

CCL134-16 OFFER TO ENTER INTO A VOLUNTARY PLANNING AGREEMENT - SECTION 96 MODIFICATION 1-5 TREACY STREET, HURSTVILLE

Report Author/s	Executive Planner, Ms N Stores Acting Director Planning and Development, Ms T Christy
File	16/73
Previous Reports Referenced	No
Community Strategic Plan Pillar	Social and Cultural Development
Existing Policy?	Yes New Policy Required? No
Financial Implications	Outside Budget
Reason for Report	For Consideration
Interested Parties	
Company Extract included	Yes

EXECUTIVE SUMMARY

Council has received an offer to enter into a Voluntary Planning Agreement (VPA) from GR Capital Group Pty Ltd which accompanied a section 96(2) Modification Application for 1-5 Treacy Street, Hurstville.

The VPA offer proposes a monetary contribution in the amount of \$200,000 to be used for traffic upgrade works or parking facilities, the details of which would be determined by Council. The Offer also notes that *“in addition to the section 94 contributions payable under the consent and any amended consent, the developer offers to provide the Monetary Contribution as an additional public benefit..”*

The section 96 Modification seeks five (5) additional levels of residential development (27 apartments) and an additional 44 basement car parking spaces. The approved development is for eleven (11) storeys including 75 residential units and 400sqm of commercial floor space.

The Joint Regional Planning Panel (JRPP) is the consent authority for the section 96 Modification. A separate Council report is presented to this meeting on the section 96 Modification for Council to receive and note. The report recommends that the modification be refused by the JRPP as the proposed development does not comply with Hurstville Local Environmental Plan 2012 as there are significant departures to the floor space ratio and height of buildings and SEPP No.65. Also the proposal is not considered to be substantially the same as the original application.

The report to the JRPP also recommends *“that should the section 96 Modification be approved, that development consent not be issued until Council negotiate a satisfactory planning agreement (that provides both an appropriate public benefit and that includes the value of the section 94 contributions) and has been endorsed by the Council for the purpose of public exhibition”*.

Council's Policy on Planning Agreements states that, *“the Council's use of planning agreements will be governed by the following principles:*

- (a) *Planning decisions may not be bought or sold through planning agreements.....*
- (e) *Development that is unacceptable on planning grounds will not be permitted because of planning benefits offered by developers that do not make the development acceptable in planning terms”*

The VPA offer is therefore not supported on the basis that the section 96 Modification is not supported on planning grounds. Additionally the VPA offer is considered inadequate in terms of the public benefit offered and the detail provided in the offer. Council would not receive any section 94 contributions (i.e.\$467,808.92) for the proposed 27 residential units as a consent

authority cannot increase the section 94 contributions nor can it impose new contributions on a section 96 Modification application.

This report recommends that the VPA offer not be accepted by the Council.

AUTHOR RECOMMENDATION

THAT Council not accept the offer to enter into a Voluntary Planning Agreement from GR Capital Group Pty Ltd as part of the section 96 Modification Application for 1-5 Treacy Street, Hurstville.

THAT should Council wish to consider a VPA in connection with the section 96 Modification, that Council not accept the current VPA offer and that the Acting General Manager commence negotiations with the Applicant in order to prepare a Voluntary Planning Agreement to Council's satisfaction which reflects the value capture of the proposed uplift of the development and is in accordance with Council's Policy on Planning Agreements (2006).

FURTHER THAT this report and Council's resolution be attached to the report presented to the Joint Regional Planning Panel on the section 96 Modification.

REPORT DETAIL

1. INTRODUCTION

Council has received an Offer to enter into a VPA from GR Capital Group Pty Ltd (the Applicant) as part of a Section 96 Modification to Development Application DA2014/1083 for 1-5 Treacy Street, Hurstville.

