

Item 5.

Owners Consent - 56, 58-76, 82-106 and 110-122 Oxford Street, Darlinghurst

File No: X013729.010

Summary

On 19 November 2018, Council resolved to enter into a 99-year lease of the City's properties at 56-76, 82-106 and 110-122 Oxford Street, Darlinghurst, with AM Darlinghurst Investment Pty Ltd (Ashe Morgan).

On 25 November 2019, the City and AM Darlinghurst Investment Pty Ltd concurrently executed the Development Deed and 99-year lease for the City's Oxford Street properties.

The Development Deed established the parameters for withholding landowner's consent which are detailed and responded to within this report.

AM Darlinghurst Investment Pty Ltd has submitted development applications and all supporting documentation for owner's consent for 58-76 (Group 1), 82-106 (Group 2) and 110-122 (Group 3) Oxford Street.

Owner's consent is to be considered to the extent that the development applications are consistent with the applicable provisions of the Development Deed. The applications being consistent with the Development Deed, owner's consent cannot be withheld. In order for the City to fulfil its obligations under the contracts, owner's consent must be provided to enable the Development Applications to be assessed.

A further development application for the heritage listed Zink building at 56 Oxford Street will follow in due course.

This report seeks Council's endorsement to delegate authority to the Chief Executive Officer to grant owner's consent to AM Darlinghurst Investment Pty Ltd lodging development applications for the City owned properties at 56, 58-76, 82-106 and 110-122 Oxford Street, Darlinghurst, and all future applications required to allow the developer to progress the endorsed objectives.

The granting of owner's consent to lodge development applications does not fetter Council's discretion as consent authority to determine any development applications lodged by or on behalf of AM Darlinghurst Investment Pty Ltd, or as landowner to submit an objection to any development applications lodged by or on behalf of AM Darlinghurst Investment Pty Ltd.

The endorsement of the recommendation ensures the City and AM Darlinghurst Investment Pty Ltd will continue to meet their contract obligations.

Recommendation

It is resolved that:

- (A) authority be delegated to the Chief Executive Officer to grant owner's consent to AM Darlinghurst Investment Pty Ltd lodging development applications for 58-76, 82-106 and 110-122 Oxford Street, Darlinghurst, as required under the Environmental Planning and Assessment Act 1979 to allow AM Darlinghurst Investment Pty Ltd to progress refurbishment of the City's properties; and
- (B) authority be delegated to the Chief Executive Officer to grant owner's consent to AM Darlinghurst Investment Pty Ltd for future development and modification applications for 56 Oxford Street, Darlinghurst, and any further applications for 58--76, 82-106 and 110-122 Oxford Street, Darlinghurst, subject to compliance with the requirements of clause 3.3 of the Development Deed.

Attachments

Attachment A. Resolution of Council Dated 19 November 2018

Attachment B. Identification Plan

Background

1. On 7 August 2017, Council unanimously endorsed seeking private sector interest via an Expression of Interest (EOI) to identify entities with the expertise and capacity to reposition the City's Oxford Street Properties, being 56-76, 82-106 and 110-122 Oxford Street, on a long-term ground lease.
2. The City established seven key objectives for the Oxford Street Expression of Interest process, which formed the basis of the Expression of Interest/Request for Detailed Proposal Evaluation Criteria, with the final selection of the preferred proponent being based on the respondent's:
 - (a) financial offer and financial capacity;
 - (b) development capability and experience;
 - (c) ability to reposition property in an urban revitalisation/activation context;
 - (d) capacity for delivering the highest quality of urban design, architecture and sustainability outcomes;
 - (e) ability to deliver projects within a heritage context;
 - (f) experience or ability to integrate, develop and manage creative and cultural tenancies within a development/s; and
 - (g) ability to ensure tenancies correspond with the core urban activation concept, with the final make-up of tenancies reflective of the intended status of Oxford Street as a significant cultural destination at the local and international level.
3. On 19 November 2018, Council unanimously resolved to endorse AM Darlinghurst Investment Pty Ltd as the preferred entity to acquire, implement and manage a successful transformation of the Oxford Street Properties on a long-term ground lease and delegated authority to the Chief Executive Officer to negotiate, execute and administer the transaction documents.

Ground Lease and Development Deed

4. On 25 November 2019, the City and AM Darlinghurst Investment Pty Ltd executed the Development Deed and 99-year Lease.
5. The Development Deed details the parameters for landowner's consent to lodging development applications, design development and design approvals, builder and key consultants, conditions precedents to works and developer milestone dates.
6. On 8 September 2020, a Deed of Variation to the Development Deed was executed that extended the first Milestone Date under the Development Deed due to the impacts of Covid-19.
7. The variation extended the date to lodge development applications with the consent authority from 12 months of the date of the Development Deed (25 November 2019) to 18 months. The effective date for lodging development applications is 24 May 2021.
8. All other Milestone Dates remain unchanged.

