

VOTING FOR THE MOTION

Mayor Dr P Gangemi
Clr M Blue
Clr M Hodges MP
Clr V Ellis
Clr J Brazier
Clr R Boneham
Clr J Cox
Clr R Jethi
Clr Dr M Kasby
Clr Dr B Burton
Clr R Tracey
Clr A Hay OAM

VOTING AGAINST THE MOTION

None

MEETING ABSENT

Clr F De Masi

ITEM 3

**VOLUNTARY PLANNING AGREEMENT OFFER – 21-23
VICTORIA AVENUE, CASTLE HILL (4/2021/PLP)**

7.09pm *Councillor Jethi having declared a Pecuniary Conflict of Interest for Item 3 (owns property in the Precinct) signed the Conflict-of-Interest Register and left the meeting and returned at 7.12 pm at the start of Item 4.*

A MOTION WAS MOVED BY COUNCILLOR HODGES MP AND SECONDED BY COUNCILLOR HAY OAM THAT the Recommendation contained in the report be adopted.

THE MOTION WAS PUT AND CARRIED UNANIMOUSLY.

264. RESOLUTION

1. The draft Voluntary Planning Agreement offer for 21-23 Victoria Avenue, Castle Hill be accepted, in principle, and be subject to drafting and legal review (at the cost of the Proponent), prior to public exhibition.
2. The draft Voluntary Planning Agreement be updated, as required, prior to public exhibition to incorporate the recommendations of the legal review.
3. The draft Voluntary Planning Agreement be publicly exhibited concurrently with the associated planning proposal (4/2021/PLP) and site-specific Development Control Plan for at least 28 days, in accordance with the Environmental Planning and Assessment Act 1979.
4. Council consider a further report on the outcomes of the public exhibition of the Planning Proposal, draft Development Control Plan and draft Voluntary Planning Agreement.

MINUTES of the duly convened Ordinary Meeting of The Hills Shire Council held in the Council Chambers on 25 June 2024

Being a planning matter, the Mayor called for a division to record the votes on this matter

VOTING FOR THE MOTION

Mayor Dr P Gangemi
Clr M Blue
Clr M Hodges MP
Clr V Ellis
Clr J Brazier
Clr R Boneham
Clr J Cox
Clr Dr M Kasby
Clr Dr B Burton
Clr R Tracey
Clr A Hay OAM

VOTING AGAINST THE MOTION

None

MEETING ABSENT

Clr F De Masi

ABSENT FROM THE ROOM

Clr R Jethi

**ITEM 4 PLANNING PROPOSAL – MELIA COURT AND GLEN ROAD,
CASTLE HILL (5/2024/PLP)**

A MOTION WAS MOVED BY COUNCILLOR COX AND SECONDED BY COUNCILLOR BLUE THAT the Recommendation contained in the report be adopted.

THE MOTION WAS PUT AND CARRIED UNANIMOUSLY.

265. RESOLUTION

The planning proposal for land at Melia Court and Glen Road, Castle Hill *not* proceed to Gateway Determination.

Being a planning matter, the Mayor called for a division to record the votes on this matter

VOTING FOR THE MOTION

Mayor Dr P Gangemi
Clr M Blue
Clr M Hodges MP
Clr V Ellis
Clr J Brazier
Clr R Boneham
Clr J Cox
Clr R Jethi
Clr Dr M Kasby
Clr Dr B Burton
Clr R Tracey
Clr A Hay OAM

ITEM 3	VOLUNTARY PLANNING AGREEMENT OFFER – 21-23 VICTORIA AVENUE, CASTLE HILL (4/2021/PLP)
THEME:	SHAPING GROWTH
MEETING DATE:	25 JUNE 2024
	COUNCIL MEETING
GROUP:	SHIRE STRATEGY
	STRATEGIC PLANNING COORDINATOR
AUTHOR:	KAYLA ATKINS
RESPONSIBLE OFFICER:	MANAGER – FORWARD PLANNING NICHOLAS CARLTON

PURPOSE AND EXECUTIVE SUMMARY

This report recommends that Council accept, in principle, a draft Voluntary Planning Agreement ('VPA') offer submitted by Spotlight Property Group in association with the planning proposal for land at 21-23 Victoria Avenue, Castle Hill (4/2021/PLP).

