

## Exemption from Tender - Link and Epsom Road Design

**File No: X099020**

### Summary

This report seeks an exemption from tender for the Head Design Consultancy services to convert the existing intersection of Link Road and Epsom Road in Rosebery from a roundabout into a signalised four-way intersection.

This signalised intersection will allow safe crossing of pedestrians, something which is not currently possible in the existing configuration. An overview of the detailed design is provided at Attachment A and the costs associated with the project are detailed at Confidential Attachment B.

The signalised intersection was originally to be delivered by the developer Toplace Pty Ltd in association with the development at 67-77 Epsom Road, Rosebery. Following the resolution of previous litigation by way of a Deed of Agreement and, subsequently, Toplace Pty Ltd and related entities going into administration, the intersection must now be delivered by the City. The design of the signalised intersection is required to be built as designed, with the design already achieving approval from Transport for NSW. Service authority asset designs and approvals are also required, along with construction phase services, from the Head Design Consultant.

The Head Design consultant, AT&L and Associates Pty Ltd (AT&L), was originally engaged by Toplace Pty Ltd to design the intersection. As such, this consultant has progressed the design and documentation to a point where it is close to complete. AT&L has also progressed associated applications with relevant service authorities for reconfiguration of services within the intersection. A change in designer at this point would lead to a loss of existing knowledge of the project and require additional time and money.

Toplace Pty Limited provided the City with a bank guarantee to secure its obligations as detailed in Confidential Attachment B. Funds are now held in the City's accounts and will be applied towards costs associated with delivery of the intersection.

## Recommendation

It is resolved that:

- (A) Council approve an exemption from tender in accordance with section 55(3)(i) of the Local Government Act 1993 for the designer for the Link Road and Epsom Road intersection for the price and contingency outlined in Confidential Attachment B to the subject report;
- (B) Council note that a satisfactory result would not be achieved by inviting tenders for this work because:
  - (i) the existing head design consultant has existing detailed knowledge of the project and has documented the current design to detailed design;
  - (ii) the head design consultant completes quality work and has been contracted by the City on other projects; and
  - (iii) if a tender is required it will add further delays to the delivery of the intersection, and will increase the cost and time to finalise the intersection design;
- (C) authority be delegated to the Chief Executive Officer to negotiate, execute and administer the contracts relating to Link Road and Epsom Road intersection;
- (D) Council note the proposed design of the new signalised intersection at Attachment A to the subject report; and
- (E) Council approve the additional funds sought from Future Public Domain Upgrade Initiatives as outlined in Confidential Attachment B to the subject report, noting that the additional costs of the project are eligible to be recouped from developer contributions for infrastructure in the area.

## Attachments

**Attachment A.** Intersection Design

**Attachment B.** Financial Implications and History of the Site (Confidential)

## Background

1. In December 2020, the City entered into a Deed of Agreement regarding the upgrade of the Epsom Road and Link Road intersection from a roundabout to a signalised intersection. The Deed arose as a result of Land and Environment Court proceedings which were settled through mediation between the City, Hifu Investment Pty Limited, Toplace Pty Limited, Jolyn Place Pty Limited, The Warehouse Pty Limited and Transport for NSW.
2. As a result of the Deed of Agreement, the City entered into a Planning Agreement with Toplace Pty Limited (as developer) and Jolyn Place Pty Limited (as landowner) to secure the delivery of the intersection upgrade by the developer Toplace Pty Limited in association with the development at 67-77 Epsom Road, Rosebery.
3. The developer provided the City with a bank guarantee at the time of execution to secure its obligations under the Planning Agreement, further detailed in Confidential Attachment B.
4. The terms of the Planning Agreement required the developer to complete the intersection works.
5. Toplace Pty Limited had sought and attained approval of the design and construction documentation for the intersection works, however, no works had commenced on site. City staff had worked extensively with Toplace Pty Limited and other parties under the Deed of Agreement in an effort to progress delivery of the intersection. However, Toplace Pty Limited was in breach of several of the terms of the Planning Agreement.
6. On 11 July 2023, the City was made aware that administrators had been appointed to manage Toplace Pty Limited and a number of other entities related to Toplace.
7. With the developer now in administration, in accordance with relevant provisions of the Planning Agreement, the City has claimed the bank guarantee provided by Toplace Pty Limited.
8. Funds are now held in the City's accounts and will be applied towards costs associated with delivery of the intersection.
9. The City is now working to finalise the design of the intersection and has programmed the construction of the intersection into its capital works program.
10. The Head Design consultant, AT&L and Associates Pty Ltd (AT&L), was originally engaged by the developer Toplace Pty Ltd to design the intersection and have progressed the detailed design and documentation to a point where it is close to complete. AT&L have also progressed associated applications with relevant service authorities for reconfiguration of services within the intersection. A change in designer at this point would lead to a loss of existing knowledge of the project and require additional time and money from the City.
11. The current intersection is a roundabout at the t-intersection where Link Road terminates at Epsom Road, on the boundary of Zetland and Rosebery. The proposed works to the intersection include construction of a new road stub, called Bunmarra Street, to the south of the intersection. The intersection will become a signalised four-way intersection as shown at Attachment A. This upgrade will help to improve general safety, facilitate safe pedestrian connections across all four intersection arms as well as cycle connections through the signals.

