

Director City Planning Report No. CP54/09



Subject: Progress Report - Deed of Agreement
for Affordable Housing Joint Venture
Project

Folder No: F2004/07993

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Executive Summary

In July 2008, Council resolved to enter into a joint partnership arrangement with a not-for-profit community housing association, Community Housing Limited (CHL), to build 8 affordable housing units on council land. Council also endorsed strata titling as the preferred land titling arrangements for the completed development. As part of its resolution, the General Manager was authorised to finalise and sign the Deed of Agreement on Council's behalf under delegated authority.

Following a complex negotiation and drafting process undertaken by the Council's Solicitor, and involving CHL and its major grant provider (The Centre for Affordable Housing), the Deed of Agreement is now ready for execution. As soon as the Deed of Agreement is ratified, construction works will commence shortly thereafter. The target date for completing this affordable housing development is June 2010.

The partnership arrangement with CHL means that 2 out of the 7 community housing associations in NSW selected by the State Government for 'growth' funding, will have a working presence in Randwick City. St George Community Housing Cooperative is the other provider with similar 'growth' status and currently manages the Council's affordable rental housing properties. The presence of community housing operators of this calibre increases the likelihood of much needed growth in affordable housing stock within our City.

This report contains a brief summary of the project and the achieved milestones, and describes the remaining tasks to be undertaken before the building completion date.

Project description

- Construction of 8 units comprising of 4 x 2 bedrooms and 4 x 1 bedroom units for affordable housing purposes. The maximum height of the project is 2 storeys.
- Estimated land and housing cost at project completion - \$3.375 million
- Estimated building construction cost - \$1.791 million
- Estimated market value range of completed project - \$3.555 million
- Council's contribution is the development site valued at \$1.4 million and \$500,000, totalling \$1.9 million
- CHL to contribute the difference between construction cost (\$1.791) and Council's cash contribution (\$500,000) - \$1.291 million
- Ownership of the units will be allocated based on the parties' contribution. The units will be leased to eligible households in accordance with the Council's affordable rental housing program procedures.

Negotiation history and key milestones

- *1997.* Site transferred from Department of Housing to Randwick City Council and in *2001* NSW Housing Minister lifted a use restriction placed on the land title to enable Council to develop the site for affordable housing purposes.
- *1999 to 2005.* Negotiations with Windgap Foundation took place for several years and many attempts on Windgap's part to secure government grant as their capital contribution towards the joint project did not come to fruition.
- *10 October 2006.* Council endorsed the process of negotiating with potential community housing providers to build an affordable housing development under a joint venture partnership arrangement. Discussions held with the Port Jackson Housing Company commenced but was not concluded due to the lack of funding on the Company's part.
- *24 October 2006.* Council resolved to continue to "...give priority to proceed with negotiations with the Office of Community Housing about the provision of affordable housing at 64-66 Minneapolis Crescent site, while continuing to investigate alternative funding sources for the provision of affordable housing on the site".
- *July 2007.* Council staff initiated discussion with Community Housing Ltd (CHL) as a potential joint venture partner. Shortly thereafter CHL applied for and was awarded a grant from the Centre for Affordable Housing (following a competitive state wide public tendering process) to build a joint equity affordable housing project exclusively with Randwick City Council.
- *22 July 2008.* After considering a report containing details of the joint venture project, Council endorsed the key terms to be drafted into the Deed of Agreement to be drafted by solicitors engaged by Council.
- *24 March 2009.* Council endorsed strata titling as the preferred land titling arrangement instead of the previously approved Tenants-in-Common arrangement. In the same resolution the General Manager was granted authority to finalise and sign the Deed on Council's behalf.
- *December 2009.* CHL awarded National Rental Affordable Housing approval to receive subsidy over a period of 10 years on completion of the development. The subsidy will go towards the funding of additional affordable housing in the locality.
- *14 April 2009.* Development consent for the construction of 8 dwelling units granted by Council

Current status

The Council's Building Certification and BCA Services Unit have been appointed building certifier and plans will shortly be lodged by CHL as soon as the Deed of Agreement is signed.

The Deed of Agreement which was completed recently took longer than was anticipated to finalise as it involved a number of parties, internally and externally, in order to ensure that the terms are consistent with the Australian Taxation Office, and meet the requirements of the grant provider while continuing to protect the charity status of CHL.

With the finalisation of the Deed, much of the planning and development work is now completed. Council staff will not have major involvement in the project during the construction phase (except for the building certification unit). Outstanding work required to be carried out is the procedural land classification process required to be undertaken on all of Council's affordable housing properties.

Classification of land or properties

The land currently has a 'community' classification. When land or property is transferred to Council's ownership the Local Government Act, 1993 provides that Council properties may be classified as either 'operational' or 'community' land. If a decision is not taken by Council to decide on a classification within three months after transfer, it will automatically assume a 'community' land classification.