The planning proposal was previously considered by Council at the Ordinary Meeting on 14 May 2024. It seeks to facilitate a high density commercial development comprising 48,410m² of gross floor area within a built form up to 12 storeys. Council resolved to submit the planning proposal for Gateway Determination however identified within its resolution that an appropriate mechanism was required to secure the dedication of land necessary for the widening of Carrington Road and upgrade of the intersection at Victoria Avenue and Carrington Road, at no cost to Council.

Following further negotiations and discussions between Council officers and the Proponent, the Proponent submitted a draft VPA offer on 3 June 2024. This is being reported to Council for consideration in satisfaction of this component of Council's previous resolution.

The VPA would require the Developer to dedicate approximately 676m² of the site to Council, being the area required to facilitate the widening of Carrington Road and upgrade of the intersection of Victoria Avenue and Carrington Road. The dedication would occur at no cost to Council. The VPA would *not* exempt the development from the payment of other contributions under the relevant Section 7.11 or Section 7.12 Contributions Plans. Accordingly, the obligation to dedicate the land would be *in addition to* the payment of the full value of monetary contributions under Contributions Plan No. 19 – Showground Precinct (CP19) in association with future development of the land.

The VPA offer, in combination with the contributions payable under CP19, represents a fair and reasonable contribution towards future infrastructure costs. The VPA would secure a material public benefit for the community in association with the planning proposal, as it will remove the liability for Council to pay full market value for the acquisition of this land in the future through separate negotiations and/or compulsory acquisition.

RECOMMENDATION

- 1. The draft Voluntary Planning Agreement offer for 21-23 Victoria Avenue, Castle Hill be accepted, in principle, and be subject to drafting and legal review (at the cost of the Proponent), prior to public exhibition.
- 2. The draft Voluntary Planning Agreement be updated, as required, prior to public exhibition to incorporate the recommendations of the legal review.
- 3. The draft Voluntary Planning Agreement be publicly exhibited concurrently with the associated planning proposal (4/2021/PLP) and site-specific Development Control Plan for at least 28 days, in accordance with the Environmental Planning and Assessment Act 1979.
- 4. Council consider a further report on the outcomes of the public exhibition of the Planning Proposal, draft Development Control Plan and draft Voluntary Planning Agreement.

IMPACTS

Financial

The land is subject to Contributions Plan No. 19 – Showground Station Precinct (CP19) and future development on the site would be levied in accordance with this Plan. The VPA would not exclude the application of this Plan.

The VPA would secure the dedication of land at no cost to Council for the purpose of road widening and intersection upgrades at Carrington Road and Victoria Avenue, Castle Hill. This would remove the liability for Council to acquire this land in the future.

Strategic Plan - Hills Future

The draft VPA would contribute to the delivery of infrastructure, which will enhance and maintain amenity in well-planned and liveable neighbourhoods. In particular, the dedication of land at no cost to Council will secure land necessary for road widening and intersection upgrades.

LINK TO HILLS SHIRE PLAN

Strategy:

8.1 Provide new and refurbished infrastructure in a timely manner that meets the needs of our growing Shire.

Outcomes:

8 Infrastructure meets the needs of our growing Shire.

LEGISLATIVE CONTEXT

The legislative framework for Planning Agreements is established within Part 7, Division 7.1, Subdivision 2 of the Environmental Planning and Assessment Act 1979 (Clauses 7.4 to 7.10). Under subsection 7.4(c) of the Act, Council may enter into a Voluntary Planning Agreement with a developer, 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. In accordance with section 7.5 of the Act, a planning agreement cannot be entered into unless public notice has been given and the agreement has been publicly exhibited for a period of 28 days. This Planning Agreement offer has been made in association with a planning proposal (4/2021/PLP).

