

RELEVANT INFORMATION FOR THE CENTRAL SYDNEY PLANNING COMMITTEE

FILE: S022751 **DATE:** 29 March 2012
TO: Lord Mayor and CSPC Members
FROM: Graham Jahn, Director City Planning, Development and Transport
SUBJECT: Information Relevant To Item 8 - Post Exhibition - Green Square Town Centre Review of Planning Controls - At Central Sydney Planning Committee 29 March 2012

AMENDED RECOMMENDATION

The purpose of this memo is to bring to the attention of the Central Sydney Planning Committee those matters discussed at the Planning Development and Transport Committee meeting on Monday 26 March 2012 that relate to the Planning Proposal and proposed LEP. Matters relating to the draft DCP were also discussed and further information sought by Councillors. In response to representations made by a landowner relating to LEP matters, which are supported by Council staff, it is proposed to amend the recommendation. This matter was referred to the Council meeting on Monday 2 April without recommendation.

An amended recommendation for the consideration of the Central Sydney Planning Committee is shown below, with inserted text and additional clauses shown as ***bold italics*** and deleted text as ~~strikethrough~~.

It is resolved that the Central Sydney Planning Committee:

- (F) approve changes to the Planning Proposal at Attachment A to the subject report consisting of amendments to:
- (i) ***Table 1: Breakdown of Current Town Centre LEP and Proposed Gross Floor Area (GFA) on page 12 of the Planning Proposal, being amended to show for the "John Newell Pty Ltd" site at 301-303 Botany Road, a maximum FSR with design excellence of 7.205:1 and a maximum GFA with design excellence of 39,404 square metres, and consequential amendments to the totals calculated in the table; and***
 - (ii) ***Appendix B: LEP Provisions Drafting Advice, Part 6, Clause 6.21 Design Excellence on page 7, being amended to delete the following text:***

~~The site at 301-303 Botany Road, Zetland (Lot 2 DP1015633) is to be excluded from the application of this clause.~~

Background

The Planning Development and Transport Committee on 26 March 2011 considered a report recommending adoption of the revised Town Centre Planning Proposal and the revised Draft *Green Square Town Centre Development Control Plan 2012* (the Draft Town Centre DCP) shown at Attachments A and B to the subject report, respectively.

As a result of representations by and on behalf of a landowner within the Town Centre at the Planning Development and Transport Committee meeting which are supported by Council staff it is proposed to amend the recommendations as they relate to LEP matters.

Site 301-303 Botany Road, Zetland

Mr John Newell, the owner of the site at 301-303 Botany Road, Zetland, objected to an amendment in the revised Planning Proposal which restricts the site's potential to achieve up to 10% additional gross floor area (GFA) for "design excellence". The key points raised by Mr Newell include:

- objection to the subject site being the only site in the Town Centre specifically excluded from the potential to achieve the additional GFA, which is different to what he was advised prior to Friday 23 March 2012;
- the lack of consultation and late advice by City officers that the above amendment is being proposed to the exhibited Planning Proposal; and
- the amendment will prevent the achievement of the maximum GFA permissible in the separate site-specific Planning Proposal approved for the site in July 2012, and jeopardises the voluntary Planning Agreement executed between Mr Newell and the City of Sydney, which offers to provide public benefits for the Town Centre.

Response:

Exhibited Planning Proposal and Application of Design Excellence

The Planning Proposal as exhibited shows at **Table 1** a breakdown per land holding of the GFA and floor space ratio (FSR) under: the current *South Sydney Local Environmental Plan 1998 (Amendment No 17) – Green Square Town Centre* (the current Town Centre LEP); proposed in the Planning Proposal; and maximum achievable with "design excellence". An extract showing the subject site is copied below, with the post-exhibition amendments shown in bold.

Table 1: Breakdown of current Town Centre LEP and proposed gross floor area (GFA)

| OWNER | ADDRESS | LOT AREA (sqm) | CURRENT LEP FSR | CURRENT LEP GFA (sqm) | PROPOSED FSR | PROPOSED GFA (sqm) | MAX FSR WITH DES EXC | MAX GFA WITH DES EXC (M ²) |
|---------------------|-------------------|--------------------------------|--------------------------------|-----------------------|--------------------------------|-----------------------------------|--------------------------------|--|
| John Newell Pty Ltd | 301-303 Botany Rd | 5697 5469 | 6.28 6.55 | 35800 | 6.28 6.55 | 35800 35,822 | 6.28 6.55 | 35800* 35,822 |

Note: The **current and** proposed FSR and GFA calculations do not include the potential for additional floorspace for design excellence.

* Denotes the maximum gross floor area with design excellence

It is clear from **Table 1** that the maximum GFA, at around 35,800 square metres, that the site was assessed as capable of achieving is similar under the current LEP, the proposed and the maximum with any “design excellence”. The amendments proposed to **Table 1** are minor, and they result from a correction to the lot area and the FSR calculation.

Consistent with the remainder of the Town Centre, the maximum achievable GFA shown in **Table 1** is informed by detailed urban design testing undertaken by the City. The testing establishes the maximum building envelopes and the resultant GFA. Given the subject site lies north of the future Town Centre plazas, the proposed building envelopes aim to achieve adequate solar access to the plazas. No additional height or GFA was considered appropriate for this site, and this is reflected in **Table 1** of the Planning Proposal, both as exhibited and as revised post-exhibition.

