

**ITEM 9. EXEMPTION FROM TENDER – PLANNING AGREEMENT AT 13-21
LACHLAN STREET, 2-4 BRUCE STREET AND 7-19 AMELIA
STREET, WATERLOO**

FILE NO: VPA/2015/23

SUMMARY

The Developer of 13-17 Lachlan Street and 2-4 Bruce Street, Waterloo has made a public benefit offer to dedicate land and undertake works for new roads in association with a development application. This report seeks Council's approval to contribute to the works, being the difference between the developer's funding contribution and the cost. This will ensure the coordinated, timely and cost effective delivery for important new roads.

On 1 May 2015, Mirvac Projects Pty Limited submitted a Development Application (D/2015/570) for a mixed use development comprising six buildings at 13-17 Lachlan Street and 2-4 Bruce Street Waterloo. The development is required to pay contributions of \$6,102,368.09, comprising community infrastructure and Section 94 contributions.

This development site is located within the Lachlan Urban Renewal Precinct. The site includes parts of the yet to be constructed Gadigal Avenue and Tung Hop Street as identified in the Sydney Development Control Plan 2012. The site also includes land for road widening to Lachlan Street as required by Roads and Maritime Services (RMS). The City has prepared Public Domain and Civil Design Concept Plans to guide the development of infrastructure.

On 10 June 2015, Mirvac Projects Pty Limited also submitted a Development Application (D/2015/782) for the infrastructure works associated with the development. The works include the construction of new portions of Tung Hop Street and Gadigal Avenue, and landscaping of the land for widening on Lachlan Street. The works will be undertaken to the developer's land, existing Bruce and Murray Streets, and land acquired by the City for new roads.

The City has received a Public Benefit Offer by Mirvac Ping An Residential Developments Pty Limited (Developer) to enter into a Planning Agreement in relation to the DAs. The offer is for the dedication of land for road reserve and delivery of community infrastructure. The scope of infrastructure works proposed is consistent with the City's Lachlan Precinct Public Domain and Civil Design Concept Plans and will be constructed in accordance with the City's Sydney Streets Code and Technical Specification.

The total value of the Public Benefit Offer is \$7,474,587 which exceeds the combined community infrastructure and Section 94 contributions of \$6,102,368.09 by \$1,372,218.91.

It is proposed that Council contribute \$1,372,218.91 to the construction of new road infrastructure in the Lachlan Urban Renewal Precinct by the Developer as part of a Planning Agreement. This contribution will supplement the works-in-kind provided by the Developer and ensure coordinated and timely delivery of the works.

The infrastructure 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 \$150,000. Section 55(3) of the Act provides for an exemption from tendering requirements because of extenuating circumstances. The decision not to tender must be made by Council.

It is recommended that Council approves the contribution to the infrastructure works without inviting tenders as it will provide an advantageous financial outcome when compared to the detailed costs estimates undertaken by the City, and facilitate the early completion of road infrastructure in line with the completion of the adjacent building works.

RECOMMENDATION

It is resolved that Council:

- (A) approve an exemption from tender, in accordance with section 55(3)(i) of the Local Government Act 1993, for the City to contribute \$1,372,218.91 to the Planning Agreement for 13-21 Lachlan Street, 2-4 Bruce Street and 7-19 Amelia Street Waterloo, noting that, because of extenuating circumstances, a satisfactory result would not be achieved by inviting tenders;
- (B) note the reasons why a satisfactory result would not be achieved by inviting tenders are:
 - (i) the developer will be delivering community infrastructure in the form of portions of the road infrastructure, adjacent to the City owned land 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 development to the adjacent site at 13-17 Lachlan Street and 2-4 Bruce Street, Waterloo;
 - (iii) delivery as one project will facilitate completion of the Gadigal Avenue works approximately two years earlier through access to the respective parcels of land, which will also reduce disruption to the local community as works on City-owned land could not commence until the Developer's Works were completed;
 - (iv) the physical constraints prevent the delivery of the road infrastructure in separate stages in a cost efficient manner, as Bruce Street requires substantial level changes necessitating temporary and redundant works such as retaining walls;
 - (v) delivering the remaining infrastructure 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 contribution provides value for money to the City as the offer by Mirvac Ping An Residential Developments Pty Limited provides financial savings when compared to the detailed costs estimates prepared by the City's quantity surveyor, including through elimination of temporary works and the existing knowledge, resources and experience associated with the project site;
- (C) endorse the delivery of the road infrastructure at 13-21 Lachlan Street, 2-4 Bruce Street and 7-19 Amelia Street Waterloo by Mirvac Ping An Residential Developments Pty Limited as set out in the Public Benefit Offer in confidential Attachment B to the subject report; and