The decision to classify its own affordable rental housing stock as 'operational' land was adopted by Council on 13 June 2006. The reclassification of the subject land and its properties does not alter the status of the dwellings which, in accordance with Council's resolutions, are set aside solely for affordable housing. When Council's development partner, CHL, is allocated its share of the project units, Council will place a covenant to restrict the use of the entire land and properties for affordable housing purposes only. No one except Council has the authority to lift the covenant. These terms are recorded in the Deed of Agreement between CHL and Randwick City Council as joint project partners.

Reclassification process

The Local Government Act provides that land can only be reclassified via the Local Environmental Plan (LEP) process. The shorter way, by resolution of the Council (used to classify Council's newly transferred affordable housing units), is not applicable because the land has already been classified 'community' by default, having missed the 3 month window of opportunity from the date of having received ownership some years ago.

In addition, Council has one other affordable housing unit, located in a medium density housing development in King Street, Randwick with a 'community' land classification. This unit, having missed the 3 month timeframe will need to be included in the reclassification process, to bring it all in line with Council's affordable rental housing program requirements.

In terms of reclassifying 64-66 Minneapolis Crescent and 3/90-98 King Street affordable housing dwelling, a new procedure was recently introduced to the LEP making process. The new procedure requires, first and foremost, the preparation of a planning proposal, endorsed by Council, to be submitted to the Minister of Planning for determination otherwise known as the 'Gateway' (see Attachment 1, and also memo on this new plan making process in the Councillor Bulletin of 17 July 2009). The Gateway process determines whether the planning proposal is to proceed, and if so, the level of technical studies required, and scope of consultation.

The reclassification of the Minneapolis crescent and King Street properties will give council staff a timely opportunity to test the effectiveness of the Gateway process, which will apply to all LEPs initiated after 1 July 2009. Also because of the lengthy time frame associated with the preparation of an LEP, it would be prudent for council staff to initiate this process as soon as possible. The reclassification of land to 'operational' status for the Minneapolis Crescent affordable housing project needs to be completed by Council before the draft strata plan of subdivision can be lodged, to mark the end of the construction phase.

In short, it is therefore necessary to reclassify 64-66 Minneapolis Crescent in order for the joint venture affordable housing project to proceed. Without an operational classification, CHL will ultimately not be able to take ownership of its share of the strata titled units and the affordable housing project won't be realised.

Relationship to City Plan

The relationship with the City Plan is as follows:

Outcome 6: A liveable City.

- Direction 6a: Our public assets are planned, managed and funded to meet the community expectations and defined levels of service
- Outcome 6c Housing diversity, accessibility and adaptability to support our diverse community

Financial impact statement

Council has already resolved to proceed with the joint venture development with CHL and its contribution is \$1.9 million, plus potential capital appreciation. The preparation of the LEP to reclassify land and property will largely be undertaken by council staff and about \$2,000 is available in the current budget to cover estimated costs, including advertising and consultation).

Conclusion

For many years, Council was involved in discussions and negotiations with a number of community housing providers to develop its land at 64-66 Minneapolis Crescent, Maroubra for affordable housing purposes. Along the way, there have been many false starts due to the absence of, or insufficient capital contribution from potential joint venture partners. Fortunately, CHL, a highly respected and experienced community housing provider (with benevolent/charity status) was awarded state government grant to develop an affordable housing project exclusively with Randwick City Council.

The execution of the Deed of Agreement to build this project is now imminent. A task needed to be carried out during the construction phase of the project is the land reclassification process, in accordance with Council's affordable rental housing procedures adopted on 13 June 2006. All affordable housing units transferred to Council's ownership undergo a classification process to confirm its 'operational' status. The reclassification of the subject land and its properties do not alter the status of the dwellings which, in accordance with Council's resolutions, are to be used solely for affordable housing. When CHL is allocated its share of the project units, a covenant to restrict the use of the entire land and properties for affordable housing purposes will be placed on title. Only Council has the authority to remove the covenant, the terms of which are recorded in the Deed of Agreement between Council and CHL. Since land or properties can only be reclassified via an LEP, it would be prudent to initiate this process to ensure that the project meets its construction schedule, and tenanted to eligible residents in a timely manner.

Recommendation

That Council:

- a) note that construction work will commence shortly once the deed is ratified and executed by a representative of CHL and the General Manager on Council's behalf; and
- b) endorse the planning proposal to reclassify 64-66 Minneapolis Crescent and 3/90-98 King Street affordable housing dwellings from community to operational land, in accordance with the new plan making process of the EP&A Act 1979, and forward the planning proposal to the Minister of Planning for determination.

Attachment/s:

1. Planning Proposal

[View](#)