



143 Stoney Creek Road, Beverly Hills

Response to Submissions PP-2021-6630

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143 STONEY CREEK ROAD, BEVERLY HILLS

Planning Proposal to rezone site to R4 High Density Residential, FSR of 1.4:1, 16m height and 'office premises' and 'business premises' as additional permitted uses

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1.0 INTRODUCTION

This report provides a response to the issues raised by government agencies and the public in response to the public exhibition of Planning Proposal for the following changes to the site at 143 Stoney Creek Road, Beverly Hills:

- change the zone from SP2 Government Administration and R2 Low Density Residential to R4 High Density Residential;
- amend Schedule 1 of Georges River LEP 2021 to include “office premises”, as defined in the Standard Instrument (Local Environmental Plans) Order 2006, as an additional permitted use on the site;
- amend Schedule 1 of Georges River LEP 2021 to include “business premises”, as defined in the Standard Instrument (Local Environmental Plans) Order 2006, as an additional permitted use on the site;
- introduce an FSR of 1.4:1 for the entire site;
- introduce a building height control of 16 metres for the entire site;
- introduce a minimum 1,000 square metre lot size for the entire site.

2.0 BACKGROUND

A Planning Proposal for the site was originally lodged with Georges River Council (Council) in November 2021.

From November 2021 until October 2022, the proponent worked with Council to refine the Planning Proposal in response to the various issues raised by Council. During this time, all concerns were satisfied by various amendments to the Planning Proposal and Council has subsequently confirmed that the application has strategic and site merit.

Notwithstanding this, Council refused to progress the Planning Proposal any further without a Voluntary Planning Agreement and so the proponent lodged a Rezoning Review application with NSW Department of Planning and Environment (the Department) on 6 October 2022. The Rezoning Review also included a request for an alternative PPA on the basis that Council was not able to fulfil its obligations in a satisfactory manner with respect to the making of the proposed instrument.

The Rezoning Review was considered by the Sydney South Planning Panel on 13 December 2022 which determined on 15 December 2022 that the Planning Proposal should be submitted for a Gateway determination because the proposal has demonstrated strategic and site specific merit. In particular, the following are the reasons for the decision:

The Panel considers that the Planning Proposal demonstrates strategic and site-specific merit however in coming to this decision, the Panel was of the view that the Council should consider a review of its Development Contributions Plan.

The Panel recommends that the LEP amendment and site specific DCP be supported subject to the inclusion of minimum lot sizes in the instrument consistent with the R4 zone.

The Council was consulted and did not express a view on retaining the PPA role. In accordance with Section 3.32(1) of the Environmental Planning and Assessment Act 1979, the Planning Panel as delegate of the Minister for Planning has therefore determined to appoint itself as the PPA for this Planning Proposal.

A Gateway Determination was granted on 2 March 2023 which provided that an amendment to the Georges River Local Environmental Plan 2021 to rezone the land and introduce FSR, height of building, minimum lot size controls and additional permitted uses, should proceed subject to a number of conditions. The conditions related to minor updates to the Planning Proposal, requirement for public exhibition and consultation with relevant government agencies, and relevant technical studies updated to address a range of flood considerations.

In response to the Gateway Determination conditions:

- The Planning Proposal was updated as required by condition (a) and submitted to the Department on 2 March 2023;
- The flood assessment prepared by Northrop was updated as required by condition (d) and submitted to the Department on 26 April 2023;
- Public exhibition has been undertaken from 26 April 2023 until 26 May 2023; and
- Consultation with relevant public authorities and government agencies has been completed.

3.0 PUBLIC AUTHORITIES AND GOVERNMENT AGENCIES

3.1 Transport for NSW

A summary of the issues raised by Transport for NSW and a response is provided below:

Issue	Response
TfNSW has reviewed the 'Traffic Impact Assessment' report (Prepared by Ason Group dated 08 April 2022) and 'Planning Concept & Site Analysis' (Prepared by Ionic Management, dated 27 May 2022) and raises no objection subject to all vehicular access to any proposed development being via Cambridge Street, as required by Clause 2.119 of State Environmental Planning Policy (Transport and Infrastructure) 2021.	Noted.

3.2 Sydney Water

A summary of the issues raised by Sydney Water and a response is provided below:

Issue	Response
Water and Wastewater Servicing	
<ul style="list-style-type: none">Potable water servicing and wastewater servicing should be available.Amplifications, adjustments, and/or minor extensions may be required	Noted.
Stormwater –clarification of design required prior to referral approval	
<p>Sydney Water's previous concurrence for the development at this site (copy enclosed) is based on the premise that the stormwater channel through the property would be deviated as part of the development with the following:</p> <ul style="list-style-type: none">No buildings or permanent structures over the new deviated stormwater channel or within 1m from the outside face of the new deviated stormwater channel.This 1m horizontal clearance requirement would apply for unlimited depth and heightPermanent structures include (but are not limited to) basement car park, hanging balcony, roof eaves, hanging stairs, stormwater pits, stormwater pipes, elevated driveway, basement access or similar structures. <p>As per the recently provided details however, the proponent proposes to construct an elevated driveway or basement access over future Sydney</p>	<p>The application is for a Planning Proposal and not a specific development type. The concept design which supports the Planning Proposal is only conceptual in nature, however, does not illustrate an elevated driveway or basement access over future Sydney Water's stormwater channel and within 1m from the outside face of the future stormwater channel.</p> <p>Any future development proposal on the site will adopt the same design approach in relation to the Sydney Water asset as that which was approved under development application DA2020/0227 and will comply with the identified requirements by Sydney Water.</p>

Issue	Response
<p>Water's stormwater channel and within 1m from the outside face of the future stormwater channel. This is not acceptable.</p> <p>The Proponent may be approved to construct a driveway over the deviated stormwater pipe/channel or within 1m from the outside face of the new deviated stormwater pipe/channel subject to the following requirements:</p> <ul style="list-style-type: none"> • Driveway must be on existing ground level. • No elevated driveway or basement access • Quality of the driveway or footpath should not exceed rural road grade or rural footpath grade. • If concrete slab is to be provided, then it should not exceed the quality/strength of 150mm thick concrete or 100mm thick concrete with SL82 mesh 	
Trade wastewater requirement	
<ul style="list-style-type: none"> • If this proposed development is going to generate trade wastewater, the developer must submit an application requesting permission to discharge trade wastewater to Sydney Water's wastewater system. Applicant must wait for approval and issue of a permit before any business activities can commence. • The permit application can be made on Sydney Water's web page through Sydney Water Tap In. http://www.sydneywater.com.au/tapin/index.htm 	<p>The application is for a Planning Proposal and not a specific development. A future development application will address the application requirements for trade wastewater discharge.</p>

3.3 NSW State Emergency Service

A detailed response to the issues raised by SES prepared by Northrop accompanies this submission as Appendix A.

3.4 Department of Planning and Environment – Biodiversity and Conservation

A summary of the issues raised by the Biodiversity and Conservation division of the Department of Planning and Environment and a response is provided below:

Issue	Response
Flooding	
The proposed FPL at the basement carpark entry may pose considerable risks by allowing floodwater	The recently approved medical centre on the site adopted Council's required Flood Planning Level of

Issue	Response
<p>to enter the basement carpark and potentially trapping visitors and users of the site under major and extreme flooding events. The FPL at the entry to the basement carpark should be sited at the PMF level to eliminate (and /or minimise) potential flooding impacts and risks.</p>	<p>1% AEP + 300mm freeboard, which is a level of 30.8 AHD.</p> <p>The PMF level is only 140mm higher at 30.94m AHD.</p> <p>There is no objection to the future development of the site adopting PMF as the Flood Planning Level for the basement instead of 1% AEP + 300mm freeboard.</p>
Consistency with Ministerial Direction 4.1 - Flooding	
<p>Consistency with Ministerial Direction 4.1 – Flooding must be demonstrated. Only a small part of the site is currently zoned low density residential with most of the site zoned SP2-Public Administration. The proposed R4-high density zoning has the potential to expose more residents to flood risk which appears to be inconsistent with the direction.</p>	<p>A detailed response in relation to Ministerial Direction 4.1 is included in the updated flood impact assessment dated 14 April 2023. In addition, it is noted that Council has specifically provided the following feedback in their submission in relation to this Ministerial Direction:</p> <p><i>The submitted concept plans and Flood report demonstrate the ability for a future development to improve the existing flood conditions through a set of design and management conditions.</i></p> <p>The following is noted in relation to the Ministerial Direction:</p> <ul style="list-style-type: none"> The Ministerial Direction requires a Planning Proposal to be consistent with the Floodplain Development Manual 2005. The Manual specifically aims to <ul style="list-style-type: none"> <i>...avoids the unnecessary sterilisation of flood prone land...</i> <p>and:</p> <p><i>...does not support the use of zoning to unjustifiably restrict development simply because land is flood prone. Zoning of flood prone land should be based on objective assessment of land suitability and capability, flood risk, environmental or other factors</i></p> <p>The flood modelling and recent approval for the site demonstrate that development of the subject site is feasible and that flood impacts, the liability of owners and occupiers, and losses during a flood event can be minimised through appropriate flood mitigation and adaption measures. Where an appropriate outcome has been demonstrated, refusal of</p>

Issue	Response
	<p>the Planning Proposal on the basis of flooding would simply sterilise the site forever.</p> <ul style="list-style-type: none"> • Whilst Clause (2) of the Direction suggests that a planning proposal should not rezone land within the flood planning area from Special Purpose to a Residential, in this particular instance the Special Purpose zoning has become redundant as the site was vacated and sold by the NSW State Government in 2018. The site has been vacant for 5 years and the Planning Proposal is necessary to allow the site to be used for a productive purpose. • Clause (3)(c) of the Direction provides that: <p><i>A Planning Proposal must not contain provisions that apply to the flood planning area which: permit development for the purpose of residential accommodation in high hazard areas.</i></p> <p>The site is not a high hazard area, and has been characterised by Northrop as a low hazard area and is therefore suitable for residential use.</p> • Clause (3)(d) of the Direction provides that: <p><i>A Planning Proposal must not contain provisions that apply to the flood planning area which: permit a significant increase in the development and/or dwelling density of that land.</i></p> <p>The Planning Proposal will not permit a significant increase in the development of the land, noting that the height and FSR is modest and exactly reflects the recently approved medical centre on the land.</p> • Clause (3)(g) of the Direction provides that: <p><i>A Planning Proposal must not contain provisions that apply to the flood planning area which: are likely to result in a significantly increased requirement for government spending on emergency management services, flood mitigation and emergency response measures.</i></p> <p>The Planning Proposal is not expected to result in any increase in government spending. In fact, the future redevelopment of the site has the ability to</p>

Issue	Response
	<u>enhance</u> existing emergency management procedures for the area by providing a common place for flood refuge if required.

3.5 Georges River Council

Georges River Council would ordinarily be the Planning Proposal Authority (PPA) responsible for undertaking the public exhibition process and review of submissions for the Planning Proposal.

However, the South District Planning Panel has appointed itself as the PPA in response to the proponent's request due to the concerns raised regarding Council's mandatory requirement for a VPA.

Georges River Council have provided a submission in relation to the public exhibition of Planning Proposal. A summary of the issues raised and a response is provided below:

Issue	Response
Strategic and Site Specific Merit	
<p>Council officers reviewed the subject Planning Proposal and concluded that it demonstrates strategic merit as it is consistent with the planning priorities and objectives of the Greater Sydney Region Plan and South District Plan, Council's Local Strategic Planning Statement (LSPS), Council's Local Housing Strategy, the draft Beverly Hills Master Plan, relevant State environment planning policies (SEPPs) and s.9.1 Ministerial Directions.</p> <p>The Planning Proposal also demonstrates site specific merit as it adequately justifies that the proposed density (maximum building height of 16m and FSR of 1.4:1) can be accommodated on the site without resulting in adverse amenity impacts on the proposed and surrounding developments.</p>	<p>Noted and agreed. The Planning Proposal has demonstrated strategic and site specific merit.</p>
Draft Site Specific DCP Amendment	
<ul style="list-style-type: none"> A draft site-specific Development Control Plan (Amendment No. 4 to GRDCP 2021) (DCP amendment) has been prepared for the subject site to accompany the Planning Proposal. Whilst Council officers acknowledge the Planning Proposal has strategic and site specific merit, it is imperative that the draft DCP amendment be adopted to support the planning controls in the Planning Proposal. The draft DCP amendment has been prepared to ensure that the built form outcome reflects urban design considerations for any future development of the site, including the provision of built form, boundary setbacks, 	<p>The proponent did not originally submit a draft DCP with the Planning Proposal and this was only provided at Council's request.</p> <p>The proponent's position is that this is not a complex or unique site which requires a site specific approach to massing and site layout and therefore a site specific DCP. It is an ordinary site which is not dissimilar to any other site in the Georges River local government area and the future redevelopment of the site would be sufficiently guided by the Council's generic DCP, just as is the case for any other high density development in the R4 zone.</p>