PROPONENT

Blueprint Australia

OWNER

Spotlight Property Group

POLITICAL DONATIONS

None disclosed by Proponent

1. BACKGROUND

The site is known as 21-23 Victoria Avenue, Castle Hill. It has an area of approximately 21,048m² and comprises two separate lots bound by Carrington Road to the south, Salisbury Road to the north and Victoria Avenue to the west. It is approximately 700 metres walking distance from Showground Metro Station.

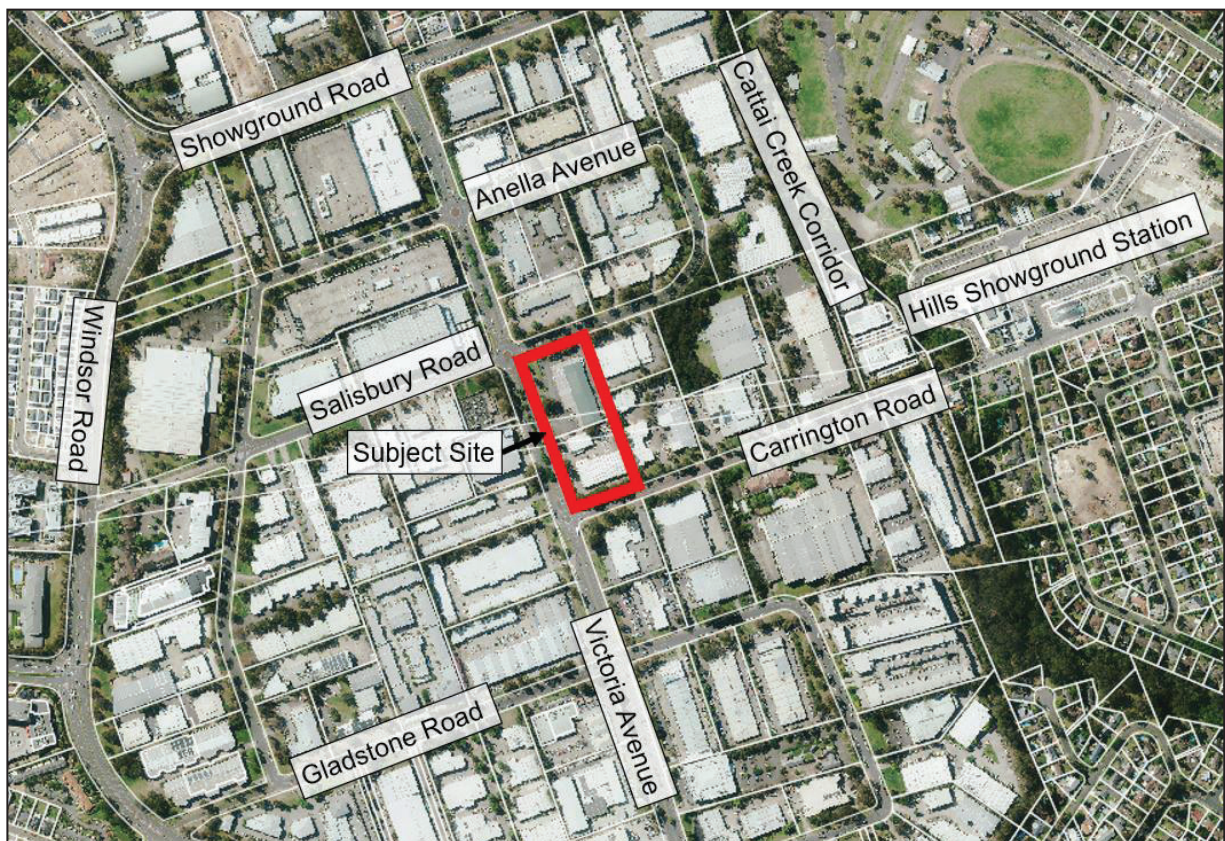


Figure 1
Aerial view of subject site and surrounding locality

At the Ordinary Meeting on 14 May 2024, Council considered a planning proposal for the site. The planning proposal seeks to facilitate a commercial and retail development including specialised retail, commercial offices, medical suites, a child care centre, business premises and gym, in a built form up to 12 storeys. The planning proposal would amend LEP 2019 to:

- Increase the maximum Height of Building to RL140.5 (up to 12 storeys on this land); and
- Introduce a maximum Floor Space Ratio of 2.3:1.

