

## ECONOMY

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<b>ITEM NUMBER</b>	8.2
<b>SUBJECT</b>	Voluntary Planning Agreement for land at 87 Church Street, Parramatta
<b>REFERENCE</b>	RZ/21/2014 - D04433039
<b>REPORT OF</b>	Project Officer Land Use
<b>APPLICANT:</b>	Hamptons Property
<b>LANDOWNER:</b>	WFM Motors Pty Ltd

### PURPOSE:

To allow Council to consider:-

- a letter of offer to enter into a Voluntary Planning Agreement for land at 87 Church Street and 6 Great Western Highway, Parramatta.
- whether Council should continue to negotiate for the inclusion of provisions in the draft VPA that facilitate the construction of a pedestrian bridge between the subject site and a site on the opposite side of the Great Western Highway

### RECOMMENDATION

(a) **That** the applicant be advised that:-

- Preference is that provision be made, in the draft VPA being negotiated for land at 87 Church Street, Parramatta for a pedestrian bridge between the subject site and a site on the opposite side of the Great Western Highway to be integrated into the design of any new development proposed for the subject site; and
- That subject to provision for the pedestrian bridge being incorporated into the draft VPA the monetary component specified in the draft letter of offer detailed in Attachment 1 is accepted in principle.

(b) **That** the Roads and Maritime Services (RMS) and owners of the subject site (who it is also noted own the former Heartland Holden site opposite the subject site) be advised that:-

- Council supports in principle the Joint Regional Planning Panel's proposal to promote pedestrian connectivity but question whether a pedestrian bridge is necessary.
- Council is willing to incorporate where appropriate controls in planning policies and Voluntary Planning Agreements to help put in place mechanisms to assist in the delivery of the bridge.
- However, Council does not accept any responsibility for funding, managing the construction or maintenance of the bridge. Any funding and construction arrangements must be resolved between the RMS and the landowner.

(c) **That** delegated authority be given to the Interim General Manager to negotiate and finalise the legal drafting of the VPA on behalf of Council and to endorse the draft VPA for public exhibition subject to the draft VPA complying with (a)

above.

- (c) **Further, that** the draft VPA be placed on public exhibition concurrently with the planning proposal for 87 Church Street and 6 Great Western Highway, Parramatta and that a report be put to Council advising the outcome of the public exhibition of the draft VPA before final endorsement.

## BACKGROUND

1. A draft Voluntary Planning Agreement has been prepared in association with a planning proposal for land at 87 Church Street and 6 Great Western Highway, Parramatta. The planning proposal seeks to amend the Parramatta Local Environmental Plan 2011 to increase the floor space ratio from 3.5:1 to 10:1, height from 28m to 180m and insert a site specific clause requiring a minimum 1:1 commercial floor space be provided with any additional commercial floor space not being counted in the calculation of FSR.
2. At Council's meeting of 14 December 2015 the following was resolved:
  - (a) **That** Council endorse the planning proposal contained at Attachment 1 for land at 87 Church Street and 6 Great Western Highway, Parramatta subject to it being modified to;
    - provide a maximum FSR of 10:1 (+1.5:1 Design excellence);
    - apply a maximum building height to be determined through provision of an amended reference design;
    - contain a site specific clause requiring 1:1 of gross floor area to be provided on the site as non-residential uses. Additional non-residential floor space may be provided but will not constitute FSR;
    - That until such time as serviced apartments are prohibited in the B4 Mixed Use zone, the applicant may propose serviced apartments;
    - That in the event that the Phase 2 Value Sharing Mechanism is not adopted under the CBD Planning Strategy, the proponent be provided with the opportunity to revisit the higher floor space ratio originally proposed for the planning proposal;
    - That in the event that a floor space greater than 10:1 is achieved for the site, car parking is limited to reflect a 10:1 floor space ratio.
  - (b) **That** the applicant provide an amended reference design consistent with the above requirements and that demonstrates compliance with SEPP 65 Apartment Design Guide (ADG). In particular, it must demonstrate an indicative layout that complies with cross ventilation requirements of the ADG. If the reference design proposes a height greater than 156AHD the reference design will need to be supported by an Aeronautical Study to address the relevant Section 117 Direction.
  - (c) **That** the CEO be authorised to consider the reference design provided by the applicant and determine the exact height that will be included in the Planning Proposal prior to it being forwarded to the Department of Planning and Environment seeking a Gateway determination.