Issue	Response
<p>deep soil areas, vehicular access, stormwater management, contamination and waste management issues.</p> <ul style="list-style-type: none"> The draft DCP amendment is on public exhibition from 17 May to 16 June 2023. Council has formally notified the Department's Agile Planning and Programs section regarding the exhibition of the DCP amendment. It should be noted that as part of the exhibition of the draft DCP amendment, Council is receiving submissions that relate to the Planning Proposal which will be sent to the Department and should be considered prior to finalising the Planning Proposal. Following the public exhibition of the DCP amendment, Council will consider a report on the submissions received and seeking the adoption of the DCP. The DCP will become effective when the LEP (Amendment No. 6 to GRLEP 2021) is gazetted. 	<p>This is evidenced by the fact that Council recently approved a 3 storey medical centre on the subject site (DA2020/0227) without a site specific DCP.</p> <p>Nonetheless, in the spirit of cooperation the proponent has prepared the Draft DCP and paid the required fee to Council.</p> <p>However, it is the proponent's firm position that as the site is already sufficiently served by existing DCP controls, the progression of the draft site specific DCP is a separate process and the Planning Proposal is not contingent upon the draft DCP.</p> <p>Accordingly, the delayed exhibition period for the draft DCP should not also delay the completion of the Planning Proposal, and submissions to the draft DCP are not a matter for consideration in the Planning Proposal.</p> <p>Council has already had their authority as PPA removed due to their refusal to move forward with the Planning Proposal in the absence of a VPA, and so it is imperative that there are no provisions in the new instrument which mandate a site specific DCP as this will provide Council with leverage to once again demand a VPA.</p>
Need for a VPA to Address Demands and Impacts of the Proposal	
<ul style="list-style-type: none"> The Planning Proposal does not include an offer to enter into a VPA. Council considers that a VPA is essential in order to address the local demands and cumulative impacts of the new residential population that will be enabled by the Planning Proposal. The proposal will enable the site to be developed for residential flat buildings with the concept plans indicating a yield of up to 38 dwellings. The resulting population of 90-102 people will generate a demand for local parks, require safe and direct pedestrian connections to local parks and public transport facilities as well as improved community facilities and services. A preliminary list of the local infrastructure works and facilities identified by Council to directly address the cumulative impacts and demands from the new residential population from the proposal is included in the attached submission (Attachment 1). 	<p>Council's refusal to progress the Planning Proposal without a VPA was the reason why the proponent needed to lodge a Rezoning Review.</p> <p>The Sydney South Planning Panel did not accept that a VPA was required and in their determination in fact advised that:</p> <p><i>....Council should consider a review of its Development Contributions Plan.</i></p> <p>Furthermore, the Panel's rejection of Council's assertion that a VPA is required is evidenced by the fact that it removed Council's role as PPA and assumed this role itself. This was done at the proponent's request due to the concerns raised regarding Council's unlawful demand for a VPA.</p> <p>The documentation that was submitted as part of the proponent's request for Rezoning Review provides a comprehensive response to Council's demand for a VPA, including legal advice, and is attached as Appendix B to this report.</p>

Issue	Response
<ul style="list-style-type: none"> The Georges River Council Local Infrastructure Contributions Plan 2021 (Contributions Plan) does not levy for the above local facilities and works. The proposed development of the site was not anticipated at the time the Contributions Plan was prepared. As such, the S7.11 contributions would not appropriately address the impacts of the development. Council concern: Council reiterates that a VPA provides the only funding mechanism for Council to address the demands for local infrastructure and facilities arising from the Planning Proposal. The public benefits identified for a VPA could not be conditioned on a future development consent. Accordingly, finalisation of the Planning Proposal should be subject to the submission and acceptance of a VPA offer. 	<p>However, below is a summary of the relevant issues relating to Council's demand for a VPA.</p> <p>The offer must be voluntary</p> <p>The Department's Planning Circular confirms the voluntary nature of VPAs and states:</p> <p><i>"A council cannot require a planning agreement in order to progress a planning proposal".</i></p> <p>In this case, there is no voluntary offer. As a VPA must be voluntary, Council cannot require the proponent to enter into a VPA.</p> <p>Addressing infrastructure demand</p> <ul style="list-style-type: none"> The Planning Proposal is needed to replace a redundant zoning and is not for a specific development type. The eventual form of redevelopment of the site is unknown and could comprise any number of the uses which will become permissible upon gazettal. Therefore, it is not possible to identify any specifically required infrastructure demand in the context of this Planning Proposal and infrastructure demand can only be addressed at the time of a development application, where the demand can be properly understood and addressed via conditions of consent. Council's assertion that "a VPA provides the <u>only</u> funding mechanism for Council to address the demands for local infrastructure and facilities arising from the Planning Proposal" is incorrect. On 1 December 2021, the Georges River Council Local Infrastructure Contributions Plan (GRCLICP) was adopted, which establishes the <u>exact</u> infrastructure requirements for any specific development, including correct apportionment. Council suggests that "the proposed development" of the site was not anticipated at the time the GRCLICP was prepared and as such the GRCLICP would not appropriately address the impacts of the development. Once again, the reference to "the proposed development" assumes a specific development outcome, which is unknown at this point in time. Nonetheless, the GRCLICP is not based on a precise population or employment growth and Section 2.1.5 explains that it is based on

Issue	Response
	<p>forecast growth in population of 22,552 persons from 2021 until 2036. Many factors will influence the actual population growth by 2036 and for this reason, the GRCLICP is subject to periodic review.</p> <ul style="list-style-type: none"> • Council also asserts that a VPA is required on the basis that the GRCLICP does not levy for the identified list of local facilities and works for a 38 apartment development. Once again, this is Planning Proposal and not a Development Application for 38 apartments. Nonetheless, this statement is incorrect as the GRCLICP already levies for funds in the categories of open space, community and recreational facilities, public domain, and traffic and transport facilities. Nonetheless, if Council still believes that the GRCLICP is deficient, it should consider a review of the GRCLICP as suggested by the Sydney South Planning Panel. • Finally, Council have suggested a “reasonable contribution” value under a VPA as \$760,000 based on an economic feasibility for 38 apartments. Once again, this is Planning Proposal and not a Development Application for 38 apartments. Nonetheless, project feasibility is only relevant for a “value capture” approach, which has been banned by the Department, and is irrelevant to determining infrastructure demand. The GRCLICP is the appropriate mechanism for determining the future infrastructure demand, not economic feasibility assessment. <p>In conclusion, a VPA is not offered, and nor is there a need for a VPA for this Planning Proposal as infrastructure demand will be appropriately determined at the Development Application stage, in accordance with the GRCLICP and reflecting the demand resulting from an actual development proposal.</p>

4.0 PUBLIC SUBMISSION

Six public submissions were received during the exhibition of the development application. A summary of the submissions and a response is provided below:

Issue	Response
Scale and Visual Impact <ul style="list-style-type: none"> The proposal will create a significant visual impact on the outlook for the neighbouring properties. This apartment block or complex would be one of Beverly Hills' tallest buildings Maximum of 12m and 3 storeys 	<p>No height or FSR development standards currently apply to the majority of the site. To provide certainty around the future built form outcomes on the site and limit the impacts of a possible future redevelopment of the site on the surrounding properties, the Planning Proposal includes the addition of a 16-metre height of buildings control and 1.4:1 maximum FSR control.</p>
Density A maximum 1:1 FSR.	<p>A height of 16 metres and floor space ratio of 1.4:1 was recently approved on the site under DA2020/0227. As part of the assessment of the approved three storey medical centre on the site, Council found that the height and FSR of the development was compatible with the surrounding land uses and within its context. In accordance with the planning principle established in <i>Project Venture Developments v Pittwater Council [2005] NSWLEC 191</i> for determining whether a proposal is compatible with its context, Council considered whether:</p> <ul style="list-style-type: none"> The proposal's physical impacts on surrounding development are acceptable. The physical impacts included noise, overlooking, overshadowing and constraining development potential. The proposal's appearance is in harmony with the building around it and the character of the street. <p>The proposal was found to be acceptable for each of these considerations.</p> <p>A similar assessment of a preliminary design for a residential flat building on the site has been undertaken by Council for the subject Planning Proposal. The concept plans demonstrate that a residential flat building of a similar envelope to the medical centre, will result in no greater impacts to the surrounding sites when compared with the approved medical centre building on the site.</p>
Shadow Concern regarding increased shadow	<p>The Planning Proposal only seeks consent for a height of 16 metres which matches the height of the recently approved medical centre on the site. Accordingly, the shadow cast by any future</p>

Issue	Response
	<p>redevelopment on the site will be consistent with the shadow cast by the recently approved building.</p> <p>Notwithstanding, any future development application will be governed by the provisions of the Georges River Development Control Plan 2021, which contains provisions relating to the protection of solar access for neighbouring properties.</p>
<p>Use</p> <ul style="list-style-type: none"> As a singular rezoning, the rezoning should be specific to the proposed purpose of site which is commercial use. If the site is to be appropriate for rezoning as R4 High Density Residential then this it should not be done in isolation. Do not oppose the use of the site as a residential development as it would be in keeping with the character. The proposed office or any potential retail uses will not be in high demand 	<p>It is noted that the submissions included two opposing views, some which supported residential use of the site, and some that support only commercial use of the site.</p> <p>The SP2 Infrastructure (Public Administration) zone has become redundant. The reasons for the proposed R4 High Density Residential zone and the additional permitted uses of “office premises” and “business premises” are as follows:</p> <ul style="list-style-type: none"> the proposed R4 zone reflects the residential context of the site; the proposed R4 zone reflects the scale and density of the recently approved building on the site; the proposed R4 zone allows for the type of development which is compatible with the flood affection of the site, being residential flat buildings and shop top housing which have a large format floorplate capable of accommodating a flood chamber below ground floor; and “office premises” and “business premises” are proposed as additional permitted uses to broaden the range of uses that can occupy the existing building on the site and the approved three storey medical building
<p>Traffic and Parking</p> <ul style="list-style-type: none"> The proposal will also generate much traffic on already very congested roads and other undeveloped substandard infrastructure Please ensure entries into any potential basement car parking area is split between Stoney Creek Road and the Cambridge Street to not cause major and increased havoc. Adequate on-site parking should be provided. 	<ul style="list-style-type: none"> The former RTA use of the site resulted in 130 peak hour trips, the approved medical centre results in 110 peak hour trips, whilst a potential residential flat development of the site will result in approximately 18 peak hour trips. The Planning Proposal will allow for alternative development of the site which will result in reduced traffic impacts when compared with the historical and recently approved uses of the site. The actual traffic impact associated with the redevelopment of the site will be assessed

Issue	Response
	<p>during the course of a future development application.</p> <ul style="list-style-type: none"> Car parking associated with the redevelopment of the site will be assessed during the course of a future development application.
<p>Privacy</p> <p>Ensured that there is a lot of vegetation and trees to ensure visual privacy and acoustic privacy.</p>	<p>The Planning Proposal is to establish high level zone, FSR and height controls for the site. The issue of privacy and mitigation of privacy with vegetation is a detailed matter which will be the subject of the assessment of a future development application.</p>
<p>Materials and Colours</p> <p>A building on the site should be built of brown-orange brick colours to be in keeping with the character of the area.</p>	<p>The Planning Proposal is to establish high level zone, FSR and height controls for the site. The issue of materials and colour is a detailed matter which will be the subject of the assessment of a future development application.</p>
<p>Flooding</p> <p>If there is an intention for underground parking, has the presence of the flood zone and impacts of flooding been adequately assessed and mitigated</p>	<p>The Planning Proposal is supported by detailed flood assessment prepared by Northrop and as discussed in detail previously in this report.</p>

5.0 CONCLUSION

This report and the accompanying documentation provides a detailed response to the issues raised by all parties in relation to the Planning Proposal.

The current zoning of the site is redundant and highly restrictive and has rendered the building on the site unusable for nearly five years. The existing building on the site has been vandalised and is in a state of decay. There is an urgent need for an appropriate replacement zoning and height and FSR controls to be established for the site.

The strategic and site-specific merit of the proposal has been established, as confirmed by both the South Sydney Planning Panel and Council.

This Response to Submissions and the accompanying documentation has addressed all issues raised during the exhibition of the Planning Proposal and has demonstrated that the Planning Proposal is capable of support.

APPENDIX A

Northrop

FLOOD RESPONSE

A

16 June 2023

SY200410_B04_[A]

Cambridge Unit Developments
C/- Chris Ryan
Ionic Management Pty Ltd
PO Box 165
Cronulla, NSW, 2230

Dear Chris,

Re: 143 Stoney Creek Road, Beverly Hills – Response to SES Submission.

Northrop Consulting Engineers have been engaged by Cambridge Unit Developments, care of Ionic Management Pty Ltd to prepare a Flood Risk Impact Assessment for the purposes of the Planning Proposal (Ref: PP-2021-6630) for 143 Stoney Creek Road, Beverly Hills, herein referred to as the “subject site”.

Following submission of the Planning Proposal, the NSW State Emergency Service (SES) provided commentary with respect to the proposal (SES Ref: ID 1932). The purpose of this letter is in response to the SES submission, which is dated the 17th of May 2023.

