

COUNCIL MEETING
Monday, 22nd August 2011

CCL161-11	NEW PROPOSED VOLUNTARY PLANNING AGREEMENT (VPA) - EAST QUARTER HURSTVILLE PTY LIMITED		
Report Author/s	General Manager, Mr V Lampe and Manager Strategic Planning, Ms C Gregory		
File	11/757		
Reason for Report	For information		
Existing Policy?	Yes	New Policy Required?	No
Financial Implications	Yes, outside of existing budget		
Previous Reports Referenced	Yes		

EXECUTIVE SUMMARY

At the Extraordinary Council meeting of 6 July 2011, Council considered a report on a new proposed Voluntary Planning Agreement (VPA) lodged by East Quarter Hurstville Pty Limited for 93 Forest Road, Hurstville. Council resolved that in addition to the terms in the proposed VPA, the General Manager be authorised to negotiate with East Quarter Hurstville Pty Limited for an amendment to be made to the proposed VPA in order for Council to receive ownership of 15% of the additional floor space as resolved by the JRPP for Stage 2 of the development.

Council also resolved that the General Manager report back to Council on the progress of negotiations at a future Council Meeting.

Following Council's resolution, further negotiations have been held between East Quarter Hurstville and Council officers. This report provides an update on the progress of the negotiations and East Quarter's position for the information of Council.

AUTHOR RECOMMENDATION

THAT the report be received and noted.

FURTHER THAT, a copy of the report be forwarded to the Sydney Region East Joint Regional Planning Panel.

REPORT DETAIL

Background

At the Extraordinary Council meeting of 6 July 2011, Council considered a report on a new proposed VPA lodged by East Quarter Hurstville Pty Limited for 93 Forest Road, Hurstville and resolved:

"THAT the Sydney Region East Joint Regional Planning Panel be advised of Council's decision and the 12 August 2011 deadline set by the Panel for an agreement to be reached on the proposed Voluntary Planning Agreement cannot be met.

THAT in addition to the terms in the proposed VPA, Council authorises the General Manager to negotiate with East Quarter Hurstville Pty Limited for an amendment to be

made to the proposed VPA in order for Council to receive ownership of 15% of the additional floor space as resolved by the JRPP for this stage of the development.

FURTHER THAT the General Manager report back to Council on the progress of negotiations at a future Extraordinary Council Meeting."

Negotiations between East Quarter Hurstville and Council

Following Council's resolution of 6 July 2011, further negotiations were held between East Quarter Hurstville and Council staff for an amendment to be made to the proposed VPA in order for Council to receive ownership of 15% of the additional floor space as resolved by the JRPP for Stage 2 of the development.

East Quarter Hurstville's legal representatives, in a letter to the JRPP dated 27 July 2011, which encloses correspondence to Council, has advised:

"In any event, East Quarter rejects the terms of the resolution, does not agree to dedicate to Council 15% of the "additional floor space" proposed for Stage 2 of the development and, more generally, objects to the manner in which Council has sought to obtain further benefits from East Quarter via the "voluntary planning agreement" process.

... Notwithstanding the foregoing, East Quarter remains committed to making the offer on the terms set out in the VPA submitted to Council on 4 July 2011. East Quarter is content to discuss with Council any fine tuning to the offer, but is not prepared to agree to the demands set out in Council's resolution of 6 July 2011 or any scheme to that effect.

In the circumstances, having regard to the terms of the resolution, East Quarter has taken the view that further negotiations are unlikely to be fruitful and so will thus seek to have the matter brought back before the JRPP for final determination. Accordingly, East Quarter is in the process of writing to the JRPP to advise of the outcome of the negotiations and to request that the Panel be reconvened at an earlier time to conclude the matter. A copy of this correspondence will be forwarded to the JRPP with that request."

A copy of this letter is included in **Appendix 1**. In summary, East Quarter cannot be made to accept the amendment to the proposed VPA as resolved by Council, nor does Council have to accept the proposed VPA offered by the applicant, as it is a voluntary process.

Given that the parties have not reached agreement, East Quarter has requested the Joint Regional Planning Panel to make its final determination in relation to the development application.

RESOLUTION - CCL

THAT the report be received and noted.

FURTHER THAT, a copy of the report be forwarded to the Sydney Region East Joint Regional Planning Panel.