Council resolved as follows:

1. *The planning proposal applicable to land at 21-23 Victoria Avenue, Castle Hill (Lot 1 DP 657013 and Lot 1 DP 660382) proceed to Gateway Determination to amend LEP 2019 as follows:*
 - a) *Increase the maximum height of buildings from 20 metres to RL140.5.*
 - b) *Increase the maximum floor space ratio from 1:1 to 2.3:1.*
2. *Draft The Hills Development Control Plan 2012 Part D Section X – 21-23 Victoria Avenue, Castle Hill (Attachment 8) be publicly exhibited concurrently with the planning proposal.*
3. *Council and the Proponent continue discussions with respect to an appropriate mechanism to secure public benefits, including the dedication of the land necessary for the intersection upgrade at Victoria Avenue and Carrington Road, at no cost to Council, with Council to receive a further Report on this matter prior to commencement of any public exhibition of the planning proposal.*

As part of the assessment of the planning proposal and concurrent progression of design work for traffic and transport upgrades in the locality, it was identified that a portion of the site will be required to facilitate the widening of Carrington Road and the upgrade and signalisation of the intersection of Victoria Avenue and Carrington Road as identified under CP19. The Proponent had communicated an intent to dedicate this land to Council as a material public benefit associated with the planning proposal, as reflected in Point 3 of Council's resolution.



Figure 2
Land to be dedicated through VPA (purple)

2. DRAFT VOLUNTARY PLANNING AGREEMENT OFFER

On 3 June 2024, Spotlight Property Group submitted a draft VPA offer (Attachment 1) in satisfaction of Point 3 of Council’s resolution.

The draft VPA offer proposes to dedicate to Council 676m² of land for the purpose of widening Carrington Road and upgrading the intersection of Victoria Avenue and Carrington Road to a signalised intersection. The dedication would occur at no cost to Council.

The VPA would *not* exclude the application of CP19 to the development. As such, the dedication would be *in addition to* the monetary contributions payable under CP19, calculated based on the applicable rates at the time of any development consent being issued. The VPA simply relates to the *additional* material public benefit offered in association with the planning proposal, being the dedication of land at no cost.

3. ASSESSMENT OF VOLUNTARY PLANNING AGREEMENT OFFER

The VPA offer, in combination with the contributions payable under CP19, represents a fair and reasonable contribution towards future infrastructure costs, on the basis that:

- CP19 currently applies to the land. At the time of preparing and adopting CP19, the strategically identified employment outcomes within this area of the Norwest Strategic Centre were known and as such, CP19 generally accounts for the uplift and extent of growth proposed on the site through the planning proposal. The payment of contributions under CP19 is therefore appropriate in this instance to address the local infrastructure demands associated with development of the land. The VPA offer does *not* exempt the development from payment of contributions under CP19. The benefits under the VPA offer are *in addition to* the contributions payable under CP19.
- The dedication of the land to Council at no cost is a material public benefit associated with the planning proposal. The need for additional land-take has been identified as an outcome of design preparation for the intersection upgrade. The VPA will secure the dedication of the strip of the land originally identified for road widening along Carrington Road (approximately 301 sqm of land zoned SP2 Infrastructure) as well as the additional land areas now required to accommodate the intersection upgrade (approximately 375 sqm of land zoned E3 Productivity Support). The VPA will remove the potential liability for Council to compensate the landowner for any of this land as part of separate negotiations and/or compulsory acquisition processes in the future.
- It is noted that the Developer will be eligible to account for a portion of the land to be dedicated for the purpose of calculating the site area and GFA potential as part of a future Development Application. Accordingly, the Developer will be able to realise a portion of the GFA potential from some of the dedicated land, prior to it being dedicated to Council at no cost.
- Council resolved to support the progression of the planning proposal to Gateway Determination and commence discussions with the Proponent with respect to an infrastructure mechanism to secure the dedication of this land for road widening and intersection upgrade works. The terms of the VPA offer reflect and align with this decision of Council.

