

ITEM 6. 501-509 BOTANY ROAD ZETLAND - ESSENTIAL TERMS FOR DRAFT VOLUNTARY PLANNING AGREEMENT FOR PUBLIC EXHIBITION AND UNDEFERRAL

FILE NO: S106837

SUMMARY

This report seeks approval to un-defer the zoning of the land at 501-509 Botany Road, Zetland which comprises 'Development Site 10' in the Green Square Town Centre.

The Green Square Town Centre is identified as a 'Planned Major Centre' in the NSW Government's *Metropolitan Plan for Sydney 2036* and the City's *Sustainable Sydney 2030* strategy. It will make a substantial contribution to the *Sustainable Sydney 2030* targets and directions that support sustainable urban renewal, sustainable forms of transport and affordable housing. Development activity is gaining momentum in the Green Square Town Centre.

The future planning controls for this land are contained in the *South Sydney Local Environmental Plan 1998*, (South Sydney LEP) but are currently 'deferred' under Section 59 of the *Environmental Planning and Assessment Act 1979* (the Act). The site's current zoning is *Zone 4a General Industrial* under the *City of Sydney Planning Scheme Ordinance 1971*.

In April and March 2012, Council and the Central Sydney Planning Committee (CSPC), respectively, approved the *Planning Proposal Sydney Local Environmental Plan 2010 (Green Square Town Centre) – Sites 301 Botany Road, 501 Botany Road, 509 Botany Road, 3 Joynton Avenue, 511-515 Botany Road, 97-115 Portman Street, 811 Elizabeth Street, Zetland; 312-318 Botany Road, 320-322 Botany Road, 324 Botany Road, 318A Botany Road, 6-12 O'Riordan Street and 2A Bourke Road, Alexandria* (the draft Town Centre LEP). The Planning Proposal excludes sites which are subject to the Landcom/Mirvac/Leighton Planning Proposal approved by Council and the Central Sydney Planning Committee in December 2011.

The draft Town Centre Local Environmental Plan has been referred to the Department of Planning and Infrastructure (the Department) with a request that it be made in accordance with Sections 58 and 59 of the Act. When made, the draft Town Centre Local Environmental Plan will replace planning controls contained in the *South Sydney Local Environmental Plan 1998*, but will also be 'deferred'.

Following the gazettal of the draft Town Centre Local Environmental Plan, the controls can be 'un-deferred', or made operative, once there is an agreement in place between the landowner and the City of Sydney on the delivery of the required public infrastructure, as specified in the *Green Square Town Centre Infrastructure Strategy (2006)*, and any other public benefits.

The owner of the site has provided a letter of offer to enter into a voluntary Planning Agreement with the City for the provision of public benefits. The discussions on the voluntary Planning Agreement are ongoing as both parties work to finalise the terms and obligations of the voluntary Planning Agreement. The terms of the draft voluntary Planning Agreement will be consistent with the *Green Square Town Centre Infrastructure Strategy (2006)* and *Sustainable Sydney 2030* directions and will include the delivery of the following public benefits:

- the dedication of land for new public domain;
- the payment of a monetary contribution towards Town Centre essential civil infrastructure;
- the provision of a publicly accessible through-site link;
- the provision of works-in-kind, including footpath widening on Botany Road and the construction of a new road to be dedicated to Council in stratum; and
- the design and construction of all buildings on the site to be capable of being fully connected to Council's proposed Green Infrastructure.

In addition to the voluntary Planning Agreement, the City and the landowner propose to enter into a separate agreement entitled the 'Green Infrastructure Deed' (the Deed). The Deed identifies the obligations of the Council with respect to the delivery of green infrastructure services.

This report requests that the Central Sydney Planning Committee note that the report to the Planning and Development Committee on 17 June 2013 recommends that authority be delegated to the Chief Executive Officer to:

- finalise the terms of the draft voluntary Planning Agreement, on behalf of the Council, for public exhibition;
- finalise the terms of the Deed on behalf of the Council; and
- execute the voluntary Planning Agreement and Deed on behalf of Council, provided that the exhibition and any further discussions with the landowner do not result in substantial changes to the terms of the agreements.

This report also recommends that following execution of the draft voluntary Planning Agreement the Central Sydney Planning Committee approve the un-deferral of 501-509 Botany Road, Zetland, and note that the report to the Planning and Development Committee on 17 June 2013 recommends that Council request the Minister for Planning and Infrastructure un-defer that site in the new Town Centre Local Environmental Plan.

