses by way of Transfer of FSR from sites
of Historic Buildings

Twelve copies are enclosed of ten pages of material on this subject from New York, San Francisco and Chicago. We have not been able over the weekend to compile fully detailed answers to Ald. Griffin's queries on this subject. Many of the answers can be found in the US material.

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C. Advice on Procedure

1. Until the City of Sydney Planning Scheme Ordinance is amended to incorporate such provisions of the Development Control and Floor Space Ratio Code as may be adopted by Council, the Code is only a set of rules by which Council agrees to be guided in the exercise of its discretion in the enforcement of the existing Planning Scheme Ordinance. As matters now stand, Council is in a position to consider cases on their merits and to exercise discretion very broadly.
2. As Alderman Griffin points out, certainty in Law is its greatest virtue. Incorporating provisions of the Codes in the Planning Scheme Ordinance will give greater certainty but limit the extent of Council's discretion. Council has resolved to prepare a Varying Scheme, opening the way to thorough research and the working out of administrative procedures, by Council's staff, with or without the assistance of consultants. Any Varying Scheme will be reviewed by the State Planning Authority and the Minister before becoming Law so that provisions in the Ordinance as amended will stand up legally and be as good technically as present town planning knowledge can make them.
3. While this is being done, the use of the Codes in their present form with a thorough investigation of every development application will yield invaluable information based on experience of actual cases. The Codes provide the guidelines which is all that can be expected in a Strategic Plan. Rules designed to meet all likely combinations of circumstances can only be formulated as a result of experience gained in the application of the Codes. This applies particularly to provisions for the Preservation of Historic Structures or Places, which are novel to Australia. The parking proposals are the result of thorough research and have been generally accepted by the various authorities concerned.
4. The right of appeal (at present to the Land and Valuation Court and later to an Appeals Tribunal to be set up by legislation now before the NSW Parliament) provides an

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effective safeguard to land owners against any wrongful, negligent or oppressive use of Council's powers during the trial period. Amendment of the Planning Scheme Ordinance will have the effect of limiting the extent of Council's discretion and of narrowing the grounds for appeal.

D. Recommendation

We recommend that, in the Council resolution adopting the Codes, you incorporate a direction to Council's City Planner and Planning Consultant to prepare and submit a Manual of Administrative Procedures to be followed in the application of the FSR and Parking Codes.

E. Other Enclosures

Attached herewith for you personally are copies of correspondence between ourselves and Council, dating back to June, 1970, on the matter of contributions for car parking. You will see that we have consistently drawn Council's attention to the complexity of these matters.

Yours sincerely

George Clarke

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