

(ITEM 28/16) DRAFT VOLUNTARY PLANNING AGREEMENT - NOS. 39-47 BELMORE STREET, 6-14 CONDER STREET AND 11-19 WYNNE AVENUE, BURWOOD

File No: 16/21463

REPORT BY ACTING MANAGER STRATEGIC PLANNING

Summary

A draft Voluntary Planning Agreement (VPA) and Explanatory Note (EN) prepared in connection with Development Application at Nos. 39-47 Belmore Street, 6-14 Conder Street and 11-19 Wynne Avenue, Burwood have been publicly notified in accordance with the relevant legislation. The draft VPA provides for the Applicant to dedicate to Council 3,962sqm of office space plus 55 car parking spaces and a stratum subdivision of these areas, and to construct a linking bridge between the proposed building and the Burwood Library and Community Hub. In exchange, the Applicant would achieve additional development on the site, a higher proportion of residential development, and an offset of Section 94A developer contribution charges. Council's endorsement is sought to enter into the VPA.

Background

Development Application 2013/031 approved a mixed use development comprising three towers (being 10, 18 and 18 storeys), 332 units, 90 serviced apartments, retail space and 530 basement parking spaces.

Development Application 2015/193 proposes to augment the earlier approval, resulting in the construction of towers (at 11, 22 and 19 storeys) containing 491 units, 3,962sqm of commercial space for Council, and retail space as approved, above basement parking.

The proposal seeks 6,199sqm of floor space over that which is permitted by clauses 4.4 and 4.4A of the Burwood Local Environmental Plan (BLEP) 2012, equivalent to a 14.8% increase. The development straddles the Middle Ring and Perimeter areas of the Burwood Town Centre, where the floor space ratio (FSR) is 4.5:1 and 3:1 respectively. The total permissible floor space is 41,792sqm or an FSR of 4.12:1. The VPA proposes a development with a total floor space of 47,990sqm or FSR of 4.73:1.

The proposal argues that the portion of the development within the Middle Ring of the Burwood Town Centre would be eligible for a 10% bonus under Council's Carrying Out Bonus Development in the Public Interest Policy. The bonus would account for an additional 3,403sqm or FSR of 4.45:1. This places the proposed floor space 6.2% over that which Council would ordinarily consider as part of the bonus policy.

The portion of the development within the Middle Ring is also subject to a Maximum Residential FSR of 3:1. Since this proposal seeks to convert the approved serviced apartments (being a commercial use) to residential units, the commercial/residential mix changes substantially. The residential component of the development would exceed that permissible by 18.43%. A variation to the permissible building height is also proposed.

The value of the development means it would be determined by the Joint Regional Planning Panel (JRPP). If approved, the consent document would include a condition of consent requiring that the VPA be entered into.

Proposal

A copy of the draft VPA is attached. The VPA provides for the following benefits to Council:

- 3,962sqm of commercial office space (in Building A, located alongside Conder Street).
- 55 parking spaces.
- Linking bridge between Building A and the Burwood Library.
- Ownership of the stratum subdivision for the above items.
- Possible location for a new amalgamated Council entity, in the vicinity of existing Council facilities.

In exchange, the VPA provides the following benefits to the applicant:

- Offset of developer contributions (ie. Section 94A and 'bonus' scheme) to an approximate value of \$13.5M.
- Conversion of all approved serviced apartments in Building A to residential apartments (a total of 90 apartments and 8,940sqm of floor space).
- An addition of one storey to Building A for residential apartments (being relocation of some of the apartments being converted to commercial office space).
- An addition of four storeys to Building B for residential apartments (two floors representing relocation of some of the apartments converted to commercial office space in Building A and two floors of additional apartments).
- An addition of one storey to Building C for additional residential apartments.
- 6,199sqm of floor space above that which is permissible under the BLEP.
- Council as an 'anchor' occupant committing pre-construction, possibly attributing the applicant a lower risk profile when seeking finance.

The request to enter into a VPA must not drive the planning outcome and the DA must also be considered on its merits. In this case, the DA will be referred to an independent planning consultant for assessment in accordance with the Planning Agreements Policy. The consultant's findings will be the subject of a separate report to the JRPP, which is the determining authority for this development. There is no guarantee that the JRPP would approve the extent of development standard variations being proposed by the DA.

The documents have been referred to Council's solicitors for their advice and vetting. Further revision of the draft VPA will be necessary prior to execution.

Discussion

The applicant has submitted a Valuation Report and Construction Cost Report to accompany the VPA. Council has provided each of these reports to external professionals for an independent peer review.

Valuation Report

The Valuation Report submitted by the applicant gives the estimated market value of the development to be dedicated to Council as \$29M. The peer review has found that:

- The \$29M value may be overestimated. The peer reviewer considers the sales and lease levels relied upon in the Report to be above market.
- The Report lacks supporting leasing and sales evidence to substantiate the valuation.
- The Report fails to account for the usual market incentives offered by owners (eg. rent free period, contribution to fitout).
- There are discrepancies within the Report in respect to the number of parking spaces and their value.
- Questions arise around the rental value (per square metre rates) attributed to the retail, office and parking components.
- The Report indicates that there is limited supply of office space in Burwood, but the peer reviewer counters this by indicating that there is a fair amount of new development occurring in the Town Centre and expected to continue.