CONCLUSION

The draft VPA offer is fair and reasonable. It maintains the obligation to pay the full contributions under CP19 as part of future development and secures an additional material public benefit to the community through dedicating the land necessary for road widening and intersection upgrade works at this location, thereby removing this future infrastructure cost liability for Council.

It is recommended that the draft VPA offer be accepted, in principle, and progress to the next phase of drafting, legal review and public exhibition concurrent with the planning proposal and draft Development Control Plan.

ATTACHMENTS

1. Draft Voluntary Planning Agreement Offer (5 pages)

3 June 2024

Michael Edgar
General Manager
The Hills Shire Council
PO Box 7064
Norwest NSW 2153

Via email: KAtkins@thehills.nsw.gov.au

Dear Mr. Edgar

**Re: VOLUNTARY PLANNING AGREEMENT LETTER OF OFFER
PLANNING PROPOSAL – 21-23 VICTORIA AVENUE, CASTLE HILL (4/2021/PLP)**

This letter sets out the offer of Spotlight Property 2 Pty Ltd (the 'Spotlight Property Group') for a Voluntary Planning Agreement associated with the Planning Proposal relating to 21-23 Victoria Avenue, Castle Hill (4/2021/PLP).

The VPA supports the Planning Proposal lodged by Spotlight Property Group over land at 21-23 Victoria Avenue, Castle Hill (Lot 1 DP 657013 and Lot 1 DP 660382) to amend The Hills Local Environmental Plan (LEP) 2019 as follows:

- Increase the maximum height of buildings from 20 metres to RL140.5.
- Increase the maximum floor space ratio from 1:1 to 2.3:1.

The purpose of this letter is to confirm an offer under Section 7.4 of the Environmental Planning and Assessment Act 1979 (the Act) to enter into a Voluntary Planning Agreement (VPA) with The Hills Council (Council) and Spotlight Property Group. The public benefit offer is for the dedication of land for the widening of Carrington Road and intersection upgrade at Victoria Avenue and Carrington Road, at no cost to Council. The VPA will provide a suitable mechanism for Spotlight Property Group and Council to secure the land transfer necessary to deliver the road upgrades.

It is noted that the land to be dedicated for the proposed road widening and intersection upgrade remains subject to change based on further consultation between Council and Transport for NSW. This matter is expected to be confirmed prior to the negotiation process for the VPA.

This letter outlines the proposed terms relating to the public benefit proposed to be included within the Voluntary Planning Agreement. This is to be negotiated and publicly exhibited with the Planning Proposal post Gateway Determination.

Proposed Planning Agreement Terms

Parties	The Hills Shire Council (Council); and Spotlight Property 2 Pty Ltd (Developer)
Description of the land (s7.4(3)(a))	21-23 Victoria Avenue, Castle Hill (Lot 1 DP 657013 and Lot 1 DP 660382)
Description of the planning proposal (s7.4(3)(b)(i))	<p>The planning proposal applicable to land at 21-23 Victoria Avenue, Castle Hill (Lot 1 DP 657013 and Lot 1 DP 660382) seeks the following amendments to The Hills LEP 2019:</p> <ul style="list-style-type: none"> • Increase the maximum height of buildings from 20 metres to RL140.5. • Increase the maximum floor space ratio from 1:1 to 2.3:1. <p>The Planning Proposal and Planning Agreement will facilitate the dedication of land for future road widening of Carrington Road and intersection upgrade at Victoria Avenue and Carrington Road.</p>
The development to which the agreement applies (s7.4(3)(b)(ii))	<p>This Agreement will apply to development of the land as put forward in the Planning Proposal and proposed by the Developer to be subject of a Development Application.</p> <p>The Development will substantially reflect the proposed development as set out in the Planning Proposal consistent with the Instrument Change (namely a mixed-use development, including commercial and specialised retail, and new public infrastructure for a linear park, footpaths and roads) (Proposed Development).</p> <p>The total Gross Floor Area of the Proposed Development on the land under the proposed amendments to the LEP is 48,410 square metres in accordance with the Planning Proposal.</p> <p>This Agreement does not apply to other development on the land unrelated to the Planning Proposal.</p>

