



BUSINESS PAPER

GENERAL MEETING

**Wednesday 9 August 2023
at 6:30PM**



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9 DRAFT VOLUNTARY PLANNING AGREEMENT - 7 CITY VIEW ROAD PLANNING PROPOSAL

EXECUTIVE SUMMARY

- In April 2022, an owner-initiated Planning Proposal was lodged for 7 City View Road, Pennant Hills, to facilitate a mixed use development of apartments, seniors housing and office space.
- The Planning Proposal was accompanied by a Letter of Offer to enter a Planning Agreement (VPA), with community benefits of open space, affordable housing and pedestrian works.
- At its 13 July 2022 meeting, resolved to support progression of the Planning Proposal and seek a Gateway Determination (received in August 2022 with conditions).
- Council also resolved to receive a future report presenting a draft VPA after negotiation on the details of community benefit to be provided.
- A draft VPA has since been negotiated with the proponent. The draft VPA includes four affordable housing units dedicated to Council in perpetuity, construction of a public access way and a contribution of \$450,000 towards improvements in the Pennant Hills Town Centre.
- Due to the time taken to negotiate the Planning Agreement, Council requested an extension of time from the Department of Planning and Environment to complete the Planning Proposal.
- Although recognising Council's significant effort to advance the Planning Proposal, the DPE denied Council's request for an extension of time and withdrew the Gateway Determination with instructions to seek a new Gateway.
- It is recommended that the Planning Proposal attached to this report be resubmitted to DPE, representations be made to the Minister for Planning expressing concern with the process, and that the draft VPA be placed on public exhibition for 28 days with the Planning Proposal, following receipt of a Gateway Determination.

RECOMMENDATION

THAT:

1. The City View Road Planning Proposal attached to Director's Report PC19/23 be submitted to the Department of Planning and Environment for a Gateway Determination.
2. The draft Voluntary Planning Agreement attached to Director's Report PC19/23 be placed on public exhibition for at least 28 days concurrently with the Planning Proposal.
3. Council make representation to the NSW Minister for Planning and Public Spaces, expressing concern regarding the process for Gateway extensions of time.

PURPOSE

The purpose of this report is to present a draft VPA associated with the 7 City View Road Planning Proposal for endorsement for exhibition and to seek a resolution to resubmit the Planning Proposal to the Department of Planning and Environment for Gateway Determination.

BACKGROUND

In April 2022, an owner-initiated planning proposal was lodged for 7 City View Road Pennant Hills. The Planning Proposal sought to increase permissible density on the site and allow residential and seniors housing as part of a mixed-use development. No additional height was proposed.

The Planning Proposal was accompanied by a Letter of Offer to enter into a VPA, with community benefits including open and community space, affordable housing and pedestrian improvements.

At its meeting on 13 July 2022, Council considered the Proposal and resolved to support progression of the Planning Proposal for a Gateway Determination and to receive a future report presenting a draft VPA. The Council report noted that the categories of items identified in the Letter of Offer were generally supported by Council's strategic goals, but that the details required further negotiation.

In August 2022, the Department of Planning and Environment (DPE) granted a Gateway Determination for the Planning Proposal, requiring the proponent to undertake additional design and traffic analysis. That work was completed by the proponent and submitted to Council in February 2023. The additional design and traffic analysis is available on Council's website, along with the supporting documentation for the original Planning Proposal.

The DPE confirmed that the proponent's additional analysis met the requirements of the Gateway Determination and the Planning Proposal could be publicly exhibited. The Gateway Determination stated that the Planning Proposal should be finalised, with the Hornsby LEP amended, on or before 26 June 2023.

In March 2023, Council provided an update to the DPE regarding the status of VPA negotiations and likely timeframes for reporting to Council and public exhibition.

On 5 April 2023, Council staff formally requested that the Gateway Determination be amended with an extension of time to allow for the timely progression of the Planning Proposal, in line with DPE guidelines. The reason for this was to allow for VPA negotiations to continue to achieve the best outcomes for the community.

On 16 May 2023, the DPE amended the Gateway Determination so that the Planning Proposal would not proceed (attached). In its covering letter, the DPE noted Council's effort in progressing the Planning Proposal and VPA. The letter concludes that, due to planning reforms seeking to reduce assessment times, Council's request would not be approved and that Council was requested to submit the Planning Proposal for a new Gateway Determination.

DISCUSSION

This report discusses changes made to the Planning Proposal post Gateway Determination and the draft VPA.

Post Gateway Planning Proposal

In supporting the Planning Proposal for submission for Gateway Determination, Council resolved to proceed with an alternative mechanism from that originally proposed by the applicant to provide more certainty for the development outcome through a new additional local provision under Part 6 of the Hornsby LEP (rather than a stand-alone increase in floor space).

