



THE HILLS
Sydney's Garden Shire

THE HILLS SHIRE COUNCIL
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3 November 2020

Ms Elizabeth Kimbell
Acting Manager - Place and Infrastructure (The Hills and Hawkesbury)
Department of Planning, Industry and Environment
Locked Bag 5022
PARRAMATTA NSW 2124

Your Ref: 2018SWC076-
PP_2016_THILL_016_00
Our Ref: 19/2016/PLP

Dear Ms Kimbell

PROGRESS UPDATE AND FINALISATION TIMEFRAME – PLANNING PROPOSAL – BULL AND BUSH HOTEL, 360-378 WINDSOR ROAD, BAULKHAM HILLS (19/2016/PLP)

I refer to the determination of the Sydney Central City Planning Panel on 20 May 2020 with respect to the abovementioned planning proposal as well as recent correspondence from the Department of Planning, Industry and Environment (DPIE) dated 27 October 2020 with respect to finalisation timeframes for 'legacy' planning proposals (that is, proposals which have had a Gateway Determination for four or more years by 31 December 2020).

It is reiterated that Council's resolved position with respect to the planning proposal is that the matter should not proceed. Despite this, having regard to the decision of the Panel on 20 May 2020 Council has, in good faith, participated in the process of resolving a number of outstanding planning matters associated with the proposal on the understanding that any decision by the Panel to finalise the proposal and amend Council's LEP should not be made in the absence of infrastructure and site-specific matters being appropriately dealt with before rezoning occurred.

At its Ordinary Meeting of 8 September 2020, Council considered a draft Voluntary Planning Agreement (VPA) offer and resolved as follows:

1. *The draft Voluntary Planning Agreement (Attachment 2) be subject to legal review.*
2. *As part of the legal review of the draft Voluntary Planning Agreement, and prior to commencement of public exhibition, the following amendments be incorporated:*
 - a) *Inclusion of provisions which require the construction, fit-out and dedication of the community floor space to occur prior to the issue of an occupation certificate for a residential dwelling within the building containing the community facility;*
 - b) *Changes to the proposed design and layout of the facility and the specific area of each component, having regard to the future operation and maintenance of the facility; and*
 - c) *Inclusion of detailed specifications for the future fit-out of the facility to be completed by the developer.*

3. *Following legal review, the draft Voluntary Planning Agreement, incorporating any amendments arising from the legal review process, be publicly exhibited for a period of at least 28 days, in accordance with the requirements of the Environmental Planning and Assessment Act 1979.*

There were a number of issues with the draft VPA submitted by the Proponent which ideally would have been negotiated and rectified prior to reporting the offer to Council. However, in the interests of obtaining a Council position and resolution on the matter prior to providing the required second Progress Update to the Panel, the VPA offer was reported to Council in the form submitted by the Proponent. As a result, Council's resolution identifies a number of key issues with the VPA offer submitted by the Proponent which need to be resolved prior to public exhibition (effectively, Council's acceptance of the VPA offer was conditional upon these matters being appropriately resolved).

In accordance with Council's resolution, Council has engaged Solicitors to undertake a legal review of the VPA and importantly, draft amendments to the VPA which address the issues raised within Council's resolution. This will also require further negotiation with the Proponent, once the legal review has been completed and draft amendments prepared.

While it is Council's intention to liaise with the Proponent and resolve these matters promptly, adequate time is required for Council's Solicitors to properly review the draft VPA *and* give effect to the matters raised in Council's resolution, before Council is in a position further negotiate with the Proponent.

Once the legal review process is completed (and assuming Council's outstanding matters can be adequately resolved), the next steps in the process for the VPA as well as the earliest possible timeframes for these to occur are as follows:

- Council and Proponent resolve outstanding issues within Council's resolution (Nov 2020);
- Draft VPA will be publicly exhibited for a period of at least 28 days (Dec 2020/Jan 2021);
- Council reviews public submissions received (Feb 2021);
- Council considers post-exhibition report (March 2021); and
- If supported by Council, execution of VPA and registration on title (April 2021).

In addition to the matter of local infrastructure contributions which Council is working to resolve through the draft VPA process, it is noted that the Panel's deferral also requires the Proponent to submit a Development Control Plan (DCP) to the Department. The DCP is a key component of providing certainty with respect to the built form outcomes on the site, as well as responding to community concerns raised in submissions. Council has not yet been provided with a copy of any detailed DCP and critically, there remains significant uncertainty with respect to the mechanism and responsibilities for implementation and adoption of such a DCP, should the Panel determine that the planning proposal should be finalised. The DCP would also be subject to a minimum 28 day public exhibition period.

On 27 October 2020, Council received correspondence from DPIE, which details the intent to finalise the planning proposal by 31 December 2020. The correspondence indicates that DPIE anticipates the VPA will be signed by the Proponent prior to this date and has requested that Council forward the VPA to the Proponent by 2 November 2020. Noting that the draft VPA is currently subject to legal review and redrafting and given the significant scope of amendments required in comparison to the VPA offer submitted by the Proponent, Council is not in a position to provide the draft VPA to the Proponent by this date. Further, it would not be appropriate for the Proponent to sign a draft agreement before it has been amended to resolve Council's issues and prior to undertaking proper community consultation with respect to the draft VPA.

Having regard to the above, the matters identified in the Panel's deferral decision are unable to be resolved by 31 December 2020. Accordingly, if DPIE requires the Panel to make a final decision on the proposal prior to 31 December 2020, it is considered that there would be no reasonable option

but for the Panel to determine that the proposal not proceed, given there would be no agreed or executed VPA and no draft or adopted Development Control Plan (being the same key unresolved matters which prompted the Panel to defer its decision in May 2020). Council would not object to the Panel determining that the proposal not proceed, noting that this would align with Council's decision on the planning proposal.

However, if the Panel is of the view that the proposal should proceed to finalisation, it will be necessary for the Department's timeframe for determination to be extended beyond 31 December 2020, to enable Council to continue to progress the draft VPA, in good faith, through the proper legislative process and to enable preparation, exhibition and adoption of an appropriate Development Control Plan to occur. Noting the remaining steps in the process as outlined within this letter, it is anticipated that a more achievable timeframe for a final decision on the planning proposal would be April/May 2020 at the very earliest. This timeframe may of course extend should matters be raised during the legal review, exhibition or negotiation between the parties on either the VPA or the DCP.

Should you require further information with respect to this matter, please contact me on 9843 0416.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Nicholas Carlton', written over a light blue horizontal line.

Nicholas Carlton
MANAGER FORWARD PLANNING