

RELEVANT INFORMATION FOR COUNCIL

FILE: X000094 **DATE:** 21 October 2016
TO: Lord Mayor and Councillors
FROM: Louise Kerr, Acting Director City Planning, Development and Transport
SUBJECT: Information Relevant To Item 9.5 - Public Exhibition - 2-32 Junction Street, Forest Lodge - At Council - 24 October 2016

Recommendation

That the Lord Mayor and Councillors note the information contained in this memo.

Purpose

To advise Council of the City's response to issues raised in a letter sent by the proponent to the Lord Mayor and all Councillors on 18 October 2016.

Background

At its meeting on 10 October 2016, the Planning and Development Committee considered a report recommending Council approve a planning proposal and supporting draft Development Control Plan amendment for Gateway determination and public exhibition.

The proponent's planning consultant spoke at the meeting to advise the Committee of the landowner's in-principle support for the subject report's recommendations, raise outstanding concerns and clarify their position. Issues raised related to the proposed floor space ratio, competitive design process requirements, heritage and open space. The Director City Planning, Development and Transport responded to the issues and the Committee resolved to support the report's recommendations.

On 18 October 2016, the proponent and owner of the subject site, Fitzpatrick Investments Pty Ltd, emailed a letter to the Lord Mayor and all Councillors, a copy of which is shown at Attachment A. Issues raised and the City's response to each are summarised below. It is recommended that Councillors note the information in this memo. No changes to the report or attachments are recommended.

Issue 1: Floor space ratio

The planning proposal is to increase the floor space ratio in Sydney Local Environmental Plan 2012 from 1:1 to 1.56:1, subject to the provision of new public open space. This could be further increased to 1.72:1 with additional floor space if the development achieves design excellence.

In their letter, Fitzpatrick Investments ask Council to increase the base floor space ratio from the proposed 1.56:1 to 1.75:1 because they consider they have adequately demonstrated the site is capable of accommodating a floor space ratio of 1.75:1.

The City undertook detailed urban design analysis of Fitzpatrick Investments' various indicative schemes and does not consider they will comply with relevant planning objectives and controls. The analysis is described in the report and the planning proposal at Attachment A to the report. Key issues of non-compliance with the proponent's most recent scheme, from July 2016, include proximity of the proposed above ground car park to Larkin Street Reserve, side boundary setbacks, building depth and amenity for proposed apartments.

Given these issues, the City does not recommend increasing the base floor space ratio to 1.75:1.

Issue 2: Competitive design process

As noted, the planning proposal is to increase the base floor space ratio to 1.56:1, which could be further increased to 1.72:1 with design excellence. The draft Development Control Plan amendment, shown at Attachment B, to the report identifies particular locations where opportunities for design excellence can be achieved. A design competition is required to achieve design excellence.

Fitzpatrick Investments consider the 'requirement' for design excellence to be unfair because the proposed height control of about 24 metres and site area of 4,824 m² are below the standard design excellence thresholds of 25 metres and 5,000 m² respectively.

The planning proposal to increase the floor space ratio to 1.56:1 is not contingent on design excellence. This could be increased up to 1.72:1 with design excellence, though this is voluntary rather than mandatory and is available to all applicants through an existing clause. Design excellence would assist with addressing issues and constraints, including the visual impact of the proposed above ground car park on Larkin Street Reserve. The site area and proposed height is marginally below the mandatory requirement for design excellence. Consequently, no changes are recommended.

Issue 3: Heritage

The site is within a heritage conservation area. The existing warehouse building on the site is shown as 'detracting' in Sydney Development Control Plan 2012. The draft Development Control Plan amendment proposes changing this to 'contributory' and requiring the front 10 metres of the building to be retained.

Fitzpatrick Investments consider this unfair and unreasonable.

The Building Contributions Map for the area was prepared as part of the Glebe Conservation Area Study in 2006. It is likely the warehouse was graded in the fieldwork as detracting because it is a warehouse and not a typical Victorian residential building. The fieldwork for the study was carried out before the significance of the area was assessed.

The building's contribution to the Conservation Area was considered in more detail as part of preparing the draft amendments. The review found the warehouse building dates from the early twentieth century and this is one of the key historic layers of the Conservation Area. It also found the building retains its overall warehouse character with a high potential for the restoration of the façade. Given this, the draft Development Control Plan amendment proposes to change the building's contribution status from detracting to contributory.

The proponent's most recent scheme, from July 2016, included an option to retain the existing warehouse building.

Issue 4: Open space

The planning proposal is to increase the floor space ratio if new public open space is provided. The draft Development Control Plan amendment identifies the preferred location of the new public open space. It has an area of about 450 m².

Fitzpatrick Investments advised they are 'extremely surprised' it is proposed to require public open space, given they offered to dedicate about 450 m² of land for public open space as part of their previous scheme but this offer was rejected.

