

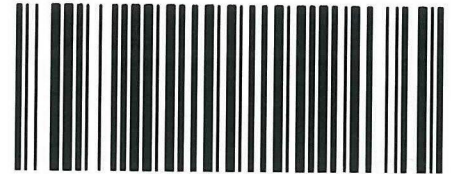


address 200 Miller Street North Sydney NSW 2060  
all correspondence General Manager North Sydney Council  
PO Box 12 North Sydney NSW 2059  
DX10587

telephone (02) 9936 8100  
facsimile (02) 9936 8177

email council@northsydney.nsw.gov.au  
internet www.northsydney.nsw.gov.au  
ABN 32 353 260 317

Karen Armstrong  
Director Metro Delivery (CBD)  
Department of Planning and Environment  
GPO Box 39  
SYDNEY NSW 2001



PCU068673

13 December 2016

Dear Karen,

**PP\_2015\_NORTH\_002\_00 - 521 PACIFIC HIGHWAY, CROWS NEST**

On 18 November 2016, Council received a letter from the land owner to the above Planning Proposal requesting the withdrawal of the Planning Proposal and revocation of the accompanying Voluntary Planning Agreement (VPA). The request to withdraw the Planning Proposal and revocation of the VPA has arisen from the State Government's actions to acquire the subject land for the construction of the Crows Nest Railway Station in association with the Sydney Metro.

On 5 December 2016, North Sydney Council considered a report addressing the applicant's request above, to which it resolved:

1. **THAT** in accordance with section 58(4) of the Environmental Planning and Assessment Act 1979, Council as the relevant planning authority, request the Minister for Planning not to proceed with the Planning Proposal.
2. **THAT** Council grant delegation to the General Manager to make the necessary arrangements to revoke the Voluntary Planning Agreement (LD 7064 - executed on 17 August 2015) in accordance with the requirements under Subdivision 2 to Division 6 to Part 4 of the Environmental Planning and Assessment Act 1979 and Division 1A to Part 4 of the Environmental Planning and Assessment Regulation 2000.

A copy of Council's report and resolution are attached for your information.

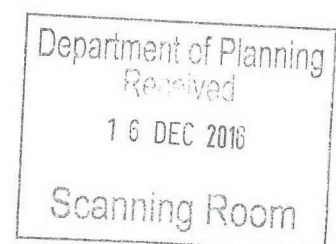
In accordance with Resolution No.1, it is respectfully requested that the Minister for Planning not proceed with the making of this Planning Proposal.

With respect to Resolution No. 2, Council will liaise with the property owner and developer to revoke the VPA with the outcomes to be advised to the Minister of Planning in accordance with Section 93G(3) of the Environmental Planning & Assessment Act 1979.

Enquiries should be directed to Ben Boyd, Executive Strategic Planner or the undersigned on **9936-8100**.

