

ITEM 9. 105-115 PORTMAN STREET ZETLAND (GREEN SQUARE TOWN CENTRE) - ESSENTIAL TERMS FOR DRAFT VOLUNTARY PLANNING AGREEMENT - PUBLIC EXHIBITION AND SITE UN-DEFERRAL

FILE NO: S108048

SUMMARY

The Green Square Town Centre is identified as a 'Planned Major Centre' in the NSW Government's *Metropolitan Plan for Sydney 2036* and the new centre of the Green Square village in the City's *Sustainable Sydney 2030* strategy. It will make a substantial contribution to the *Sustainable Sydney 2030* targets and directions that pursue sustainable urban renewal, high quality design, sustainable forms of transport and affordable housing.

The subject of this report is the land at 105-115 Portman Street, Zetland (the site) which comprises 'Development Sites' 9A, 9B, 12A and 12B within the Green Square Town Centre. The site's current owner is Bridge Hill Zetland Pty Ltd. It was formerly owned by Waverley Council and was subdivided in January 2013.

The proposed planning controls for the site are contained in 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 Planning Proposal).

On 2 April 2012 and 29 March 2012, Council and the Central Sydney Planning Committee, respectively, approved the Planning Proposal for making as a local environmental plan, but with the provisions being 'deferred' from operation until the terms for the delivery of essential civil and public domain infrastructure have been agreed between Council and a landowner, and finalised in a voluntary Planning Agreement. The *Green Square Town Centre Infrastructure Strategy (2006)*, as updated, provides the basis for the terms of an agreement.

Sydney Local Environmental Plan (Green Square Town Centre - Stage 2) 2013 (the Town Centre LEP) that puts into effect the Planning Proposal was published on 6 September 2013. The Town Centre LEP 'un-deferred' the provisions for two sites for which satisfactory arrangements for the delivery of essential infrastructure had been made between Council and the landowners.

The provisions in the Town Centre LEP were 'deferred' for the remainder of the sites covered by the LEP, including the subject site. The site's current zoning is *Zone 4(a) General Industrial* under the *City of Sydney Planning Scheme Ordinance 1971*.

The owner of the site has submitted a letter of offer to the City to enter into a voluntary Planning Agreement with Council for the provision of public infrastructure and has requested the site be 'un-deferrred'. The discussions on the voluntary Planning Agreement are ongoing as both parties work to finalise the terms and obligations under the agreement. The terms 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:

- (a) the dedication of land for new public domain;
- (b) the payment of a monetary contribution towards Town Centre essential civil infrastructure less the cost of any works-in-kind delivered for public domain;
- (c) the provision of a publicly accessible through-site link;
- (d) the provision of works-in-kind, including:
 - (i) footpath widening on Botany Road to be dedicated to Council in stratum;
 - (ii) the construction of Paul Street to be dedicated to Council in fee simple;
 - (iii) the construction of Sonny Leonard Street to be dedicated to Council part in fee simple and part in stratum;
 - (iv) the construction of Hinchcliffe Street to be dedicated to Council in stratum; and
 - (v) the construction of a lane from Dunning Avenue to Portman Street to be dedicated to Council in fee simple; and
- (e) 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 Council's Planning and Development Committee on 3 December 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.

The report further recommends that once the voluntary Planning Agreement is executed, the Central Sydney Planning Committee approve the un-deferral of 105-115 Portman Street, Zetland, and note that the report to the Planning and Development Committee on 3 December 2013 recommends that Council request the Minister for Planning and Infrastructure un-defer the site in the Town Centre LEP.

It is noted that upon un-deferral the floor space ratio for the site to be published in the Town Centre LEP Floor Space Ratio Map is 3.35:1, to account for the subdivision of the former Waverley Council Depot site registered in January 2013 to create the subject site.