Reference is made herein to the Flood Risk Impact Assessment for Planning Proposal submission prepared by Northrop Consulting Engineers and dated the 14th of April 2023 [REV E], herein referred to as the Flood Risk Impact Assessment (Northrop, 2023).

Presented below is a summary of the SES comments outlined in their letter and a response to each item.

SES Comments and Response

SES Comment 1

NSW SES notes that the proposed site is directly in a known overland flow path within the 1% Annual Exceedance Probability (AEP) flood extent 1%, is prone to high velocity flooding on and immediately surrounding the site (>2.0m/s during 1% AEP events) 2 and the proposal is inconsistent with Ministerial Section 9.1 Direction 4.1 – Flooding. NSW SES recommends reconsidering the proposed uses and car parking options for the site.

Response

Attachment 2 of the Flood Risk Impact Assessment (Northrop, 2023) demonstrates the subject site is located in a Low Flood Hazard Precinct as defined by Georges River Council Stormwater Management Policy (2020). A small spike in flow velocities greater than 2.0m/s is observed during the 1% AEP, however, this occurs as flows pass around the existing building. The majority of the site is exposed to low flood hazard conditions during the 1% AEP, as shown in Figure 3 of Attachment 2.

The Flood Risk Impact Assessment (Northrop, 2023) discusses compliance with the NSW Ministerial Direction 4.1 – Flooding. Similarly, the Flood Risk Impact Assessment (Northrop, 2023) discusses the feasibility of developing the site where flood impacts, the liability of owners and occupiers, and losses during a flood event can be minimised through appropriate flood mitigation and adaption measures.

Development specific mitigation and adaption measures will be considered during future development phases. Guiding Principles for Flood Management for Future Development of the site have been developed in consultation with Georges River Council. These are outlined in the Flood Risk Impact Assessment (Northrop, 2023) as well as in the site-specific Development Control Plan.

It is understood that the Shelter In Place (SIP) strategy is not endorsed by the SES. The NSW Department of Planning and Environment (DPE) are currently reviewing its suitability as a flood emergency management response measure with the Draft Shelter-In-Place guidelines prepared in January 2023. The guideline suggests SIP may be supported for Flash Flood events where a short warning and inundation time is expected. This is consistent with the type of event that is expected to occur at the subject site.

SES Comment 2

Zoning should not enable development that will result in an increase in risk to life, health or property of people living on the floodplain.

Response

As outlined by the Flood Risk Impact Assessment (Northrop, 2023), the NSW Floodplain Development manual (NSW FPDM, 2005; pp J-2):

“does not support the use of zoning to unjustifiably restrict development simply because land is flood prone. Zoning of flood prone land should be based on objective assessment of land suitability and capability, flood risk, environmental or other factors “

In this case, the Flood Risk Impact Assessment (Northrop, 2023) and current Development Application approval highlights the capacity for the site to facilitate development. The Flood Risk Impact Assessment (Northrop, 2023) demonstrates that the risk to life, health and property for future development on the site can be managed through a combination of sound engineered solutions and the introduction of appropriate operational / behavioural measures.

We acknowledge SES preference to place future development at the PMF. This has been considered in the Flood Risk Impact Assessment (Northrop, 2023) with the Guiding Principles for Flood Management for Future Development recommending placement of any proposed habitable spaces at a minimum of the 1% AEP plus 500mm freeboard or the PMF (whichever is higher). Additional development controls are outlined by the principles which are expected to be enforced by the site-specific Development Control Plan.

Additional information with respect to structural capacity and louvres for undercroft areas is expected to be determined once the final concept site layout is recognised. This is expected to occur during future project phases such as Development Application (DA), or Construction Certificate (CC) phase.

SES Comment 3

Risk assessment should consider the full range of flooding, including events up to the PMF and not focus only on the 1% AEP flood.

Response

The Flood Behaviour section of the Flood Risk Impact Assessment (Northrop, 2023) includes consideration to events ranging from the 50% AEP (i.e. 2yr ARI) to the PMF.

Attachment 3 of the Flood Risk Impact Assessment (Northrop, 2023) also presents additional flood Figures for the 50%, 20%, 10%, 5% AEP and the 1% AEP plus climate change.

SES Comment 4

Risk assessment should have regard to flood warning and evacuation demand on existing and future access/egress routes. Consideration should also be given to the impacts of localised flooding on evacuation routes.

Response

Modelling for more frequent events has been considered as outlined in response to Comment 3 above.

The Flood Emergency Response Summary presented in the Flood Risk Impact Assessment (Northrop, 2023) highlights a strategy for early closure and evacuation of the facility, up to a day in advance, if warning time permits. Evacuation well in advance of the event occurring is not expected to significantly increase demand on existing access / egress routes.

Where sufficient time for evacuation is not available (e.g. the warning occurs on the same day or rainfall has already commenced), on-site refuge is recommended. The requirement for future development to facilitate on-site refuge is also outlined in the Guiding Principles for Flood Management for Future Development presented in the Flood Risk Impact Assessment (Northrop, 2023). On-site refuge is also not expected to increase evacuation demand on existing access / egress routes as occupants are expected to remain on-site.

Evacuation of the site, once rainfall has commenced, is not recommended due to the potential for the regional road network to be compromised by flood water. Early evacuation or on-site refuge as outlined herein is a recognised emergency response measure as outlined by the Draft Shelter-In-Place guidelines (DPE, 2023).

SES Comment 5

In the context of future development, self-evacuation of the community should be achievable in a manner which is consistent with the NSW SES's principles for evacuation. Future development must not conflict with the NSW SES's flood response and evacuation strategy for the existing community.

Response

Self-motivated evacuation is expected to be possible prior to the commencement of rainfall. If a flood warning has been received and rainfall has commenced, on-site flood refuge is recommended. This is due to the expected Flash Flood nature of the event and the risk of directing occupants to evacuate through a compromised road network. This strategy is generally consistent with the Draft Shelter-In-Place guidelines whereby if evacuation is not possible, SIP should prevail (DPE, 2023).

We acknowledge SES comments with respect to flood risks associated with basement garages and vertical evacuation for persons with limited mobility. We expect this can be further reviewed during future development phases (such as at DA phase) once a final concept site layout is recognised at Development Application phase.

SES Comment 6

Evacuation must not require people to drive or walk through flood water.

Response

As mentioned above, evacuation of the facility, prior to the commencement of rainfall and ideally a day in advance, is preferred (if warning time permits). This is outlined in the Flood Emergency Response Summary presented in the Flood Risk Impact Assessment (Northrop, 2023).

Where there is insufficient time for evacuation (e.g. the warning occurs on the same day or rainfall has already commenced), on-site refuge is recommended. The requirement for future development to

facilitate on-site refuge is expected to be enforced through the Guiding Principles for Flood Management for Future Development and the site-specific Development Control Plan.

Through the implementation of this strategy, we expect evacuation through floodwater will not be required.

SES Comment 7

Development strategies relying on deliberate isolation or sheltering in buildings surrounded by flood water are not equivalent, in risk management terms, to evacuation.

Response

As previously mentioned, evacuation of the facility, prior to the commencement of rainfall and ideally a day in advance, is recommended. This is outlined in the Flood Emergency Response Summary presented in the Flood Risk Impact Assessment (Northrop, 2023).

Where there is insufficient time for evacuation, on-site refuge is recommended on the site. As previously mentioned, Shelter in Place when evacuation is not possible, is supported by the Draft Shelter-In-Place guidelines (DPE, 2023). The draft guidelines also suggest SIP is appropriate for in-fill development which is observed by the proposal.

SES Comment 8

Development strategies relying on an assumption that mass rescue may be possible where evacuation either fails or is not implemented are not acceptable to the NSW SES.

Response

Mass rescue is not expected to be required due to the provision for early self motivated evacuation and the capacity for future development to facilitate on-site refuge with an expected short duration of flooding.

SES Comment 9

The NSW SES is opposed to the imposition of development consent conditions requiring private flood evacuation plans rather than the application of sound land use planning and flood risk management.

Response

The proposal does not rely solely on a private flood evacuation plan. The Guiding Principles for Flood Management for Future Development and the site-specific Development Control Plan outlines the necessary additional land-use and planning measures. The private flood evacuation plan is expected to support these measures, further reducing flood risk in the area.

In addition, Development on the site presents an opportunity to (informally) introduce a regional evacuation centre for the nearby residential properties whereby members of the community who were unable to evacuate may seek refuge within the facility. As a result, development on the subject site has the potential to reduce the risk to life on the subject site but also for nearby flood affected residents.

SES Comment 10

NSW SES is opposed to development strategies that transfer residual risk, in terms of emergency response activities, to NSW SES and/or increase capability requirements of the NSW SES.

Response

Additional demand on emergency services is not expected to be created by future development of the site due to the provision for early self-motivated evacuation, development capacity to facilitate on-site

refuge and the additional land-use and planning measures outlined by the Guiding Principles for Flood Management for Future Development.

As mentioned previously, development of the site, in accordance with the Guiding Principles for Flood Management for Future Development, presents an opportunity to reduce flood risk on the site and for the nearby residents by (informally) introducing a regional flood refuge centre.

The potential introduction of residential dwellings on the site presents an opportunity for greater education and awareness with the potential for training and emergency drills to be incorporated into the operation of the facility. Itinerant occupants are less likely to be aware of the proposed flood management measures and emergency procedures. Education and awareness programs and frequency of re-training and drills can be outlined in the private flood evacuation plan.

Flood impacts in adjacent properties were assessed for the purposes of the Development Application for the proposed Health Services Facility in 2020. This was subsequently approved by Georges River Council in 2021. The Flood Impact Assessment (Northrop, 2020) is presented as Attachment 1 in the Flood Risk Impact Assessment (Northrop, 2023).

As outlined in the Flood Impact Assessment (Northrop, 2020), minimal change in the extent of already observed hazard conditions was expected and no escalation in hazard category was observed in adjacent properties. In addition, a reduction in the extent of flood hazard conditions in both Cambridge and Stoney Creek Roads was observed during both the 1% AEP and PMF demonstrating potential benefits for the future development of the site.

The Flood Impact Assessment (Northrop, 2020) concluded that significant adverse impacts were not expected, and the existing risk was expected to remain the same or reduce as a result of the development.

It is anticipated that a future Development Application will need to perform a similar investigation to confirm adverse flood impacts do not occur as outlined by the Guiding Principles for Flood Management for Future Development and the site-specific Development Control Plan.

SES Comment 11

Consent authorities should consider the cumulative impacts any development will have on risk to life and the existing and future community and emergency service resources in the future.

Response

As mentioned above, the Flood Impact Assessment (Northrop, 2020) prepared for the purposes of Development Application for the Health Services Facility concluded that adverse impacts were not expected, and the existing risk was expected to remain the same or reduce as a result of the development.

It is anticipated that a future Development Application will need to perform a similar investigation to confirm adverse flood impacts do not occur as outlined by the Guiding Principles for Flood Management for Future Development and the site-specific Development Control Plan.

Additional demand on emergency services is not expected to be created by future development of the site due to the provision for early self-motivated evacuation, development capacity to facilitate on-site refuge and the additional land-use and planning measures outlined by the Guiding Principles for Flood Management for Future Development.

Conclusion

A response to the NSW SES comments presented in their letter dated the 17th of May 2023 (SES Ref: ID 1932) is presented herein.

We commend our findings to the Department for their review. Should you have any queries regarding this correspondence, please feel free to contact the undersigned on (02) 4943 1777.

Prepared by:



Laurence Gitzel

Associate | Flood Engineer

BEng (Env) MProfEng(Env) MIEAust CPEng (Civil) NER

Limitation Statement

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APPENDIX B

Sutherland & Associates Planning

REZONING REVIEW REQUEST AND LEGAL
ADVICE

B

6 October 2022

Ms Claire Mirow
Director, Eastern and South Districts
Department of Planning and Environment
Locked Bag 5022
PARRAMATTA NSW 2124

Dear Ms Mirow

REZONING REVIEW REQUEST - PLANNING PROPOSAL – 143 STONEY CREEK ROAD, BEVERLEY HILLS

This letter relates to a Planning Proposal submitted to Georges River Council on 2 November 2021, and amended on 7 July 2022, relating to land at 143 Stoney Creek Road, Beverly Hills.

On behalf of Cambridge Unit Developments Pty Ltd (the Proponent) we request that a rezoning review be undertaken as Georges River Council has failed to indicate its support for the Planning Proposal within 90 days from the date the amended Planning Proposal was received by Council.

The review request has been prepared in accordance with the guidelines for a rezoning review set out in the 'Local Environmental Plan Making Guideline' (The Guideline) dated September 2022 published by the NSW Department of Planning, Industry and Environment.

This letter also requests the appointment of the South Sydney Planning Panel be appointed as the Planning Proposal Authority for the Planning Proposal.