RECOMMENDATION

It is resolved that the Central Sydney and Planning Committee:

- (A) note that the report to the Planning and Development Committee on 17 June 2013 recommends that authority be delegated to the Chief Executive Officer to prepare and publicly exhibit a draft voluntary Planning Agreement, in accordance with the relevant provisions of the *Environmental Planning and Assessment Act 1979*, that will require the landowner to deliver the following public benefits:
- (i) the dedication to Council of 82 square metres of land in stratum for the widening of the Botany Road footpath and the subsequent construction of the new footpath;
 - (ii) the dedication to Council of 416 square metres of land in stratum for the purpose of a public road being part provision of Hinchcliffe Street, the extension of Emanuel Lane and the subsequent construction of both;

- (iii) the construction of a nine metre wide publicly accessible through-site link from Sonny Leonard Street to Botany Road;
 - (iv) the payment to Council of a cash contribution for 'essential infrastructure' in accordance with the 'Development Rights Scheme' in the *Green Square Town Centre Infrastructure Strategy* (2006), less the cost of any works-in-kind delivered for public domain; and
 - (v) the design and construction of any proposed building to be capable of being connected to the Green Infrastructure that is to be provided by Council to the boundary of the site;
- (B) note that the report to the Planning and Development Committee on 17 June 2013 recommends that, following public exhibition of the draft voluntary Planning Agreement, authority be delegated to the Chief Executive Officer to make any minor changes to the draft voluntary Planning Agreement to finalise matters raised during public exhibition and execute the voluntary Planning Agreement, subject to the voluntary Planning Agreement remaining consistent with the terms detailed in clause (A) above;
- (C) note that the report to the Planning and Development Committee on 17 June 2013 recommends that authority be delegated to the Chief Executive Officer to negotiate with the landowner and prepare a draft Green Infrastructure Deed that includes:
- (i) provision to allow the Council and the land owner to ensure that there is adequate notice provided to each party with regard to the delivery of the Green Infrastructure. The provisions are to allow for the consideration of contingencies with regard to the design of the buildings in the event that the green infrastructure cannot be delivered within specified time periods; and
 - (ii) provisions to enable the parties to the Deed to agree to alternative arrangements in the event that the Green Infrastructure cannot be delivered within the specified time periods;
- (D) note that the report to the Planning and Development Committee on 17 June 2013 recommends that following public exhibition of the draft voluntary Planning Agreement, authority be delegated to the Chief Executive Officer to make any minor changes to and execute the draft Green Infrastructure Deed, subject to the terms of the Green Infrastructure Deed being consistent with the terms detailed in clause (C) above;
- (E) approve the un-deferral of land at 501-509 Botany Road, Zetland from the local environmental plan made to give effect to *Planning Proposal: Sydney Local Environmental Plan 2010 (Green Square Town Centre) – Sites 301 Botany Road, 501 Botany Road, 509 Botany Road, 3 Joynton Avenue, 511-515 Botany Road, 97-115 Portman Street, 811 Elizabeth Street, Zetland; 312-318 Botany Road, 320-322 Botany Road, 324 Botany Road, 318A Botany Road, 6-12 O'Riordan Street and 2A Bourke Road, Alexandria*, subject to execution of the voluntary Planning Agreement by the Chief Executive Officer and the landowner in accordance with the terms detailed in clause (A) above; and

- (F) note that the report to the Planning and Development Committee on 17 June 2013 recommends that Council request the Minister for Planning and Infrastructure under-fer land at 501-509 Botany Road, Zetland in accordance with Section 59 of the *Environmental Planning and Assessment Act*, subject to execution of the voluntary Planning Agreement by the Chief Executive Officer and the landowner in accordance with the terms detailed in clause (A) above.

ATTACHMENTS

Nil.

BACKGROUND

1. The land at 501-509 Botany Road, Zetland comprises Development Site 10 in the Green Square Town Centre (the Town Centre), as shown in Figure 1. The land area is 2,056 square metres and is owned by Senayear Pty Ltd.



Figure 1 – Green Square Town Centre layout.

2. The site's current zoning is *Zone 4a General Industrial* under the *City of Sydney Planning Scheme Ordinance 1971* (the Planning Scheme). The site is also subject to the *South Sydney Local Environmental Plan 1998* (South Sydney LEP), but these controls are 'deferred' under Section 59(3) of the *Environmental Planning and Assessment Act 1979* (the Act). The controls in the South Sydney LEP allow for a mix of uses and significantly more development capacity than what can be achieved under the controls in the Planning Scheme.