RECOMMENDATION

It is resolved that the Central Sydney and Planning Committee:

- (A) note that the report to Council's Planning and Development Committee on 3 December 2013 recommends that authority be delegated to the Chief Executive Officer to prepare and publicly exhibit a draft voluntary Planning Agreement for the site at 105-115 Portman Street, Zetland, 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 approximately 64 square metres of land in stratum for the widening of the Botany Road footpath and the construction of the new footpath;
 - (ii) the dedication to Council of approximately 680 square metres of land in stratum for the purpose of a public road being part provision of Hinchcliffe Street and the construction of this part of the public road;
 - (iii) the dedication to Council of approximately 2,592 square metres of land in fee simple for the purpose of a public road being part provision of Paul Street and the construction of this part of the public road;
 - (iv) the dedication to Council of approximately 759 square metres of land in fee simple for the purpose of a public road being part provision of Sonny Leonard Street and the construction of this part of the public road;
 - (v) the dedication to Council of approximately 120 square metres of land in stratum above a tunnel between basements on Sites 12A and 12B for the purpose of a public road being part provision of Sonny Leonard Street and the construction of this part of the public road;
 - (vi) the dedication to Council of approximately 252 square metres of land in fee simple for the purpose of a public lane from Dunning Avenue to Portman Street and the construction of the public lane;
 - (vii) the construction of an approximately four metre wide publicly accessible through-site link from Sonny Leonard Street to Geddes Avenue;
 - (viii) 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
 - (ix) 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 Council's Planning and Development Committee on 3 December 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 Council's Planning and Development Committee on 3 December 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 Council's Planning and Development Committee on 3 December 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, subject to execution of the voluntary Planning Agreement by the Chief Executive Officer and the landowner in accordance with the terms detailed in clauses (A) and (C) above, the un-deferral of the land at 105-115 Portman Street, Zetland from *Sydney Local Environmental Plan (Green Square Town Centre - Stage 2) 2013* 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*, to the extent that it applies to the subject land; and
- (F) note that the report to Council's Planning and Development Committee on 3 December 2013 recommends that Council request the Minister for Planning and Infrastructure un-defer 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; and
- (G) note that it is intended that the request for un-deferral of the land, detailed in clause (F) above, will include a Floor Space Ratio Map showing a 3.35:1 FSR to account for the plan of subdivision registered on 31 January 2013, shown at **Attachment A** to the subject report.