The DPE's Gateway Determination dated 26 August 2022 supported Council's requested amendments to the Planning Proposal and required that:

1. *The planning proposal is to be updated to:*
 - (a) *Reflect the changes to the proposal made by Council, consistent with its resolution date 13 July 2022.*
 - (b) *Demonstrate consistency with the Regional Plan and relevant objectives of the Regional Plan.*
 - (c) *Update the transport impact assessment's modelling conditions, including queue lengths and level of service during peak hours, with scenarios for existing, concept design and cumulative impacts. This updated modelling should be prepared in accordance with the relevant guidelines and be provided to Transport for NSW for comment.*
 - (d) *Provide further evidence demonstrating compliance can be achieved with SEPP 65, particularly for units on the lower ground floors and the south and east of the development.*
 - (e) *Ensure the Project Timeline is updated to reflect the timelines to make the LEP included in this determination.*
2. *Prior to community consultation, the planning proposal is to be revised to address conditions 1 and forwarded to the Department for review and approval.*

Between August 2022 and February 2023, the proponent undertook additional traffic assessment and urban design analysis and provided an updated Planning Proposal to Council on 14 February 2023. The DPE confirmed on 24 February 2023 that the Gateway Determination's conditions had been met and that the Planning Proposal is suitable for public exhibition.

The exhibition is intended to occur concurrently with the exhibition of the Planning Agreement, which has been in negotiation since the Gateway Determination.

Draft Voluntary Planning Agreement

Section 7.4 of the *Environmental Planning and Assessment Act 1979* ("the Act") defines a planning agreement as:

- (1) *A planning agreement is a voluntary agreement or other arrangement under this Division between a planning authority (or 2 or more planning authorities) and a person (the developer)—*
 - (a) *Who has sought a change to an environmental planning instrument, or*
 - (b) *Who has made, or proposes to make, a development application or application for a complying development certificate, or*
 - (c) *Who has entered into an agreement with, or is otherwise associated with, a person to whom paragraph (a) or (b) applies,*

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

The Act prescribes the content, form, subject matter and procedures for making planning agreements. The Agreement submitted by the applicant has been made in accordance with the Act.

As discussed above, a Letter of Offer was lodged with the Planning Proposal. In October 2022, Council officers provided formal feedback to the proponent regarding the Letter of Offer (attached) and the findings of the 13 July 2022 report to Council.

In summary, Council's response requested that the offer be amended as follows:

- Affordable housing:
 - Affordable housing should apartments dedicated in perpetuity.
 - Dwellings should be designed and constructed to a standard that is generally consistent with other dwellings (such as solar access) and be a mix of sizes.
- Public infrastructure
 - The pocket park and community space should not be included, as they do not align with Council's adopted strategies for delivery of the same.
 - Delivery of adopted strategic positions should be prioritised, namely the delivery of high-quality community and open space at the Pennant Hills local centre.
- Development contributions
 - Any offer should not impact development contributions associated with a future development application.

Council staff have negotiated with the proponent on how best to meet these requests. An informal workshop with Councillors was held on 29 March 2023 regarding the key elements offered by the proponent.

A draft VPA (attached) has been prepared by the proponent, with guidance from Council's solicitor. The contributions associated with the draft VPA are as follows:

Affordable housing

The draft VPA states that four units would be dedicated to Council in perpetuity for affordable housing, with a value of \$3,700,000.

The dwellings would:

- Consist of four units (one two-bedroom unit and three additional units consisting of a mix of studio and one bedroom units).
- Meet the size and solar access requirements of the Apartment Design Guide.
- Include one parking space for each unit, (unless there was no demonstrated need).
- Be identified specifically at the development assessment stage.

Through-site link

The draft VPA states that a through site link from City View Road to Boundary Road would be constructed as part of a future development, with an easement allowing public access at all times. The site of the crossing currently contains multiple informal tracks, indicating demand for more formal access. Delivery of the through-site link would allow for improved access in and around the area for residents, workers and visitors associated with the development and the surrounding the community.

Establishment of the easement would be the responsibility of the developer. Establishment of the easement would be required to be completed prior to an occupancy certificate being issued.

Monetary contributions to Pennant Hills Town Centre infrastructure

The draft VPA states that the developer will make a monetary contribution to the provision of open space, community facilities and civic improvements within the Pennant Hills Town Centre. The monetary contribution is to be \$450,000 (excluding GST) and would be delivered prior to the issue of an occupation certificate.

As noted in the 13 July 2022 Council report, multiple strategies adopted by Council have identified opportunities for improvements to community infrastructure within the Pennant Hills Town Centre, including *Play Plan* and *Community and Cultural Facilities Strategic Plan*.

If the VPA is entered into, options for improvements would be investigated further, costed and incorporated into a future delivery plan for Council review and adoption.

Development contributions

The draft VPA confirms that it does not exclude the application of Section 7.11 or 7.12 fees for future development. As such, the contributions associated with the draft VPA would be over and beyond those associated with those plans.