(Moved Councillor S McMahon / Seconded Councillor J Jacovou)

APPENDIX

Appendix 1: Letter to Joint Regional Planning Panel - 27 July 2011



East Quarter letter to JRPP_27 July 2011.pdf

Our Ref: AFP.CFP.103418

27 July 2011



Panel Secretariat
Joint Regional Planning Panels
Department of Planning
GPO Box 3415
SYDNEY NSW 2000

By email: jrppenquiry@jrpp.nsw.gov.au.

**Proposed Mixed Use Development
Panel Reference: 2011SYE018 - Hurstville - 11/DA-21
Re 93 Forest Road, Hurstville**

Dear Sir

We refer to the above development application, currently before the Joint Regional Planning Panel (Sydney East Region), and to the minutes of the JRPP meeting convened on 15 June 2011, regarding the application.

We **attach** a copy of the minutes for convenience.

The Panel resolved, on 15 June 2011, that it would grant consent to the application subject to the removal of one typical residential floor from each of the Buildings A, B and E. The parties have, in response, discussed and agreed to an appropriately worded condition of consent addressing the removal of a typical residential floor from Buildings A, B and E.

In addition, on 15 June 2011, the Panel requested:

1. that the parties reach agreement regarding the voluntary planning agreement offered by the applicant (as referenced in the officer's report submitted to the Panel in connection with the development application), on or before 12 August 2011; and
2. the parties prepare and comment on the conditions of consent.

In relation to the VPA, further discussions between the applicant and the Council have taken place, without success and without - it would seem - any prospect of success. The outcome of those discussions is set out in our letter addressed to the General Manager of Hurstville City Council, dated 21 July 2011, a copy of which is **attached**. In short, the applicant cannot force the Council to accept the VPA.

In relation to the conditions of consent, the parties have met and discussed the proposed conditions, most of which have been agreed. The applicant anticipates submitting a brief schedule to the JRPP setting out those conditions which are not agreed (and the competing preferred wording of those specific conditions), for the JRPP's determination.

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LAWYERS

27 July 2011
Hurstville City Council

cbp

In the circumstances, and upon receipt of the agreed conditions and the schedule of not agreed conditions, the applicant says that the development application is ready for determination.

We understand that Council has written to the JRPP seeking an extension to the timetable set out in the minutes of 15 June 2011. The applicant says that, in the circumstances, there is no reason to further delay the final determination of the matter.

A copy of this letter has been sent to the General Manager of Hurstville City Council, and to the Council's legal representative.

Yours faithfully



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Partner
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Direct Line: +61 (02) 8281 4606

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Solicitor
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**MINUTES OF THE SYDNEY EAST REGION JOINT REGIONAL
PLANNING PANEL MEETING
HELD AT PLANNING ASSESSMENT COMMISSION
ON WEDNESDAY, 15 JUNE AT 1.30PM**

PRESENT:

John Roseth	Chair
David Furlong	Panel Member
Mary-Lynne Taylor	Panel Member
Con Hindi	Panel Member
Philip Sansom	Panel Member

IN ATTENDANCE

Tina Christy Hurstville Council

APOLOGY: NIL

1. The meeting commenced at 1.32pm

2. **Declarations of Interest - NIL**

3. **Business Items**

ITEM 1 - 2011SYE018 – Hurstville - 11/DA-21 - Mixed retail/residential development containing 3 buildings with ground floor retail area, 292 residential units and remediation of site - 93 Forest Road, Hurstville

5. **Public Submission -**

Chris Johnson, Architecture Addressed the panel on behalf of the applicant
and Urban Design
Consultant

Ian Armstrong, director Kann Addressed the panel on behalf of the applicant
Finch Group, Project
Architect

6. **Business Item Recommendations**

ITEM 1 - 2011SYE018 - Hurstville - 11/DA-21 - Mixed retail/residential development containing 3 buildings with ground floor retail area, 292 residential units and remediation of site - 93 Forest Road, Hurstville

- 1) The Panel resolves by a majority of 4 to 1 (for: John Roseth, Mary Lynne Taylor, David Furlong and Philip Sansom; against: Con Hindi) that it would grant consent to the application subject to the removal of one typical residential floor from each of the buildings A, B and E.
- 2) The Panel requests the council's planning assessment officer to prepare appropriate conditions of approval on or before 15 July 2011 and the applicant to comment on these by 29 July 2011. The conditions are to include the requirement to remove one typical residential floor from Buildings A, B and E.