This letter is accompanied by the following supporting documentation:

Appendix	Documentation
Appendix A	Various correspondence from Council regarding their request for a VPA
Appendix B	Legal advice from Mills Oakley dated 4 October 2022
Appendix C	Various correspondence from Council confirming support for the merits of the PP

1.0 Background

The subject site is known as 143 Stoney Creek Road, Beverly Hills and is legally described as Lots 2 and 3 in DP 1205598. The site has an area of 2,454 square metres with a frontage of approximately 63 metres to Stoney Creek Road and 38 metres to Cambridge Street. The site is approximately 600 metres walking distance from the Beverly Hills train station.

The site was used as a Roads and Traffic Authority administration centre for over 40 years and contains an office building of approximately 480 square metres at the north-eastern corner of the site, with the remainder of the site occupied by a hard stand car park for approximately 40 cars. The site has therefore historically functioned as an

important service provider within the Beverly Hills local centre. The site was sold by the NSW State Government in mid-2018.

Reflecting the former use of the site, the site is currently predominantly zoned SP2 Infrastructure (Public Administration) under the Georges River Local Environmental Plan 2021 and there are currently no height or FSR restrictions for the majority of the site. A small part of the site is zoned R2 Low Density Residential as a result of a mapping anomaly however this part of the site has not been used for a residential use.

The building on the site has been vacant for over four years, since the NSW Government sold the site, due to the restrictive zoning which currently applies to the land which means it can essentially only be used for Government administration purposes, or a 'health services facility' pursuant to State Environmental Planning Policy (Transport and Infrastructure) 2021. The existing building on the site is in a state of decay and has suffered significant water damage. Recently, the site has been temporarily occupied by a COVID-19 testing facility in the car park.

Since the Proponent purchased the site in mid-2018, the Proponent has actively engaged with Georges River Council's Strategic Planners and Development Assessment Team to facilitate the re-use of the existing building or redevelopment of the site.

On 21 February 2021, the Sydney South Planning Panel granted consent to Development Application DA2020/0227 for a 3-storey medical centre above 3 basement levels with car parking for 114 vehicles on the subject site pursuant to Clause 57 within Division 10 of State Environmental Planning Policy (Infrastructure) 2007 which is now Clause 2.60 in State Environmental Planning Policy (Transport and Infrastructure) 2021.



Figure 1:

Aerial view of the site (Source: Six Maps 2021_

As the current zoning of the site is redundant and highly restrictive, a Planning Proposal is necessary to:

- Amend Schedule 1 of Georges River LEP 2021 to include “office premises” and “business premises” as additional permitted uses on the site. This will broaden the range of uses that can occupy the existing building on the site and the approved three storey medical building;
- Change the zoning of the site from SP2 and R2 to the more appropriate zone of R4 High Density Residential. The proposed R4 zone reflects the residential context of the site and the scale and density of the recently approved building and includes residential uses (such as residential flat buildings and shop top housing) that are compatible with the flood affection of the site, noting that any new building on the site requires a large flood chamber below ground level.
- Introduce an FSR of 1.4:1 which reflects the exact density of the recently approved medical centre building on the site and the concept residential flat building (noting there is currently no FSR restriction on the majority of the site); and
- Introduce a building height control of 16 metres which exactly reflects the scale of the recently approved medical centre building on the site (noting there is currently no height restriction on the majority of the site).

The proposed new zone and additional permitted uses for the site have strategic merit as they are consistent with Council’s Local Strategic Planning Statement in that they would allow the site to continue to be used for employment generating uses, they would allow a broader range of employment generating uses within the recently approved medical centre building on the site which would contribute to job creation in the George River local government area, as well as providing the potential for the site to make a small contribution to the identified residential target.



Figure 2:

Image of the approved 3 storey medical centre on the site (DA2020/0227) as viewed from Stoney Creek Road

2.0 Planning Proposal

The Planning Proposal related to the site at 143 Stoney Creek Road, Beverly Hills was lodged on 2 November 2021 and sought to amend Schedule 1 of the LEP to introduce the following additional permissible uses for the site, to enable the existing building to be usefully occupied, and also allow the approved three storey medical building to accommodate a broader mix of employment generating uses which can serve the local community:

- Commercial premises;
- Centre-based child care facility;
- Health services facility; and
- Veterinary hospital

Following lodgement of the Planning Proposal, Council provided the following feedback:

- The parent land use term “commercial premises” is considered too broad and could introduce a wide range of land-uses that may be incompatible for the location and surrounding context, particularly when considering the absence of development standards applying to the majority of this site.
- The retention of the existing land use Zone SP2 Infrastructure (Public Administration) is considered unsuitable as the special purpose land use is no longer operating on the site. It is recommended that the proponent consider an alternative land use zone that is compatible with the surrounding land uses and proposed future land uses.
- In accordance with Council’s Policy on Planning Agreements, planning proposals should be accompanied by an offer to enter into a planning agreement with Council.

In response to feedback provided by Council the Planning Proposal was amended on 7 July 2022. The proposed changes to the Georges River Local Environmental Plan 2021 as it relates to the subject site are:

- Change the zone from SP2 Infrastructure (Public Administration) and R2 Low Density Residential to R4 High Density Residential;
- Provide additional permitted uses of ‘office’ and ‘business premises’ in Schedule 1 of Georges River LEP 2021;
- Introduce an FSR of 1.4:1 for the entire site; and
- Introduce a building height control of 16 metres for the entire site.

The amended Planning Proposal included a justification at Section 4.1 for not providing an offer to enter into a Voluntary Planning Agreement.

3.0 Rezoning Review Trigger and Timeframe

In accordance with The Guideline a proponent for a planning proposal can seek a rezoning review request:

- within 42 calendar days of council notifying the proponent that it does not support the planning proposal request, or
- if council has failed to make a decision on the planning proposal after:
 - 90 calendar days from the date the proposal was lodged with council if this is a basic and standard planning proposal
 - 115 calendar days from the date the proposal was lodged with council if this is a complex planning proposal
- if council has supported the planning proposal but has not submitted the planning proposal to the Department within 28 calendar days

The Guideline states that for the purposes of triggering a rezoning review request, the timeframe begins from the day the planning proposal is lodged with the Council on the Planning Portal and fees are paid. This timeframe restarts if a planning proposal is amended and received by Council when under assessment by Council.

The Planning Proposal meets the review trigger time frames as follows:

- An amended Planning Proposal was submitted on 7 July 2022. The rezoning review timeframe restarted on that date.
- The Planning Proposal is a standard planning proposal, which is described in the Guideline as:

A standard planning proposal refers to any one or more of the following proposed LEP amendment types, including an amendment:

- To change the land use zone where the proposal is consistent with the objectives identified in the LEP for that proposed zone
- That relates to altering the principal development standards of the LEP
- That relates to the addition of a permissible land use or uses and/or any conditional arrangements under Schedule 1 Additional Permitted Uses of the LEP
- That is consistent with an endorsed District/Regional Strategic Plan and/or LSPS
- Relating to classification or reclassification of public land through the LEP meets the requirements for a standard
- It has been 90 days since the amended Planning Proposal was received by Council.
- A decision has not yet been made by Georges River Council on the Planning Proposal.

It has been 90 calendar days since the amended, standard Planning Proposal was received by Council and no decision has been made. As such, the Planning Proposal satisfies the trigger for a rezoning request.

4.0 Rezoning Review Request Requirements

The following table summarises how the rezoning review request requirements set out in The Guideline have been addressed in the Rezoning Review Request documentation.

Rezoning Review Request Requirement	Location of Information
A copy of the proponent's latest version of the planning proposal, including all supporting material and information that was submitted to council	Appendix A of this letter
All correspondence that the proponent has received from the council in relation to the planning proposal request, including (if relevant) any copies of the council's written advice to the proponent and/or the Council resolution not proceed with the proposal	Appendix B of this letter
All correspondence and written advice from other public authorities and government agencies, if available	Not applicable.
The proponent's written justification of the strategic and site-specific merit to confirm why a review is warranted	Sections 4 and 5 of this letter
Disclosure of reportable political donations under section 10.4 of the EP&A Act, if relevant	No reportable political donations have been made
The rezoning review fee to the Department	The rezoning review fee will be paid at the time of lodgement of the review

5.0 Strategic Merit for the Proposal

The strategic merit of the Planning Proposal is detailed in the Planning Proposal report that accompanies the application. The strategic merit considerations identified in The Guideline are summarised in the table below.

Strategic Merit Consideration	Comment
Does the proposal:	
<ul style="list-style-type: none"> • Give effect to the relevant regional plan outside of the Greater Sydney Region, the relevant district plan within the 	The Planning Proposal is consistent with the Greater Sydney Region Plan and the South District Plan.

Strategic Merit Consideration	Comment
<p>Greater Sydney Region, and/or corridor/precinct plans applying to the site. This includes any draft regional, district or corridor/precinct plans released for public comment or a place strategy for a strategic precinct including any draft place strategy; or</p>	<p>The South District Plan notes that local centres are a focal point of neighbourhoods, and centres such as Beverly Hills which contain a train station, are an important part of a 30-minute city. Local centres provide essential access to day-to-day goods and services close to where people live and local centres account for close to 18% of all Greater Sydney's jobs.</p> <p>Given the site is located adjacent to the Beverly Hills local centre and 600 metres from the Beverly Hills train station, the introduction of additional commercial uses and potentially housing for the subject site will positively contribute to this objective by placing additional employment density, and potentially housing, in a highly convenient location that will encourage usage of existing transport infrastructure.</p> <p>The Planning Proposal is entirely consistent with the identified role for local centres and will allow the site and existing building, as well as a future building on the site, to continue its historic role as an employment node and services location or a housing location on a key site adjacent to the Beverly Hills town centre.</p>
<ul style="list-style-type: none"> Demonstrate consistency with the relevant LSPS or strategy that has been endorsed by the Department or required as part of a regional or district plan; or 	<p>Beverly Hills is a local centre which is identified for centre expansion investigation under the GRLSPS. In addition, the GRLSPS identifies the following in relation to future commercial activity in the Georges River local government area (emphasis added):</p> <p><i>As part of Greater Sydney's Eastern Harbour City, Georges River LGA is home to almost 56,000 jobs. Community surveys indicated that the number one reason for locating a business in Georges River was 'proximity to home'. Our well educated community works in knowledge intensive job sectors with an emerging presence in the health and education job sectors.</i></p> <p><i>The growth, innovation and evolution of commercial centres are central to the economy of the South District and critical to achieving a well connected 30 minute Greater Sydney. Facilitating the growth of our centres is a priority in growing the number of jobs available in Georges River.</i></p> <p><i>It's forecast that between 2016-2036 employment generated within the LGA's centres is to increase by around 13,000 jobs. It is important that our centres accommodate this growth by remaining economically viable and by providing an additional 25% of employment floor space.</i></p> <p><i>Council will seek to facilitate this additional floor space not only through development controls, but also through the growth of the following commercial centres ...Beverly Hills</i></p> <p>...</p> <p>The Planning Proposal is entirely consistent and aligned with the need to provide an additional 25% of employment floor space. The existing building on the site is currently dormant due to the existing zoning of the site but is ideally suited for ongoing employment uses of retail, business or office activity.</p>

Strategic Merit Consideration	Comment
	<p>In addition, the approved 3 storey medical building is also suitable for accommodating this range of employment generating uses in parallel with medical uses.</p> <p>Proposed New R4 High Density Residential Zone</p> <p>Notwithstanding that the primary objective of the Planning Proposal is to expand the uses which can be accommodated within the existing and approved buildings on the site, it is also appropriate to take the opportunity to update the zone as a result of the now redundant SP2 Infrastructure (Public Administration) zone on the site. Accordingly, the Planning Proposal also includes an amendment to change the mixed SP2 and R2 zoning of the site to a residential zone on the site as this reflects the residential use of land immediately surrounding the site, is compatible with the envelope of the approved development and allows for residential uses that can be designed to address the flood affectation of the site due to the need for a large flood chamber beneath any new building on the site.</p> <p><i>Residential Target in GRLSPS</i></p> <p>The Georges River Local Strategic Planning Statement provides an assessment under Theme 3 Housing and Neighbourhoods in relation to the required additional dwellings from 2016 and also identifies the capacity of the existing planning controls to meet this demand, and the shortfall under the current controls.</p> <p>There is a need to provide 14,000 additional dwellings and whilst the majority of this demand can be met by the existing planning controls, there remains a 2,000 dwelling shortfall which will need to be addressed by various zoning changes across the Georges River local government area.</p> <p>The proposed R4 High Density Residential zone for the site, combined with the proposed FSR of 1.4:1 which reflects the floor space of the current approved development on the site, would facilitate a modest 38 apartments towards this 2,000-dwelling shortfall. This accommodation would be provided in an appropriate location noting that the site is 100 metres from the Beverly Hills town centre and associated amenities, and also approximately 600 metres from the Beverly Hills train station.</p>
<ul style="list-style-type: none"> Respond to a change in circumstances that has not been recognised by the existing planning framework 	<p>The Planning Proposal is required as the current SP2 'Public Administration' zoning of the majority of the site is redundant as the site is no longer required by the Government for administrative uses. The SP2 zoning of the site is highly restrictive and as such the existing building on the site cannot be used for any other purpose.</p> <p>The R2 zoning of the site is also redundant as it does not relate to the historical use of the site (which prevents the reuse of this part of the site without redevelopment) nor can a low-density residential use be provided due to vehicular access requirements and the flood affectation of the site.</p> <p>The building on the site has remained vacant for over 4 years which clearly demonstrates that the existing planning framework</p>

Strategic Merit Consideration	Comment
	has not been responsive to the changing circumstances of the site.

