

## Item 7.

### **Pemulwuy Project - Final Land Transfer and Variation of Deed to the Aboriginal Housing Company**

**File No: S072236.007**

#### **Summary**

The Aboriginal Housing Company Limited, a not-for-profit organisation, plans to redevelop the area known as “the Block” in Redfern. The Pemulwuy Project site comprises 15,638 square metres of mixed use including affordable housing, commercial, retail, cultural, and community uses and public domain.

On 20 August 2012, Council resolved in principle to support the transfer of land to the Aboriginal Housing Company Limited, subject to finalisation of an appropriate deed with the Aboriginal Housing Company Limited. The Chief Executive Officer was appointed the delegated authority to settle the terms of that deed. This Pemulwuy Project Deed, as shown at Attachment A, was entered into by the City and the Aboriginal Housing Company Limited on 31 May 2013 (the Deed).

This Deed requires the Pemulwuy Project to be “Substantially Progressed” by the “Agreed Date” which is defined as 21 December 2017. The Aboriginal Housing Company Limited has confirmed that the Project is well progressed having received Department of Planning approvals and Construction Certificate for demolition works. It should be noted that the “Substantially Progressed” condition as defined under the Deed is unlikely to be met as although demolition works have been undertaken, construction has not yet commenced.

On 11 December 2017, Council resolved to enter into a Deed of Variation to the Pemulwuy Project Deed with the Aboriginal Housing Company Limited to effect a 12 month extension to the date specified as the Agreed Date from 21 December 2017 to 21 December 2018.

It has recently been discovered that a 6.0 square metre portion (the splay corners) of Eveleigh Lane, known as Lot 1 in DP1177664, as shown at Attachment B (the Splays), was not included in the land transferred to the Aboriginal Housing Company Limited, nor was this land referenced in the Deed. The intention of both the City and the Aboriginal Housing Company Limited was that the Splays were to be included in the land to be transferred to the Aboriginal Housing Company Limited as it formed part of the former Eveleigh Lane.

This report seeks approval to transfer Lot 1 in DP 1177664, referred to in this report as the Splays, to the Aboriginal Housing Company Limited. The transfer will be documented by way of a further Deed of Variation to the Deed (Second Variation Deed), so that Lot 1 in DP 1177664 is included in the definition of the “Laneway Land” as was the original intention of the parties.

The Aboriginal Housing Company Limited has informed the City that it is expecting to commence construction in late November/early December of this year, and has requested a further 12 month extension to the date specified as the Agreed Date from 21 December 2018 to 21 December 2019.

This report also seeks approval to for the City to effect the 12 month extension to the date specified as the Agreed Date, such extension to be effected in the Second Deed of Variation.

## Recommendation

It is resolved that:

- (A) Council transfer a 6.0 square metre portion (the splay corners) of Eveleigh Lane, known as Lot 1 in DP1177664, to the Aboriginal Housing Company Limited for the nominal sum of \$10.00; and
- (B) authority be delegated to the Chief Executive Officer to negotiate, execute and administer a Deed of Variation of the Pemulwuy Project Deed with the Aboriginal Housing Company Limited for the purpose of:
  - (i) amending the date specified as the "Agreed Date" from 21 December 2018 to 21 December 2019;
  - (ii) including Lot 1 in DP 1177664 as part of the "Laneway Land", to document the transfer of this land to the Aboriginal Housing Company Ltd; and
  - (iii) including DP 117664 as an annexure.

## Attachments

- Attachment A.** Existing Pemulwuy Project Deed
- Attachment B.** Pemulwuy Project Plan
- Attachment C.** Location Plan (Splay Corners)
- Attachment D.** Deed of Variation Pemulwuy Project
- Attachment E.** Deposited Plan Administration Sheet - DP1177664
- Attachment F.** Deposited Plan Administration Sheet - DP1163669
- Attachment G.** Certificate of Title - Lot 1 DP1177664
- Attachment H.** Resolution of Council - Dated 20 August 2012

