

Item 12

Exemption from Tender - Planning Agreement - 118-130 Epsom Road and 905 South Dowling Street, Zetland

File No: VPA/2023/10

Summary

In 2015, the City prepared Public Domain Concept and Civil plans to guide the development of new public infrastructure in the Epsom Park Precinct, part of the Green Square urban renewal area as it transforms from an industrial and commercial area into a revitalised, residential and mixed-use locality.

The City's plans identify a significant network of public streets, through site links and open spaces to revitalise the Precinct and provide connectivity to surrounding areas for pedestrians and cyclists. The plans include Gunyama Park Aquatic and Recreation Centre, Mulgu Park, Zetland Avenue and George Julius Avenue, both part of the 'Eastern Transit Corridor', a significant future mass transit corridor through the Precinct connecting to the Green Square town centre to the west and Rosebery to the south.

The City is responsible for infrastructure delivery in the urban renewal area and has the option to undertake the work itself, such as the Gunyama Park Aquatic and Recreation Centre, or to engage developers to undertake the work on their land as their sites re-develop, such as Wulaba Park (Meriton).

In 2015, the City prepared a concept design for Mulgu Park. Development of the design involved community consultation and a presentation to the City's Design Advisory Panel.

The site of the future park is located on the property currently known as 118-130 Epsom Road and 905 South Dowling Street, Zetland.

In August 2023, the developer of 118-130 Epsom Road and 905 South Dowling Street, Zetland, Karimbla Properties (No. 60) Pty Ltd, submitted a Stage 1 Concept Development Application for roadways, pedestrian access ways, public open spaces and building envelopes with basement parking and associated landscaping (D/2023/724). The Development Application was endorsed by the Central Sydney Planning Committee at its meeting of 9 May 2024.

In relation to the Development Application, the developer has made a public benefit offer to dedicate land and undertake works to deliver the new infrastructure outlined in the City's Public Domain and Civil Design Concept plans. This includes parts of Zetland Avenue, Chimes Street, Peters Street, Rose Valley Way, Defries Avenue, George Julius Avenue, Mulgu Park, two pocket parks, a footpath widening to Epsom Road and the last required extension of the Green Square trunk drain. The substantial land dedication and public infrastructure delivery is proposed to be secured in a Planning Agreement.

Under the subsequent Stage 2 Detailed Development Applications, the contributions of this developer will be \$24,952,005, comprising community infrastructure under clause 6.14 of the Sydney Local Environment Plan 2012 (SLEP) and Section 7.11 contributions. The developer will also be required to pay affordable housing contributions in accordance with the SLEP.

The total value of the complete land dedication and public infrastructure works detailed above is \$32,121,894.

The City has an opportunity to request that Karimbla Properties (No. 60) Pty Ltd construct Mulgu Park, the adjoining pedestrian areas and two pocket parks (the parks) as part of the Planning Agreement. This contribution will ensure the parks are delivered earlier and at less cost as part of the new development, rather than if the City is to construct the parks after the land has been remediated and dedicated at the end of the development. To do so, the City would transfer the \$7,169,889 to cover the additional works.

The City has funding allocated for the Epsom Park Precinct New Open Space project contained in the draft capital works budget and Long Term Financial Plan. A payment of \$7,169,889 will be eligible for contribution funding recoupment by other developers in the area.

The procurement of a contractor to deliver the parks works would usually attract a public tender under section 55 of the Local Government Act 1993 (the Act) as the estimated contract amount is in excess of \$250,000. The decision not to tender due to extenuating circumstance must be made by resolution of Council.

This report recommends that Council approve the engagement of Karimbla Properties (No. 60) Pty Ltd to undertake the parks work without inviting tenders as it will provide an advantageous financial outcome when compared to the works if they were to be undertaken by the City in the future, and facilitate the early completion in line with the completion of the adjacent buildings.

This situation is not unique. In July 2016, Council approved a similar exemption from tender to engage Mirvac to deliver new roads as part of its development at 13-21 Lachlan Street, Waterloo. The City's contribution payment through the Planning Agreement was \$1.37 million and ensured the coordinated and timely delivery of the works adjacent to Dyuralya Square at the least cost to the City.