12. In April 2019, Transport for New South Wales approved the Traffic Control Signal (TCS) Plan for the upgrade of the existing roundabout at Epsom Road and Link Road to traffic signals. In July 2021, the new signals were recommended by the Local Pedestrian, Cycling and Traffic Calming Committee.

### History of the Site



Figure 1 – Link and Epsom Road intersection

13. The area has a complex planning history. In 2010, the Central Sydney Planning Committee granted a concept development consent to Overland Consolidated Pty Ltd for development at 67-77 Epsom Road and 95 Dalmeny Avenue Rosebery. At the time a development known as “Dolina” had been granted consent by the Land and Environment Court for a significant development on two nearby sites. The Dolina development was obliged to deliver the traffic lights at the intersection under a Voluntary Planning Agreement, however it was identified that the Overland Consolidated development would also trigger the need for the intersection upgrade and appropriate conditions were imposed.
14. In 2011, the Dolina development was split into two and is now known as “Hifu” (constructed and operational) and “The Warehouse” (not yet commenced). Delivery of the intersection was secured through a voluntary planning agreement between the City, Hifu and the Warehouse in addition to the imposition of conditions of consent. In 2016 development consent was granted to Toplace Pty Ltd for the redevelopment of their site. Conditions of consent were imposed by RMS as the concurrence authority relating to the requirement for the upgrading of the intersection prior to occupation.
15. Construction of the intersection required remediation and dedication of land on all three sites, Toplace, Hifu and the Warehouse, to the City. The land from Toplace and Hifu has been dedicated. The Warehouse land has not yet been dedicated to the City due to the fact that that redevelopment has not proceeded at this time.

16. In 2020 the Toplace development was finalised but could not be occupied as the intersection upgrade had not been completed. Toplace commenced various proceedings in the Land and Environment Court in order to progress the occupation of their building. The City joined all relevant parties – Hifu, The Warehouse and Transport for NSW to one set of proceedings to enable all issues involving the site to be resolved in the one forum.
17. The intersection upgrade is required to be delivered in accordance with Transport for NSW approvals that have been granted as part of the settlement of the matter. Further information on the settlement terms is provided in Confidential Attachment A.

### **Financial Implications**

18. The required funding for the capital project exceeds the amount of the bank guarantee provided by Toplace Pty Limited (as detailed in Confidential Attachment B).
19. As part of the Quarter 1 Review Report 2024, Council approved the transfer of funds to the Link Road and Epsom Road Intersection project from the provision of Future Public Domain Upgrade Initiatives (as set out in Confidential Attachment B to the report).
20. Additional spending on this project will be eligible for recoupment from developer contributions for infrastructure in the Green Square area.

### **Relevant Legislation**

21. The exemption from tender process has been conducted in accordance with the Local Government Act 1993 and the Local Government (General) Regulation 2021.
22. Local Government Act 1993 - Section 10A provides that a council may close to the public so much of its meeting as comprises the discussion of information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business.
23. Attachment B contains confidential commercial information 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.
24. 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**

25. Engagement of Designer - May 2024.
26. Engagement of Head Contractor - February 2025.
27. Completion of construction works - early 2026.

## **Public Consultation**

28. Consultation for the proposed changes was undertaken as part of the masterplan for the Epsom Park Precinct. Consultation was also undertaken with directly affected stakeholders as part of the Development Application process for 67-77 Epsom Road, Rosebery.
29. Notification of affected surrounding residents and businesses will take place prior to the construction works commencing.

## **KIM WOODBURY**

Chief Operating Officer

Sam Wheatley, Delivery Manager