- (d) ***That*** Council advises the NSW Department of Planning and Environment that the CEO will be exercising the plan-making delegations for this planning proposal as authorised by Council on 26 November 2012.
  - (e) ***That*** Council invite the proponent to make an offer of a Voluntary Planning Agreement (VPA) in relation to the planning proposal to deliver a public benefit.
  - (f) ***That*** delegated authority be given to the CEO to negotiate the VPA on behalf of Council and that the outcome of negotiations be reported back to Council prior to its public exhibition.
  - (g) ***Further, that*** Council authorise the CEO to correct any minor anomalies of a non-policy and administrative nature that may arise during the plan amendment process.
3. The Department of Planning and Environment issued a gateway determination for the land at 87 Church Street and 6 Great Western Highway, Parramatta on 12 September 2016 which supported the proposed 10:1 (11.5:1 with design excellence) FSR.
4. Council Officers after reviewing the concept designs and design options for this site consider that any future design can be assessed against the existing DCP controls and a site specific DCP is not required for this site.

## PLANNING AGREEMENTS

5. A planning agreement can be made under section 93F of the Environmental Planning and Assessment Act 1979 and is a voluntary agreement between Council and a landowner, under which the developer may be required to dedicate land, carry out works, pay a monetary contribution or provide other material public benefit, or any combination of these, to be used towards a public purpose. This may be in lieu of section 94 or s94A developer contributions, as a part substitution or an additional benefit.
6. The Act specifies that a public purpose includes the provision of public amenities or public services, the provision of affordable housing, the provision of transport or other infrastructure relating to the land, the funding of recurrent expenditure relating to any of these, the monitoring of the planning impacts of a development and the conservation or enhancement of the natural environment.

## CURRENT POLICY FRAMEWORK

7. In 2008 Council adopted the Planning Agreements Policy (prepared by Connell Wagner) which sets out the principles managing planning agreements, matters that Council must consider in negotiating agreements, the steps in the negotiating process, public probity, notification requirements and implementation. The policy was prepared in line with requirements of the Act and Regulation which set out the legal and procedural framework for planning agreements.
8. The negotiation of a planning agreement is at Council's discretion. Key principles of Council's policy are that:

- planning decisions will not be bought or sold through planning agreements;
  - development that is unacceptable on planning grounds will not be permitted because of the benefits of a planning agreement;
  - the benefits of the planning agreement will bear a relationship to the application;
  - Council will not give undue weight to a planning agreement when making a decision on a development application; and
  - Council will not improperly rely on its position in order to extract unreasonable public benefits under planning agreements.
9. Procedurally, Council's policy requires:
- a Council resolution to undertake negotiations on a planning agreement;
  - appointment of a Council officer with delegated authority to negotiate a planning agreement on behalf of Council (this is not to be an officer with a key responsibility for the development application);
  - consideration of whether an independent person is required to facilitate the negotiations;
  - public exhibition of the draft agreement, once prepared; and
  - Council will ultimately make the decision as to whether to approve the planning agreement.
10. The policy framework guiding the assessment and negotiation process of VPAs is currently under review. Council has considered two reports on 27 June 2016 and 22 August 2016 which provided advice on potential amendments to Council's Policy Framework for assessing VPAs and resolved to defer consideration of any changes to the policy framework pending an independent review of the information prepared to inform both of those reports and preparation of a discussion paper which will guide decision making on the future VPA policy framework. This work is underway and is expected to be reported to Council early in 2017.
11. Since Council initiated the independent review process of Council's VPA Framework Council has considered a number of draft Voluntary Planning Agreements for four (4) sites within the CBD. The draft VPA's for these sites have been assessed against the existing policy previously adopted by Council in 2008 and the recommendations of the CBD Infrastructure Funding Review Committee following their meeting of 1 March 2016, as detailed in part 2(b) below:

*(2) THAT Council concurrently pursue two Options for infrastructure funding as a part of its review of the Parramatta CBD Planning Framework, including:*

- (a) 4.5% section 94A levy to apply to the whole development (subject to Ministerial approval), plus 50% value sharing for Phase 2 (being \$375/m<sup>2</sup>); and*
- (b) 3% section 94A levy to apply to the whole development, plus 20% value sharing for Phase 1 uplift (being \$150/m<sup>2</sup>) and 50% value sharing for Phase 2 uplift (being \$375/m<sup>2</sup>); and*

*should Option (a) be successfully approved by the Minister, then the clauses and maps in the Parramatta CBD Planning Proposal that enable Option (b) be removed at that time.*

12. The subject draft VPA has been assessed against these same criteria.

## **VPA OFFER**

13. The VPA offer (Attachment 1) provided by the landowner of 87 Church Street and 6 Great Western Highway, Parramatta in relation to the associated planning proposal is a monetary contribution of \$3,223,350. The contribution is to be delivered in addition to Section 94A Development Contributions.