- (D) endorse the City's contribution of \$1,372,218.91 from a forthcoming capital works budget to the Developer's Works for the construction of road infrastructure as part of the Planning Agreement for 13-21 Lachlan Street, 2-4 Bruce Street and 7-19 Amelia Street Waterloo.

ATTACHMENTS

Attachment A: 13-21 Lachlan Street, 2-4 Bruce Street and 7-19 Amelia Street, Waterloo - Site Plan and Transfer Land

Attachment B: 13-21 Lachlan Street, 2-4 Bruce Street and 7-19 Amelia Street, Waterloo - Public Benefit Offer from Mirvac Ping An Residential Developments Pty Limited (Confidential)

Attachment C: Quantity Surveyor Assessment from WT Partnerships (Confidential)

(As Attachments B and C are confidential, they will be circulated separately from the agenda paper and to Councillors and relevant senior staff)

BACKGROUND

1. The Lachlan Precinct is one of the City's Urban Renewal areas of Green Square, identified to transform the existing industrial and commercial area into a revitalised residential and mixed use locality.
2. Lachlan Precinct is identified as a Specific Area under section 5.4 of the Sydney Development Control Plan 2012 (the DCP).
3. Sydney Local Environmental Plan 2012 (the LEP) and the DCP provide detailed provisions to guide development across the City.
4. The Lachlan Precinct is bounded by Bourke, Lachlan and South Dowling Streets and O'Dea Avenue, Waterloo.
5. The DCP identifies a network of streets, through site links and open spaces to revitalise the Lachlan Precinct and provide connectivity to surrounding areas for pedestrians and cyclists. It includes Gadigal Avenue, a significant 30m wide north-south road reserve through the Precinct, which is identified to accommodate a future mass transit corridor.
6. The City has prepared detailed Public Domain and Civil Design Concept Plans to guide the delivery of new infrastructure in the Lachlan Urban Renewal Precinct by developers.
7. On 1 May 2015, Mirvac Projects Pty Limited submitted a Development Application (D/2015/570) for the demolition of existing buildings and structures, land remediation, excavation and construction of a mixed use development comprising six buildings and two levels of basement car parking at 13-17 Lachlan Street and 2-4 Bruce Street, Waterloo.
8. The above development utilises additional floor space available under Clause 6.14 of the LEP. Use of this floor space requires provision of community infrastructure. An additional 4,694m² floor space generates a community infrastructure contribution of \$2,170,036.20. Additionally, as at December 2015, the development generates \$3,932,331.89 in section 94 contributions.
9. This development site is located within the Lachlan Urban Renewal Precinct. The site includes parts of Gadigal Avenue and Tung Hop Street which are yet to be constructed. The site is subject to road widening of Lachlan Street, as required by Roads and Maritime Service (RMS) for the upgrade of this connector road.
10. The existing warehouse building is accessed from Lachlan Street with secondary access provided by Bruce Street, a dead-end street located within the future alignment of Gadigal Avenue.
11. The Developer-owned site contributes only part of the required land to create Gadigal Avenue. The remainder is to be made up of the existing Bruce Street, land previously purchased by the City, and land dedicated by the adjoining developer at 52 O'Dea Avenue Waterloo.
12. To accommodate flood management strategies, the new infrastructure is required to be constructed up to two metres above the existing levels of Bruce Street.