Yours faithfully

MARCELO OCCHIUZZI  
MANAGER STRATEGIC PLANNING



<b>ENGLISH</b>	If you do not understand this information, please ring the Translating and Interpreting Service (TIS) on 13 14 50, and ask for an interpreter in your language to contact North Sydney Council on (02) 9936 8100. This is a free service.
<b>ARABIC</b>	إذا لم يكن بمقدورك فهم هذه المعلومات، فالرجاء الاتصال بخدمات الترجمة الخطية والفورية (Translating and Interpreting Service (TIS)) على الرقم 13 14 50 والطلب من مترجم فوري يتحدث العربية أن يتصل لك بمجلس مدينة شمال سيدني على الرقم (02) 9936 8100 – هذه الخدمة مجانية.
<b>GREEK</b>	Αν δεν καταλαβαίνετε αυτές τις πληροφορίες, παρακαλώ τηλεφωνήστε στην Υπηρεσία Μετάφρασης και Διερμηνείας (Translating and Interpreting Service (TIS)) στο 13 14 50, και ζητήστε να σας διαθέσουν ένα διερμηνέα στη γλώσσα σας για να επικοινωνήσει με το Δήμο του North Sydney στο (02) 9936 8100. Αυτή είναι μια δωρεάν υπηρεσία.
<b>HINDI</b>	यदि आप इस जानकारी को समझ नहीं सकते हैं तो कृपया अनुवाद और दुभाषिया सेवा (Translating and Interpreting Service - TIS) को 13 14 50 पर फ़ोन करें और अपनी भाषा के दुभाषिए द्वारा उत्तरी सिडनी काउंसिल (North Sydney Council) को (02) 9936 8100 पर फ़ोन करने के लिए कहें। यह सेवा निःशुल्क है।
<b>INDONESIAN</b>	Jika Anda kurang memahami informasi ini, silakan telepon Translating and Interpreting Service (TIS) di 13 14 50, dan mintalah seorang juru bahasa dalam bahasa Anda untuk menghubungi North Sydney Council di (02) 9936 8100. Layanan ini tidak dipungut biaya.
<b>ITALIAN</b>	Se non capite queste informazioni, chiamate il Servizio di Traduzione e Interpretariato (TIS - Translating and Interpreting Service) al numero 13 14 50, e chiedete ad un interprete nella vostra lingua di contattare il North Sydney Council al numero (02) 9936 8100. Il servizio è gratuito.
<b>JAPANESE</b>	上記の情報について何かご質問がございましたら、通訳・翻訳サービス (Translating and Interpreting Service (TIS)) 電話番号 13 14 50 までお問い合わせください。また、ご自分の国の言語で通訳の手配をご希望の方は、ノース・シドニー・カウンスル (North Sydney Council) 電話番号 (02) 9936 8100。まで電話でお問い合わせください。尚、このサービスは、無料です。
<b>KOREAN</b>	이 정보를 이해하지 못하실 경우 번역 통역 서비스 (Translating and Interpreting Service (TIS))에 13 14 50으로 연락하셔서 한국어 통역사를 요청하시고 노스 시드니 카운슬 (North Sydney Council) 연락처인 (02) 9936 8100로 연결하도록 요청하십시오. 이 서비스는 무료입니다.
<b>TAGALOG</b>	Kung hindi ninyo naiintindihan ang impormasyong ito, mangyari lamang na tumawag sa Translating and Interpreting Service (TIS) sa 13 14 50, at hilingin sa interpreter ng inyong wika na tawagan ang North Sydney Council sa (02) 9936 8100. Ito ay isang libreng serbisyo.
<b>TRADITIONAL CHINESE</b>	如果你不明白這份資料，請致電13 14 50聯絡Translating and Interpreting Service (TIS)，要求一名能說你的語言的傳譯員，代你致電(02) 9936 8100聯絡North Sydney Council。這是免費服務。



**DECISION OF 3687<sup>th</sup> COUNCIL MEETING  
HELD ON 5 DECEMBER 2016**

**361. CiS03: Planning Proposal – 521 Pacific Highway, Crows Nest – Withdrawal of Planning Proposal & Revocation of VPA**

Report of Ben Boyd, Executive Strategic Planner

On 15 December 2014, Council resolved to adopt a Planning Proposal to amend North Sydney Local Environmental Plan 2013 (NSLEP 2013) relating 521 Pacific Highway, Crows Nest and forward it to the Minister for Planning in order to receive a Gateway Determination. In particular, the Planning Proposal sought to increase the maximum building height control from 20m to 40m and introduce a maximum floor space ratio control of 5.3:1. Council also resolved to exhibit an associated draft Voluntary Planning Agreement (VPA) concurrently with the Planning Proposal subject to it receiving a Gateway Determination.

On 20 April 2015, Council considered a post exhibition report in relation to the Planning Proposal where it resolved to adopt the Planning Proposal unamended and give delegation to the General Manager to execute the amended VPA. Council also resolved to only forward the Planning Proposal to Parliamentary Counsel with a request that a Local Environmental Plan be made after Council had received a bank guarantee for the proposed monetary contribution towards new open space in accordance with the VPA.

The VPA was formally executed on 17 August 2015 by all parties. However, Council could not forward the Planning Proposal to Parliamentary Counsel, due to a bank guarantee not having been paid to Council in relation to the VPA.