## Background

1. The Aboriginal Housing Company Limited, a not-for-profit organisation, plans to redevelop the area known as the Block in Redfern. The Pemulwuy Project site comprises 15,638 square metres of mixed used including affordable housing, commercial, retail, cultural, and community uses and public domain, as shown on the Precincts Plan at Attachment B.
2. On 20 August 2012, Council resolved in principle to support the transfer of land to the Aboriginal Housing Company, subject to finalisation of an appropriate deed with the Aboriginal Housing Company. The Chief Executive Officer was appointed the delegated authority to settle the terms of that deed. This deed was finalised and entered into on 31 May 2013.
3. The deed formally commits the City to the transfer of a portion of Caroline Lane and Eveleigh Lane, being Lot 1 in DP1163669, and seven small parcels of land, to the Aboriginal Housing Company, allowing the delivery of the Pemulwuy Project.
4. The Department of Planning and Infrastructure granted Project Approval to the Pemulwuy development on 21 December 2012, giving the Aboriginal Housing Company consent to redevelop the area into three precincts, including culturally appropriate and accessible housing.
5. On 21 December 2012, development approval was given for the 'Pemulwuy Project'. The development was to upgrade 'the Block'. The site was to be divided into 3 precincts:
  - (a) Precinct P1:
    - (i) the construction of a two (2) / part six (6) storey mixed-use building containing 62 dwellings, retail/commercial space, gymnasium/fitness centre space, car park accommodating a total of 115 spaces; and
    - (ii) the provision of 865m<sup>2</sup> of publicly accessible open space;
  - (b) Precinct P2: the construction of a two (2) / part three (3) storey mixed-use building, containing a retail/commercial space and a 60 place childcare centre; and
  - (c) Precinct P3: the construction of a three (3) / part six (6) storey mixed-use building containing a retail/commercial space, a gallery and student housing accommodating a total of 154 beds in 42 units.
6. In May 2013, the City entered into a deed at Attachment A, with the Aboriginal Housing Company Limited for the 'Pemulwuy Project', being the re-development of 'the Block' in Redfern. The deed was subject to key elements of the development being delivered. These include:
  - (a) affordable housing - Precinct 1;
  - (b) childcare - Precinct 2;
  - (c) gallery - Precinct 3; and
  - (d) public open space - Precinct 1.

**Land Transfers**

7. The deed also agreed the transfer of City land (including the former Pemulwuy Park, Eveleigh Lane and Caroline Lane) for a sum of \$20.00 to facilitate the redevelopment of 'the Block'. This land has since been re-classified, closed and transferred as per the requirements of the deed.
8. Subsequently and pursuant to section 9.3 of the deed, the City registered a Caveat on the subject land on 16 July 2014. This caveat was registered to ensure that any development of this land would deliver affordable housing. The delivery of affordable housing was questioned by the Aboriginal Housing Company Limited and their investors due to the lack of financial capacity to deliver the project, based on their current proposal for the site.
9. In December 2016, the Aboriginal Housing Company Limited lodged a Request for Secretary's Environmental Assessment Requirements (SEAR) with the Department of Planning and Environment, seeking a modification to Precinct 3. The modifications include:
  - (a) increasing the student accommodation from 154 beds in 42 units to 522 accommodation units;
  - (b) increasing the height of the building from a maximum of six storeys to 16; and
  - (c) increasing the floor space from 2.3:1 to 7.16:1.
10. The City made a submission to the Department of Planning and Environment on the latest application. Councillors were briefed in October 2017 prior to the submission being sent and received a copy of the submission.
11. In accordance with the existing Pemulwuy Project Deed, as shown at Attachment A, the land transfers have been completed with the transfer of the "Open Space Land" and the "Laneway Land", being Lot 1 in DP 1163669 for a nominal payment of \$10.00 for the "Laneway Land" and \$10.00 for the "Open Space Land".
12. It has recently been discovered that a 6.0 square metre portion (the splay corners) of Eveleigh Lane, known as Lot 1 in DP1177664, as shown at Attachment H, was not included in the land transferred to the Aboriginal Housing Company Limited, nor was this land referenced in the Pemulwuy Project Deed.
13. It has always been the City's intention to transfer these splay corners, as they formed part of the former Eveleigh Lane, which was resolved to be transferred for a nominal sum of \$10.00, as shown in the Resolution of Council, dated 20 August 2012 at Attachment E. These splay corners should be included in the description of the "Laneway Land" in the definitions section within the Pemulwuy Project Deed, as shown at Attachment A.
14. Upon review of the Resolution of Council, dated 20 August 2012 and pertaining to the Pemulwuy development, it is considered that a deed of variation amending the Pemulwuy Project Deed to include Lot 1 in DP 1177664 as a part of the "Laneway Land" will enable this small portion of land to be transferred to the Aboriginal Housing Company, thus completing all of the intended land transfers associated with this Project.

15. Council is requested to formally endorse the variation of the existing Pemulwuy Project Deed to include Lot 1 in DP 1177664 as a part of the "Laneway Land", as defined in the existing Pemulwuy Project Deed, and to note that it is intended to transfer this land to the Aboriginal Housing Company Limited as part of the Laneway Land, resolved by Council on 20 August 2012 to be transferred for a nominal sum of \$10.00.