## **FORMER HEARTLAND HOLDEN SITE (57, 63 & 83 Church St & 44 Early St)**

14. A development application for land at 57, 63 and 83 Church Street and 44 Early Street, Parramatta otherwise known as the former Heartland Holden site (FHH) was lodged on 17 October 2014. This site is directly opposite the subject site. The application sought approval for the construction of 7 buildings containing 753 units and 39,000sqm of retail/commercial floor space.
15. The Joint Regional Planning Panel was the determining body for the application. During the assessment concerns were raised regarding the increase in pedestrian movement around the local streets and how pedestrians would travel, in a safe and convenient manner, between the site (and sites further to the south) and the core of the CBD and public transport interchange to the north of Great Western Highway. The JRPP required the applicant and Council to investigate a pedestrian bridge. Council Officers took the stance that a pedestrian bridge was not a good urban design or connectivity outcome for the area however a better alternative was not identified.
16. As part of the investigation Council consulted with the Roads and Maritime Services (RMS) as the Great Western Highway is a classified road. The infrastructure requires RMS approval and will ultimately fall into their ownership. On 18 March 2016 RMS noted their support in principle of the pedestrian bridge concept. The RMS has provided their concurrence under Section 138 of the *Roads Act 1993* to the construction of the pedestrian bridge. Condition 3 of their concurrence (as amended on the 12 May 2016) reads as follows:  
*The Developer is to enter into a Transport Infrastructure Contributions (TIC) Deed with Roads and Maritime Services to construct the proposed pedestrian overbridge in Great Western Highway at Church Street intersection prior to issue of the construction certificate.*
17. The JRPP in their assessment report noted that the construction of the pedestrian bridge is reliant on the redevelopment of the subject site (87 Church St) on the opposite side of the road and the integration of the bridge into the future design of any redevelopment of this site.
18. The feasibility of constructing the pedestrian bridge between the FHH and the subject site is improved as both sites are owned by the same owner and are both currently the subject of processes that are pursuing significant redevelopment of the subject sites. The ideal arrangements would be for the bridge to be integrated into the design of the buildings with any associated lifts, steps or ramps incorporated into the design of both buildings. It would not be appropriate for the lifts/steps or ramps associated with the bridge to be provided in the public domain (ie the footpath area) because it would be likely to impact significantly on the function, safety and amenity of the footpath areas due to the narrow width of the public domain available in this area.

19. Therefore in practical terms the delivery of the pedestrian bridge is reliant on the redevelopment of both sites, FHH and 87 Church St. As RMS is currently managing the delivery of the bridge with the landowners of FHH through a Transport Infrastructure Contributions Deed it is recommended a parallel process is undertaken for 87 Church St. This would mean the RMS will be the overarching managers of the project in consultation with Council. The role of the RMS would be to oversee the design and delivery of the bridge. Council's role would be ensuring the design integration of the bridge with the redevelopments of both sites as part of the design competition and Development Application processes.
20. The risk to the bridge being delivered in accordance with the process outlined above is the applicant/owner objecting to the construction of the bridge and challenging the condition imposed by the JRPP requiring the bridge as part of the concept approval for the FHH site or an objection from the owner of 87 Church Street to the requirement to accommodate the bridge as part of redevelopment of that site.
21. While there is a condition on the current concept approval for the FHH site there is no condition or formal requirement linked to the subject site (87 Church Street) that provides a framework for the delivery of that part of the pedestrian bridge that will land on 87 Church Street.
22. Whilst Council Officers question whether a pedestrian bridge is a necessary requirement for this development, we respect the JRPP's determination and will continue to action the development consent for the FHH site. One way to provide some assurance that a bridge can be accommodated on the 87 Church Street site would be to include in the current draft VPA a commitment that the bridge will be accommodated in any future design.
23. This option has been raised with the landowner and they have indicated that they are supportive of the construction of the bridge across both of their sites but they have objected to it being included in the subject draft VPA for the following reasons:-
  - *The two separate sites are at two separate stages of the planning process and are being linked together, which is not a reasonable outcome to facilitate the outcomes in a timely manner, nor can one development consent rely upon another.*
  - *For the Gateway South site the pedestrian bridge does not form part of a voluntary planning agreement, but is to be completed through a Transport Infrastructure Contributions Deed which is facilitated through a condition of the development consent. The same circumstance should apply on the 87 Church Street site.*
  - *The design brief for the Design Excellence Competition will reflect the need for a pedestrian connection with the southern side of Great Western Highway to the Gateway South site. The applicant has met with RMS and design guidelines are in the process of being issued to ensure that the most suitable position for the bridge can be achieved, which reduces the span of the bridge and allows for adequate pedestrian amenity and safety to be achieved.*
  - *The purpose of the voluntary planning agreement is that it is voluntary; the position with respect to the bridge may be easily enforced through a condition, which is obviously involuntary and therefore provides greater certainty for the Council and the community.*
24. The applicant's response indicates in principle support for the delivery of the pedestrian bridge. The point of contention relates to the mechanism. Council Officers would prefer to see the delivery of the bridge formalised in some way via the draft VPA and the applicant considers there are other mechanisms that

can be used to progress the delivery of the bridge. The risks if Council does not pursue some provision for the bridge in the draft VPA are:-

- While the applicant to date has indicated in principle support for the bridge should issues arise during the next phase of the approval process (given the existing consent is a concept approval not a consent that allows for the construction of any building or bridge) they would have less incentive to challenge the condition requiring them to deliver the bridge if they were committed via a draft VPA to incorporating the bridge on the 87 Church Street Site;
- Given that the draft VPA would sit with the land it would be clear, should the landowner seek to sell it, to any purchaser of the site that there is an obligation for this site to contribute to the delivery of the pedestrian bridge if it was included in the draft VPA.