The City did not reject Fitzpatrick Investments' offer to dedicate land for new public open space. Instead, it advised in a letter of 12 April 2016 that:

... The 452 m² of land offered for dedication includes part of the central through site link and a portion of land along the irregular-shaped north west boundary. The City has estimated the combined area of these two components to be in the order of 100 m². Their function and shape means they are not usable open space and they should therefore be excluded from the land offered to be dedicated for open space. This results in an effective extended open space area of approximately 1,350 m². This is less than the minimum 1,500 m² [including Larkin Street Reserve] needed to provide an appropriate level of usability.

For the planning proposal to progress, the land offered for dedication to extend Larkin Street Reserve will need to be revised to exclude part of the central through site link and part of the north west boundary and ensure the combined usable park area is at least 1,500 m² ...

Fitzpatrick Investments did not offer to dedicate land as part of their most recent July 2016 scheme. The preferred location of the new public open space is shown in the draft Development Control Plan amendment. It does not include the irregular shaped land to the north west of the site and is consistent with the City's letter advice of 12 April 2016. Consequently, no changes are recommended.

Issue 5: Strategic merit

Fitzpatrick Investments advised they have invested considerable time and expense into developing their scheme over and above that typically required to assess the strategic merit of a planning proposal. They believe their work demonstrates the site can accommodate a floor space ratio of 1.75:1 and that all other matters can be addressed at the development application stage.

As noted, the City undertook detailed urban design testing and analysis and considers all schemes presented by Fitzpatrick Investments will lead to impacts that will not comply with relevant planning objectives and controls at an FSR of 1.75:1. The flooding constraints at the site have required a high level of analysis and testing.

The planning proposal and draft Development Control Plan amendment seek to accommodate the landowner's expectations, to the extent possible, while ensuring impacts will comply with relevant objectives and controls. Given the site's flooding constraints, the draft amendments allow the proposed above ground car park to be considered as an 'open' car park rather than a 'closed' car park. Additionally, they allow the car park walls to be constructed of permeable architectural screening with landscaping; they do not require the car park to be sleeved in active uses.

Prepared by: Jonathon Carle, Senior Specialist Planner

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Attachments

Attachment A: Letter from Fitzpatrick Investments to the Lord Mayor and all Councillors

Approved

A handwritten signature in black ink, appearing to read 'Louise Kerr', with a long horizontal flourish extending to the right.

**Louise Kerr, Acting Director City Planning,
Development and Transport**

ATTACHMENT A

**LETTER FROM FITZPATRICK
INVESTMENTS TO THE LORD MAYOR
AND ALL COUNCILLORS**

Dear Councillors,

I write to confirm our 'in principle' support for the recommendations, outlined in the Council officer's assessment report 10 October 2016, to increase the allowable FSR and height at 2 – 32 Junction Street Forest Lodge.

As land owner of this property, we have worked closely with Council staff over the last 24 months testing various development scenarios for this site. On numerous occasions we have been requested to provide additional information or make amendments to our proposal, in all instances we responded to the Council's requests. Throughout the duration of dealings with Council officers we have felt that the goal posts to reach agreement have constantly changed, frustrating both us and our project team of consultants. We were then surprised to discover that the Planning Proposal was to be reported to Council in October.

Despite having in principle support for the recommendations, we wish to outline our concerns and clarify our position on key points within the Council's report:

- Based on the analysis and information provided to date, we have adequately demonstrated that the site is capable of accommodating a floor space ratio (FSR) of 1.75:1. Our proposal therefore seeks to amend the controls to reflect this capacity. We therefore ask that the base FSR be changed to 1.75:1 as opposed to the position recommended in the Council officer's report which sets out a base FSR of 1.56:1 and the imposition of a Competitive Design Process. We are of the opinion that imposing the requirement for a Design Competition is unfair as it is inconsistent with the Council's current policy framework which states that the need for competitive process is only required where a site is over 5,000m² or the buildings are above 25m in height, our proposal is below both of these triggers.
- The existing building on site is located within a Heritage Conservation Area but nominated as a 'detracting building' by Council's current DCP. It seems enormously unfair and unreasonable for Council to now identify this building as having potential heritage significance. Council had suggested the demolition of the building with the retention of the street façade. The latest recommendation directly contravenes current planning policy. It is also worth noting that we have an existing active consent to demolish this building;

- From day 1, our proposal has included multiple through site links – a key strategic community benefit. An expanded park was then offered to Council but was rejected on more than one occasion due to it not meeting Council's requirements for size and overshadowing. We are extremely surprised to see Council staff now requiring the park as a contribution. To clarify, we support the provision of a public park (approximately 450sqm) as part of this proposal, on the basis of the terms outlined in our public benefit officer dated 25 February 2016;
- Considerable time and expense has been invested into the various submissions to Council – over and above what would typically be required to assess strategic merit of a planning proposal. We believe (as do Council staff) that this work has proved the site can accommodate the maximum floor space identified above. All other matters can be assessed and determined by Council as part of the Development Application process.

It is for these reasons that we have requested a Rezoning Review by the Planning and Assessment Commission. We remain willing to negotiate an agreeable outcome with Council on the above points.

I trust this information will help with your understanding of the proposal, however should you wish to discuss this matter further, I can be contacted on 02 8117 5105.

Yours faithfully
Fitzpatrick Investments Pty Ltd



Jamie Stewart
Project Director