2. BACKGROUND

Development Application (DA2014/1083)

Development Consent was issued by the JRPP on 1 April 2015 for the demolition of the existing building and construction of an eleven (11) storey mixed use development including 75 residential units and 400sqm of commercial floor space with basement parking on 1-5 Treacy Street, Hurstville. A condition of this consent was that the planning agreement accepted by Council on 19 November 2014, relating to this development application, must be entered into before the issuance of any Construction Certificate under this consent.

Planning Agreement between Hurstville City Council and GR Capital Group

At the Council Meeting on 19 November 2014 Council accepted an offer to enter into a Planning Agreement in relation to the above DA2014/1083. The Planning Agreement was entered into on 14 March 2016 between Council and GR Capital Group.

The Planning Agreement provides for public domain and landscaping works around the site, dedication of land (1 metre wide) for footpath and future road widening, and the dedication and fitout of a commercial floor space (81m² - plus or minus 5%) and car space.

It is noted that the section 96 Modification results in a reduction of the commercial floor space to be dedicated to Council from 81sqm to 79sqm. This reduction can be accommodated in the Planning Agreement as it provides for a 5% variation in the floor space.

Section 96 Modification (MOD 2015/0162) of DA2014/1083

A section 96 Modification has been lodged seeking five (5) additional levels of residential (27 apartments) and an additional 44 basement car parking spaces as follows:

	Hurstville LEP 2012	Approved in DA2014/1083	Proposed S96 Modification
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Maximum building height	23m	39.7m (+72% increase from HLEP 2012 maximum)	56.15m (+41% increase from DA2014/1083 approval)
Maximum Floor Space Ratio	3:1	4.9:1 (+63% increase from HLEP 2012 maximum)	6.9:1 (+41% increase from DA2014/1083 approval)

A separate report on the s96 Modification is presented to this Council Meeting to receive and note.

The JRPP is the consent authority for the s96 Modification. In summary the s96 Modification is not supported and is recommended for refusal for the following reasons:

- the proposed development is not considered to be substantially the same as the original application
- the proposed development does not comply with the Hurstville Local Environmental Plan 2012 in terms of the objectives of the Zone, Height of Buildings and Floor Space Ratio
- the proposed development does not comply with the *State Environmental Planning Policy 65 – Design Quality of Residential Apartment Development* and a range of Design Principles
- the proposal is inconsistent with the associated Apartment Design Guide
- the proposed development does not comply with the Hurstville Development Control Plan No, 2 – Hurstville City Centre.

The report to the JRPP however recommends *“that should the section 96 Modification be approved, that development consent not be issued until Council negotiate a satisfactory planning agreement (that provides both an appropriate public benefit and that includes the value of the section 94 contributions) and has been endorsed by the Council for the purpose of public exhibition”*.

3. OFFER TO ENTER INTO A VOLUNTARY PLANNING AGREEMENT

The section 96 Modification was accompanied by an offer by GR Capital Group Pty Ltd to enter into a VPA. A copy of the Offer is included in Appendix 1 of this report.

In summary, the Offer includes the following:

- *“In circumstances where the Modification Application is approved and prior to the issue of a Construction Certificate reflecting the modified scheme is issued and development works have physically commenced, the developer offers to:*
 - a) *Provide an additional monetary contribution, beyond the existing VPA and the Section 94 contributions payable in the amount of \$200,000 to Hurstville Council towards Road and Traffic Management Infrastructure items RT1, RT2 and/or Item RT3 within Appendix F to the Contributions Plan. (the applicant’s offer)*
- *The voluntary planning agreement which would give effect to the applicant’s offer would not exclude (wholly or in part) the application of section 94, 94A or 94EF.*

- *The applicant seeks that benefits under the agreement will be taken into consideration in determining a development contribution under section 94.*
- *The final voluntary planning agreement will contain provisions necessary to ensure that it complies with the Environmental Planning and Assessment Act 1979 and that the developer's interests are protected”.*

Note: Council has received legal advice that a consent authority cannot increase the section 94 contributions nor can it impose new section 94 contributions when determining a section 96 application (refer to section below).