The City also notes that a neighbouring site in the Epsom Park Precinct, the current Ausgrid depot site, is also expected to have the value of the required land dedications and public infrastructure greater than the estimated community infrastructure and Section 7.11 contributions. Negotiations on that development and Planning Agreement have recently commenced.

Recommendation

It is resolved that:

- (A) Council approve an exemption from tender in accordance with section 55(3)(i) of the Local Government Act 1993 to contribute \$7,169,889 to the Planning Agreement for 118-130 Epsom Road and 905 South Dowling Street, Zetland;
- (B) Council note that a satisfactory result would not be achieved by inviting tenders for this work because:
 - (i) the developer will be delivering community infrastructure in the form of new roads, trunk drain and parks as works-in-kind required by Clause 6.14 of Sydney Local Environmental Plan 2012;
 - (ii) the infrastructure works will be co-ordinated and delivered as one project in a timely manner as part of the re-development of the entire site at 118-130 Epsom Road and 905 South Dowling Street, Zetland;
 - (iii) delivery as part of the Planning Agreement will facilitate completion of Mulgu Park, the adjoining pedestrian areas and two pocket parks approximately four years earlier, which will reduce disruption to the local community as works could not otherwise commence until the developer's works were completed and land dedicated to the City;
 - (iv) physical constraints prevent the separate delivery of new parks by the City in a cost-efficient manner, due to substantial level changes necessitating temporary and redundant works such as retaining walls;
 - (v) delivering the new parks separately would restrict the pedestrian and vehicle access to the new development, necessitating a lengthy and expensive construction methodology by the City; and
 - (vi) the engagement of the developer to do the works provides value for money to the City as the offer by Karimbla Properties (No. 60) Pty Ltd has been peer reviewed by the City's quantity surveyor and provides financial savings when compared to the works being undertaken separately by the City in the future, including through elimination of temporary works, whole-of-site access for excavation, bulk earthworks, etc and given the developer's existing knowledge, resources and experience associated with the project site; and
- (C) Council endorse the City's payment of \$7,169,889 from the Epsom Park Precinct New Open Space project contained in the draft capital works budget and Long Term Financial Plan as a partial payment of the cost of the developer's works for the construction of Mulgu Park, the adjoining pedestrian areas and two pocket parks as part of the Planning Agreement for 118-130 Epsom Road and 905 South Dowling Street, Zetland.

Attachments

Attachment A. Epsom Park Precinct Concept Plan

Attachment B. Mulgu Park Concept Design

Attachment C. Public Benefit Offer from Karimbla Properties (No. 60) Pty Ltd for 118-130 Epsom Road and 905 South Dowling Street, Zetland

Attachment D. Site Plan – Works Associated with Development

Attachment E. Cost Estimate (Confidential)

Background

1. In May 2012, Council adopted the Sydney Development Control Plan 2012 (DCP). It includes Epsom Park Precinct as a Specific Area under section 5.
2. The DCP states that Epsom Park is to be a new neighbourhood with a strong sense of place and public life, where residents enjoy proximity to the City, easy access to the Green Square Town Centre, good transport links, open parklands and recreational opportunities, and specialty retail activities. It is to have a strong urban character and identity built on the quality of the streets, architecture, good public transport, facilities and services.
3. The precinct has experienced significant transformation in the last 8 years, with new residential developments, new streets and Gunyama Park Aquatic and Recreation Centre.
4. The Epsom Park Precinct is bounded by Joynton Avenue, Epsom Road, South Dowling Street and Zetland Avenue, Zetland.
5. The DCP identifies a network of streets, through site links and open spaces to revitalise the Precinct and provide connectivity to surrounding areas for pedestrians and cyclists. It includes Zetland Avenue and George Julius Avenue, both part of the 'Eastern Transit Corridor', a significant future mass transit corridor through the Precinct connecting to the Green Square town centre to the west and Rosebery to the south.
6. In 2015, the City prepared detailed Public Domain and Civil Design Concept plans to guide the delivery of new infrastructure in the Epsom Park Precinct. The general arrangement drawing at Attachment A.
7. The City is responsible for infrastructure delivery in the urban renewal area and has the option to undertake the work itself, or to engage developers to undertake the work on their land as their sites re-develop.
8. In 2015, the City prepared a concept design for Mulgu Park. Development of the design involved community consultation and a presentation to the City's Design Advisory Panel. An extract of the design is at Attachment B.
9. The site of the future park is located on the property currently known as 118-130 Epsom Road and 905 South Dowling Street, Zetland.
10. On 16 August 2023, the landowner at 118-130 Epsom Road and 905 South Dowling Street, Zetland, Karimbla Properties (No. 60) Pty Ltd, submitted a Stage 1 Concept Development Application for roadways, pedestrian access ways, public open spaces and building envelopes with basement parking and associated landscaping (D/2023/724). The Development Application will be reported to the Central Sydney Planning Committee with a recommendation for a deferred commencement, subject to a draft Planning Agreement being exhibited and any submissions considered.
11. On 16 August 2023, Karimbla Properties (No. 60) Pty Ltd also submitted a Development Application (D/2023/753) for construction of roads, sewer, stormwater and water supply infrastructure associated with the development. The Development Application is currently under assessment.