25. Council Officers also note that the Planning Proposal for the subject site will need to be referred to the RMS as part of the formal consultation process. Council Officers consider it likely that the RMS will seek some mechanism be incorporated into the Planning Proposal to assist with the delivery of the bridge. Incorporating this issue into the draft VPA would proactively address this issue.
26. Council Officers have advised the applicant that Council would be happy to structure the draft VPA so that it was conditional upon the RMS continuing to support the bridge. The draft VPA could be structured so that if the bridge was not found to be feasible as a result of the processes underway for the FHH site that the requirement for the bridge to be accommodated on this site would not be enforceable.

## **ASSESSMENT OF FINAL VOLUNTARY PLANNING AGREEMENT OFFER**

27. The monetary contribution has been derived by applying the CBD Infrastructure Funding Committee's recommended \$150/sqm rate to the additional Gross Floor Area permitted under the Planning Proposal. The Planning Proposal permits an FSR of 10:1, which is a 6.5:1 increase from the 3.5:1 FSR currently permitted on the land under the PLEP 2011. The additional Gross Floor Area equates to 21,489sqm when the uplift of 6.5:1 is applied to the site area of approximately 3,306sqm. By applying the recommended 20% value sharing rate (that being \$150/sqm) a total contribution of \$3,223,350 is calculated.
28. Whilst it is the Council Officer's position that the VPA should include provisions to enable construction of the bridge, the table below offers Council two options:

Option 1 is to endorse the letter of offer submitted by the applicant with no provision for the bridge.

OR

Option 2 is to endorse the letter of offer submitted by the applicant subject to inclusion of an easement for a pedestrian bridge.

<b>Option</b>	<b>Comment</b>
Option 1: Monetary Contribution	<ul style="list-style-type: none"> <li>• The applicant's offer is in keeping with the CBD Infrastructure Funding Review Committee.</li> <li>• The VPA execution process will be much faster and easier to complete.</li> </ul>

	<ul style="list-style-type: none"> <li>• The requirement to deliver the pedestrian bridge may be able to be enforced at a later stage in the project (i.e. DA stage).</li> </ul>
Option 2: Monetary Contribution and Provision for the bridge	<ul style="list-style-type: none"> <li>• Transparency is improved particularly if the site ownership changes.</li> <li>• The VPA will support the condition of consent (on the FHH site) making the enforcement of the condition an easier process for Council and the RMS.</li> <li>• Ensures space is allocated on the site for the footings of the bridge.</li> <li>• Improved overall public benefit.</li> </ul>

**Table 1** – Options available to progress the Planning Agreement

29. Council Officers have concluded that Option 2 is in the best interest of the public as it assists in the delivery of public infrastructure and promotes transparency. It is recommended that Council resolves to support the letter of offer contributing \$3,223,350 towards public domain works subject to the inclusion of a public pedestrian easement on the site. In the event that the relevant condition imposed on the FHH site is successfully challenged and removed then the VPA for this site may be drafted in such a way as to no longer carry any obligation in this regard.

## WHAT'S NEXT

30. If Option 1 is preferred by Council the recommendation should be reworded to remove reference to the bridge provisions being included in any draft VPA and the draft VPA can be legally drafted and exhibited in conjunction with the Planning Proposal.
31. If Option 2 is preferred by Council the recommendation of this report should be endorsed and further negotiations will proceed with the applicant about the inclusion of provisions relating to the pedestrian bridge in the draft VPA. If an agreed position is negotiated the Interim General Manager can then endorse the draft VPA for public consultation. If no agreement can be reached the matter will be reported to Council for a final decision to be made on the draft VPA.
32. In either instance the outcomes of the exhibition process will be reported to Council prior to the draft VPA being finalised. Council will at that stage be asked to determine whether Council should enter into the VPA with the applicant.

Kimberley Beencke  
**Project Officer – Land Use Planning**

Robert Cologna  
**Service Manager Land Use Planning**

Sue Weatherley  
**Director Strategic Outcomes and Development**



Sue Coleman  
**Acting Interim General Manager**

**ATTACHMENTS:**

1 Letter of Offer 2 Pages