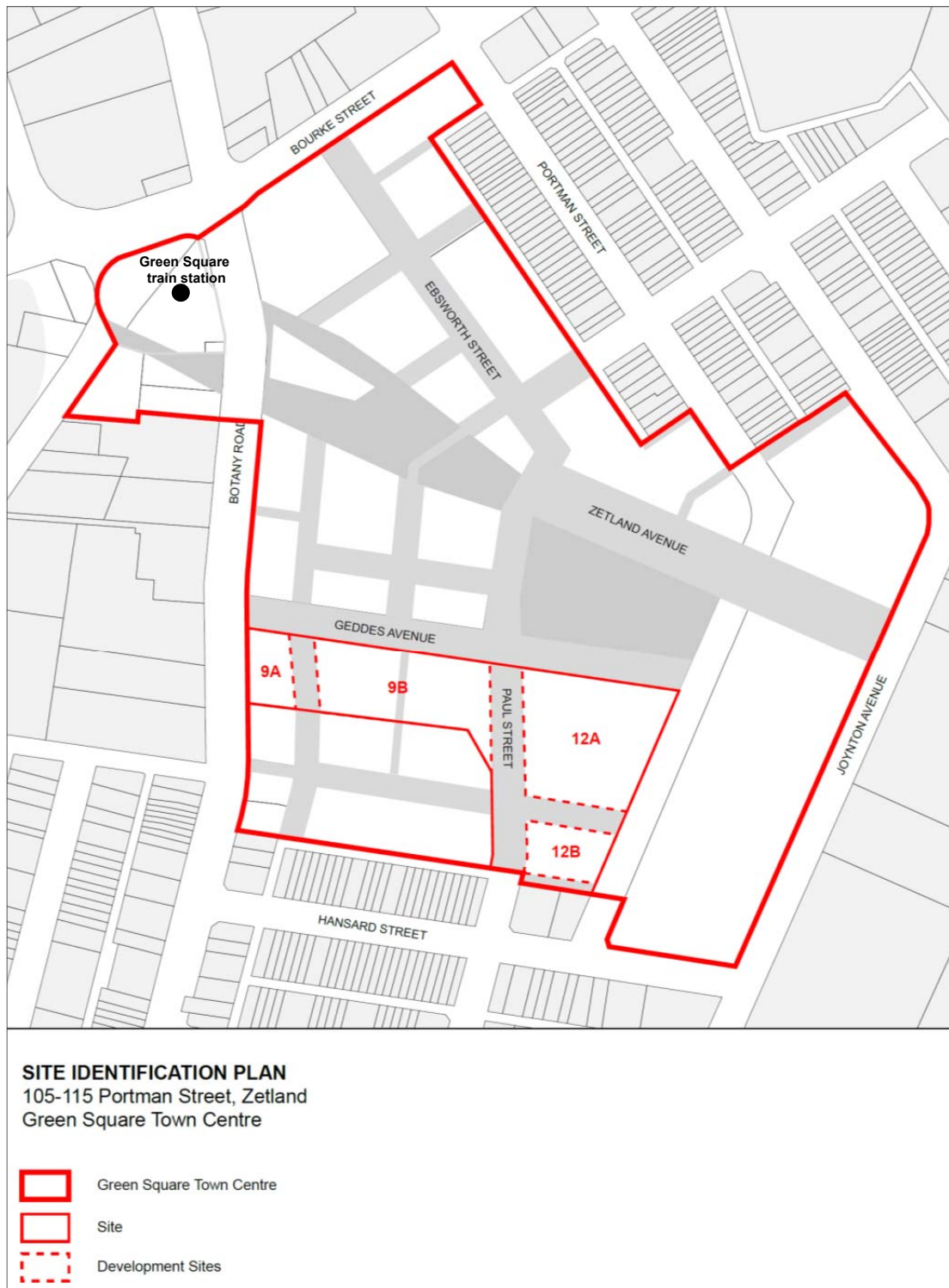
ATTACHMENTS

Attachment A: Subdivision Plan registered on 31 January 2013

BACKGROUND

1. The land at 105-115 Botany Road, Zetland (the site) comprises ‘Development Sites’ 9A, 9B, 12A and 12B within the Green Square Town Centre (the Town Centre), as shown in Figure 1. The land area is 17,900 square metres and is owned by Bridge Hill Zetland Pty Ltd. The site was formerly owned by Waverley Council.

Figure 1 - Green Square Town Centre layout and subject site



2. The site's current zoning is *Zone 4a General Industrial* under the *City of Sydney Planning Scheme Ordinance 1971* (the Planning Scheme).
3. The proposed planning controls for the site are contained in 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 Planning Proposal).
4. Council, on 2 April 2012, and the Central Sydney Planning Committee, on 29 March 2012, approved the Planning Proposal for making as a local environmental plan (LEP), but with the provisions being 'deferred' from operation. The 'deferral' is to ensure the timely delivery of essential infrastructure to support redevelopment of the Town Centre under the LEP, which allows for a mix of uses and significantly more development capacity than what can be achieved under the controls in the Planning Scheme.
5. 'Un-deferral' or activating the LEP provisions for a site is subject to the terms for the delivery of essential civil and public domain infrastructure being agreed between Council and a landowner, and finalised in a voluntary Planning Agreement. The *Green Square Town Centre Infrastructure Strategy (2006)*, as updated, provides the basis for the terms of an agreement.
6. *Sydney Local Environmental Plan (Green Square Town Centre - Stage 2) 2013* (the Town Centre LEP) that puts into effect the Planning Proposal, came into effect on 6 September 2013. The Town Centre LEP 'un-deferred' the provisions for two sites: the 'Hatbands' site at 511-515 Botany Road, Zetland; and the City West Housing site at 130 Portman Street, Zetland. Satisfactory arrangements for the delivery of essential infrastructure had been made between Council and the landowners for the 'un-deferral' of these sites.
7. The remainder of the sites to be covered by the Town Centre LEP were 'deferred' from the LEP under Section 59(3) of the *Environmental Planning and Assessment Act 1979*. Therefore, most sites in the Town Centre are still zoned *Zone 4(a) General Industrial* under the Planning Scheme.
8. The Town Centre LEP includes all land in the Town Centre, except land that is the subject of a planning proposal for the sites being developed by Urban Growth NSW with the Green Square Consortium (Mirvac Projects and Leighton Properties). *Sydney Local Environmental Plan (Green Square Town Centre) 2013* that puts into effect this planning proposal, came into effect on 13 September 2013. The sites were rezoned at this time and the public benefits obligations contained in the Planning Agreement registered on the title commenced then.
9. On 2 April 2012, Council approved the *Green Square Town Centre Development Control Plan 2012* (the Town Centre DCP) which covers the entire Town Centre.
10. The following main controls are proposed to apply to the site:
 - (a) zoned B4 Mixed Use;