On 18 November 2016, Council received a letter from the land owner requesting the withdrawal of the Planning Proposal and revocation of the VPA. The request to withdraw the Planning Proposal and VPA is due to the State government acquiring the subject land for the construction of the Crows Nest Railway Station in association with the Sydney Metro.

Given that the anticipated development envisaged by the proposed changes to the planning controls under NSLEP 2013 will no longer be achieved, it is recommended that Council resolve to formally request the Minister for Planning not to make the Planning Proposal and revoke the VPA.

**Local Government Act 1993: Section 23A Guidelines - Council Decision Making During Merger Proposal Period**

The Guidelines have been considered in the preparation of this report and are not applicable.

**Recommending:**

- 1. THAT** in accordance with section 58(4) of the Environmental Planning and Assessment Act 1979, Council as the relevant planning authority, request the Minister for Planning not to proceed with the Planning Proposal.
- 2. THAT** Council grant delegation to the General Manager to make the necessary arrangements to revoke the Voluntary Planning Agreement (LD 7064 - executed on 17 August 2015) in accordance with the requirements under Subdivision 2 to Division 6 to Part 4 of the Environmental Planning and Assessment Act 1979 and Division 1A to Part 4 of the Environmental Planning and Assessment Regulation 2000.

Voting was as follows:

For/Against 8/0

<b>Councillor</b>	<b>Yes</b>	<b>No</b>	<b>Councillor</b>	<b>Yes</b>	<b>No</b>
Gibson	Y		Beregi	Y	
Reymond	<b>Absent</b>		Barbour	Y	
Clare	Y		Morris	Y	
Baker	Y		Marchandean	<b>Absent</b>	
Carr	Y		Bevan	Y	

**RESOLVED:**

- 1. THAT** in accordance with section 58(4) of the Environmental Planning and Assessment Act 1979, Council as the relevant planning authority, request the Minister for Planning not to proceed with the Planning Proposal.
- 2. THAT** Council grant delegation to the General Manager to make the necessary arrangements to revoke the Voluntary Planning Agreement (LD 7064 - executed on 17 August 2015) in accordance with the requirements under Subdivision 2 to Division 6 to Part 4 of the Environmental Planning and Assessment Act 1979 and Division 1A to Part 4 of the Environmental Planning and Assessment Regulation 2000.



**Report to General Manager**

Attachments:  
Nil

---

**SUBJECT:** Planning Proposal – 521 Pacific Highway, Crows Nest –Withdrawal of Planning Proposal & Revocation of VPA

**AUTHOR:** Ben Boyd, Executive Strategic Planner

**ENDORSED BY:** Joseph Hill, Director City Strategy

**EXECUTIVE SUMMARY:**

On 15 December 2014, Council resolved to adopt a Planning Proposal to amend North Sydney Local Environmental Plan 2013 (NSLEP 2013) relating 521 Pacific Highway, Crows Nest and forward it to the Minister for Planning in order to receive a Gateway Determination. In particular, the Planning Proposal sought to increase the maximum building height control from 20m to 40m and introduce a maximum floor space ratio control of 5.3:1. Council also resolved to exhibit an associated draft Voluntary Planning Agreement (VPA) concurrently with the Planning Proposal subject to it receiving a Gateway Determination.

On 20 April 2015, Council considered a post exhibition report in relation to the Planning Proposal where it resolved to adopt the Planning Proposal unamended and give delegation to the General Manager to execute the amended VPA. Council also resolved to only forward the Planning Proposal to Parliamentary Counsel with a request that a Local Environmental Plan be made after Council had received a bank guarantee for the proposed monetary contribution towards new open space in accordance with the VPA.

The VPA was formally executed on 17 August 2015 by all parties. However, Council could not forward the Planning Proposal to Parliamentary Counsel, due to a bank guarantee not having been paid to Council in relation to the VPA.

On 18 November 2016, Council received a letter from the land owner requesting the withdrawal of the Planning Proposal and revocation of the VPA. The request to withdraw the Planning Proposal and VPA is due to the State government acquiring the subject land for the construction of the Crows Nest Railway Station in association with the Sydney Metro.