4. PRELIMINARY ASSESSMENT OF OFFER

Council's Policy on Planning Agreements states in clause 2.1 that *“the Council's use of planning agreements will be governed by the following principles:*

- a) *Planning decisions may not be bought or sold through planning agreements.....*
- f) *Development that is unacceptable on planning grounds will not be permitted because of planning benefits offered by developers that do not make the development acceptable in planning terms.”*

A copy of Council's Policy on Planning Agreements (2006) is included in Appendix 2 of this report.

As the section 96 Modification is not supported on planning grounds, the offer to enter into a VPA is not supported and is not recommended to be accepted by the Council.

Based on a preliminary assessment of the VPA offer, the offer is considered inadequate in terms of the public benefit offered and the limited detail provided. In summary:

- the offer of a monetary contribution for road and traffic management infrastructure is supported in principle as there are direct impacts from the proposed development on road and traffic infrastructure in the City Centre. However in order for Council to determine an appropriate value of the monetary contribution for a VPA, economic consultants would need to be engaged to undertake a value capture assessment resulting from the uplift in land and development values from the proposed changes to the planning controls.
- the Council would not receive any section 94 contributions for the proposed development if the section 96 Modification is approved by the JRPP and therefore no contribution for open space and community facilities will be paid to Council. (see section below).
- the VPA offer is not in the format of a planning agreement and minimal information is provided in terms of how any VPA would operate. The offer does not address a range of matters including enforcement, registration, security, payment of Council's costs, mediation, etc.
- the planning agreement therefore does not produce outcomes that meet the general values and expectations of the public and protect the overall public interest.

Section 94 Contributions

The Offer includes the following references to Council's Section 94 contributions:

- *“The voluntary planning agreement which would give effect to the applicant’s offer would not exclude (wholly or in part) the application of section 94, 94A or 94EF.*
- *The applicant seeks that benefits under the agreement will be taken into consideration in determining a development contribution under section 94”.*

Legal advice has been received that a consent authority cannot increase development contributions under section 94 of the EP&A Act when determining a section 96 Modification, nor can it impose new development contributions.

As a result, if the JRPP approve the section 96 Modification no section 94 contributions for community facilities and open space can be levied for the additional 27 residential units. The VPA Offer does not propose to provide a monetary contribution to the value of the section 94 contributions.

The section 94 contributions that would apply to an additional 27 residential units, based on the proposed mix of units under the Hurstville Section 94 Development Contributions Plan 2012 (December Quarter 2015 and is indexed Quarterly) is as follows:

Proposed development & contribution rates per dwelling	S94 contributions for community facilities & open space
13 x two (2) bedroom dwellings @ \$14,446.84 per dwellings	\$ 187,808.92
14 x three (3) bedroom dwellings @ \$20,000.00 per dwelling	\$ 280,000.00
Total	\$ 467,808.92

It is recommended that if any future negotiations are undertaken in relation to the VPA for the proposed s96 Modification, that the current section 94 contributions for the increase in residential units be included as a monetary contribution in the VPA to reflect the community facilities and open space, recreation and public domain facilities identified in the Development Contributions Plan 2012.

5. ALTERNATIVE OPTION

This report recommends that the offer to enter into a VPA not be accepted.

However should the Council wish to consider a VPA in connection with the section 96 Modification, it is recommended that Council not accept the current offer and request the Acting General Manager to commence negotiations with the Applicant in order to prepare a VPA to the Council's satisfaction. In order for Council to determine an appropriate value of the monetary contribution for a VPA, economic consultants would need to be engaged to undertake a value capture assessment resulting from the uplift in land and development values from the proposed changes to the planning controls.

APPENDICES

Appendix 1 Applicants offer to enter into a VPA for s96 Mod 1-5 Treacy Street, Hurstville

Appendix 2 Hurstville City Council - Policy on Planning Agreements 2006

Appendix 3 Company extract - applicant-owner - 1-5 Treacy St Hurstville (Confidential)