

REPORT ON PUBLIC BENEFITS OFFERED BY DEVELOPERS FOR ADDITIONAL DENSITY AT RHODES WEST

TASK

The task has been to determine an approach to public benefits offered by developers in return for increased floor space at Rhodes West.

The four developers Mirvac, Billbergia, Multiplex and Meriton, have consulted with Council officers and have provided details of their offers. These have now been considered by Council officers, David Baxter and Peter Jackson of Pikes Lawyers, and Russell Briggs, Valuer of Colliers International.

OVERALL APPROACH

The overall approach has been to determine the value of the additional floor space to be obtained by each developer if the proposal proceeds. It is generally accepted by the developers that it is an appropriate means of establishing contributions payable towards additional infrastructure and community benefits to be made for the additional floor space gained. It is proposed the contributions payable would be secured by amendment to the relevant planning instruments, backed up by a deed with the developer if necessary.

The developers accept they will make an additional profit from any additional floor space obtained and that this profit should be shared with the Council. The developers were invited to submit what they believed would be an appropriate profit share formula.

After considering their proposals the following has been determined to be an appropriate approach in the circumstances:

VALUE TO BE ASSIGNED TO ADDITIONAL FLOOR SPACE

Mirvac offered 25% of profit. Each of the other developers suggested an appropriate means was to value the floor space on the basis of the additional dwellings created with an amount offered per dwelling or site.

The second approach is generally that taken when land which has the benefit of a development approval is offered for sale to a developer. The rate per site offered varied from \$50,000 in the case of Meriton to \$58,824 in the case of Billbergia.

Billbergia supplied valuation evidence and a financial feasibility model. These have been reviewed. The amount of \$58,824 is considered to be fair and reasonable in the circumstances of the current market.

The rate per site has been compared with rates per site being offered in other areas of Sydney where there is a substantial number of residential flat buildings under construction. The sum of \$58,824 compares favourably with the rate being offered in other areas.

It is suggested that the additional floor space to be obtained by each developer be divided into the number of dwellings (sites) it will create. The number of sites is then multiplied by \$58,824. The amount thus determined is the contribution to be made by the developer.

Sites have been estimated to be 100sqm in size. The number of sites to be gained by each developer has been obtained by dividing the estimated additional floor space to be gained by each developer by 100. It will be necessary to determine the exact area of the additional floor space prior to finalising the amounts payable by each of the developers.

MAKE UP OF THE CONTRIBUTION

The proposed make up of the contribution varied from developer to developer. Each developer offered a cash contribution towards a community facility and sought that it be credited with value for embellishment of public open space to be dedicated to the Council or for infrastructure to be created within the public open space.

THE VALUE TO BE ASSIGNED TO ADDITIONAL OPEN SPACE

Billbergia suggested that there was no value to be assigned to the open space created by reducing the footprints of the proposed developments and dedicating the additional open space to Council.

After considering the circumstances at length, it was agreed that is a proper approach. The reasons are:

- The land will be classified community.
- Council will have responsibility for maintaining the land.
- The land will be available for passive recreation only.
- In many instances the land is so positioned that it will not readily invite extensive use by the public.
- The land is generally positioned so that it enhances the amenity of the adjoining developments and creates green viewing corridors for those developments.
- Some of the land will be unlimited in depth, other parts will be created as a stratum limited in depth to the subterranean car parking which exists below.

ALLOWANCE FOR THE COST OF EMBELLISHING OPEN SPACE

The land to be dedicated to the Council will require levelling, landscaping, turfing and planting. In some cases park furniture will be included, in others playgrounds created, toilet facilities provided or bicycle parking provided. One developer has also offered to carry out works to extend pedestrian/cycle pathways.

It is considered the developers should be allowed the cost of these embellishments as a deduction against the contribution for additional floor space.

The question arose as to how to determine an appropriate means of valuing the embellishments. One proposal was to ask the developers to provide details of the invoice costs. That could involve adjustments being made either by the developer to Council or Council to the developer once initial payments had been made. That is possibly undesirable and it may be better to determine a rate per square metre for embellishments. Council's officers believe the fairest means of addressing the issue is to allow the rate of \$450psm which is Council's average cost of carrying out such embellishment work.

It will be important to establish the exact areas to be dedicated after the curtilage of each building has been determined.

INFRASTRUCTURE NO LONGER REQUIRED

The proposed reconfiguration of buildings and open space leads in a number of instances to roads and footpaths no longer being required.

Since the cost of dedicating and constructing the roads and footpaths was to be borne by the developer, it is considered that cost should be added to the amount payable by the developer for the additional floor space. Where infrastructure is no longer required, an additional amount payable by the developer has been calculated at the rate of \$750psm which is a rate determined by Council's officers for similar infrastructure works carried out by the Council.

AFFORDABLE HOUSING

It has been suggested that some developers may offset the amount payable to Council by the dedication to Council of completed home units for affordable housing.

If that occurs it is not appropriate that the developer simply be allowed the per site value of \$58,824 for each home unit dedicated. Council will receive a completed home unit which will need to be valued at its cost to construct.

If any developers proceed with the offer of affordable housing, it is suggested the developer should be allowed back the cost of the site allowed to Council plus the cost to construct, determined by a quantity surveyor if necessary. It is understood there may be 8 affordable housing units involved in this process.

SECTION 94 CONTRIBUTIONS

The current proposal generates the need for section 94 contributions. The additional floor space and therefore additional number of persons residing in the Rhodes West area will generate increased section 94 contributions.

It is considered that section 94 contributions do not fall within those items which should be credited against the developer contribution for additional floor space. In other words, section 94 contributions are separate and will be payable independent of what might be agreed with the developer as appropriate for the profit share formula. We understand that Council's current section 94 Contributions Plan covers the proposed developments.

SECURING THE BENEFITS

A critical aspect of the proposal will be to lock the developers into a binding agreement so as to secure the public benefits offered within each of the precincts. The securing of a public benefit which is offered by a developer is usually obtained by way of a negotiated Voluntary Planning Agreement pursuant to the Environmental Planning and Assessment Act 1979 ("the Act") at the same time as the lodgement of a DA for a proposed development.

However, it is not envisaged that DA's will be lodged with Council until the planning instrument, namely SREP 29, is amended to permit the proposed developments within each of the precincts within the Rhodes Peninsula. It is possible to secure the public benefits by way of a Voluntary Planning Agreement pursuant to the Act where the developers seek a change to an environmental planning instrument rather than at the same time as the lodgement of a DA. This can be achieved pursuant to section 93F(1)(a) of the Act which provides as follows:

"93F Planning agreements

(1) *A planning agreement is a voluntary agreement or other arrangement under this Division between a planning authority (or 2 or more planning authorities) and a person (the developer):*

(a) who has sought a change to an environmental planning instrument, or [emphasis ours]

(b) who has made, or proposes to make, a development application, or

(c) who has entered into an agreement with, or is otherwise associated with, a person to whom paragraph (a) or (b) applies.

under which the developer is required to dedicate land free of cost, pay a monetary contribution, or provide any other material public benefit, or any combination of them, to be used for or applied towards a public purpose."

It will be possible pursuant to a Voluntary Planning Agreement, entered into pursuant to 93F(1)(a) to make provisions for the payment of the agreed public benefits to Council possibly by way of lodgement of a bank guarantee within an agreed timeframe, i.e usually within a certain time from gazettal of the amendment to the relevant planning instrument.

Therefore, the public benefits can be secured pursuant to a voluntary planning agreement in accordance with section 93F(1)(a) of the Act.

Dated : 30 July 2009



David Baxter
Pikes Lawyers