Given that the anticipated development envisaged by the proposed changes to the planning controls under NSLEP 2013 will no longer be achieved, it is recommended that Council resolve to formally request the Minister for Planning not to make the Planning Proposal and revoke the VPA.

**FINANCIAL IMPLICATIONS:**

Nil.

---



Report of Ben Boyd, Executive Strategic Planner  
Re: Planning Proposal – 521 Pacific Highway, Crows Nest –Withdrawal of Planning Proposal  
& Revocation of VPA

(2)

---

**Local Government Act 1993: Section 23A Guidelines - Council Decision Making During Merger Proposal Period**

The Guidelines have been considered in the preparation of this report and are not applicable.

**RECOMMENDATION:**

- 1. THAT** in accordance with section 58(4) of the Environmental Planning and Assessment Act 1979, Council as the relevant planning authority, request the Minister for Planning not to proceed with the Planning Proposal.
  - 2. THAT** Council grant delegation to the General Manager to make the necessary arrangements to revoke the Voluntary Planning Agreement (LD 7064 - executed on 17 August 2015) in accordance with the requirements under Subdivision 2 to Division 6 to Part 4 of the Environmental Planning and Assessment Act 1979 and Division 1A to Part 4 of the Environmental Planning and Assessment Regulation 2000.
-

---

## **LINK TO DELIVERY PROGRAM**

The relationship with the Delivery Program is as follows:

Direction: 2. Our Built Environment

Outcome: 2.2 Improved mix of land use and quality development through design excellence  
2.3 Vibrant, connected and well maintained streetscapes and villages that build a sense of community

## **BACKGROUND**

The following outlines the chronology and milestones of the Planning Proposal and Voluntary Planning Agreement (VPA) process to date:

14 November 2014 - Council receives a Planning Proposal and draft VPA relating to the site at 521 Pacific Highway, Crows Nest. The Planning Proposal sought to amend North Sydney Local Environmental Plan 2013 (NSLEP2013) as follows:

- increase in the height control from 20 metres to 40 metres; and
- introducing a floor space ratio (FSR) control of 5.3:1.

The draft VPA contains provision for:

- A monetary contribution of \$1,600,000 to be paid to Council for the purposes of providing new open space within the precinct;
- A 6 metre setback from the Oxley Street frontage to allow for a widened footpath and outdoor seating;
- A 3 metre setback from the Pacific Highway frontage to allow for a widened footpath;
- A restriction on building height below the current permitted height on the southern portion of the site to ensure an appropriate podium and tower building typology is achieved that allows for a number of existing residential units on the eastern side of Clarke Lane to retain a westerly aspect.

15 December 2014 – Council resolves to adopt the Planning Proposal and forward it to the Minister for Planning in order to receive a Gateway Determination. Council also resolved to exhibit the draft VPA concurrently with the Planning Proposal subject to it receiving a Gateway Determination.

23 January 2015 – Gateway Determination was issued, subject to meeting a number of conditions. The Gateway Determination also granted delegated authorisation to Council to directly request Parliamentary Counsel's Office to make the plan.

12 February 2015 - 12 March 2015 - Planning Proposal and draft VPA placed on public exhibition for 28 days.

---

---

20 April 2015 – Council considers post exhibition report and resolves:

- 1. THAT the General Manager be given delegation to execute the draft Voluntary Planning Agreement as amended.*
- 2. THAT upon execution of the draft Voluntary Planning Agreement as amended and receipt of a bank guarantee for the proposed monetary contribution towards new open space, having completed the community consultation requirements outlined in the Gateway Determination, Council forward the Planning Proposal unamended to Parliamentary Counsel with a request that a Local Environmental Plan be made in accordance with section 59 of the Environmental Planning and Assessment Act 1979, so as to give effect to the Planning Proposal.*

17 August 2015 – VPA is formally executed by Council, the developer and landowner. The Planning Proposal was not forwarded to Parliamentary Counsel to be made as Council never received a bank guarantee for the proposed monetary contribution towards new open space.

18 November 2016 – Council receives a letter requesting the withdrawal of the Planning Proposal and revocation of the VPA.