6.0 Site-Specific Merit of the Proposal

6.1 Site-Specific Merit Summary

The site was used as a Roads and Traffic Authority administration centre for over 40 years and contains an office building of approximately 480 square metres at the north-eastern corner of the site, with the remainder of the site occupied by a hard stand car park for approximately 40 cars.

Due to this historical use, the site is predominately zoned SP2 Infrastructure (Public Administration). A small part of the site is zoned R2 Low Density Residential as a result of a mapping anomaly. This R2 zoned land forms part of the car park for the existing building and does not have direct vehicular access to Stoney Creek Road.

The site became surplus to the NSW State Government needs and the Roads and Traffic Authority administration centre closed. The site was sold in mid-2018.

As a result of the restriction on the permissible uses due to the SP2 Infrastructure (Public Administration) zone, the existing building has been unable to be occupied for a new use and so has remained vacant and dormant for over four years. The building has been vandalised and broken into on multiple occasions since it was vacated.

Since the Proponent purchased the site in mid-2018, the Proponent has actively engaged with Georges River Council's Strategic Planners and Development Assessment Team to facilitate the re-use of the existing building or redevelopment of the site.

6.2 Site-Specific Merit Considerations

The table below addresses the site-specific merit considerations identified in The Guideline.

Table 2: Site-specific Merit Considerations

Site-specific Merit Consideration	Comment
The natural environment on the site to which the proposal relates and other affected land (including known significant environmental areas, resources or hazards)	<p>There are no significant environmental hazards on the site apart from partial flood affectation.</p> <p>The Flood Risk Impact Assessment dated 2 June 2022 and prepared by Northrop details the flood hazard affecting the site.</p> <p>Overland flow derived from the upstream catchment enters the subject site from the southern and western boundaries, before continuing towards Cambridge Street via the driveway entrance and finally onto Stoney Creek Road as flows pass across the northern boundary. Overland flow continues in a north-easterly direction across Stoney Creek Road, exceeding the capacity of the road network and into the properties to the north. Flood depths for the 1% AEP range across the subject site between 100-500mm while, depths in the order of 600-1000mm are observed in the Probable Maximum Flood (PMF).</p> <p>The recently approved medical centre on the site (D/202/0227) includes a flood chamber beneath ground floor which successfully addresses the flood affectation on the site and also achieves a regional flood benefit by creating additional flood storage within the catchment</p>

Site-specific Merit Consideration	Comment
	<p>beyond the existing site circumstance, and lowering flood levels on adjacent properties.</p> <p>The flood affectation on the site is such that any new residential development on the site would need to adopt a similar flood chamber design across a building on the site as that which has recently been approved in the medical centre building on the site. Whilst the approved flood chamber was developed in response to Council's existing stormwater and flood management controls, Council have prepared a site specific DCP for the property which provides more specific guidance in relation to the need for the flood chamber for any other potential redevelopment of the site. The draft DCP provisions include the following two diagrams that show the required extent and size of the flood chamber.</p> <div data-bbox="633 709 1321 1152" data-label="Image"> </div> <p>Figure 2: Plan of Indicative Flood Chamber</p> <div data-bbox="618 1220 1317 1463" data-label="Image"> </div> <p>Figure 3: Section of Indicative Flood Chamber Zone (in blue)</p> <p>In order to accommodate a large flood chamber across the site, a single consolidated building format is required as per the recently approved medical building on the site and this is the only building method for accommodating the overland flow through the site without adverse impact to surrounding sites.</p> <p>The most suitable form of residential accommodation which can be accommodate a large flood chamber across the site is residential flat building due to its single format design above basement level car parking.</p> <p>The proposed R4 zone reflects the residential context of the site and matches the scale and form of the approved building envelope on the site and is the only residential zone that permits residential uses (such</p>

Site-specific Merit Consideration	Comment
	as residential flat buildings and shop top housing) that are compatible with the flood affectation on the site.
The built environment, social and economic conditions	<p><i>Built environment</i></p> <p>No FSR or height development standards currently apply to the part of the site zoned SP2. To provide certainty around the future built form outcomes on the site and limit the impacts of a possible future redevelopment of the site on the surrounding properties, the Planning Proposal includes the addition of a 16-metre height of buildings control and 1.4:1 maximum FSR control.</p> <p>A height of 16 metres and floor space ratio of 1.4:1 was recently approved on the site under DA2020/0227. As part of the assessment of the approved three storey medical centre on the site, Council found that the height and FSR of the development was compatible with the surrounding land uses and within its context. In accordance with the planning principle established in <i>Project Venture Developments v Pittwater Council [2005] NSWLEC 191</i> for determining whether a proposal is compatible with its context, Council considered whether:</p> <ul style="list-style-type: none"> • The proposal's physical impacts on surrounding development are acceptable. The physical impacts included noise, overlooking, overshadowing and constraining development potential. • The proposal's appearance is in harmony with the building around it and the character of the street. <p>The proposal was found to be acceptable for each of these considerations.</p> <p>A similar assessment of a preliminary design for a residential flat building on the site has been undertaken by Council for the subject Planning Proposal. The concept plans demonstrate that a residential flat building of a similar envelope to the medical centre, will result in no greater impacts to the surrounding sites when compared with the approved medical centre building on the site.</p> <p><i>Social and Economic Impacts</i></p> <p>The Proposal demonstrates a commitment to providing for ongoing and additional employment floor space which will stimulate business activity and private sector investment within the Beverly Hills local centre thereby supporting the growth and evolution of the centre. The Planning Proposal will directly facilitate additional jobs beyond that which would be achievable on the site under the current planning controls. By providing employment close to transport nodes within an identified centre, workers will benefit from reduced commuting times, achieving the NSW Governments objective for a walkable and 30-minute city.</p> <p>The Planning Proposal will facilitate the future redevelopment of the site that will have positive social impacts in terms of urban renewal in an established area that will create a vibrant cosmopolitan culture within the centre through a broader offering of services and opportunities within the centre.</p>

Site-specific Merit Consideration	Comment
	<p>The Planning Proposal could also facilitate a modest residential development on the site which would improve housing diversity in the locality and provide housing that responds to the needs, lifestyle and values of the local community. By providing housing close to transport nodes within an identified centre, residents will benefit from reduced commuting times, improved access to employment opportunities and a greater range of services achieving the NSW Governments objective for a walkable and 30 minute city.</p> <p>The social benefits associated with the proposal include:</p> <ul style="list-style-type: none"> • Improved local amenity including new commercial uses and business opportunities; • Increased employment opportunities for local residents; • Access to high quality new housing including a range of 1, 2 and 3 bedroom dwellings.
Existing, approved and likely future uses of land in the vicinity of the land to which the proposal relates; and/or	<p>The Beverly Hills Town Centre strip along King Georges Road is a well-known entertainment precinct with a high proportion of restaurants and cafes, as well as a cinema. This strip is only 100 metres from the subject site. The site has historically functioned as an important service provider within the Beverly Hills town centre through its use by the Roads and Traffic Authority as a local service centre.</p> <p>The Beverly Hills Town Centre requires revitalisation through urban renewal. In recognition of this, Council has spent several years developing a Masterplan for the Beverly Hills Town Centre that establishes a new vision for the Town Centre and will guide and stimulate future development. At the time of writing the Masterplan has not been formally adopted by Council.</p> <p>Development to the north of the site consists of residential flat buildings within the Beverly Hills Town Centre Masterplan area.</p> <p>The site adjoins town house developments to the south and south-west and is located opposite a townhouse development to the east, despite the current R2 zoning now prohibiting such a use.</p> <p>The surrounding land is likely to continue to be used for residential purposes. The current use of the site for a non-residential use and the approved use of the site for as a medical centre, demonstrates that the additional non-residential uses proposed in the planning proposal can co-exist and achieve compatibility with the surrounding development.</p>
Services and infrastructure that are or will be available to meet the demands arising from the proposal and any proposed financial arrangements for infrastructure provision	<p>This Planning Proposal has not been based on a particular vision or redevelopment concept and instead is necessary to replace a redundant zoning of the land.</p> <p>This Planning Proposal therefore does not relate to a specific concept proposal and furthermore the Planning Proposal does not seek any “uplift” in FSR as it provides an identical FSR to that which is <u>already</u> approved on the site.</p> <p>Whilst the Planning Proposal was subsequently amended and a concept for a residential flat building submitted to Council, this was simply to demonstrate that compliance with the principles in SEPP 65</p>

Site-specific Merit Consideration	Comment
	<p>and design criteria of the Apartment Design Guide could be achieved, and was not the genesis for the Planning Proposal.</p> <p>The objectives for this Planning Proposal as outlined in Section 6.2 are expressed as follows:</p> <ul style="list-style-type: none"> <i>The core objective of the Planning Proposal is to amend the GRLEP as it applies to the site to allow the existing building on the site to be usefully occupied by a commercial use and also to allow the approved 3 storey medical building to be occupied by commercial uses which complement the medical uses within the building.</i> <i>The secondary objective for the Planning Proposal is to change the redundant SP2 and R2 zoning of the site to R4 High Density Residential. The R4 zone reflects the residential context of the site and the scale and form of the approved building envelope on the site and is the only residential zone that permits residential uses (such as residential flat buildings and shop top housing) that are compatible with the flood affectation on the site.</i> <i>The third objective of the Planning Proposal is to introduce an FSR of 1.4:1 and a building height limit of 16 metres which reflects the density and scale of the recently approved medical centre building on the site (noting there is currently no height or FSR restrictions on the majority of the site).</i> <p>No specific services or infrastructure around the site were identified as being necessary to accommodate the recently approved 3-storey medical centre approved on the site (D/2020/0227). A condition of consent was however imposed requiring the payment of a Section 7.12 contribution in accordance with the Georges River Council Section 94A Contributions Plan 2017 (which was subsequently repealed and replaced by the Georges River Council Local Contributions Plan 2021). The Section 7.12 payment will contribute to the provision, extension or augmentation of public facilities, or go towards recouping the cost of their provision, extension or augmentation.</p> <p>Any future redevelopment or use of the site upon gazettal of the new controls in the Planning Proposal could take any number of forms, subject to permissibility and also compliance with DCP standards.</p> <p>Therefore, any specific infrastructure requirements arising from a future development application would be appropriately determined during the assessment of that development application and appropriately addressed via the Georges River Council Local Contributions Plan 2021.</p>

7.0 Request for an Alternative Planning Proposal Authority

Clause 3.32(1) of the EP&A Act 1979 defines the Planning Proposal Authority (PPA) as:

3.32 Planning proposal authority

(1) For the purposes of this Division, the planning proposal authority in respect of a proposed instrument is as follows—

(a) the council for the local government area to which the proposed instrument is to apply, subject to paragraph (b),

(b) if so directed under subsection (2)—the Planning Secretary, a Sydney district or regional planning panel or any other person or body prescribed by the regulations.

Clause 3.32(2) contains provisions allowing the Minister to direct that the Planning Secretary or the Planning Panel be the PPA for the Planning Proposal in certain cases listed below (emphasis ours):

(2) The Minister may direct that the Planning Secretary (or any such panel, person or body) is the planning proposal authority for a proposed instrument in any of the following cases—

(a) the proposed instrument relates to a matter that, in the opinion of the Minister, is of State or regional environmental planning significance or of environmental planning significance to a district under Division 3.1,

(b) the proposed instrument makes provision that, in the opinion of the Minister, is consequential on the making of another environmental planning instrument or is consequential on changes made to a standard instrument under section 3.20,

(c) the Planning Secretary, the Independent Planning Commission or a Sydney district or regional planning panel has recommended that the proposed instrument should be submitted for a determination under section 3.34 (Gateway determination) or that the proposed instrument should be made,

(d) the council for the local government area concerned has, in the opinion of the Minister, failed to comply with its obligations with respect to the making of the proposed instrument or has not carried out those obligations in a satisfactory manner,

(e) the proposed instrument is to apply to an area that is not within a local government area.

(Emphasis added in underline).

We request that an alternative PPA is appointed for the Planning Proposal on the basis that Council is not able to fulfil its obligations in a satisfactory manner with respect to the making of the proposed instrument. This is because Council has provided a clear indication that the Planning Proposal will not be progressed unless it is accompanied by a Voluntary Planning Agreement (VPA). Furthermore, the Policy relied on by Council to determine the content of the VPA is based on the concept of “value capture”.

The seemingly mandatory requirement for a VPA and the basis of the Policy relied on by Council (i.e. value capture) are directly contrary to Department’s Planning Circular PS21-001 and Planning Agreements Practice Note dated February 2021. Given Council’s unwillingness to progress the Planning Proposal without a VPA, it is necessary for the appointment of an alternative PPA to achieve resolution.