Development Applications

9. The developer has submitted applications and all supporting documentation for:
 - (a) 58-76 (Group 1) and 82-106 (Group 2) Oxford Street, Darlinghurst; and
 - (b) 110-122 (Group 3) Oxford Street, Darlinghurst.
10. A development application for the state heritage listed building at 56 Oxford Street will be submitted at a later stage.

Landowners' Consent - Parameters for granting consent

11. Owner's consent is to be considered to the extent that the development applications are consistent with the applicable provisions of the Development Deed (including clauses 3.2 and 3.3).
12. Under Clause 3.2 Development Approvals the developer must obtain all necessary development approvals required to carry out the development and for the use of the premises. Each development application prepared by the developer must:
 - (a) be consistent with the Landowner's Objectives and substantially in accordance with the Development Proposal; and
 - (b) provide for a high standard of design, materials and construction.
13. Under Clause 3.3 Landowners Consent, the City may only withhold consent to a development application or a modification to the development application if the development application:
 - (a) has not been prepared in accordance with Clause 3.2 of the Deed (CI 3.3.3 a); or
 - (b) is for the carrying out of works which, on completion of those works, would not comply with applicable planning laws (CI 3.3.3 b); or
 - (c) does not provide for at least 1,600m² of space within the Buildings to be leased to the Creative Tenants, as required under the terms of the Lease (CI 3.3.3 c).

Landowners review of applications

14. The City confirms that each of the development applications reviewed has been prepared in accordance with Clause 3.2 and is therefore not inconsistent with Clause 3.3.3 (a). It is noted that further applications will be submitted for individual uses.

15. In respect of Clause 3.3.3 (b) the City confirms that each development application is for works which on completion of those works would comply with applicable planning laws.
16. The developer has prepared a Clause 4.6 variation request to the development standard for height of buildings under Clause 4.3 of the Sydney LEP 2012. The maximum building height that applies to the site under Clause 4.3 of the Sydney Local Environmental Plan 2012 (Sydney LEP 2012) is 15 metres. It is noted that the developer is seeking to vary the height standards from 15 metres to 24.9 metres. Clause 4.6 of the Sydney LEP 2012 enables a consent authority to grant consent for development even though the development contravenes a development standard in certain circumstances. The clause aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for, and from, development. This variation request will be considered as part of the assessment process of this development application in accordance with the Environmental Planning and Assessment Act 1979.
17. In respect of Clause 3.3.3 (c), the developer is required to provide for at least 1,600 square metres of space within the buildings to be leased to the Creative Tenants, as required under the terms of lease. The development applications reviewed provide a total of 1,199.3 square metres which is a shortfall of 400.7 square metres.
18. The developer has provided written confirmation that the balance of space required for Creative Tenants will be within the future development application for the Zink building at 56 Oxford Street.
19. In accordance with Clause 3.3.3 of the Development Deed, the City can withhold its consent to the development application for 56 Oxford Street, if it does not make allowance for the remaining 400.7 square metres as creative space. This may result in the developer modifying the development application or the development applications/approvals for 58-76, 82-106 and 110-122 Oxford Street to take the remaining 400.7 sqm into account.
20. The landowner's consent to the current applications will state that the City is providing landowner's consent in reliance on the developer's written undertaking that the development application for 56 Oxford Street will include the remainder of the creative space portion of 400.7 square metres.

Council Delegations - Landowner's Consent

21. The granting of owner's consent on a significant property or land (including road) owned or managed by Council is a function which is not delegated to the Chief Executive Officer.
22. To manage the City's contractual obligations, the most practical and expeditious approach is for the Council to delegate authority to the Chief Executive Officer to provide owner's consent to lodgement of:
 - (a) the current applications for 58-76, 82-106 and 110-122 Oxford Street;
 - (b) the future application for 56 Oxford Street (provided that all obligations under the deed are complied with); and
 - (c) any future applications to progress the transformation of these properties.

Financial Implications

23. There are no financial implications directly related to the report.

Relevant Legislation

24. Environmental Planning and Assessment Act 1979.
25. Local Government Act 1993.

Critical Dates / Time Frames

26. Council's adoption of the recommendations will ensure that the City, in its capacity as owner, and AM Darlinghurst Investment Pty Ltd, in its capacity as developer and purchaser, will meet their obligations under the contracts.

Options

27. Council could determine not to delegate authority to the Chief Executive Officer to give owner's consent for the lodgement of applications as required by legislation. Such action could delay the purchaser/developer and impact AM Darlinghurst Investment Pty Ltd's obligations under the contracts. In this situation, AM Darlinghurst Investment Pty Ltd could obtain owners consent through an appeal to the Land and Environment Court.

Public Consultation

28. There is no public consultation required for the City in its capacity as a property owner to authorise the lodgement of an application.

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