- (b) maximum floor space ratio (FSR) of 1.81:1 which generates a gross floor area (GFA) of 59,911 square metres and, where Design Excellence provisions are applied, a maximum FSR of 2.0:1 which generates a maximum GFA of 66,042 square metres;
- (c) maximum building heights ranging from:
 - (i) five storeys on the southern portion to 10 storeys along Geddes Avenue, rising to 12 storeys on Botany Road; and
 - (ii) where a competitive design process is undertaken, six storeys on the southern portion to 14 storeys on the corner of Geddes Avenue/Portman Street and on Botany Road;
- (d) the provision of land for the public domain for:
 - (i) footpath widening on Botany Road;
 - (ii) part of Hinchcliffe Street;
 - (iii) southern part of Paul Street;
 - (iv) eastern part of Sonny Leonard Street; and
 - (v) a lane between Dunning Avenue and Portman Street; and
- (e) a publicly accessible through-site-link from Sonny Leonard Street through to Geddes Avenue.

11. The site layout is shown in **Figure 1**.

Site Subdivision and FSR

- 12. The site was formerly owned by Waverley Council and was part of a larger 33,100 square metre site (97-115 Portman Street) used for the Waverley Council Depot.
- 13. On 31 January 2013, a subdivision plan for the original site owned by Waverley Council was registered on title, creating three lots: Lot 1 (95A Portman Street); Lot 2 (97-103 Portman Street); and Lot 3 (105-115 Portman Street). Lots 1 and 2 were transferred to Council and have a combined area of close to 15,200 square metres. Lots 1 and 2 contain in full the future Geddes Avenue and The Drying Green park. These lots have no development potential and no GFA allocation. The subdivision plan is shown at **Attachment A** to this report.
- 14. Lot 3, now owned by Bridge Hill Zetland Pty Ltd and the subject of this report, has an area of 17,900 square metres and contains the remainder and only developable portions, 'Development Sites' 9A, 9B, 12A and 12B. These "Development Sites" combined contain the total 59,911 square metres of GFA (66,042 square metres with design excellence) allocated to the original parent lot in the Planning Proposal.

15. The subdivision of the original parent lot into three lots has reduced the original site area over which the FSR is calculated. The effect is that although the building envelopes and total GFA are the same as in the Planning Proposal and the Town Centre DCP, the FSR has changed. The FSR shown in the FSR Map of the Planning Proposal is 1.81:1 for the original parent lot before subdivision. Its subdivision into three lots results in 0:1 FSR for the public domain Lots 1 and 2, and 3.35:1 FSR for Lot 3 which contains the 'Development Sites' 9A, 9B, 12A and 12B.
16. It is proposed that at the time of the un-deferral of the site once the voluntary Planning Agreement is finalised, the FSR in the Town Centre LEP be translated to a 3.35:1 to account for the plan of subdivision. The FSR Map in the Town Centre LEP will show this FSR for the site. This will enable its redevelopment to the building envelopes identified in the Planning Proposal and Town Centre DCP.