13. In accordance with the DCP, future development of this site will not have direct vehicle access from Lachlan Street, but be accessed from Tung Hop Street via Gadigal Avenue.
14. On 10 June 2015, Mirvac Projects Pty Limited submitted a Development Application (D/2015/782) for the infrastructure works associated with the building works in D/2015/570. The works include construction of new portions of Tung Hop Street and Gadigal Avenue, and landscaping of the RMS road dedicated setback on the Lachlan Street frontage.
15. New road works include landscaping, drainage, footpaths and street lighting. The works will be undertaken to the developer's land, Bruce and Murray Streets, and City-owned land. A plan showing the development site and land to be dedicated is at Attachment A.
16. The City has received a final Public Benefit Offer by Mirvac Ping An Residential Developments Pty Limited dated 19 April 2016 to enter into a Planning Agreement in relation to the development applications. The Public Benefit Offer is at Attachment B.
17. In summary, the total Public Benefit Offer of \$7,474,587 consists of:
 - (a) dedication of land for new road reserves, with a value of \$280,400; and
 - (b) embellishment works for the new roads on dedicated land and City-owned land, to the value of \$7,194,187.
18. The scope of works is in accordance with the City's Concept Plans for the Lachlan Urban Renewal Precinct. The works will service the development, activate the frontages and minimise temporary work required, if the road was constructed in stages.
19. The City engaged a Quantity Surveyor to confirm the offer as a reasonable cost estimate of works. The Quantity Surveyor's report is included with the Public Benefit Offer at confidential Attachment C. In the Public Benefit Offer, Mirvac Ping An Residential Developments Pty Limited estimated the value of the embellishment works at \$8,421,780, but have agreed to accept the City's estimate of \$7,194,187. This equates to a notional saving of \$1,227,593.
20. The total contributions of \$6,102,368.09 generated by the development are:
 - (a) community infrastructure - \$2,170,036.20; and
 - (b) section 94 (as at December 2015) – \$3,932,331.89.
21. As the total value of public benefits exceed the development contributions, Mirvac Ping An Residential Developments Pty Limited requested that the City contribute the balance of funds, being \$1,372,218.91, to allow the development to proceed.
22. Payment of this amount would be required on completion of the works.
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 the Council approve this payment.

24. Acceptance of the Offer and approval to exhibit the draft Planning Agreement was sought from the Chief Executive Officer in accordance with the delegations.
25. The draft Planning Agreement was exhibited for 28 days and no submissions were received.

KEY IMPLICATIONS

Strategic Alignment - Sustainable Sydney 2030 Vision

26. *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. This proposal is aligned with the following SS2030 strategic directions and objectives:
 - (a) Direction 4 - A City for Walking and Cycling – The Developer's works will provide new footways and cycleways in the Green Square Urban Renewal Area.
 - (b) Direction 6 - Vibrant Local Communities and Economies - The new works form part of the transformation of the Lachlan Precinct Urban Renewal Area from a light industrial area to a mixed use (commercial/retail/residential) area.
 - (c) Direction 9 - Sustainable Development, Renewal and Design – The infrastructure works are consistent with the City's Lachlan Precinct Public Domain Plans and Civil Design Concept Plans delivering high quality urban design to this renewal area.

Organisational Impact

27. The delivery of the infrastructure works will have minimal impact on the organisation, as the project will be delivered by the developer of 13-17 Lachlan Street Waterloo.
28. City officers who oversee the Planning Agreement and ensure the works are delivered to a high standard.

Risks

29. Areas of the site have been formerly used for industrial purposes and include some contamination, which will be remediated in accordance with an approved Remedial Action Plan.
30. A Site Audit Statement will confirm that the works are fit for purpose in accordance with the EPA Guidelines.
31. Existing utility services will be modified and upgraded in conjunction with the infrastructure works. These have been surveyed and mapped in order to mitigate risk during construction.
32. The Planning Agreement includes measures to resolve disputes between the City and Mirvac Ping An Residential Developments Pty Limited, should any arise.
33. The Planning Agreement requires the developer's works to be secured by a Bank Guarantee or Insurance Bond to mitigate the City's financial risk.