### **Project Commencement**

16. On 14 March 2017, a letter was received from the Aboriginal Housing Company Limited updating the Redfern community and the City about their new funding model and proposed amendments to the 'Pemulwuy Project'.
17. The delays to this project have been directly related to the Aboriginal Housing Company Limited's financial capacity to undertake this project. These financial challenges are due to insufficient funding from various government authorities. The former project relied heavily on government assistance. The appointment of KPMG as a financial consultant and the development of the new proposal ensures the project is economically viable, without reliance on government funding.
18. Whilst the proposed amendments to Precinct 3 are substantial and have considerable planning implications, the proposed amendments do not largely change the key elements for consideration within the deed. This project will still deliver affordable housing, the gallery, open space (including roads and plaza) and child care. Note: the gallery was originally located in Precinct 3 and is now located in Precinct 1 (the Block) and aligns common space that connects all three precincts.
19. In November 2017, Property Services met with the Aboriginal Housing Company Limited to undertake a review of the Pemulwuy Project Deed and discuss compliance with the Agreed Date of 21 December 2017.
20. The Pemulwuy Project Deed requires the Aboriginal Housing Company Limited to have "Substantially Progressed" the Pemulwuy project by the Agreed Date, as follows:
  - (a) all approvals and authorisations reasonably necessary for the construction of the first stage of the Pemulwuy Project have been granted;
  - (b) the Aboriginal Housing Company Limited has entered into a construction contract for the construction of at least the first stage of the Pemulwuy Project; and
  - (c) construction work has commenced on the Pemulwuy Project Site.
21. The Aboriginal Housing Company Limited has confirmed the following in response to the above "Substantially Progressed" conditions:
  - (a) June 2017 - Section 75W to modify Precinct 3 submitted to Department of Planning and correspondence received from Department of Planning requesting further information as a result of Public Exhibition of S75W;
  - (b) June 2017 - Construction Contract updated and entered into with Diecorp; and
  - (c) construction has not yet commenced, however, in October 2017, demolition of Murawina Building in Precinct 3 was completed and in November 2017, demolition commences of the Precinct 2 building.

- (d) October 2018 - Construction Certificate documentation for Precinct 1's (affordable housing) bulk earthworks and shoring details are near completion with sign off scheduled for late October 2018 and onsite construction works programmed to commence in November 2018.
22. In September 2018, the City met with the Aboriginal Housing Company Limited and their developer, Deicorp, to seek an update on the status of the Pemulwuy Project. The Aboriginal Housing Company Limited confirmed that while they are fully committed to commencing construction on the Pemulwuy Project this year, they are seeking a further extension of 12 months of the Agreed Date - ie from the current date of 21 December 2018 to 21 December 2019 based upon the following matters beyond the control of both the Aboriginal Housing Company Limited and project developer Deicorp:
- (a) Department of Planning advised that the final DA and modification condition documentation will be sent to PAC in early October with a determination expected in late November;
- (b) The Elouera Tony Mundine Gym (located in the future Affordable Housing Precinct 1) is currently the training base for an Ex World Champions Boxing Event participant, Anthony Mundine. The boxing event is scheduled to take place in late November, which results in the gym demolition being pushed out to December 2018; and
- (c) the 2018/2019 festive season results in the shutdown of the construction industry.

## Key Implications

### Strategic Alignment - Sustainable Sydney 2030 Vision

23. The Pemulwuy Project plans to revitalise the area formerly known as the Block. The project aims to develop housing and services for the Aboriginal community as well as providing a community centre, health and fitness facility, respite centre and public open space. In addition, key elements, as defined under the Deed, include child care, the gallery and public open space. The Pemulwuy Project will contribute to the neighbourhood regeneration.

**Budget Implications**

24. The subject land, being Lot 1 in DP 1177664, as shown at Attachment B, was originally intended to be transferred as a part of Resolution of Council, dated 20 August 2012, as shown at Attachment H. The budget implications were addressed as part of this report.
25. Prior to the transfer of Lot 1 in DP 1177664, the City will enter into a Deed of Variation with the Aboriginal Housing Company to include Lot 1 in DP 1177664 as part of the "Laneway Land" intended for transfer in the existing Pemulwuy Project Deed. This Deed, as mentioned above, will protect the City's interest in this land both commercially and for the intended use of the land (as an affordable housing project).
26. As reported in December 2017, the transfer of a portion of Caroline Lane and Eveleigh Lane, being Lot 1 in DP1163669, and seven small parcels of land, to the Aboriginal Housing Company, allowing the delivery of the Pemulwuy Project for the total nominal sum of \$20.00, results in a write off of an estimated \$700,000 in land assets and \$38,000 in "Park Improvements", as per the City's Financial Register.

**Relevant Legislation**

27. Local Government Act 1993.

**AMIT CHANAN**

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