3. The purpose of the 'deferred' South Sydney LEP controls is to ensure the timely delivery of essential infrastructure to support redevelopment of the site. The controls can be un-deferred by the Minister of Planning and Infrastructure once the landowner enters into a Planning Agreement with the City of Sydney for the delivery of the essential infrastructure and land for the public domain.
4. Council, on 2 April 2012, and the Central Sydney Planning Committee (CSPC), on 29 March 2012, approved *Planning Proposal Sydney Local Environmental Plan 2010 (Green Square Town Centre) – Sites 301 Botany Road, 501 Botany Road, 509 Botany Road, 3 Joynton Avenue, 511-515 Botany Road, 97-115 Portman Street, 811 Elizabeth Street, Zetland; 312-318 Botany Road, 320-322 Botany Road, 324 Botany Road, 318A Botany Road, 6-12 O'Riordan Street and 2A Bourke Road, Alexandria* (the draft Town Centre LEP). The draft Town Centre LEP includes all land in the Town Centre except those sites that are the subject of the Landcom/Mirvac/Leighton Planning Proposal (draft Landcom/Mirvac/Leighton Local Environmental Plan) approved by Council on 5 December 2012 and the CSPC on 1 December 2012.
5. On 2 April 2012, Council approved the Green Square Town Centre Development Control Plan 2012 (Town Centre DCP) which covers the entire Town Centre.
6. The draft Town Centre LEP has been referred to the Department of Planning and Infrastructure (the Department), with a request that it be made in accordance with Sections 58 and 59 of the Act. Parliamentary Counsel has commenced the drafting of the LEP. When gazetted, the draft Town Centre LEP will replace planning controls contained in the South Sydney LEP, but will also be deferred under Section 59(3) of the Act.
7. Under the draft Town Centre LEP and the Town Centre DCP, the following controls apply:
 - (a) zoned B4 Mixed Use;
 - (b) maximum floor space ratio of 3.64:1 and, where Design Excellence provisions are applied, a maximum floor space ratio of 4:1;
 - (c) maximum height of:
 - (i) five to eight storeys on the southern portion of the site; and
 - (ii) eight storeys on the northern portion of the site and, where a competitive design process is undertaken, 10 storeys;
 - (d) the provision of land for the public domain for:
 - (i) part Hinchcliffe Street;
 - (ii) footpath widening on Botany Road;
 - (iii) a through site link from Sonny Leonard Street through to Botany Road; and
 - (iv) part extension of Emanuel Lane.
8. The site layout is shown in Figure 1.

The draft voluntary Planning Agreement

9. The owner of the site wants to lodge a development application that is consistent with the controls in the draft Town Centre LEP and the Town Centre DCP 2012. The owner has provided a letter of offer to enter into a voluntary Planning Agreement with the City to provide certain public benefits to support the site's redevelopment.
10. The discussions on the voluntary Planning Agreement are ongoing as both parties work to finalise the terms and obligations of providing civil and Green Infrastructure. The terms are consistent with the *Green Square Town Centre Infrastructure Strategy (2006)* and *Sustainable Sydney 2030* directions.
11. In summary, the key terms of the draft voluntary Planning Agreement are:
 - (a) the dedication to Council of 82 square metres of land in stratum for the widening of the Botany Road footpath and the subsequent construction of the new footpath;
 - (b) the dedication to Council of 416 square metres of land in stratum for the purpose of a public road being part provision of Hinchcliffe Street, the extension of Emanuel Lane and the subsequent construction of both;
 - (c) the construction of a nine metre wide publicly accessible through-site link from Sonny Leonard Street to Botany Road;
 - (d) the payment to Council of a cash contribution for 'essential infrastructure' in accordance with the 'Development Rights Scheme' in the Green Square Town Centre Infrastructure Strategy (2006) (the DRS), less the cost of any works-in-kind delivered for public domain. The contribution currently required under the DRS is \$2,240,900.66 (indexed to March 2013); and
 - (e) the design and construction of any proposed building to be capable of being connected to the Green Infrastructure that is to be provided by Council to the boundary of the site.
12. The draft voluntary Planning Agreement will not affect the application of Section 94 under the *City of Sydney Development Contributions Plan 1996* or contributions for affordable housing required under the draft Town Centre LEP. These contributions are to be levied at the development consent stage in accordance with the plans.
13. The land for the construction of Hinchcliffe Street is to be dedicated to Council in stratum, with a basement car park associated with the development beneath the road. It is generally the City's preference for roads to be dedicated in unlimited depth, to ensure ease of access for maintenance and the flexibility to construct infrastructure beneath the roads, as required. However, in this instance, the complete dedication of this road would result in an unworkable basement car parking area, which would impact the operation and feasibility of the development.
14. This approach is consistent with the Town Centre DCP adopted by Council in April 2012. The DCP specifies Hinchcliffe Street, among others in the Green Square Town Centre, where car parking is permitted beneath the streets.

15. The dedication of the streets in stratum is to be to a depth that will allow for the construction of drainage works, Green Infrastructure and services beneath the road. To ensure Council has unfettered access to the road, the draft voluntary Planning Agreement will require that development beneath the dedicated land is for common areas in the basement car park, such as access ways and visitor parking.