34. The Planning Agreement defines that the City's contribution is a fixed lump sum paid at completion of the works as defined by the agreement which further mitigates the City's financial risk.
35. The Planning Agreement includes acquisition clauses should the developer fail to transfer the land in accordance with the Agreement.
36. The Planning Agreement includes rights and remedies for the City to complete the work should the developer fail in its undertakings.

Social / Cultural / Community

37. The infrastructure works will improve pedestrian and cycle links between Waterloo, Zetland and the Green Square Town Centre and provide improved amenity within the local area.
38. New street furniture and improved lighting will provide opportunities for meeting and gathering within the local area.
39. The new infrastructure will be immediately adjacent to the proposed Dyuralya Square and provide access and amenity to this new open space, with opportunities for social gatherings and community events.

Environmental

40. The community infrastructure works are designed in accordance with the City's Sydney Streets Code and incorporate such sustainable objectives as increased canopy cover from street trees, LED lighting, green concrete and raingardens.

Economic

41. The community infrastructure works will provide on-street access to ground floor retail to be delivered as part of the development.

BUDGET IMPLICATIONS

42. It is anticipated that works would be completed no earlier than 2018, so the contribution is required at the earliest in the 2017/18 financial year.
43. Payment of the City's contribution will be due at the completion of works by the developer.
44. It is proposed that the contribution of \$1,372,218.91 is included in a forthcoming capital works budget.
45. GST is excluded from the contribution amount.

RELEVANT LEGISLATION

46. An exemption from tender is sought in accordance with section 55(3)(i) of the Local Government Act 1993 (the Act).
47. Section 377 of the Act expressly excludes the delegation of some functions from Council to the CEO. Section 377(1)(g) refers to the voting on money for expenditure on its works, services or operations as being excluded from the delegations.

48. Attachments B and C contain confidential commercial information on Mirvac's project costings and inclusions 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.
49. 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.

CRITICAL DATES / TIME FRAMES

50. The construction of the road infrastructure would usually attract a public tender under section 55 of the Act, as the estimated contract amount is in excess of \$150,000. Section 55(3) of the Act provides for extenuating circumstances where tendering is not required and the decision not to tender must be made by the elected Council
51. The development application for the building works at 13-17 Lachlan Street Waterloo was considered at the Central Sydney Planning Committee meeting of 23 June 2016 and delegated for determination by the CEO, subject to the draft Planning Agreement being exhibited and any submissions considered.
52. The developer plans to commence works on their site as soon as the development application is determined and relevant pre-commencement conditions are satisfied.
53. The road infrastructure works will be completed prior to the issue of the first Occupation Certificate of the building works.
54. If the opportunity for the developer to construct the road infrastructure in association with their building works is not taken, access to undertake the works to the City-owned land will not be available until the building works are completed.

OPTIONS

55. The City could deliver the infrastructure works on City-owned land. This would result in a significant delay in the infrastructure being completed.
56. If the developer were to construct only the portion of Gadigal Avenue on land in their ownership, this would result in:
 - (a) ground floor levels and entry ways of the new building up to two metres above the existing roadway of Bruce Street;
 - (b) substantial works-in-kind being temporary or redundant, including retaining walls, pavements and services once remaining infrastructure is delivered;
 - (c) the development having limited street frontage and no on-street parking to activate ground floor retail;
 - (d) the timeframe to deliver the new infrastructure being extended as the sites are too constrained to undertake the works concurrently under separate contracts;

- (e) remediation of the City-owned land at a later date requiring deep excavation which could undermine the newly finished infrastructure; and
 - (f) restriction of the pedestrian and vehicle access to the new development when delivering the remaining infrastructure, necessitating a lengthy and expensive construction methodology by the City.
57. Delivery by the City is not recommended due to the impractical and costly outcomes of delivering the road infrastructure in a piecemeal manner.

PUBLIC CONSULTATION

58. A draft Planning Agreement was exhibited for 28 days in accordance with legislation
59. No submissions were received

GRAHAM JAHN

Director City Planning, Development and Transport

Brett Calcar, Senior Project Manager – Planning Agreements