

RELEVANT INFORMATION FOR CENTRAL SYDNEY PLANNING COMMITTEE

FILE: S091122 **DATE:** 25 July 2013
TO: Central Sydney Planning Committee
FROM: Graham Jahn, Director of City Planning, Development & Transport
SUBJECT: Information Relevant To Item 7 - Post-exhibition: 87 Bay Street Glebe: Planning Proposal, Draft Development Control Plan and Draft Planning Agreement - At Central Sydney Planning Committee 25 July 2013

Alternative Recommendation

That the recommendation for Item 7 in the subject report be amended, incorporating the following changes, with deleted text shown as ~~strike through~~ and inserted text as **bold italics**, to read as follows:

It is resolved that the Central Sydney Planning Committee:

- (A) note the matters raised in response to the public exhibition of the '*Planning Proposal: Sydney Local Environmental Plan 2012 – 87 Bay Street Glebe*', '*Sydney Development Control Plan 2012 - 87 Bay Street Glebe*' and '*Planning Agreement – 87 Bay Street Glebe*', as shown at Attachment A to the subject report;
- (B) ***note the 'Planning Agreement – 87 Bay Street Glebe' as shown at Attachment D to the subject report is to be amended by mutual consent by the deletion of Clauses 16.1 "Obligations if relevant legal challenge" and 16.2 "Re-transfer of land and release of covenants"; and by the dedication of an appropriate number of car parking spaces to the Affordable Housing Lot (these amendments are scheduled in Attachment A to this memo);***
- (C) under section 39(1) of the *City of Sydney Act*, approve '*Planning Proposal: Sydney Local Environmental Plan 2012 – 87 Bay Street Glebe*', as shown at Attachment B to the subject report, to be made as a local environmental plan under section 59 of the *Environmental Planning and Assessment Act 1979*;
- (D) ***note that the local environmental plan will not be made until the Planning Agreement referred to in clause (B) has been entered into by the Chief Executive Officer on behalf of Council and the site owner; and lodged for registration on title at the same time; and***
- (E) note the *Draft Development Control Plan*, as amended and shown at Attachment C to the subject report, ***and with the following further amendments:***
 - i. The Height in Storeys map at Figure 6.32 of the draft Development Control Plan be amended as shown at Attachment B to this memo;***

ii. An additional provision be inserted at the end of the existing Section 6.1.10.1 of the draft Development Control Plan to read:

Provide a development mix that ensures the envelope described in this Development Control Plan is not exceeded.

Note: As the controls permit a variable development mix, the building envelopes prevail and must guide the mix to achieve compliance with the building envelopes.

(F) ~~note the 'Planning Agreement – 87 Bay Street Glebe' shown at Attachment D to the subject report.~~

Background

A post-exhibition report on this planning proposal, including the proposed amendment to the Development Control Plan height map noted below, was considered by the Transport, Heritage and Planning Sub-Committee at its meeting on 22 July 2013 and was referred to Council without recommendation pending further consideration of the VPA terms. A request was made to further examine the terms contained in the draft Planning Agreement with particular reference to the certainty of the affordable housing obligations. It was requested that the Director of Legal and Governance again review the clauses of the draft VPA.

Draft Planning Agreement

As noted above, at the Transport, Heritage and Planning Sub-Committee meeting a request was made to review the certainty of the affordable housing obligations if the rezoning proceeded; and specifically the operation of Clause 16.1 and 16.2 dealing with the temporary suspension of the developer's obligations if there is a legal challenge. The Director of Legal and Governance has undertaken a further review of the terms and conditions of the draft Planning Agreement and discussions have taken place with the proponent. As a consequence of that review, and to eliminate any perception of ambiguity concerning the operation of the agreement, Clause 16.1 (and associated definitions) and 16.2 has been removed by mutual agreement in their entirety. This removes the suspension of obligations in the case of a legal challenge and the consequential actions. It was agreed by the parties that the anticipation of this remote possibility through these two clauses may have diminished certainty that rezoned land absolutely carried the public benefit obligations following a legal challenge.

Also as a consequence of discussions with the proponent, it is mutually agreed that the affordable housing component will include a dedication of a minimum of 7 residential parking spaces and 3 visitor parking spaces. This totals 10 parking spaces dedicated for use by the Affordable Housing Lot, as envisaged in the Relevant to memo presented to the October 2012 meetings of Council and the Central Sydney Planning Committee. The proposed amendments are included at Attachment A to this memo, highlighted in ***bold italics***.

It is confirmed that the planning agreement is the preferred legal mechanism for establishing the public benefit and clearly linking it to the development uplift in the proposed local environmental plan. The public benefit is secured by ensuring that the local environmental plan cannot be made, and the development uplift cannot be accessed, until the planning agreement is executed and registered on title. The proposed changes to the VPA go to this aim.

Development Control Plan Map Amendment

Following consideration of submissions received during the public exhibition of the planning controls, the post-exhibition report contained a draft Development Control Plan, which includes a height in stories map to more closely describe the intended built form outcome. Three areas for taller building were identified on the proposed amendment map and ascribed widths of 18 metres.

Following publication of the report the landowner requested that the height in stories map be amended in plan only (no additional stories) so that the three areas for nine stories allow for greater flexibility in the design process. The City agrees that this request is reasonable and will not create unacceptable impacts and recommends amending the Height in Storeys map to widen these three areas to a maximum of 24 metres, to be depicted as shapes without dimensions on the Height in Storeys map, as shown at Attachment B to this memo.

An additional provision is recommended to the draft Development Control Plan to emphasise that the built form envelopes take precedence given the variable floor space mix. The proposed amendments to the DCP map are scheduled in Attachment A to this memo in ***bold italics***.

Attachments

Attachment A – Updated table of proposed amendments

Attachment B – Recommended amendments to Figure 6.32 Height in Storeys map – draft Development Control Plan – 87 Bay Street Glebe

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Approved



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