The draft Green Infrastructure Deed

16. In addition to the draft voluntary Planning Agreement, the City and the landowner propose to enter into a separate agreement titled the 'Green Infrastructure Deed' (the Deed). The Deed identifies the obligations of the Council with respect to the delivery of green infrastructure services to the boundary of the site.
17. Once the Green Infrastructure is provided to the boundary of the site, the landowner will connect the relevant building to the Green Infrastructure system in accordance with the terms of the voluntary Planning Agreement.
18. Due to the specific requirements for voluntary Planning Agreements under the *Environmental Planning and Assessment Act 1979*, the Deed is to be considered as an independent agreement and, as such, will not form part of the voluntary Planning Agreement, but only be attached to the voluntary Planning Agreement for information purposes.
19. It is proposed that the draft Green Infrastructure Deed, amongst other things, include:
 - (a) provisions to allow the Council and the landowner to ensure that there is adequate notice provided to each party with regard to the delivery of the Green Infrastructure. The provisions are to allow for the consideration of contingencies with regard to the design of the buildings in the event that the green infrastructure cannot be delivered within specified time periods; and
 - (b) provisions to enable the parties to the Deed to agree to alternative arrangements in the event that the Green Infrastructure cannot be delivered within the specified time periods.
20. While the proposed provisions of the Deed may assist in reducing the City's liability should the Green Infrastructure not be delivered on time by the City, it should be noted that the City may still incur some liabilities in the event that the Green Infrastructure as contemplated under the Deed is not delivered by the City.
21. This report recommends that following execution of the draft voluntary Planning Agreement and the Deed, the Central Sydney Planning Committee approve the un-deferral of 501-509 Botany Road, Zetland, and note that the report to the Planning and Development Committee on 17 June 2013 recommends that Council request the Minister for Planning and Infrastructure un-defer that portion of the site in the new Town Centre Local Environmental Plan.

KEY IMPLICATIONS

Strategic Alignment - Sustainable Sydney 2030 Vision

22. *Sustainable Sydney 2030* is a vision for the sustainable development of the City to 2030 and beyond. It includes 10 strategic directions to guide the future of the City, as well as 10 targets against which to measure progress. Development in the Green Square Town Centre has the potential to realise many Sustainable Sydney 2030 objectives. Of particular relevance are:
- (a) Direction 2 - A Leading Environmental Performer - sets measurable targets to drive down the City's environmental footprint by reducing greenhouse gas emissions by 70% compared to 1990 levels by 2030. The draft voluntary Planning Agreement will ensure that all development can be connected to planned Green Infrastructure network.
 - (b) Direction 3 - Integrated Transport for a Connected City - will provide for a City that is connected, accessible, easy to get to and easy to get around. The Green Square Town Centre is pivotal to the Integrated Inner City Transport Network and achieving an important public transport oriented hub in the south of the City. If executed, the draft voluntary Planning Agreement will enable development that will enhance connectivity between Green Square Station and the Town Centre.
 - (c) Direction 8 - Housing for a Diverse Population – will build on Sydney's character as a city of diversity and equity, with a place for everyone. It recognises that the lack of affordable housing is an increasing challenge in inner Sydney. In developing the site, the landowner will make a cash or in-kind contribution to provision of affordable housing under the Green Square Affordable Housing Scheme.
 - (d) Direction 9 - Sustainable Development, Renewal and Design - responds to the sustainability and environmental imperatives facing our cities. The Green Square Town Centre is identified as an Activity Hub, which will act as an exemplar for sustainable development and community infrastructure.

BUDGET IMPLICATIONS

23. Funding for the delivery of infrastructure and public domain works is critical to the success of the Town Centre. The *Green Square Town Centre Infrastructure Strategy (2006)* sets out the process for funding, through development, the delivery of civil infrastructure and public domain required to service the Town Centre. Two-thirds of this funding is to come from Town Centre landowners, with the City contributing one-third.
24. The terms of the draft voluntary Planning Agreement are consistent with the *Green Square Town Centre Infrastructure Strategy (2006)*, the Town Centre DCP, the Sustainable Sydney 2030 Directions and the essential infrastructure development application approved by the CSPC in March 2013.

RELEVANT LEGISLATION

25. *Environmental Planning and Assessment Act 1979* and *Environmental Planning and Assessment Regulation 2000*.

PUBLIC CONSULTATION

26. If the recommendations of this report are adopted, the draft voluntary Planning Agreement will be placed on public exhibition for no less than 28 days, in accordance with the Act.

KIM WOODBURY

Chief Operating Officer

(Tamara Bruckshaw, Senior Specialist Planner)