

Ordinary Council Meeting 16 December 2013
RESULTS OF COMMUNITY CONSULTATION ON THE PROPOSED VOLUNTARY PLANNING
AGREEMENT FOR 7-15 CENTENNIAL AVENUE LANE COVE

Subject: Results of Community Consultation on the Proposed Voluntary Planning Agreement for 7-15 Centennial Avenue Lane Cove
Record No: DA13/176-01 - 63655/13
Division: Corporate Services Division
Author(s): Ian Naylor

Executive Summary

Community consultation on the Proposed Voluntary Planning Agreement for 7-15 Centennial Avenue, Lane Cove has been completed and the purpose of this report is to advise of the results of the community consultation and recommend that Council enter into a Voluntary Planning Agreement with Hyecorp.

Discussion

At the Council Meeting of 21 October 2013, Council resolved to place the proposed Voluntary Planning Agreement on public exhibition for 6 weeks in conjunction with the proposed Development Application for this site. Council undertook community consultation on the proposed Agreement and communicated this to the public by an advertisement in the North Shore Times, e-newsletter to over 8,900 subscribers, public exhibitions at Council's Civic Centre and Libraries and providing information on the Agreement on Council's website. Surveys were also available at Council's Civic Centre and Libraries and an online version was available on Council's website. The Explanatory Note required by legislation to be exhibited in conjunction with the Agreement which outlines proposal is shown attached as **AT-1**.

12 written submissions were received and 36 online surveys were completed. 26 responses were in favour of the proposal and 19 against the proposal with 3 submissions not stating whether they were for or against the proposal. The submissions received provided comment on the following broad issues:-

Financial Compensation

13 submissions stated that the proposed financial compensation to Council is not sufficient. Council staff asked Hill PDA, a firm of qualified valuers, land economists and planners who provided the original valuation and assessment on the proposal to provide further comment on the financial compensation to Council. They indicate:-

"1. Hill PDA's assessment recognised that the Hector proposal does not result in any additional floorspace entitlements (and thereby no additional units over the permitted FSR) across the sites at 7-15 Centennial Avenue. The development application is therefore entitled to redistribute floorspace across the development site provided it is within the development envelop.

2. The proposed development would however require additional building height leading to a potential increase in development profit as a result of potentially better views and privacy. Based on our market research we quantified this additional value as between \$310,000 to \$465,000.

3. *The benefit of the proposed development to the community, owing to the dedication of land to form part of the Batten Reserve and a financial contribution was estimated as \$537,000 (between \$72,000 and \$227,000 more than the developer).*

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4. *This benefit to the Community continues to be greater than the benefit to the developer even after a 75% discount on the developers land value (from their purchase price of \$1.45 to \$362k on account of the development potential of the site being given to the neighbouring site).*

5. *Our assessment also acknowledged, yet did not quantify that the development proposal would result in land being dedicated to the bushland of the Batten Reserve. The value of the bushland to the community and local ecology has an intrinsic value that if quantified would add to the benefits of the proposal to the Community further outweighing the benefits to the developer.*

6. *As a final matter, the argument that the transferred units to a higher level would result in a lower construction cost (as they are built on existing structure) is mistaken. Rather construction costs per square metre increase with building height. Furthermore the basement car parking being restricted to a smaller site area (due to the dedication of land) is also likely to result in a higher charge per car space if additional levels are required. As a consequence the additional building height is likely to result in a greater cost to the developer rather than a cost saving”.*

As a result, Hill PDA are of the review that the community would be receiving a greater benefit from the proposal than the developer.

Redistribution of Floor Space

8 Submissions raised concern about the proposal to redistribute floor space across the development taking into account the transfer of 15 Centennial Avenue to Council. Refer to Point 1 of Hill PDA's advice above.

Traffic and Development Issues

13 Submissions raised concern about the traffic associated with the development and other development issues. These issues will be considered as part of the assessment of the Development Application. The issues would apply equally if 15 Centennial was developed in isolation.

Purchase of 15 Centennial Avenue

1 submission proposed that Council purchase the property from Hyecorp and not enter into a planning agreement with them. Hyecorp have not offered the site to Council and have declined to do so when approached.

Memorial Plaque

1 submission proposed that Council install a memorial plaque at 15 Centennial Avenue, part of this submission is shown below:-.

“It would be nice to think that the house where I lived and spent many happy years since 1978 has as its memorial a little park with trees and seats that look over the treed green space I enjoyed for so many years. It should have a little memorial plaque to the house that once was there and the creative environment it provided for some of my inventions that now reside in the Powerhouse Museum”.