12. The proposed development seeks to utilise additional floor space available under Clause 6.14 of the SLEP when providing community infrastructure. An additional 20,424.5m² floor space, generates a community infrastructure contribution of \$9,701,637. Additionally, the development generates \$15,250,368 in section 7.11 contributions (as at March 2024).
13. This development site includes parts of the yet to be constructed Zetland Avenue, Chimes Street, Peters Street, Rose Valley Way, Defries Avenue, George Julius Avenue, Mulgu Park, two small pocket parks and a footpath widening to Epsom Road as identified in the Sydney Development Control Plan 2012. The site also includes a future extension of the Green Square trunk drain.
14. To accommodate flood management strategies, the new infrastructure is required to be constructed up to two metres above existing ground levels. These level changes will require strategic coordination of works within the site to ensure impacts external to the site and downstream are minimised.
15. Karimbla Properties (No 60) Pty Ltd has made a public benefit offer to enter into a Planning Agreement in relation to the development applications. The public benefit offer is at Attachment C.
16. In summary, the total public benefit offer of \$32,121,894 consists of dedication of 16,939sqm of land for new roads and parks (\$3,387,860) and embellishment works for the construction of new roads, parks and trunk drain on the land (\$28,734,034).
17. The scope of works is in accordance with the City's Public Domain and Civil Design Concept Plans for the Epsom Park Precinct. A site plan showing the extent of the works is at Attachment D
18. The City engaged an independent Quantity Surveyor to confirm the offer as a reasonable cost estimate of works. The cost estimate is included at confidential Attachment E.
19. The total contributions generated by the development for community infrastructure (\$9,701,637) and section 7.11 (\$15,250,368) will be \$24,952,005.
20. The total value of public benefits if delivered in full, exceeds the development contributions by \$7,169,889.
21. The City has an opportunity through the Planning Agreement to pay \$7,169,889 towards the construction of the three parks and adjacent new roads by the landowner to facilitate the delivery of all the community infrastructure as an integral part of the development.
22. Payment of this amount would be required on a milestone basis and completion of the relevant elements of the works to the City's satisfaction.
23. Having regard to the nature of the development, the necessary infrastructure works to service the development and the cost estimate of the works, it is recommended that Council approve this payment.
24. If approved by Council, acceptance of the public benefit offer and approval to exhibit the draft Planning Agreement will be sought from the Chief Executive Officer in accordance with the delegations.

25. The draft Planning Agreement will be exhibited for 28 days
26. A neighbouring site in the Epsom Park Precinct, the current Ausgrid depot site, is also expected to have the value of the required land dedications and public infrastructure greater than the estimated community infrastructure and Section 7.11 contributions.
27. Council approved a similar exemption from tender in July 2016 to engage Mirvac to deliver new roads as part of their development at 13-21 Lachlan Street, Waterloo. The City's contribution payment through that Planning Agreement was \$1.37 million and ensured the coordinated and timely delivery of the works at the least cost to the City.

