

8 April 2021

The Chief Executive Officer  
City of Parramatta Council  
PO Box 32  
Parramatta NSW 2124

By email  
[rcologna@cityofparramatta.nsw.gov.au](mailto:rcologna@cityofparramatta.nsw.gov.au)

Dear Sir

**Planning Agreement St John's Cathedral Planning Proposal**  
**Our ref: NLS/PAR970-00169**

- 1 We refer to the attached planning agreement relating to the Planning Proposal for the St Johns Cathedral and surrounding land at Hunter Street, Macquarie Street and Church Street, Parramatta, which has been negotiated between the parties and has been prepared for exhibition.
- 2 The original agreement was drafted using Council's template document in January 2021. Throughout 2021, negotiations continued between Council and the landowner due to uncertainties with the proposal, including:
  - (a) what would occur if development consent could not be obtained to demolish the St John's Church Hall,
  - (b) whether the planning agreement should address the proposed use of land that forms part of Hunter Street, and
  - (c) whether land should be dedicated to establish a laneway at the rear of Hunter Street properties for access to Queensland Arcade.
- 3 A revised version of the planning agreement was provided by us to Council (and then to the applicant) in December 2021. The planning agreement was originally drafted on the basis that a public access easement would be granted over that part of the land forming the public open space area around the Cathedral (**Civic Space Land**).
- 4 In early 2022, Council was advised by the landowner that it would not grant an easement or any proprietary interest or agree to any covenants registered on title. On that basis, the landowner has proposed a licence over the Civic Space Land for use as a thoroughfare and for passive recreation activities by the public.
- 5 Amendments have been made to the agreement following negotiations with the landowner about the use of the Civic Space Land and in accordance with Council's instructions including the "Terms Sheet of Public Benefits" dated 11 March 2022 as provided at Attachment 1 of Item 12.3 of the report to Council's Extraordinary Meeting on 21 March 2022, except as follows:

**Newcastle**

Sparke Helmore Building, Level 7, 28 Honeysuckle Dr, Newcastle NSW 2300  
PO Box 812, Newcastle NSW 2300

t: +61 2 4924 7200 | f: +61 2 4924 7299 | DX 7829 Newcastle | [www.sparke.com.au](http://www.sparke.com.au)

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- (a) the dedication at the rear of 45 Hunter Street has been amended from a 'stratum' parcel dedication by the Church to an 'easement in gross over the desired access point' to the benefit of Council; and
- (b) the location of the temporary access route has been amended from one option (west of the Warden's Cottage) to two options (west or east of the Warden's Cottage),

Parties to the agreement

- 6 The owner of the majority of land subject to the planning agreement, Anglican Church Property Trust Diocese of Sydney, is a party to the Planning Agreement. Some of the subject land is owned by individual representatives of the landowner. We are advised that the majority landowner is currently arranging to have that land transferred to it and it will be the owner of all of the subject land by the time the agreement is executed. The agreement has therefore been drafted on the basis that the Anglican Church Property Trust Diocese of Sydney is the owner of the relevant land.

Contributions towards Public Purposes

- 7 The agreement requires the landowner to:
- (a) carry out works to embellish the Civic Space Land to create an open space area that is consistent with Parramatta Square;
  - (b) enter into a "Public Access and Restriction on Use Licence" requiring the Civic Space Land to be generally open to the public for certain uses in perpetuity;
  - (c) carry out road works and grant an easement over land at the rear of 45 Hunter Street for permanent vehicular access to the Queensland Arcade (181 Church Street, Parramatta);
  - (d) grant a temporary access licence across the land for vehicular access to the rear of the Queensland Arcade (for a period of ten years or until permanent access is available, whichever is earlier); and
  - (e) pay a monetary contribution of \$4,600,000.00 for the improvement of public domain areas in the Parramatta Central Business District.
- 8 All of the obligations to deliver contributions, except the requirement to provide temporary access to the Queensland Arcade, are contingent on the grant of a development consent for the demolition of the St John's Church Hall and the landowner "electing" to carry out those works (that is, obtaining a construction certificate for, or commencing, demolition works). We are instructed that the offer has been made to provide an enhanced public space to mitigate the impacts of removal of a heritage listed item.
- 9 Obligations to deliver the Civic Space outcomes and pay the monetary contribution must be satisfied before an Occupation Certificate is issued for "Building 1 (North Tower)" located adjacent to the Civic Space land. A formal document containing the terms of the public access licence must be agreed in principle on execution of the planning agreement. The public access licence must be executed by the parties on the issue of a Construction Certificate for the demolition of the Church Hall (or on commencement of demolition if no such certificate is required), with the terms of the Public Access & Restriction on Use Licence to commence upon completion of the Civic Space Works.