Nature and extent of the provision to be made by the developer, and the times and manner in which the provision is to be made (s7.4(3)(c))	<p>The Developer will dedicate land for public roads identified in Attachment 1, at no cost to Council. The public benefit aims to enable the orderly delivery of road upgrades to Carrington Road and Victoria Avenue, consistent with relevant strategic planning documents, through the transfer of land to Council.</p> <p>The total area of land to be dedicated is approximately 676 square metres. The extent of the land dedication remains subject to change based on further consultation between Council and Transport for NSW. This matter is expected to be confirmed prior to the negotiation process for the VPA.</p> <p>The land is to be dedicated to Council prior to the issue of an Occupation Certificate for the Development.</p>
Application of Section 7.11, 7.12 and 7.24 of the Act (s7.4(3)(d))	<p>The Agreement does not exclude the application of Section 7.11, 7.12 and 7.24 of the Act to the Development.</p> <p>The Developer does not consider that an amendment to an existing adopted Contributions Plan will be required if the Planning Agreement is entered into.</p>
Benefits under the agreement are or are not to be taken into consideration in determining a development contribution under section 7.11 (s7.4(3)(e))	<p>The benefits under the Planning Agreement are not to be taken into account when determining a development contribution under Section 7.11.</p>
Mechanism for the resolution of disputes under the agreement (s7.4(3)(f))	<p>The Developer proposes that Planning Agreement will provide for mediation of disputes between the parties, at their own cost, before the parties exercise any other legal rights in relation to the dispute.</p>
The enforcement of the agreement by a suitable means, such as the provision of a bond or guarantee, in the event of a breach of the agreement by the developer (s7.4(3)(g))	<p>The Planning Agreement can be registered on the title to the Land and will be removed once the land for the road upgrades is dedicated.</p> <p>If the Developer fails to dedicate the land at the time required under the Planning Agreement, the Planning Agreement will provide that Council can compulsorily acquire that land for \$1.</p>
Costs	<p>The Developer agrees to pay the Council's reasonable costs in connection with the negotiation, preparation, and execution of the Planning Agreement. The Developer requires that Council provide an estimate of the likely costs.</p>

Other	Spotlight Property 2 Pty Ltd is currently the owner of the Land. The Development may be carried out by a separate entity or future owner of the Land. The Planning Agreement will therefore include provision for assignment of the rights and obligations under the agreement, subject to the Developer providing Council with a novation deed under which the transferee agrees to carry out the Developer's requirements under the Planning Agreement.
Defined Terms	<p>Development means the development of the Land proposed to be carried out, by the Developer in accordance with the Planning Proposal.</p> <p>Development Consent means consent granted under Part 4 of the Act to carry out the future development of the Land.</p> <p>Land means land at 21-23 Victoria Avenue, Castle Hill (Lot 1 DP 657013 and Lot 1 DP 660382).</p> <p>Other Development means development carried out by the Developer on the land which is unrelated to the Planning Proposal.</p> <p>Planning Proposal means the Planning Proposal 4/2021/PLP prepared by Ethos Urban.</p>

The Spotlight Property Group looks forward to working with The Hills Shire Council to facilitate an appropriate development outcome for the site and wishes to contribute to the surrounding community and wider LGA through the dedication of land for the widening of Carrington Road and intersection upgrade at Victoria Avenue and Carrington Road, at no cost to Council.

Should Council require any further information in relation to this matter please contact Travis Reid of Blueprint Australia on 0402 487 681.

Yours sincerely,



Zac Fried
Deputy Executive Chairman
Spotlight Group
On behalf of Spotlight Property 2 Pty Ltd