The issues encountered with Council stem from the fact that a VPA does not accompany the Planning Proposal and are summarised as follows:

- Council has repeatedly stated that they require a VPA to accompany the Planning Proposal in accordance with Council’s Planning Agreements Policy. Notwithstanding that Council is not entitled to mandate a VPA, this is a misinterpretation of the Policy. We are unaware of any provision of this Policy that actually requires all planning proposals to be accompanied by a VPA.

- Council has repeatedly pressed the Proponent to enter into a VPA. This is inconsistent with the voluntary nature of VPAs which is confirmed by the Department's Planning Circular PS21-001 as follows:
"A council cannot require a planning agreement in order to progress a planning proposal".
- Council's Planning Agreements Policy and approach to negotiating a VPA is predicated on the concept of **"value capture"**, which is directly contrary to the Department's Practice Note dated February 2021. The Practice Note is made under legislation and Council therefore has an obligation to act in a manner consistent with the Practice Note.
- Council's repeated requests for a VPA have been made despite the Proponent maintaining the position that a VPA should not be required in this case (as discussed in Section 4.1 of the Planning Proposal dated July 2022) as there is no need for a public benefit offer given:
 - The Planning Proposal is needed to replace redundant zoning and is not for a specific development.
 - The Planning Proposal does not seek any uplift in FSR.
 - The Planning Proposal is not designed to facilitate a single, specific development as other Planning Proposals often are. The *primary* objective of the Planning Proposal has always been to expand the uses which can be accommodated within the existing building on the site and also within the approved medical centre building on the site, which the developer intends to deliver in 2023/24 however a rezoning is also proposed given the current zoning is redundant. If any other development made permissible by the LEP amendment is pursued, the specific infrastructure needs of that future development is appropriately determined at the time the development application is made, just as it was when the DA for the medical centre was approved.
 - The Georges River Council Local Infrastructure Contributions Plan 2021 (Section 7.11 and 7.12 plan) provides the most appropriate mechanisms for addressing any infrastructure demand associated with the potential redevelopment of the Site.

The following table summarises Council's requests for a VPA to accompany the Planning Proposal. The correspondence referred to below is also **Appendix A** to this submission.

Date	Request
Late 2021	After Planning Proposal was submitted, Council indicated verbally that a VPA would need to accompany the Planning Proposal.
25 January 2022	Council wrote to Mr Sutherland informing him that Council requires planning proposals to be accompanied by a VPA.
23 February 2022	Council emailed Mr Sutherland and stated: <i>"We require the following information in order to commence the assessment of the PP..."</i> Council went on to request a VPA on the basis that Council's Planning Agreements Policy requires Planning Proposals to be accompanied by an offer to enter in a VPA.
1 June 2022	Ms Stores emailed Mr Aaron Sutherland responding to the comments in the PP that a VPA would not be provided. In this email Ms Stores notes that Council has engaged "economic consultants" to assist in providing advice on a "reasonable contribution value for public benefits". Ms Stores also refers to the Council Planning Agreements Policy which provides for either value capture or an alternative mechanism. Ms Stores notes the DPIE Practice Note which states that value capture should not be the primary purpose of a planning agreement but also refers to economic consultants being engaged (albeit we note that the only reason economic consultants would need to be engaged is to provide a value capture assessment). The email concludes with

Date	Request
	Ms Stores stating that she will be in contact to arrange a meeting to discuss a VPA offer.
7 July 2022	Amended Planning Proposal lodged which confirms that it is not accompanied by an offer to enter into a planning agreement. A justification/explanation for this was given in the text of the Planning Proposal report (refer to Section 4.1).
18 July 2022	Council informed Mr Sutherland that they have received the economic assessment and requests a meeting to discuss the infrastructure requirements and the need for a VPA.
29 July 2022	Council decline the Proponent's request for a copy of the economic assessment and instead request development feasibility work, despite being previously advised that there is no development or development feasibility as the Planning Proposal is to replace a redundant zoning.
2 August 2022	<p>Council again pressed for a VPA in a meeting specifically convened to discuss the required VPA.</p> <p>The Proponent requested a copy of the economic assessment upon which Council's VPA claim is made but Council again declined to provide this.</p> <p>Council re-iterated that a VPA is required as the Contributions Plan does not envisage a 38-apartment residential development. The Proponent reiterated that:</p> <ul style="list-style-type: none"> the Planning Proposal is not "for" a 38 apartment residential development, but is necessary to replace a redundant zoning and the future redevelopment of the site is not confirmed. Notwithstanding, if the basis for a request for a VPA is because the Contributions Plan does not envisage a 38-apartment residential development, then any such VPA would need to 'turn off' the Contributions Plan from applying to such a development. <p>However, Council would not agree to offsetting or 'turning off' the section 7.11 contribution and confirmed that S7.11 or S7.12 contributions would still apply to any future redevelopment, even if a VPA was entered into.</p>
11 August 2022	<p>Council requests that a VPA be entered into via email. In this email, Council states the following:</p> <p><i>The provision of a VPA in conjunction with the Planning Proposal is considered essential in order to provide a mechanism to deliver some of the infrastructure works and community facilities to support the demands and impacts of the proposal.</i></p> <p><i>A VPA is a key tool to facilitate the delivery of the works to support the Planning Proposal and provides a means for providing focused public benefits.</i></p> <p><i>As indicated above Council's Planning Agreements Policy and the Practice Note on Planning Agreements are used to guide the negotiation and preparation of VPAs.</i></p> <p><i>To provide guidance and to ensure that the value of any VPA contributions / works is appropriate and reasonable, Council engaged economic consultants Hill PDA to provide initial advice on a reasonable VPA contribution value. The review included a review of the Planning Proposal documentation, market research and feasibility assessment. As discussed at the meeting, this economic feasibility assessment would benefit from any feasibility analysis work, valuations that you have available.</i></p>

Date	Request
	<i>Based on the work undertaken, a suitable and reasonable contribution for public benefits under a VPA for the Planning Proposal is considered to be \$760,000. This value would guide the value of any public benefits in a VPA.</i>
19 August 2022	On 19 August 2022, Council again emailed Mr Sutherland pressing for a VPA. The email read: <i>"Please be advised that a response to the VPA request will need to be received prior to this PP being progressed to a LPP meeting."</i>
21 September 2022	On 21 September 2022, Council again emailed Mr Sutherland advising that the Planning Proposal would not be progressed until the VPA issue has been addressed: <i>"As you are aware, I cannot progress the assessment report to LPP until the VPA issue has been addressed".</i>

8.0 Response to Council's Request for a VPA

Following lodgement of the Planning Proposal, Council formally requested a VPA on three occasions up until June 2022.

The Proponent provided a response to Council's requests for a VPA in the amended Planning Proposal dated July 2022 in Section 4.1 of the document. The response explained why a VPA was not offered with the Planning Proposal, for the reasons outlined above in this submission.

Despite this response, Council has continued to request a VPA, culminating in an email dated 11 August 2022 from Nerida Stores which identifies a required value for public benefits of \$760,000 based on an economic assessment by Hill PDA. This economic assessment:

*"...included a review of the Planning Proposal documentation, market research and feasibility assessment".
As discussed at the meeting, this economic feasibility assessment would benefit from any feasibility analysis work, valuations that you have available"*

Council has declined the Proponent's request for a copy of the Economic Assessment.

Council staff also identified a preliminary list of the works and facilities that are considered to be required to:

"support and address the impacts of the demands of the proposed development. The list of works is only preliminary at this stage"

Legal Advice

The Proponent has sought legal advice in relation to the Council's repeated request for a VPA. Mills Oakley have provided legal advice to the Proponent dated 4 October 2022, which accompanies this submission at **Appendix B**.

A summary of the legal advice is provided below:

Issue	Summary of Legal Advice
The offer must be voluntary	The Department's Planning Circular confirms the voluntary nature of PPs and states: <i>"A council cannot require a planning agreement in order to progress a planning proposal".</i>

Issue	Summary of Legal Advice
	<p>In this case you clearly have not made an offer to enter into a VPA. To the contrary, you have listened to Council's requests but consistently maintained that you will not be offering a VPA and provided Council with reasons for why a VPA is not needed.</p> <p>As a VPA must be voluntary, Council clearly cannot require you to enter into a VPA and cannot refuse to progress your PP on the basis that you have not offered to enter into a VPA.</p>
Council's Planning Policy and Value Capture	<p>Council's Policy does not require that all planning proposals be accompanied by a VPA.</p> <p>At section 2.4 of Council's Policy, it is stated that "Council may consider" entering into a VPA where a developer has made a request for an instrument change. This is different to the Policy requiring that all planning proposals be accompanied by a VPA.</p> <p>Furthermore, in this case, Council are requesting the VPA be entered into on the basis of value capture. Using value capture as a basis for requiring a VPA is inconsistent with the Department's Practice Note.</p> <p>Council's use of a value-capture approach is shown by the fact that Council:</p> <ul style="list-style-type: none"> Engaged an economic consultant to prepare a report (this is only needed for a value capture approach); Has asked you to provide feasibility analysis work and valuations; and Has informed you that the public benefit offer should be in the amount of \$760,000, based on the economic consultant's report. <p>The use of feasibility analysis specifically for the purpose of value capture is clearly outlined in the report to the Georges River Council Environment and Planning Committee for the Draft Georges River Planning Agreements Policy 2020 on 9 March 2020. In particular, Paragraph 4(a) states the following:</p> <p><i>Land Value Capture - the land value capture formula (one of the mechanisms to calculate contributions) has been amended and now requires an <u>open book feasibility approach</u> based on the current market value of a site and its existing improvements and the proposed residual land value of the site under the planning proposal. The developer is to provide Council with all feasibility inputs to undertake accurate feasibility modelling.</i></p> <p>Clearly, the purpose of the economic assessment, including the repeated request for feasibility assessment work, is based on value capture as the primary purpose for the VPA request.</p>
Is the use of value capture appropriate and/or lawful?	<p>The use of value capture is clearly not appropriate and is in breach of the Department's Practice Note on VPAs. The Practice Note is made under legislation and Council therefore has an obligation to act in a manner consistent with the Practice Note.</p> <p>At part 2.3 of the Practice Note, titled "Value Capture" the note states:</p> <p><i>Planning agreements should not be used explicitly for value capture in connection with the making of planning decisions. For</i></p>

Issue	Summary of Legal Advice
	<p><i>example, they should not be used to capture land value uplift resulting from rezoning or variations of planning controls.</i></p> <p>In contrast, part 2.10 of Council's Policy is titled "Calculation of contributions for a planning proposal" and states:</p> <p><i>"Where a planning proposal is likely to result in an increase in value of the unimproved land the subject of the planning proposals, Council will determine appropriate contributions by applying land value capture as set out in paragraph 5.11-5.17 or use an alternative mechanism which Council considers appropriate.</i></p> <p><i>For the purposes of this Policy, land value capture is the public financing mechanism implemented through planning agreements by which the Council captures for the community's benefit a share of unearned increment to developers in land value increases arising from an instrument change...."</i></p> <p>The Department's Practice Note clearly indicates that value capture should not be used yet Council's Planning Policy continues to provide for value capture in VPAs.</p> <p>The Department's Practice note is stated to be made for the purposes of cl25B of the <i>Environmental Planning and Assessment Regulation 2021</i> (EP&A Reg), to assist parties in the preparation of planning agreements. Council should not act in a manner which is contrary to the Practice Note and EP&A Reg.</p>
Should the Contributions Plan be used to address infrastructure demand?	<p>The most appropriate way to meet the infrastructure demand resulting from a specific development is to refer to the Georges River Council Local Infrastructure Contributions Plan (adopted on 1 December 2021) which establishes the exact requirements for any specific development, including correct apportionment.</p> <p>This was the approach used for the Medical Centre DA and the same approach should be used for any future development application which may rely upon the rezoning in the PP. As such, there is no need for a VPA as contributions will be appropriately paid in accordance with the s7.11 plan in the future and in a way which reflects the development for which consent is sought.</p> <p>Furthermore, there is no way to fairly determine infrastructure demand at the Planning Proposal stage as the eventual redevelopment of the site is unknown.</p>
There is no need for a public benefit offer	<p>A VPA should not be required in this case as there is no need for a public benefit offer. This is because:</p> <ul style="list-style-type: none"> • The PP is needed to replace redundant zoning (which Council themselves assert is redundant). A rezoning is therefore needed. The Site has been vacant for more than 4.5 years due to the restrictive and redundant zoning, demonstrating that the SP2 zoning is not appropriate for the Site. • The PP does not seek any uplift in FSR. Firstly, there is not currently any FSR or height control on the majority of the Site and thus no actual limit on FSR and height. Second, the PP provides for an

Issue	Summary of Legal Advice
	<p>identical FSR (of 1.4:1) and height (16m) to the recently approved Medical Centre DA;</p> <ul style="list-style-type: none"> • The application is for a PP and not a specific development type. The eventual form of redevelopment of the site is unknown and could comprise any number of the uses which will become permissible upon gazettal. Therefore, it is not possible to identify any required infrastructure demand in the context of this PP and infrastructure demand should be addressed at the time of a development application, where the demand can be properly understood and addressed via conditions of consent; • Council appears to be considering the PP on the basis that a development application for a residential flat building will follow. Whilst the PP includes a concept for a 38-apartment residential flat building, this information was only included at the request of Council to demonstrate compliance with SEPP 65. A residential flat building is only one permissible use under the R4 zoning and there is no reason for the PP to be assessed on the basis that a flat building will follow. • Having regard to the above, Council's s7.11 and S7.12 plans provide the most appropriate mechanisms for addressing infrastructure demand associated with the potential redevelopment of the Site.

