

## Relevant Information for Council

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**FILE:** X038757 **DATE:** 24 June 2022

**TO:** Lord Mayor and Councillors

**FROM:** Graham Jahn AM, Director City Planning, Development and Transport

**SUBJECT:** Information Relevant To Item 11.10 – Public Exhibition - Planning Proposal - Pitt and Hunter Street - Sydney Local Environmental Plan 2012 and Sydney Development Control Plan 2012 Amendments

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### For Noting

This memo is for the information of the Lord Mayor and Councillors.

### Purpose

This memo is to provide additional information requested by Councillors on the public benefits provided by the applicant.

### Background

At the meeting of the Transport, Heritage, Environment and Planning Committee on 20 June 2022, further information was sought on the relationship of any value uplift of the proposal and the public benefit offer associated with the planning proposal.

### Approach to infrastructure provision and planning agreements for Central Sydney

The City can only require<sup>1</sup> contributions relating to development in accordance with the provisions of the Environmental Planning and Assessment Act 1979. The requirements for voluntary planning agreements, which are the only contributions mechanism available at the planning proposal stage, are very detailed in both the Act and guidelines imposed by the NSW Department of Planning and Environment.

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<sup>1</sup> Non voluntary contributions

The fundamental principle for contributions under the current legislative scheme is that they are intended to reflect the demand for infrastructure created by development, rather than be a means by which the community shares in the wealth created through the improvement of land. There is no mechanism in the current legislation to require the capture or sharing of the increase value when the planning controls applicable to an individual piece of land are changed. This however does not prevent a consent authority from considering purely voluntary contributions relating to a proposal.

The NSW Planning Agreements Practice Note (February 2021) is clear in its statement:

"the use of planning agreements for the primary purpose of value capture is not supported as it leads to the perception that planning decisions can be bought and sold and that planning authorities may leverage their bargaining position based on their statutory powers."

The current approach taken by the City provides certainty and transparency to the development industry and is consistent with this requirement.

### **Infrastructure provision under the Central Sydney Planning Framework**

The original version of the Central Sydney Planning Strategy included value capture contributions in its planning proposal guideline.

Developed in 2013-15, the draft Central Sydney Planning Strategy was considered by Council and when published by the City in 2016 proposed several innovative solutions to guide contributions made by developers for the provision of public infrastructure commensurate to the scale of development being proposed.

The July 2016 Report to Council notes that a draft Guideline for site-specific planning proposals would provide a transparent framework for the preparation and assessment of proposals as well as a framework for sharing value in planning gain resulting from changes to the CBD planning controls to fund infrastructure delivery.

In early 2019, with the Central Sydney planning proposal having not been progressed by the Department, the Council resolved to place the draft Strategy, Planning Proposal, Development Control Plan and draft Guideline (collectively the Central Sydney Planning Framework) on non-statutory exhibition in order to identify the level of public support for the proposal.

The March 2019 Report to Council discussed an attached the draft Guideline for Site Specific Planning Proposals in Central Sydney (the draft Guideline) including suggested rates for uplift contributions to be secured by a voluntary planning agreement. Being in a guideline, it was not a statutory obligation.

Based on economic analysis, a rate of \$1200 per square metre of additional floor space for the northern core and \$600 per square metre of additional floor space for the remainder of Central Sydney was put forward. The draft Guideline also set out the infrastructure demand for Central Sydney and which could be funded through this mechanism.

A copy of these draft Guidelines from March 2019 is provided at Attachment A.

At the time, it was understood that the rate of statutory contributions payable at the development application stage would remain at 1 per cent in accordance with s61 of the City of Sydney Act 1988.

Following subsequent negotiations, in December 2019, the then Minister for Planning agreed to enable the Central Sydney Planning Framework to proceed to gateway subject to several significant amendments. These included the substitution of the City's proposed approach to contributions for community infrastructure, for an increased development contribution levy of 3 per cent for all development in the Central Sydney area regardless of development having an uplift or not. This was reasoned that surrounding development benefitted from community infrastructure improvements as much as the planning proposal in question. The City's analysis indicated that there was measurable benefit in having the certainty of the statutory 3 per cent contribution rate compared to the guideline, as well as better equity of contributions being paid at the higher rate by all eligible development across the area. The Central Sydney Planning Framework was subsequently amended by Council and proceeded to gateway, public exhibition, and finally was made as an amendment to the Sydney LEP and a new contributions plan in November 2021.

The background to the changed approach to contributions is set out in a Lord Mayoral Minute on the topic, endorsed by Council on 9 December 2019.

### **Public benefit offer - 105-107 Pitt and 15-25 Hunter Streets**

This Offer accords with the Central Sydney Planning Framework as adopted by Council.

The letter of Offer accompanying the proposal sets out the public benefits offered by the proponent. The letter of Offer is included at Attachment C to the subject report. It includes an offer to pay Council the 3 per cent development contribution required under the Central Sydney contributions plan before construction starts. This is a benefit as the NSW Government has proposed that contributions be paid at the back end of projects prior to the issue of an occupation certificate. This would delay by several years receipt of contributions and, in the City's opinion, increase the uncertainty in receipt of the contributions. As noted in the public benefit offer, the applicant estimates the infrastructure contributions to be approximately \$9.9M, to be cost updated closer to construction. Note, additional affordable housing contributions will be payable by condition of consent estimated to be at least \$5.3M.

Other aspects of the public benefit Offer are public access easements over private land, sustainability commitments and the provision of public art. The minimum value of the public art at 0.5 per cent of the total cost of development is approximately \$1.65M. Note, the creation and embellishment of the public access easement land will be required by conditions of consent.

The uplift considered in the planning proposal for Pitt and Hunter Street is envisaged by the Central Sydney Planning Framework. The current planning controls in the tower cluster area in the LEP would enable an FSR for the site of 18.75:1 for commercial or 22:1 for hotel uses without a planning proposal. The proposal seeks an FSR of 22:1 above ground but for commercial uses inclusive of the design excellence bonus.

In assessing the request for a planning proposal, the City does not attempt to calculate the financial value (or proponent risk) created by a planning proposal for the purposes of capturing land value uplift consistent with NSW legislation and guidelines. However, it will consider any purely voluntary contributions that may be proposed.

**Graham Jahn AM, Director City Planning and Development**

Prepared by: Sally Peters, Manager Central Sydney Planning

**Attachments**

**Attachment A.** Draft Guideline for Site Specific Planning Proposal in Central Sydney -  
March 2019

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Approved



**GRAHAM JAHN AM**

Director City Planning, Development and  
Transport