- 10 Obligations to grant the easement in gross and carry out road works on that land to allow for vehicular access must be satisfied before an Occupation Certificate is issued for "Building 2 (South Tower)", which will be located on the land at 45 Hunter St.
- 11 The temporary accessway must be constructed and the temporary access licence must be granted, subject to agreement being reached with the Queensland Arcade owners, within 6 months of development consent being granted for the demolition of the Church Hall (regardless of whether the developer "elects" to act on that consent).

#### Easement and Licence Terms

- 12 The planning agreement contains draft easement and licence terms. Under the planning agreement, the parties agree to enter into the required easements and licences substantially in accordance with those terms.
- 13 The easement terms for the vehicular access to the Queensland Arcade are generally consistent with Council's standard terms and require the landowner to repair and maintain the easement. The terms allow the landowner to prevent use of the site in an emergency or for the safety or protection of any person. The terms further provide that Council is not responsible for users of the site (other than Council's employees, contractors and agents) and contain indemnities and releases in favour of Council. Both parties must obtain public liability insurance to cover liability up to \$20 million per occurrence over the easement land.
- 14 The terms of the public access licence for the Civic Space Land will permit public use of the land as a thoroughfare and for certain passive recreation uses. The landowner may be able to close the site to the public in the case of an emergency, for the safety of any person, for the protection of property or for legitimate Church related uses. The site may not be "closed" for public use for more than 90 days per calendar year without Council's consent. If the licensed area is "closed" for Church uses, the landowner must ensure that there is are reasonable pedestrian pathways at least 3 metres wide across the land between Church Street and Hunter Street. The landowner is entitled to remove persons who it considers to be a nuisance, safety risk or acting against their organisational beliefs (including breaching the landowner's Social Covenants).
- 15 The landowner will be required to repair and maintain the Civic Space Land (licensed area) as well as any portion of Hunter Street that it intends to incorporate into the Civic Space. Consequently, the landowner will be required to indemnify Council against claims arising on the licensed site, as well as on the Hunter Street Land. The indemnity relating to the Hunter Street land is limited, however, to the extent of the landowner's public liability insurance. The public access licence will require both the landowner and Council to maintain public liability insurance for both the licensed area as well as the Hunter Street land for the limit of liability of \$20 million per occurrence.

#### Enforcement

- 16 A bank guarantee equivalent to the value of the works to embellish the Civic Space Land will be required prior to the issue of a construction certificate or if no Construction Certificate is required, prior to commencement of the Demolition Works for the demolition of the Church Hall. The bank guarantee can be called on by Council if the developer has not commenced the construction of Building 1 (North Tower) within 6 months after demolition of the hall, or completed within 4 years after demolition of the hall (or the landowner is otherwise in substantial breach of the agreement or becomes insolvent). If Council calls on the bank

guarantee it will be entitled to carry out the works required under the planning agreement itself.

- 17 The planning agreement also provides that Council may compulsorily acquire the easement to provide vehicular access to Queensland Arcade at the rear of 45 Hunter Street for \$1.00 if the landowner fails to grant that easement as required.
- 18 The issue of construction certificates and occupation certificates for various parts of the development will be restricted unless the landowner satisfies the obligations to deliver contributions under the planning agreement.

Other Planning Agreement terms

- 19 The agreement does not exclude the application of sections 7.11, 7.12 and 7.24 of the EPA Act to the proposed development. Conditions requiring the payment of development contributions under the EPA Act may be imposed on the grant of any development consent granted for the proposed development.
- 20 The agreement is to be registered against the title to the land and Council has a caveatable interest over the Land if the landowner fails to register the agreement as required.
- 21 When the agreement is registered it will be "binding on, and is enforceable against, the owner of the land from time to time as if each owner for the time being had entered into the agreement" (in accordance with section 7.6 of the EPA Act). In addition, the agreement restricts transfer or assignment of the land unless the transferee agrees to comply with all the outstanding obligations of the landowner under the agreement.
- 22 The agreement contains standard provisions concerning dispute resolution, assignment, notices and other general provisions. Clause 14 confirms that the agreement is not intended to operate to fetter, in any manner, the exercise of any statutory power or discretion of the Council.

Exhibition of the agreement

- 23 The attached version of the agreement is consistent with the terms agreed between the parties to date and may now be exhibited by Council in accordance with clause 204 of the *Environmental Planning and Assessment Regulation 2021*.
- 24 Please contact us if you have any queries regarding the exhibition of the agreement.

Yours faithfully



Naomi Simmons, Partner  
Accredited Specialist Local Govt & Planning Law  
t: +61 2 4924 7325  
m: +61 410 415 416  
e: naomi.simmons@sparke.com.au