Preliminary List of Works

It has been established that the core basis for Council's request for a proposed VPA offer of \$760,000 is based solely on value capture.

Council has nonetheless provided a list of "works" to justify the \$760,000. However, this is flawed for a number of reasons.

Firstly, the stated basis for the works is to "support and address the impacts of the proposed development" being a hypothetical 38 apartment residential project. However, this application is for a PP and not a specific development type. The eventual form of redevelopment of the site is unknown and could comprise any number of the uses which will become permissible upon gazettal. As such, it is not possible to determine infrastructure demand within the context of the current PP and Council's s7.11 and S7.12 plans provide the most appropriate mechanisms for addressing infrastructure demand associated with the potential redevelopment of the Site.

Secondly, notwithstanding the above, no nexus has been established between a potential 38 apartment development and the suggested infrastructure works, noting that Council has even explained that list of works are only "preliminary" at this stage.

Clearly, the list of "works" is derived from an intent to back-fill the \$760,000 amount, rather than from a nexus between genuine infrastructure demand a potential redevelopment of the site, noting again that the Planning Proposal is to rezone the site and not for a specific development.

Other comments in relation to the preliminary list of works are:

- Council has advised via email on 16 May 2022 that "Council's traffic engineer is satisfied with the transport impact assessment". This was without qualification. However, Council has subsequently indicated that they require a VPA to provide for bus shelters, pedestrian islands, etc notwithstanding that these were not identified in the traffic assessment or by Council when it confirmed that its traffic engineer was satisfied with

- the transport impact assessment. The approved Medical Centre DA generates approximately 10 times the traffic and pedestrian movement than that which would result from a potential 38 apartment development, and did not require any such upgrades.
- The preliminary works include a new bus shelter and upgrade and installation of DDA compliant tactile for the “Penshurst Street after Stoney Creek Road” bus stop. There is already a bus shelter at this bus stop which appears to have been recently installed.
 - The preliminary works include \$200,000 for improvements to two local child care facilities (Jack High Child Care Centre and Penshurst Long Day Care). These specific child care centres are already included within and funded by the Georges River Council Local Infrastructure Contributions Plan (GRCLIC) 2021. Notwithstanding, a potential 38 apartment residential development would ordinarily generate an apportionment of approximately \$7,000 to child care centres under the GRCLIC, so the suggested \$200,000 is completely disproportionate to any demand, which would be met by an imposed condition of consent on a future Development Consent in any event.
 - The preliminary works include \$150,000 to address demand for library services. This appears excessive and is unclear how a hypothetical 38 apartment could possibly generate the demand for this level of expenditure on library services.

The above issues confirm that the “preliminary” list of infrastructure works are simply a mechanism for justifying the identified \$760,000 which is actually based solely on value capture.

9.0 Key Correspondence

The Proponent has worked diligently with Council to address key issues in relation to FSR, height, traffic, contamination and flooding.

In addition, at the request of Council the Proponent has progressed a site specific DCP and agreement has been received from Council in relation to the final form of the draft site specific DCP.

Key correspondence from Council is provided in **Appendix C** and summarised in the table below.

Date	Summary
2 May 2022	Email received from Council advising that: <i>“Our urban designer has reviewed the amended concept scheme and indicated it has demonstrated the ability for the subject site to accommodate the proposed density of 16 metres and 1.4:1 FSR, and to achieve an ADG-compliant development in the future”.</i>
16 May 2022	Email received from Council advising that: <i>“Council’s traffic engineer is satisfied with the transport impact assessment”</i>
2 August 2022	Email received from Council advising that: <i>“Our Environmental Health team has reviewed the information provided below in relation to the DSI report and are satisfied with EI Australia’s response to their concerns.</i> <i>In relation to the stormwater DCP controls – we have come to an understanding and have reduced the number of requirements for the site specific DCP”</i>
23 September 2022	Email received from Council with their comments and amendments to the draft DCP to accompany the PP. The Proponent accepts all comments. The Draft DCP with Council’s changes is attached to this correspondence for completeness.

10.0 Conclusion

The current zoning of the site is redundant and highly restrictive and has rendered the building on the site unusable for over four years. The existing building on the site is in a state of decay and has suffered significant water damage.

Since the Proponent purchased the site in mid-2018, the Proponent has actively engaged with Council's Strategic Planners and Development Assessment Team to facilitate the re-use of the existing building or redevelopment of the site.

Given the long history of negotiations with Council since the site was purchased in mid-2018 and the current unusable state of the site, it is essential that the Planning Proposal proceed without further delay. The timeframes and triggers for a rezoning review have now been met and we therefore request that a rezoning review be undertaken.

We also request that the South District Planning Panel be appointed as the PPA due to the concerns raised regarding Council's mandatory requirement for a VPA, and that the Policy relied on by Council to determine the content of the VPA is based on the concept of "value capture" which is inconsistent with the DPE's Practice Note.

The site-specific merit of the proposal is clear. The core objective of the Planning Proposal is to amend the GRLEP as it applies to the site to allow the existing building on the site to be usefully occupied by a commercial use and also to allow the approved 3 storey medical building to be occupied by commercial uses which complement the medical uses within the building. The secondary objective for the Planning Proposal is to change the redundant SP2 and R2 zoning of the site to R4 High Density Residential. The R4 zone reflects the residential context of the site and the scale and form of the approved building envelope on the site and is the only residential zone that permits residential uses (such as residential flat buildings and shop top housing) that are compatible with the flood affectation on the site. The third objective of the Planning Proposal is to introduce an FSR of 1.4:1 and a building height limit of 16 metres which reflects the density and scale of the recently approved medical centre building on the site (noting there is currently no height or FSR restrictions on the majority of the site).

The Planning Proposal report details the strategic merit of the Planning Proposal and consistency of the Proposal with the Greater Sydney Region Plan, the South District Plan, the Georges River LSPS and other applicable State and regional studies or strategies.

We trust that sufficient information has been provided to enable the rezoning review to progress. If you require any further information, please do not hesitate to contact me on 0410 452 371.

Yours faithfully



Aaron Sutherland

Sutherland & Associates Planning Pty Ltd

4 October 2022

Mills Oakley
ABN: 51 493 069 734

Your ref:
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Dear Aaron,

Requirement for VPA in relation to Planning Proposal for 143 Stoney Creek Rd, Beverly Hills

We refer to your request for advice in relation to your property at 143 Stoney Creek Rd, Beverly Hills, otherwise known as Lots 2 and 3 in DP1205598 (**the Site**). As you know, you submitted a Planning Proposal which (as amended) seeks to rezone the Site from a primary zoning of SP2 Public Infrastructure to an R4 zoning with some additional permitted uses. Since the Planning Proposal was submitted to Georges River Council (**Council**), Council has stated that the Planning Proposal needs to be accompanied by an offer to enter into a voluntary planning agreement (**VPA**) with Council. Although you have outlined in detail on a number of occasions why a VPA is neither appropriate nor required, Council has continued to assert that a VPA is required in order to progress your Planning Proposal.

In light of Council's continued request to enter in a VPA, you have asked for advice on the following:

- a) Can Council require a VPA in order to progress a Planning Proposal?;
- b) Is Council's request based on value capture, and if so, is this lawful?;
- c) Are the Georges River S7.11 and S7.12 contribution plans sufficient to address infrastructure demand associated with a potential redevelopment facilitated by the Planning Proposal, or is there a need for a VPA for this particular Planning Proposal to meet infrastructure demand?

Summary

A VPA is a **voluntary** planning agreement and Council **cannot require** you to provide a letter of offer to enter into a VPA or refuse to consider the Planning Proposal on the basis that it is not accompanied by a VPA. The voluntary nature of a VPA is made clear at both law and in policy documents. Furthermore, in our opinion, in this case Council's request is based on value capture. The use of value capture for a VPA is clearly not permitted and is in clear contravention of the Department's 2021 Practice Note on Planning Policies. In our view, the contributions plan is the appropriate tool for addressing infrastructure demand and there is no need for a VPA in relation to your Planning Proposal.

1. Background

- 1.1 Before we consider the law regarding VPAs, we consider the background and the position that both parties have taken to date.

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The Site

- 1.2 The Site is currently zoned primarily SP2 Public Infrastructure, with a small portion being zoned R2 low density residential under the *Georges River Local Environmental Plan 2021 (LEP)*.
- 1.3 The Site has historically been used as a RTA administration centre for over 40 years and there is an existing office building and hard stand carpark on the Site. However, the building has been vacant for over 4.5 years due to the restrictive SP2 zoning of the Site (which prevents most uses of the existing building).
- 1.4 We understand that Council agrees that the SP2 Public Infrastructure/Administration zoning is redundant. Council has informed you of this in writing via letter dated 25 January 2022.
- 1.5 Development consent (DA2020/0227) was granted on 21 February 2021 for a 3 storey medical centre with an FSR of 1.4:1 and a height of 16m (**Medical Centre DA**). This DA relied upon the Infrastructure SEPP for permissibility.
- 1.6 However, attempts to lease the Site have shown a demand for other uses (including office space). Furthermore, the current zoning of the Site limits the use of the existing building (which has remained vacant). You therefore submitted a Planning Proposal for the Site in order to achieve a more appropriate zoning.

Planning Proposal

- 1.7 A Planning Proposal for the Site was originally lodged with Council in November 2021. This Planning Proposal sought to amend Schedule 1 of the LEP to allow some additional permitted uses (commercial premises, child care, health services facility, veterinary hospital) on the Site.
- 1.8 Following lodgement of the Planning Proposal, Council provided written feedback via letter dated 25 January 2022 that:
 - The SP2 Infrastructure (Public Administration) zoning is considered unsuitable and redundant;
 - The term “commercial premises” is too broad and allows too many uses on the Site when the SP2 zoning does not include FSR or height controls;
 - You should consider an alternative zone for the Site; and
 - “In accordance with Council’s Policy on Planning Agreement, planning proposals should be accompanied with an offer to enter into a planning agreement with Council”.
- 1.9 You then amended the Planning Proposal to nominate a R4 High Density Residential zone for the Site. Due to the flood affectation of the Site, R2 low density residential zoning is not flood compatible (as low density housing cannot be constructed with the required flood chamber). The amended Planning Proposal was submitted to Council in July 2022 (**PP**). We note that the PP provided detail as to why the R2 zoning was not practical.
- 1.10 The PP noted at page 18 that the PP was not accompanied by an offer to enter into a VPA for the following reasons:
 - Council’s Planning Agreements Policy is predicated on the concept of “**value capture**”, which is contrary to the Department’s Practice Note dated February 2021;
 - The PP **does not seek any uplift in FSR** and provides identical FSR and height controls to the medical centre building approved on the Site;
 - Any increase in infrastructure demand is appropriately addressed in **Council’s s94A Plan** which provides for the payment of s7.12 levies (which were applied to the Medical Centre DA).

Council’s Request for a VPA

- 1.11 Since the time that original PP was submitted, Council has pressed you to provide a letter of offer to enter in a VPA. The timeline of the request to enter into a VPA is as follows:
 - (a) **Late 2021:** After the initial PP was submitted, Council indicated that a VPA would need to accompany the PP;

- (b) **25 January 2022:** Council wrote to Mr Sutherland informing him that Council requires planning proposals to be accompanied by a VPA;
- (c) **23 February 2022:** On 23 February 2022, Council emailed Mr Sutherland and stated "We require the following information in order to commence the assessment of the PP....." and went on to request a VPA on the basis that Council's Policy on Planning Agreements requires Planning Proposals to be accompanied by an offer to enter in a VPA;
- (d) **1 June 2022:** Email from Ms Stores to Mr Aaron Sutherland responding to the comments in the PP that a VPA would not be provided. In this email Ms Stores notes that Council has engaged "economic consultants" to assist in providing advice on a "reasonable contribution value for public benefits". Ms Stores also refers to the Council VPA Policy which provides for either value capture or an alternative mechanism. Ms Stores notes the DPIE Practice Note which states that value capture should not be the primary purpose of a planning agreement but also refers to economic consultants being engaged (albeit we note that the only reason economic consultants would need to be engaged is to provide a value capture assessment). The email concludes with Ms Stores stating that she will be in contact to arrange a meeting to discuss a VPA offer;
- (e) **18 July 2022:** Council informs Mr Sutherland that they have received the economic assessment and requests a meeting to discuss the infrastructure requirements and the need for a VPA;
- (f) **2 August 2022:** You meet with Council and Council again pressed you for a VPA. . We understand that you requested a copy of the economic assessment upon which Council's VPA claim is made but Council has declined to provide this. We have been informed that Council re-iterated that a VPA is required as the Contributions Plan does not envisage a 38 apartment residential development. You then requested that, should a VPA be entered into, any s7.11 contributions would be offset, however Council would not agree to any offsetting;
- (g) **11 August 2022:** Council emails you and again requests that a VPA be entered into. In this email, Council states the following:

The provision of a VPA in conjunction with the Planning Proposal is considered essential in order to provide a mechanism to deliver some of the infrastructure works and community facilities to support the demands and impacts of the proposal.