Council's Policy on Planning Agreements

Council's *Policy on Planning Agreements* (2007) provides that Planning Agreements should meet the acceptability test set out in the Practice Note issued by the Department of Planning to ensure that Agreements:

- *Are directed towards proper or legitimate planning purposes, ordinarily ascertainable from the statutory planning controls and other adopted planning policies applying to development.*

Comment:

Under Council's *Policy on Planning Agreements*, affordable housing, town centre and urban design improvements, and streetscape improvements are listed as an appropriate benefit for a planning agreement.

Council's Local Strategic Planning Statement and supporting strategies identify a need for the delivery of affordable housing within the Shire. The method of delivery, being dedication to Council, aligns with established policies in similar councils. That strategic body of work also identifies Pennant Hills Town Centre as a priority for centralising and improving community infrastructure, which would be aided by the proposed monetary contribution.

The proposed easement responds to existing informal walking tracks through a portion of the site. Construction of a pedestrian access with an associated easement would formalise that access, complementing the mixed use nature of the proposed future development.

- *Provide for public benefits that bear a relationship to development that are not wholly unrelated to the development.*

Comment:

Delivery of affordable housing within the development will assist in the delivery of diverse housing within the development, as well as the local community.

A through-site link would increase accessibility for residents, workers and visitors of the development.

The site is within the walking catchment of Pennant Hills Town Centre and improvements to that centre would benefit residents, works and visitors of the development.

- *Produce outcomes that meet the general values and expectations of the public and protect the overall public interest.*

Comment:

The draft VPA contributions will assist in the delivery of affordable housing in the Shire and improve amenity in the Pennant Hills Town Centre. These outcomes align with Council's adopted strategic goals, which have been developed in consultation with the community.

- *Provide for a reasonable means of achieving the relevant purposes and outcomes and securing the benefits.*

Comment:

The draft VPA provides clear criteria for the design and delivery of the contributions proposed.

- *Protect the community against planning harm.*

Comment:

The draft VPA will be placed on public exhibition, allowing for interested persons to consider and comment on the merits of the proposal through a public exhibition process.

Overall, the draft VPA represents an appropriate method for delivery of Council's strategic priorities. As such, the draft VPA satisfies the acceptability test and is consistent with Council's Policy on Planning Agreements.

CONSULTATION

Subject to a Gateway Determination, the Planning Proposal and VPA would be exhibited concurrently through the following channels:

- Advertisement on the Council's Your Say website.
- Displays at the Council Chambers, Hornsby Library and Pennant Hills Library.
- Letters to nearby land owners and public authorities, as identified in the Gateway Determination.

The draft VPA is required to be placed on public exhibition for a period of 28 days in accordance with Section 7.5 of the Environmental Planning and Assessment Act 1979 and Clause 204 of the Environmental Planning and Assessment Regulation 2021.

It is recommended that Council place the draft VPA on public exhibition alongside the Planning Proposal for at least 28 days in accordance with the above strategy.

BUDGET

The monetary contributions received from a finalised VPA would support Council's delivery of improvements in the Pennant Hills Town Centre, which is in proximity to 7 City View Road.

POLICY

While there has been significant and timely advancement of the Planning Proposal, DPE have revised the Gateway Determination so that it cannot proceed, requesting that the Planning Proposal be resubmitted. As such, it is recommended that the attached Planning Proposal be submitted to DPE for a new Gateway Determination.

In its letter dated 16 May 2023, the DPE stated that its reason for altering the 26 August 2022 Gateway Determination was to streamline and simplify processes and reduce assessment times. The

alteration is inconsistent with this reasoning, as it has the potential to complicate and delay the assessment of the Planning Proposal by requiring a new Gateway Determination.

It is recommended that Council make representations to NSW Minister for Planning and Public Spaces, expressing concern regarding the DPE's decision and instead encourage discretion in the interpretation of guidelines to prioritise the delivery of positive outcomes for the community.

CONCLUSION

The draft VPA outlining contributions associated with the 7 City View Road Planning Proposal has been negotiated in accordance with Council's 13 July 2022 resolution and reviewed by Council's solicitors. As written, the draft VPA would provide benefits to the community supported by Council's adopted strategies.

It is recommended that the draft VPA be placed on public exhibition for at least 28 days along with the Planning Proposal.






RESPONSIBLE OFFICER

The officer responsible for the preparation of this Report is the Manager of Strategic Land Use Planning – Katherine Vickery - who can be contacted on 9847 6744.

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Attachments:

1.  7 City View Road Updated Planning Proposal
2.  7 City View Road Planning Proposal - DPE Alteration of Gateway Determination
3.  Council Response to 7 City View Letter of Offer
4.  VPA Explanatory Note
5.  Voluntary Planning Agreement

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