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Sanghyun Yang
Acting Director – Operations, Infrastructure and Place Division
Department of Planning, Industry and Environment
Locked Bag 5022
PARRAMATTA NSW 2124

KP (CIS)

12 April 2021

Dear Mr Yang,

RE: PLANNING PROPOSAL NO. 3/18 - 50-56 ATCHISON STREET, ST LEONARDS

Introduction

Reference is made to the Gateway Determination issued for the above-mentioned Planning Proposal on 15 March 2021 (refer to Attachment 1). Condition 1C of the Gateway Determination requires the Planning Proposal be amended prior to public exhibition to:

clarify that the Special Infrastructure Contribution (SIC) will apply to the site and any Voluntary Planning Agreement (VPA) is in addition to the application of the SIC.

Clarification is sought by Council on whether the deliverables and public benefits proposed under the draft VPA accompanying the Planning Proposal (which includes a substantial monetary contribution towards open space upgrades within the St Leonards and Crows Nest precinct) will be accepted in lieu of the SIC. This request is made in accordance with the 'State and local voluntary planning agreements' provision on page 76 of the *St Leonards and Crows Nest 2036 Plan (2036 Plan)* which states:

Section 7.4 of the Environmental Planning and Assessment Act 1979 allows a developer to enter into a voluntary planning agreement (VPA) to provide State or local infrastructure associated with a change to planning controls or a development application. This is an available avenue to provide infrastructure in St Leonards and Crows Nest in lieu of a contribution to the SIC or local contribution schemes.

Background and history

On 6 April 2018, Council received a Planning Proposal for 50-56 Atchison Street, St Leonards to amend the height and density controls applying to the site under North Sydney Local Environmental Plan 2013 (NSLEP 2013).

The Planning Proposal seeks to:

- increase the maximum building height from 20m to 56m;
- impose a maximum Floor Space Ratio (FSR) of 6.4:1;
- increase the minimum non-residential FSR from 0.6:1 to 1.7:1; and
- introduce a site-specific special provision clarifying that this control may be reasonably exceeded for those portions of the building designed to provide access to a communal rooftop.

Discussions with the proponent regarding potential public benefits to be included in the VPA took place from the initial assessment of the Planning Proposal in May 2018, this is prior to the exhibition of the draft SIC. This is reflected in Council's preliminary assessment letter dated 23 May 2018 (refer to Attachment 2). A formal letter of offer to enter into a VPA was subsequently submitted by the applicant together with an amended Planning Proposal on 6 February 2019, with further negotiations and revised VPA offers being exchanged until an agreement was reached between both parties.

On 27 July 2020, Council resolved to endorse the Planning Proposal and forward the Planning Proposal to the DPIE with a request for a Gateway Determination. A Gateway Determination was issued by the DPIE on 15 March 2021.

On 26 March 2021, Council sought further clarification from the DPIE with respect to the condition 1C of the Gateway Determination in light of the 'State and local voluntary planning agreements' provision on page 76 of the *2036 Plan*. A response was received on 30 March 2021, advising Council that in accordance with the DPIE's letter dated 20 December 2019 (refer to Attachment 3), if any additional information could be provided the DPIE may reconsider its position.

Previous SIC exemption

In considering a SIC exemption for 100 Christie Street, a letter was issued by the DPIE on 20 December 2019 signed by the Acting Deputy Secretary, Greater Sydney, Place and Infrastructure. This letter granted an 'exemption' to the payment of the SIC on the basis that the negotiations had commenced prior to the exhibition of the proposed SIC and that the VPA delivered regional connectivity and open space.

Commentary was also provided that in consideration of request for 100 Christie Street and other Planning Proposals in the precinct, that should additional information be provided to demonstrate that VPA negotiations commenced prior to the exhibition of the proposed SIC, and provide regional facilities, the DPIE would re-consider its position. The sites referenced in this letter included 23-35 Atchison Street, 575 Pacific Highway and 50-56 Atchison Street.

Voluntary Planning Agreement (50-56 Atchison Street)

The draft VPA includes the following key deliverables of public benefit:

- Provision of a 5.6m wide and 7.2-7.5m high through-site link from Atchison Street to Atchison Lane, with an easement for public access between 6am to 11pm; and
- A monetary contribution of \$1.4 million to Council for open space upgrades within the St Leonards and Crows Nest Precinct.

50-56 Atchison Street, St Leonards

As outlined in the agreed terms of the draft VPA (refer to Attachment 4), a monetary contribution of \$1.4 million has been agreed between Council and the landowner towards the upgrade of Hume Street Park in addition to the provision of a through-site link with easement for public access. The total value of public benefits proposed under the draft VPA have been independently assessed at \$2.425 million.

The *2036 Plan* identifies the allocation of \$3.5 million of SIC funding to North Sydney Council for Stage 1 upgrade of Hume Street Park. Based on current SIC rates, it is estimated that a SIC of \$981,500 would be required from the landowner.

Consistent with the other Planning Proposals affected by the proposed SIC in the St Leonards and Crows Nest Precinct at the time, Council agreed to include a re-negotiation provision within the terms of the draft VPA. In the event there was a SIC determination which imposed a requirement for the landowner or developer to pay the SIC, then a review of the agreement could be requested to re-negotiate the contribution payable by the development to Council under the VPA.

It is requested that consideration be given to accepting the draft VPA offer in lieu of the SIC on the basis of there being a duplication between the public benefits proposed under the draft VPA and SIC Plan in relation to Hume Street Park, with the monetary contribution agreed to by the landowner under the draft VPA being of higher value than that required under the SIC Plan. Should the SIC be imposed in addition to the VPA, it is likely that the landowners will request a review of the draft VPA with the value of public benefits proposed being reduced to take into consideration payment of the SIC.

Summary

In light of the above circumstances, written confirmation is sought on whether the draft VPA makes a satisfactory contribution towards regional infrastructure within the St Leonards and Crows Nest precinct, and would be accepted in lieu of the SIC.

It is highlighted that this process started, and was advanced, well ahead of the *St Leonards and Crows Nest 2036 Plan*, with key deliverables under the VPA being a monetary contribution of \$1.4 million towards the delivery of regional open space within the precinct (i.e. Hume Street Park open space upgrade), which is of a greater value than that applicable under the SIC.

It is kindly requested that a response be received as soon as practicable so as to progress with the requirements of the Gateway Determination.

If you wish to discuss this matter further, please contact Neal McCarry of Council's Strategic Planning Department on 9936-8100.

Yours sincerely,

MARCELO OCCHIUZZI
MANAGER STRATEGIC PLANNING

List of Attachments:

- Attachment 1 – Gateway Determination (dated 15 March 2021)
- Attachment 2 – Council’s preliminary assessment letter (dated 23 May 2018)
- Attachment 3 – DPIE letter to Council (dated 20 December 2019)
- Attachment 4 – Draft VPA for 50-56 Atchison Street, St Leonards