- 3) The Panel requests the council and the applicant to reach agreement, on or before 12 August 2011, on the Voluntary Planning Agreement offered by the applicant.
- 4) Following the above the Panel will consult by electronic means of communication to determine the application, unless, in its opinion, a further public meeting is necessary.
- 5) Councillor Hindi voted against approval because
 - a) the changes would increase traffic;
 - b) the Land and Environment Court's refusal of the s96 application;
 - c) the project is intended to be a "mini-suburb" including commercial, retail and residential;
 - d) the staff's recommendation for refusal; and
 - e) the additional floor area proposed is above the requirement of the existing DCP.
- 6) While Councillor Sansom shares Councillor Hindi's concerns, he believes that the majority decision of the Panel is a reasonable compromise.

The meeting concluded at 2.55pm.

Endorsed by
John Roseth
Chair, Sydney East
Joint Regional Planning Panel
15 June 2011

Our Ref: AFP.CFP.103418



21 July 2011

The General Manager
Hurstville City Council
Civic Centre
MacMahon Street
HURSTVILLE NSW 2220

By email: vlampe@hurstville.nsw.gov.au
nstores@hurstville.nsw.gov.au
cgregory@hurstville.nsw.gov.au

Dear Mr Lampe

Proposed Mixed Use Development (Stage 2)
93 Forest Road, Hurstville
Re : 2011/DA-00021 (JRPP Ref DA. No.2011SYE018)

We refer to East Quarter's voluntary planning agreement submitted to Council on 4 July 2011 in connection with the above development application, and to the outcome of the Extraordinary Meeting of Council convened on 6 July 2011, at which time the VPA was considered by Council.

The minutes of the Extraordinary Meeting have now been published, a copy of which are **attached** for reference.

Without reference or regard to East Quarter, Council resolved on 6 July 2011 to authorise the General Manager to "negotiate" with East Quarter for an amendment to be made to the VPA in order for Council to "receive ownership of 15% of the additional floor space as resolved by the JRPP for this stage of the development."

Representatives of East Quarter met with yourself and your team on 8 July 2011 and 18 July 2011 regarding the resolution and the terms of the VPA. The outcome of those discussions has confirmed that the authority vested in the General Manager to "negotiate" with East Quarter to receive ownership of 15% of the additional floor space proposed for Stage 2 is limited to accepting the resolution of Council. Furthermore, we understand that the Councillors' interpretation of the quantum of additional floor space fails to recognise the unused approved floor space carried over from Stage 1. Due to the timeframes required by Council to organise additional meetings to resolve the above, it would appear that our ability to reach an agreement by the date requested by the JRPP of 12 August 2011, is unlikely.

In any event, East Quarter rejects the terms of the resolution, does not agree to dedicate to Council 15% of the "additional floor space" proposed for Stage 2 of the development and, more generally, objects to the manner in which Council has sought to obtain further benefits from East Quarter via the "voluntary planning agreement" process.

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LAWYERS

In addition to the foregoing, we make the following observations:

1. The VPA negotiation process has been protracted and cumbersome, and there is an apparent disconnect between the views of the Council Staff and that of the Councillors. This has in turn resulted in a process where progress has been frustrated as evidenced by:-
 - Since March 2011, not less than 7 meetings have been held with Council Staff to discuss and negotiate an acceptable VPA,
 - At the Council Meeting on 27 April 2011, and despite a report by the Director of Planning recommending that the VPA process be progressed, the Councillors resolved to request East Quarter to further present the details of the VPA in a "Council Workshop Meeting",
 - On 18 May 2011, a "Council Workshop Meeting" was held in which East Quarter provided a 1.5 hour presentation,
 - The Extraordinary Council Meeting scheduled for 1 June 2011 was postponed due to lack of quorum,
 - At the Extraordinary Council Meeting on 8 June 2011, and again despite a report by the General Manager recommending that the VPA process be progressed, Councillors opposed the recommendation and voted to not proceed with the VPA,
 - At the Extraordinary Council Meeting on 8 July 2011, and again despite a report by General Manager that the VPA process be progressed, Councillors resolved to request the ownership of 15% of the additional floor space (in addition to the offering already made by East Quarter),
 - In total, there have been 5 versions of the proposed VPA presented thus far.
2. Council's expectation of the 15% ownership is unclear in terms of the basis of calculation. It is obvious from the plans submitted in connection with the current Stage 2 development application that additional floor space has been sought. However, and most importantly, this is a site - and always has been - comprising three stages of the one overall development. The effect and impact of the current Stage 2 development application does not in any material respects increase FSR or FSA over the three stages (due to the reduction in floor space from Stage 1). Accordingly, East Quarter considers the request for additional benefits unreasonable and unwarranted and do not address or in any way relate to a public purpose as is required by section 93F of the Environmental Planning & Assessment Act 1979.
3. Council's resolution of 6 July 2011 constitutes a demand made, in our view, under the prevailing assumption by Council that it holds some sort of veto power over the approval of the Stage 2 development application. That assumption by Council has created a very unhelpful and improper context in which to have any further negotiations with Council regarding the matter.