The site is proposed to be regenerated as bushland. Consideration to the request can be given once the regeneration plan is developed.

<p style="text-align: center;">Ordinary Council Meeting 16 December 2013 RESULTS OF COMMUNITY CONSULTATION ON THE PROPOSED VOLUNTARY PLANNING AGREEMENT FOR 7-15 CENTENNIAL AVENUE LANE COVE</p>

Conclusion

Council received 48 submissions in relation to the proposed Voluntary Planning Agreement with 26 (more than half) in favour of the proposal. Of those against the proposal many were concerned that Council was not receiving sufficient financial consideration from the Developer. Council sought further advice from Hill PDA that confirmed that under the current proposal the community would be receiving a greater benefit than the Developer. The VPA is therefore supported.

RECOMMENDATION

That Council enter into a Voluntary Planning Agreement for 7-15 Centennial Avenue, Lane Cove, as outlined in the explanatory note and authorise the Mayor and General Manager to sign the Agreement and affix Council's seal to any necessary documents.

Craig Dalli
Executive Manager - Corporate Services
Corporate Services Division

ATTACHMENTS:

AT-1	View	Explanatory Note - Hyecorp Voluntary Planning Agreement	7 Pages
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Explanatory Note:

Draft Planning Agreement

Lane Cove Municipal Council

Hyecorp Property Fund No 10 Pty Ltd

Prepared in accordance with clause 25E of the
Environmental Planning and Assessment Regulation 2000

[Insert Date]

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1. Summary of objectives, nature and effect

A draft planning agreement (**the Agreement**) has been prepared. The proposed parties to the Agreement are the Lane Cove Municipal Council (**the Council**) and Hyecorp Property Fund No 10 Pty Ltd (**the Developer**).

1.1 Objectives

The objective of the draft planning agreement (**the Agreement**) is to provide a mechanism by which Lot B DP415901 (**Lot B**) - also known as 15 Centennial Avenue Lane Cove - may be dedicated to the Council. The Developer is currently the owner of Lot B.

The purpose of the dedication is to allow for the extension of Stringy Bark Reserve and preserve the established vegetation that has ecological value to the community.

1.2 Nature

The Agreement will be a voluntary agreement under section 93F of the *Environmental Planning and Assessment Act 1979* (**the Act**).

An agreement of this kind may require a developer to dedicate land free of cost, pay a monetary contribution, or provide any other material public benefit to be used for or applied towards a public purpose.

In this particular case, the Agreement involves the dedication of land (Lot B, or substantially the same land) and the payment of a monetary contribution (\$175,000) to contribute to the conservation, restoration or enhancement of the land following its dedication to Council.

A planning agreement cannot impose an obligation on a planning authority to grant development consent. A planning agreement cannot breach the provisions of an environmental planning instrument or a development consent applying to the relevant land.

Where it is relevant to a development application, a consent authority is to take into consideration a planning agreement, or any draft planning agreement that a developer has offered to enter into.

1.3 Effect

The effect of the Agreement, if implemented, is that the Developer would be unable to develop Lot B for residential accommodation. This is because the Council would assume ownership of the land.

The Council would also be able to carry out works to conserve, restore or enhance Lot B with the assistance of the monetary contribution that would be made by the Developer. The Council intends to demolish the existing house on Lot B as part of such works.

The Developer is not obliged to dedicate the land or make the monetary contribution until the earlier of 12 months having elapsed since the issuing of a construction certificate or immediately before the issue of an occupation certificate, in relation to development for the purposes of a residential flat building on land neighbouring Lot B. The development consent for the proposed development has not been granted at this time.

This land is legally described as

- (a) Lot 200 DP 1002700;
- (b) Lot 201 DP 1002700;
- (c) Lot 100 DP 850741;
- (d) Lot 101 DP 850741;
- (e) Lot 1 DP 363679;
- (f) Lot 1 DP 525748;
- (g) Lot 2 DP 525748;
- (h) Lot 3 DP 525748;
- (i) Lot 23 DP 27864;
- (j) Lot 24 DP 27864; and
- (k) Lot 25 DP 27864.

This land is commonly known as 7, 7A, 9, 9A, 11, 11A, 11B and 13 Centennial Avenue and 92, 94 and 96 Gordon Crescent Lane Cove.

The Agreement applies to both Lot B, and the land that is proposed to be developed for the purposes of a residential flat building.