The draft voluntary Planning Agreement

17. The owner of the site wishes to lodge a development application that is consistent with the building envelopes and public domain in the Planning Proposal 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.
18. 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.
19. In summary, the key terms of the draft voluntary Planning Agreement are:
 - (a) the dedication to Council of approximately 64 square metres of land in stratum for the widening of the Botany Road footpath and the construction of the new footpath;
 - (b) the dedication to Council of approximately 680 square metres of land in stratum for the purpose of a public road being part provision of Hinchcliffe Street and the construction of this part of the public road;
 - (c) the dedication to Council of approximately 2,592 square metres of land in fee simple for the purpose of a public road being part provision of Paul Street and the construction of this part of the public road;
 - (d) the dedication to Council of approximately 759 square metres of land in fee simple for the purpose of a public road being part provision of Sonny Leonard Street and the construction of this part of the public road;
 - (e) the dedication to Council of approximately 120 square metres of land in stratum above a tunnel between basements on Sites 12A and 12B for the purpose of a public road being part provision of Sonny Leonard Street and the construction of this part of the public road;
 - (f) the dedication to Council of approximately 252 square metres of land in fee simple for the purpose of a public lane from Dunning Avenue to Portman Street and the construction of the public lane;

- (g) the construction of approximately an approximately four metre wide publicly accessible through-site link from Sonny Leonard Street to Geddes Avenue;
 - (h) 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 \$ 5,415,536.42 (indexed to September 2013); and
 - (i) 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.
20. The draft voluntary Planning Agreement may include the application of Section 94 under the *City of Sydney Development Contributions Plan 1996* to the extent that it is required to offset the works-in-kind.
21. The draft voluntary Planning Agreement will not affect the contributions for affordable housing required under the Town Centre LEP. These contributions are to be levied at the development consent stage in accordance with the plans.
22. The land for the construction of Hinchcliffe Street and part of Sonny Leonard 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 these roads would result in an unworkable basement car parking area, which would impact the operation and feasibility of the development.
23. This approach is consistent with the Town Centre DCP adopted by Council in April 2012. The DCP specifies Hinchcliffe Street and a tunnel between basements on Sites 12A and 12B under Sonny Leonard Street, among others in the Green Square Town Centre, where car parking is permitted beneath the streets.
24. 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.
25. It is noted that the report to Council's Planning and Development Committee on 3 December 2013 recommends that Council delegate authority to the Chief Executive Officer to finalise the terms of the draft voluntary Planning Agreement for public exhibition and execute the agreement provided that the key terms described above remain substantially unchanged.

The draft Green Infrastructure Deed

26. 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.

27. 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.
28. 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 it for information purposes.
29. It is proposed that the draft Green Infrastructure Deed that will, among other things, include:
 - (a) provisions to allow 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.
30. While the proposed provisions of the Deed referred to in sub-paragraph (b) above, 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.
31. 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 105-115 Portman Street, Zetland, and note that the report to the Planning and Development Committee on 3 December 2013 recommends that Council request the Minister for Planning and Infrastructure un-defer the site in the Town Centre LEP.
32. It is noted that upon un-deferral the floor space ratio for the site to be published in the Town Centre LEP Floor Space Ratio Map is 3.35:1 to account for the subdivision of the former Waverley Council Depot site registered in January 2013 to create the subject site.

KEY IMPLICATIONS

Strategic Alignment - Sustainable Sydney 2030 Vision

33. *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 to Green Square Station, the Town Centre and the adjacent neighbourhoods.
- (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 the centre of the Green Square village. It will act as an exemplar for sustainable development and community infrastructure. The application of design excellence objectives will deliver high quality buildings and public domain.

BUDGET IMPLICATIONS

- 34. 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.
- 35. 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 Central Sydney Planning Committee in March 2013.

RELEVANT LEGISLATION

- 36. *Environmental Planning and Assessment Act 1979* and *Environmental Planning and Assessment Regulation 2000*.

PUBLIC CONSULTATION

- 37. 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 *Environmental Planning and Assessment Act 1979*.

GRAHAM JAHN, AM

Director City Planning, Development and Transport

(Lila Contziu, Manager Green Square and Major Projects)