Risks

28. Areas of the site have been formerly used for industrial purposes and may include some contamination, which will be remediated by the developer in accordance with the development consent, at no cost to the City. A Site Audit Statement will confirm that the works and land are fit for purpose in accordance with the EPA Guidelines.
29. The Planning Agreement will require the developer's works to be secured by a guarantee to mitigate the City's financial risk.
30. Following completion of the works, the City will hold a guarantee for 10 per cent of the work's value for a 12-month defects liability period under the Planning Agreement.
31. The Planning Agreement will define the City's contribution as a fixed sum paid in instalments linked to milestones including completion to the City's satisfaction.
32. The Planning Agreement will include acquisition clauses should the developer fail to dedicate the land in accordance with the Agreement.
33. The Planning Agreement will include rights and remedies for the City to complete the work should the developer fail in its undertakings.

Financial Implications

34. There are sufficient funds allocated for the payment of \$7,169,889 within the Epsom Park Precinct New Open Space project contained in the draft capital works budget and Long Term Financial Plan.
35. It is anticipated that works would be undertaken no earlier than 2026, so the payment is required at the earliest in the 2025/26 financial year
36. The delivery of the infrastructure works will have minimal impact on the organisation, as the project is proposed to be delivered by the developer of 118-130 Epsom Road and 905 South Dowling Street, Zetland.
37. City officers who oversee the implementation of the Planning Agreement ensure the works are delivered to a high standard. Delivery of the works by the developer will provide organisational efficiencies, as City staff will not be assigned to a delivery role.

Relevant Legislation

38. An exemption from tender is sought in accordance with section 55(3)(i) of the Local Government Act 1993 (the Act).
39. The exemption from tender process has been conducted in accordance with the Local Government Act 1993 and the Local Government (General) Regulation 2021.
40. Local Government Act 1993 - Section 10A provides that a council may close to the public so much of its meeting as comprises the discussion of information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business.
41. Attachment E contains confidential commercial information which, if disclosed, would:
 - (a) confer a commercial advantage on a person with whom Council is conducting (or proposes to conduct) business; and
 - (b) prejudice the commercial position of the person who supplied it.
42. Discussion of the matter in an open meeting would, on balance, be contrary to the public interest because it would compromise Council's ability to negotiate fairly and commercially to achieve the best outcome for its ratepayers.
43. Environmental Planning and Assessment Act 1979.
44. Environmental Planning and Assessment Regulations 2021.

Critical Dates / Time Frames

45. The Stage 1 Concept Development Application for 118-130 Epsom Road and 905 South Dowling Street, Zetland was endorsed by the Central Sydney Planning Committee at its meeting of 9 May 2024.
46. The developer plans to commence work on site as soon as the Development Application is determined, and relevant pre-commencement conditions are satisfied.
47. The community infrastructure works are required to be completed in stages prior to the issue of the Occupation Certificate for the relevant adjoining building.
48. If the opportunity for the developer to construct the new parks and adjacent roads in association with their building works is not taken, access to the land for the City to undertake the work will not be available until the building works are completed and the land dedicated.

Options

49. The City could deliver the new parks and adjacent roads after the land has been remediated and dedicated and the development completed. This would result in:
 - (a) a significant delay in the parks being completed

- (b) the City being subject to increased construction costs
 - (c) the City incurring the additional costs of a separate contractor engagement
 - (d) the reworking of some temporary and interim works undertaken by the developer; and
 - (e) the City contributing the cost of the temporary, interim and redundant work, which is estimated at approximately \$1,281,081.
50. If the developer were to exclude the new parks and adjacent roads and construct only part of the infrastructure up to the value of the contributions, this would result in:
- (a) ground floor levels and entry ways of the adjoining buildings being above ground level;
 - (b) substantial works-in-kind being redundant, including temporary retaining walls, batters and interim landscaping;
 - (c) the completed development having no access to significant new public open space;
 - (d) the timeframe to deliver all the required new infrastructure being extended as the location of the new parks and adjacent roads are too constrained for the City to undertake the works concurrently with the development; and
 - (e) restriction of the pedestrian and vehicle access to the new development when delivering the remaining elements, necessitating a lengthy and expensive construction methodology by the City.
51. Delivery by the City in the future is not recommended due to the impractical and costly outcomes of delivering the community infrastructure in a piecemeal manner after the development is completed.

Public Consultation

52. A draft Planning Agreement will be exhibited for 28 days in accordance with Environmental Planning and Assessment Act and Regulations.

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