This report specifically addresses the applicant's request of 18 November 2016.

## **CONSULTATION REQUIREMENTS**

Community engagement will be undertaken in accordance with Council's Community Engagement Protocol.

## **SUSTAINABILITY STATEMENT**

The sustainability implications were considered and reported on during the initiation phase of this project.

## **DETAIL**

### **1. Request for withdrawal the Planning Proposal and revocation of the VPA**

The reason behind the request for the withdrawal of the Planning Proposal and associated VPA is in response to the State Government's commitment (made on 15 November 2015) to the construction of the Sydney Metro. In particular, the subject site forms part of the land to be acquired by the State government for the construction of the Crows Nest Railway Station in connection with the Sydney Metro. The land owner has now indicated that it has almost reached an agreement with the State Government for them to acquire the land for the railway station.

Accordingly, the concept proposal envisaged to be constructed on the site which aligns with the proposed amendments to Council's planning controls, will no longer be realised. It is anticipated that once acquired, the State Government will seek to amend the planning controls

---



---

for the subject land in association with the construction of the Metro, at which point Council will be in a position to negotiate a new outcome.

## **2. Withdrawing the Planning Proposal**

Once a Gateway Determination has been issued, the only way a Planning Proposal may be withdrawn is for Council, as the Relevant Planning Authority (RPA), to formally request the Minister for Planning that the Planning Proposal not proceed under section 58(4) of the Environmental Planning and Assessment Act, 1979 (EP&A Act).

As the concept development that underlines the Planning Proposal is no longer being pursued in its current form, it is considered appropriate that Council request the Minister for Planning to not proceed with the Planning Proposal.

## **3. Revoking the VPA**

Pursuant to Clause 25C(2) to the Environmental Planning and Assessment Regulations 2000 (EP&A Regulations) a “*planning agreement may be ... revoked by further agreement in writing signed by the parties to the agreement ...*”

There are also a number of other requirements that need to be satisfied when revoking a VPA. In particular:

- Section 93G(1) of the EP&A Act states that a VPA cannot be revoked, unless public notice has been given of the proposed revocation and a copy of the revocation has been made available for inspection by the public for a period of not less than 28 days;
  - Section 93G(3) of the EP&A Act states that if the Minister for Planning is not party to a VPA, then a copy of the notice of revocation must be provided to the Minister within 14 days;
  - Section 93H of the EP&A Act requires that the removal of the VPA from a registered land title must be agreed to by all persons who have an interest in the land;
  - Clause 25E of the EP&A Regulations requires that where a VPA is to be revoked, Council must prepare a written statement (referred to as an explanatory note) that:
    - Summaries the objectives, nature and effect of the revocation;
    - Contains an assessment of the merits of the proposed revocation, including the impact (positive or negative) on the public or any relevant section of the public;
    - Identifies how the revocation promotes public interest and one or more of the objects of the Act;
    - Identifies how the revocation promotes one or more of the elements of Council’s charter under section 8 of the Local Government Act, 1993;
    - Identifies what planning purpose or purposes served by the revocation and contain an assessment of whether the revocation provides a reasonable means of achieving that purpose;
    - Identifies whether the revocation conforms with Council’s works program;
-

Report of Ben Boyd, Executive Strategic Planner

Re: Planning Proposal – 521 Pacific Highway, Crows Nest –Withdrawal of Planning Proposal  
& Revocation of VPA

(6)

- 
- Must be prepared jointly with the other parties;
  - Must be exhibited with the copy of the proposed revocation when it is made available for inspection by the public.

To ensure a timely outcome for the revocation of the VPA, it is recommended that Council resolves to grant delegation to the General Manager to make the necessary arrangements to enable the VPA to be revoked.

#### **4. Conclusion**

The need for the Planning Proposal and associated VPA is no longer required as the land to which they relate are to be redeveloped as part of the future Crows Nest Railway Station to the Sydney Metro. It is anticipated that the redevelopment of the subject land will be very different to that envisaged under the Planning Proposal and VPA and therefore should be subject to a different planning process.

---