The proposed residential flat building is one that is generally in accordance with that described in development application DA176/2013. If a development consent is not granted for (or a construction certificate obtained pursuant to a consent granted in relation to DA176/2013) the proposed residential flat building, the benefits of the Agreement will not be realised

2. Assessment of the merits of the proposed agreement

2.1 Impact on the public or any relevant section of the public

The Agreement has a positive impact on the public, and in particular, the residents of the immediate locality. This is because the Agreement provides an opportunity to extend Stringy Bark Reserve and preserve the established vegetation that has ecological value to the community.

While Lot B will not be developed for the purpose of residential accommodation (if the obligations of the Developer under the Agreement are triggered), the land neighbouring Lot B will be developed for this purpose.

Before the obligations of the Developer under this Agreement are triggered, development consent must first be granted for the development for the purposes of a residential flat building, generally described in development application DA176/2013.

If such a consent is granted (in terms sought by the development applicant), there will be no net loss of housing to the community because (even though Lot B would not be developed for residential accommodation) the Developer would provide the floor space (that might have otherwise been approved for Lot B) on the land neighbouring Lot B.

The Council would become responsible for Lot B. The financial burden of this responsibility will be reduced by the monetary contribution to be made by the Developer.

2.2 Promotion of the public interest and the objects of the Act

The Agreement promotes the following objects of the Act:

- (a) Section 5(a)(i):
to encourage: ... the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment ...
- (b) Section 5(a)(iv):
to encourage ... the provision of land for public purposes ...
- (c) Section 5(a)(v):
to encourage ... the provision and co-ordination of community services and facilities ...
- (d) Section 5(a)(vi):
to encourage ... the protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats ...
- (e) Section 5(a)(vii):
to encourage ... ecologically sustainable development ...

The Agreement promotes the above objects of the Act, and the public interest, by:

- providing for an increase in the stock of public land available for use by the community, together with a monetary contribution towards works to restore, conserve or enhance that land; and
- by providing an opportunity to preserve established vegetation that has ecological value to the community.

2.3 The purposes of the *Local Government Act 1993*

The Council is the planning authority that would be a party to the Agreement. The Council is a public authority constituted under the *Local Government Act 1993*.

The Agreement promotes the following purposes of this Act:

- (a) Section 7(a):

to provide the legal framework for an effective, efficient, environmentally responsible and open system of local government in New South Wales ...

(b) Section 7(d):

to give councils: ... the ability to provide goods, services and facilities, and to carry out activities, appropriate to the current and future needs of local communities and of the wider public ... to require councils, councillors and council employees to have regard to the principles of ecologically sustainable development in carrying out their responsibilities ...

(c) Section 7(e):

to require councils, councillors and council employees to have regard to the principles of ecologically sustainable development in carrying out their responsibilities ...

The Agreement promotes the above purposes of the Act in the same way that is set out in section 2.2 above.

2.4 The council's charter

Section 8 of the *Local Government Act 1993* sets out the 'council's charter'

The Agreement promotes the following elements of the council's charter:

- [T]o provide directly or on behalf of other levels of government, after due consultation, adequate, equitable and appropriate services and facilities for the community and to ensure that those services and facilities are managed efficiently and effectively
- to exercise community leadership ...
- to properly manage, develop, protect, restore, enhance and conserve the environment of the area for which it is responsible, in a manner that is consistent with and promotes the principles of ecologically sustainable development
- to have regard to the long term and cumulative effects of its decisions
- to bear in mind that it is the custodian and trustee of public assets and to effectively plan for, account for and manage the assets for which it is responsible ...

The Agreement promotes the above elements of the council's charter in the same way that is set out in section 2.2 above.

2.5 The planning purpose

The planning purpose of the Agreement is to provide an opportunity to:

- expand an existing reserve; and
- provide increased open space to benefit the community,

without adversely impacting on the supply of housing or housing choice.

The Agreement provides a reasonable means of achieving that purpose because, in the absence of the Agreement, it is likely that the Developer would seek to develop Lot B for the purposes of



residential accommodation. If this were to happen, the opportunity to expand Stringy Bark Reserve would be lost.

2.6 The Council's capital works program

This matter has arisen outside the scope of the Council's capital works program.

2.7 Construction certificate, occupation certificate or subdivision certificate

The Agreement does not specify any requirements that must be complied with before a construction certificate or subdivision certificate is issued.

The Agreement does specify that certain requirements must be complied with before an occupation certificate is issued. These requirements are:

- (a) payment of \$175,000 as a single monetary contribution; and
- (b) dedication of Lot B (or substantially the same land) to the Council.

These requirements arise if they have not already been triggered pursuant to an application for an occupation certificate if 12 months have passed since the issue of a construction certificate in relation to the DA176/2013).

3. Preparation of this explanatory note

This explanatory note has been prepared jointly by the parties proposing to enter into the Agreement.