A VPA is a key tool to facilitate the delivery of the works to support the Planning Proposal and provides a means for providing focused public benefits.

As indicated above Council's Planning Agreements Policy and the Practice Note on Planning Agreements are used to guide the negotiation and preparation of VPAs.

To provide guidance and to ensure that the value of any VPA contributions / works is appropriate and reasonable, Council engaged economic consultants Hill PDA to provide initial advice on a reasonable VPA contribution value. The review included a review of the Planning Proposal documentation, market research and feasibility assessment. As discussed at the meeting, this economic feasibility assessment would benefit from any feasibility analysis work, valuations that you have available.

Based on the work undertaken, a suitable and reasonable contribution for public benefits under a VPA for the Planning Proposal is considered to be \$760,000. This value would guide the value of any public benefits in a VPA.

- **19 August 2022:** On 19 August 2022, Council again emailed Mr Sutherland pushing for a VPA. The email read: "Please be advised that a response to the VPA request will need to be received prior to this PP being progressed to a LPP meeting." It is unclear to us why Council would be asking for a response to the VPA request when

you have provided a written response in the Planning Proposal clearly stating that you would not be providing a VPA and explaining the reasons for this.

2. Can Council require you to enter into a VPA?

- 2.1 In our opinion, there are a number of reasons why a VPA is not required in this case. We outline these in detail below.

The offer must be voluntary

- 2.2 Section 7.4 of the *Environmental Planning and Assessment Act 1979 (EP&A Act)* provides that “a planning agreement is a voluntary agreement.....”.
- 2.3 The Cambridge Dictionary defines “voluntary” as “done, made or given willingly, without being forced...”.
- 2.4 The Department’s Planning Circular confirms the voluntary nature of PPs and states:
“A council cannot require a planning agreement in order to progress a planning proposal”.
- 2.5 In this case you clearly have not made an offer to enter into a VPA. To the contrary, you have listened to Council’s requests but consistently maintained that you will not be offering a VPA and provided Council with reasons for why a VPA is not needed.
- 2.6 **As a VPA must be voluntary, Council clearly cannot require you to enter into a VPA and cannot refuse to progress your PP on the basis that you have not offered to enter into a VPA.**
- 2.7 **It is in our view clearly inappropriate for Council to continue to write to you informing you that you need to make an offer into a VPA in relation to your PP.** Council cannot require you to make an offer to enter into a VPA, and consistently informing you that a VPA is required is clearly not appropriate and in breach of the requirements in the EP&A Act as well as the Department’s Planning Policy (and even Council’s own Policy).

Council’s Planning Policy

- 2.8 Council has repeatedly stated that they require a VPA to accompany the PP as this is consistent with their Planning Policy. Council assert in a number of emails that the Planning Policy requires a planning proposal to be accompanied by an offer to enter in a VPA.
- 2.9 We have reviewed Council’s Planning Policy dated August 2016 and in our view **Council’s Policy does not require that all planning proposals be accompanied by a VPA.**
- 2.10 At section 2.4 of Council’s Policy, it is stated that “Council may consider” entering into a VPA where a developer has made a request for an instrument change. This is different to the Policy requiring that all planning proposals be accompanied by a VPA. **We have not been able to find anything in Council’s Policy which requires a VPA to be included for any or all planning proposals and note that such a requirement would, in any case, not be lawful (as the EP&A Act requires that VPAs be voluntary).**
- 2.11 **Furthermore, in this case, Council are requesting the VPA be entered into on the basis of value capture.** We discuss value capture in more detail below but note that using value capture as a basis for requiring a VPA is inconsistent with the Department’s Practice Note.

There is no need for a public benefit offer

- 2.12 Regardless of Council’s Planning Policy, a VPA should not be required in this case as there is no need for a public benefit offer. This is because:
- **The PP is needed to replace redundant zoning (which Council themselves assert is redundant).** A rezoning is therefore needed. The Site has been vacant for more than 4.5 years due to the restrictive and redundant zoning, demonstrating that the SP2 zoning is not appropriate for the Site. We also note that the original Planning Proposal submitted to Council was framed in terms of additional permitted uses, but Council expressly requested that a rezoning take place.
 - **The PP does not seek any uplift in FSR.** Firstly, there is not currently any FSR or height control on the majority of the Site and thus no actual limit on FSR and height.

Second, the PP provides for an identical FSR (of 1.4:1) and height (16m) to the recently approved Medical Centre DA;

- **The application is for a PP and not a specific development type.** The eventual form of redevelopment of the site is unknown and could comprise any number of the uses which will become permissible upon gazettal. Therefore, it is not possible to identify any required infrastructure demand in the context of this PP and infrastructure demand should be addressed at the time of a development application, where the demand can be properly understood and addressed via conditions of consent;
- Council appears to be considering the PP on the basis that a development application for a residential flat building will follow. However, you have not stated this intent to submit a DA for a residential flat building and the PP is not premised on such a residential flat building development. Whilst the PP includes a concept for a 38 apartment residential flat building, we understand that this information was only included at the request of Council to demonstrate compliance with SEPP 65. A residential flat building is only one permissible use under the R4 zoning and there is no reason for the PP to be assessed on the basis that a flat building will follow. As you know, you initially sought to include commercial, child care, medical and veterinary uses as additional uses on the Site but did not seek to add residential uses. Council recognised that the SP2 zoning was redundant and suggested a rezoning was a more appropriate planning pathway; and
- Having regard to the above, Council's s7.11 and S7.12 plans provide the most appropriate mechanisms for addressing infrastructure demand associated with the potential redevelopment of the Site. We consider this in more detail below.

2.13 It is clear that Council cannot require you to enter into a VPA. As you have consistently informed Council that you will not be entering into a VPA, Council's continued requests for a VPA are not appropriate.

3. Is Council's request based on value capture, and if so, is this lawful?

3.1 Based on the information provided to us, it is our view that Council has in fact requested that you provide a VPA is based on a value-capture approach.

3.2 **Council's use of a value-capture approach** is shown by the fact that Council:

- Engaged an economic consultant to prepare a report (this is only needed for a value capture approach);
- Has asked you to provide feasibility analysis work and valuations; and
- Has informed you that the public benefit offer should be in the amount of \$760,000, based on the economic consultant's report.

3.3 In Council's recent email, Council indicated that a contribution of \$760,000 was required based on the "economic consultant report". In our opinion, the only reason an economic consultant report would be needed for your PP would be to determine value capture.

3.4 Council also requested (by email from Catherine McMahon dated 29 July 2022) that you provide feasibility analysis work. In particular, in an email from Nerida Stores dated 11 August 2022, Council outlined that:

The review included a review of the Planning Proposal documentation, market research and feasibility assessment. As discussed at the meeting, this economic feasibility assessment would benefit from any feasibility analysis work, valuations that you have available

3.5 The use of **feasibility analysis** specifically for the purpose of **value capture** is clearly outlined in the report to the Georges River Council Environment and Planning Committee for the Draft Georges River Planning Agreements Policy 2020 on 9 March 2020. In particular, Paragraph 4(a) states the following:

Land Value Capture - the land value capture formula (one of the mechanisms to calculate contributions) has been amended and now requires an open book feasibility approach based on the current market value of a site and its existing improvements and the proposed residual land

value of the site under the planning proposal. **The developer is to provide Council with all feasibility inputs to undertake accurate feasibility modelling.**

- 3.6 Clearly, the purpose of the economic assessment, including the repeated request for feasibility assessment work, is based on **value capture** as the primary purpose for the VPA request.
- 3.7 We have been informed that you requested a copy of the economic report but Council have declined to provide this. If the economic report was prepared for and used for a proper purpose, we do not see any reason why Council would refuse to provide you with a copy of the report.

Is the use of value capture appropriate and/or lawful?

- 3.8 **The use of value capture is clearly not appropriate and is in breach of the Department's Practice Note on VPAs. The Practice Note is made under legislation and Council therefore has an obligation to act in a manner consistent with the Practice Note.**

- 3.9 At part 2.3 of the Practice Note, titled "Value Capture" the note states:

Planning agreements should not be used explicitly for value capture in connection with the making of planning decisions. For example, they should not be used to capture land value uplift resulting from rezoning or variations of planning controls.

- 3.10 In contrast, part 2.10 of Council's Policy is titled "Calculation of contributions for a planning proposal" and states:

"Where a planning proposal is likely to result in an increase in value of the unimproved land the subject of the planning proposals, Council will determine appropriate contributions by applying land value capture as set out in paragraph 5.11-5.17 or use an alternative mechanisms which Council considered appropriate.

For the purposes of this Policy, land value capture is the public financing mechanism implemented through planning agreements by which the Council captures for the community's benefit a share of unearned increment to developers in land value increases arising from an instrument change....

- 3.11 **The Department's Practice Note clearly indicates that value capture should not be used yet Council's Planning Policy continues to provide for value capture in VPAs.**
- 3.12 The Department's Practice note is stated to be made for the purposes of cl25B of the *Environmental Planning and Assessment Regulation 2021 (EP&A Reg)*, to assist parties in the preparation of planning agreements. **Council should not act in a manner which is contrary to the Practice Note and EP&A Reg.**
- 3.13 **Both Council's Policy itself and their conduct in implementing their Policy is inappropriate and unlawful.**
- 3.14 Council have requested a proposed VPA offer of \$760,000 based solely on value capture. **Although Council has provided a list of "works" to justify the \$760,000, no nexus has been properly established between a potential redevelopment of the site (noting this could be for a variety uses) and the suggested infrastructure works.** Clearly, the list of "works" is derived from an intent to back-fill the \$760,000 amount, rather than from a nexus between genuine infrastructure demand a potential redevelopment of the site, noting again that the Planning Proposal is to rezone the site and not for a specific development.
- 3.15 Importantly, Council has informed you via email from Rebecca Lau on 16 May 2022 that "Council's traffic engineer is satisfied with the transport impact assessment". This was without qualification. However, Council has subsequently indicated that they require a VPA to provide for bus shelters, pedestrian islands, etc notwithstanding that these were not identified in your traffic assessment or by Council when it confirmed that its traffic engineer was satisfied with the transport impact assessment. This again indicates that Council has used a value capture approach in relation to your PP and their request for a VPA.

4. Should the Contributions Plan be used to address infrastructure demand?

- 4.1 You have asked whether the Georges River S7.11 and S7.12 contribution plans are sufficient to address infrastructure demand associated with a potential redevelopment facilitated by the Planning Proposal or where there a need for a VPA for this particular Planning Proposal to meet infrastructure demand?

- 4.2 It is our view that the most appropriate way to meet the infrastructure demand resulting from a specific development is to refer to the *Georges River Council Local Infrastructure Contributions Plan* (adopted on 1 December 2021) which establishes the exact requirements for any specific development, including correct apportionment. For example, the s7.11 plan states that 38 units would require infrastructure demand equivalent to \$676,000 at the time of writing.
- 4.3 We note that this was the approach used for the Medical Centre DA and the same approach should be used for any future development application which may rely upon the rezoning in the PP. As such, there is no need for a VPA as contributions will be appropriately paid in accordance with the s7.11 plan in the future and in a way which reflects the development for which consent is sought. Furthermore, there is no way to fairly determine infrastructure demand at the Planning Proposal stage as the eventual redevelopment of the site is unknown.
- 4.4 Notwithstanding the above, in our opinion, Council's identified infrastructure and community facility works which are identified (in an email to you) as needed to support a residential development are disproportionate to the 38 apartments that could be built on the rezoned R4 Site (putting aside the fact that the PP is not for a residential flat building development).
- 4.5 For example, Council has sought \$200,000 for improvements to two local child care facilities and \$150,000 in improvements to mobile library services. These amounts seem extremely high for only part of the contributions required for a 38 apartment development.
- 4.6 Furthermore, as noted above, you submitted a Traffic Assessment with the PP and we understand that Council has accepted this Traffic Assessment (and provided written confirmation of this). The Traffic Assessment considered a hypothetical residential development of 38 apartments and two levels of basement parking and found that parking provided on-site would meet DCP controls and that traffic and parking impacts would be significantly less than the already approved medical centre. We note that a VPA for additional traffic infrastructure works was not required for the Medical Centre DA.

Conclusion

In our view, the above clearly demonstrates that you are not required to enter into a VPA and in fact a VPA is not appropriate for your PP. On this basis, you should not provide Council with a VPA simply because Council are repeatedly pressuring you to provide a VPA.

If you have any questions or require further information, please do not hesitate to contact Anthony Whealy on +61 2 8035 7848 or awhealy@millsoakley.com.au or Clare Collett at ccollett@millsoakley.com.au

Yours sincerely




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