To clarify this, the revised drafting instructions for the new LEP include a notation. The notation is shown in blue italics in *Clause 6.21 Division 4 Design Excellence* at Appendix B of the Planning Proposal, at Attachment A of the subject report. It specifically excludes the subject site from the application of the clause, and is consistent with the information presented in **Table 1** of the exhibited Planning Proposal.

The landowner’s objection to the above restriction is based on the documentation being prepared for a development application (DA), which seeks to achieve the 10% additional GFA the current Town Centre LEP offers. However, it is not until the DA is assessed by the City and determined, that the quantum of additional achievable GFA can be confirmed.

To retain the opportunity for development on the site to be able to demonstrate at DA stage that an additional GFA up to 10% can be achieved through “design excellence”, it is recommended to amend **Table 1** and *Clause 6.21 Division 4 Design Excellence* in the Planning Proposal shown at Attachment A to the subject report. It should be noted that the City’s built form testing shows that additional GFA at the upper floor levels of the envelope will have unacceptable overshadowing impacts on the Town Centre’s public domain and SEPP 65 impacts. This testing assumes only one full level of commercial development at ground level and that additional floor space may be achieved within the lower or podium levels. The controls state that it is incumbent on the applicant in their development application to demonstrate that the maximum GFA or a proportion thereof may be achieved by demonstrating design excellence without creating unacceptable off site impacts, such as maintaining an acceptable level of solar access to the public domain and SEPP 65 compliance. The proposed amendments as outlined in clause (F) of the revised recommendation include:

- increasing the maximum GFA with “design excellence” to 39,404 square metres, which equates to an FSR of 7.205:1; and
- deleting the notation specific to the site in the LEP drafting advice.

Consultation with the landowner

Mr Newell stated he was not consulted on the proposed changes to the Planning Proposal and that he was only advised on Friday 23 March 2012 of the exclusion of the site from the 10% additional GFA.

The Planning Proposal was on public exhibition from 22 November to 20 December 2011. Notification of the exhibition was through the City of Sydney website, the *Sydney Morning Herald* and *Central*. The City notified the public exhibition in writing to all Town Centre landowners. A summary of the submission on the exhibited Planning Proposal and Draft Town Centre DCP made by JBA Planning on behalf of Mr Newell is shown at Attachment C of the subject report (submission No .10).

Further, on Friday morning 23 March 2012 the City notified submitters that the Planning Development and Transport Committee was to consider the officer's report on the outcomes of the exhibition. Advice of the Central Sydney Planning Committee meeting on 29 March 2012 was sent on Monday 26 March 2012.

The exhibited Planning Proposal clearly showed in **Table 1** the maximum GFA the site can potentially achieve. The GFA as exhibited and as proposed to be amended are both shown in the revised Planning Proposal at Attachment A to the subject report. As discussed above, the post-public exhibition changes proposed to **Table 1** are minor. The additional notation in the drafting instructions at *Clause 6.21 Division 4 Design Excellence* at Appendix B of the revised Planning Proposal was added to clarify the GFA limitation on the site clearly spelt out at **Table 1**. Therefore, further consultation with the landowner was not necessary given the minor nature of the changes to the exhibited Planning Proposal.

Site-specific Planning Proposal and voluntary Planning Agreement

A separate site-specific Planning Proposal to amend the current Town Centre LEP to vary the land use mix was approved by Council and the Central Sydney Planning Committee in July 2011. The LEP amendment is to increase the amount of retail and residential GFA permissible and delete the commercial GFA, with no changes to the building envelopes or total GFA. The amendment is anticipated to be gazetted in the next few months.

The landowner has entered into a voluntary Planning Agreement that provides for public benefits, which include amongst other things, a monetary contribution to the Town Centre "essential infrastructure" and connection to the City's "Green Infrastructure". The agreement will be in force once the LEP amendment is gazetted.

The landowner is also preparing a DA for lodgement once the LEP amendment is gazetted.

The landowner stated the site-specific Planning Proposal, the voluntary Planning Agreement and the DA documentation have all progressed on the basis of achieving the additional 10% GFA. Although this may have been assumed by the landowner it is not until the DA is assessed by the City and determined that the achievable GFA can be confirmed.

It is noted however, that the site-specific Planning Proposal to amend the current Town Centre LEP and the associated Planning Agreement have progressed ahead of the subject Town Centre Planning Proposal, which seeks to bring the planning controls for the site into a Standard Instrument format. Given the imminent expected gazettal of the site-specific LEP amendment, the DA will be able to proceed under this LEP, unaffected by the controls in the Town Centre Planning Proposal.

It is intended the Town Centre Planning Proposal will be "deferred" as with the current Town Centre LEP. The subject site will also be "deferred" and so, the new controls will not apply until a replacement Planning Agreement that refers to the new Standard Instrument-compliant controls is in place. This can only be done at the request of the landowner. Therefore the Town Centre Planning Proposal before the Central Sydney Planning Committee for consideration, shown at Attachment A of the subject report, will not impede the landowner's progress of the development of the site.

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Approved



**Graham Jahn, Director City Planning,
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