Notwithstanding the foregoing, East Quarter remains committed to making the offer on the terms set out in the VPA submitted to Council on 4 July 2011. East Quarter is content to discuss with Council any fine tuning to the offer, but is not prepared to agree to the demands set out in Council's resolution of 6 July 2011 or any scheme to that effect.

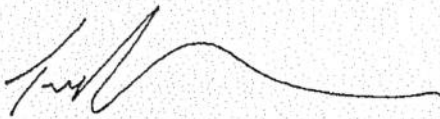
21 July 2011
Hurstville City Council

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In the circumstances, having regard to the terms of the resolution, East Quarter has taken the view that further negotiations are unlikely to be fruitful and so will thus seek to have the matter brought back before the JRPP for final determination. Accordingly, East Quarter is in the process of writing to the JRPP to advise of the outcome of the negotiations and to request that the Panel be reconvened at an earlier time to conclude the matter. A copy of this correspondence will be forwarded to the JRPP with that request.

Should Council wish to discuss the matter further prior to East Quarter contacting the JRPP, please contact Anthony Perkins of this office.

Yours faithfully



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EXTRAORDINARY COUNCIL MEETING

MINUTES OF MEETING Wednesday, 6th July 2011

The Meeting commenced at 10:24 pm.

PRESENT

Council Members

His Worship the Mayor Councillor P Sansom
Councillor V Badalati
Councillor B Giegerl, OAM
Councillor C Hindi
Councillor A Istephan
Councillor J Jacovou
Councillor S McMahon
Councillor D Perry
Councillor W Pickering, OAM
Councillor C Wong

Council Staff

General Manager, Mr. V Lampe
Director Administration, Mr J Tripp
Manager Strategic Planning, Ms C Gregory
Manager Development Assessment, Ms T Christy
Governance Officer, Mr H Cavill

APOLOGIES

Apologies for the inability to be present were tendered on behalf of Councillors N Liu and A Wagstaff.

RECOMMENDED THAT apologies be accepted and leave of absence granted.
(Moved Councillor B Giegerl / Seconded Councillor C Hindi)

DISCLOSURES OF INTEREST

The following Councillors declared an interest in a matter before Council:

Councillor C Hindi and His Worship the Mayor, Councillor P Sansom wished to have it recorded that they are members of the Sydney Region East Joint Regional Planning Panel, however a declaration of interest is not required for this matter.

ITEMS

Minute No. 165

ECM009-11 NEW PROPOSED VOLUNTARY PLANNING AGREEMENT (VPA) - EAST
QUARTER HURSTVILLE PTY LIMITED (11/757)

(Report by General Manager, Mr V Lampe and Manager Strategic

Planning, Ms C Gregory)

1. THAT the Sydney Region East Joint Regional Planning Panel be advised of Council's decision and the 12 August 2011 deadline set by the Panel for an agreement to be reached on the proposed Voluntary Planning Agreement cannot be met.

2. THAT in addition to the terms in the proposed VPA, Council authorises the General Manager to negotiate with East Quarter Hurstville Pty Limited for an amendment to be made to the proposed VPA in order for Council to receive ownership of 15% of the additional floor space as resolved by the JRPP for this stage of the development.

3. FURTHER THAT the General Manager report back to Council on the progress of negotiations at a future Extraordinary Council Meeting.

(Moved Councillor C Hindi / Seconded Councillor S McMahon)

PROCEDURAL MOTION

RESOLVED THAT a 30 minutes extension of time be granted to continue with the Council agenda.

(Moved Councillor W Pickering / Seconded Councillor C Hindi)

It was noted that Councillor Istephan left the Chamber at 11:01pm and returned at 11:03pm.

It was noted that Councillor Giegerl left the Chamber at 11:03pm and returned at 11:09pm.

It was noted that this item was carried unanimously.

The meeting finished at 11:18 pm.

Chairperson