- The Report appears not to account for the primary retail components of Burwood being centred around Westfield, nor that other commercial space tends to be closer to the commercial 'core' and rail station.

Construction Cost Report

The Construction Cost Report submitted by the applicant gives the estimated development cost of the development to be dedicated to Council as \$18,505,000. The peer review has found:

- The cost estimate to be in the order of \$17,033,000, a 6.8% variation. However, the peer reviewer finds this variation to be within the +/- 10% expected.
- There are discrepancies in respect to the calculation of Net Saleable Area (ie. floor area).
- There are discrepancies within the Report in respect to the number of parking spaces being costed.
- In the Report, an amount has been added to the construction cost which relates to structural upgrades that come about as a result of additional residential levels at the top of the building. The peer reviewer believes these costs should not form part of the Council development costing, but rather the larger development.
- There are differences in the manner recommended for applying preliminaries, margins and contingencies which result in minor variances to the construction cost.

VPA Revision and Negotiation

The following matters have been identified, and are recommended to be the subject of further revision of the VPA and EN, and/or negotiation amongst the parties:

- Resolution of the building floorplan and design of Building A, given that the plans which are the basis of the VPA and valuation report differ substantially from those approved and currently under assessment by Council. It is noted that heritage issues have been raised in respect to Building A.
- Clarification whether the 3,962sqm of office space relates to useable internal space, or includes wall thickness, plant, stairwells and the like.
- Clarification of how the 3,962sqm of office space would be distributed across floors, as the VPA and plans differ in describing the space over 2.5 or 4 storeys.
- Clarification of the development cost for the whole of the subject site, as the figure in the VPA differs from that given in the DA submitted to Council.
- Confirmation and possible revision of all monetary values given in the VPA and EN documents. These would be revised having regard to the peer review documents (discussed below) and final DA documentation.
- Ensuring no "double counting" is occurring in the values given for total development cost and development cost of the Council development.
- Clear details regarding the extent of internal fitout, fixtures and building work to be provided in the Council development, especially in respect to the quality of construction and finishes, the design of the pedestrian bridge, and any access arrangements to external spaces.
- Insertion of a set timeframe within which the Council dedication would occur, as the present VPA wording could result in the development being staged and years before Council receives the office space.
- Provision of a bond or similar guarantee to safeguard Council against the loss of developer contributions or land dedication in the event of the developer or owner's bankruptcy, non-completion of the project, or any other unforeseen circumstances.

Other minor errors and anomalies within the VPA and EN will need to be addressed, as follows:

- Correction of values given for the estimated market value of the property dedication, shown inconsistently as \$29M and \$30M in parts of the VPA.
- Correction of values given for the area of converted serviced apartments, shown inconsistently as 8,940sqm and 7,791sqm in the VPA and Schedule 1.

- Inputting updated DA number and development details as required.
- Consider deletion of clause 5.3 of the VPA in accordance with legal advice.
- Clarification of whether the \$1,000/sqm figure should be described as a Section 94 contribution, or should be otherwise described for the purposes of this VPA.
- Insertion of postal addresses, where these are different from physical street addresses.
- Updating of footer and insertion of execution dates.

It is recommended that the General Manager be authorised to endorse revisions of the document prior to execution.

Consultation

The draft VPA and EN were publicly notified for a period of at least 28 days from 22 April 2016 to 20 May 2016. The public notice was placed in the local newspaper and on Council's website. Hard copies were also made available to view at Council's Customer Service Centre. No submissions have been received at the time of writing.

Planning or Policy Implications

Council has a Planning Agreements Policy which has been referenced in the progression of this matter. The Policy contains an acceptability test which stipulates the matters that Council should consider when determining whether or not to enter into a VPA. Consideration of these matters against the draft VPA is outlined below:

1. The VPA is directed towards a proper or legitimate planning purpose. The VPA provides property to Council to be used as a public facility, either as a potential future Council Administration Centre or leasable property as an income-generator for Council's other functions and services.
2. The VPA would result in a public benefit. The property dedication involves 3,962sqm of office space, 55 parking spaces and a linking bridge to be used for a public purpose.
3. The VPA provides a reasonable means of achieving the relevant purpose. The VPA is a reasonable means of acquiring public facilities. The VPA approach has benefits and efficiencies over the alternative options, which are Council purchasing existing office space at market value, or renting premises.
4. The VPA would be taken into consideration in the assessment of the DA. The DA must stand on its own merits from a design, planning and amenity perspective. The DA will be the subject of a separate and independent planning assessment. If the VPA is not entered into, the applicant would be expected to rely on their existing approval, which provides floor space in accordance with that which is permissible under the BLEP.
5. The VPA would produce outcomes that meet the general values and expectations of the community, and protect the overall public interest. The provision, augmentation and improvement of public facilities by Council is an expectation of the community. The VPA provides Council with a public facility.
6. The VPA promotes Council's strategic objectives as outlined in Clause 2.1 of Council's *Planning Agreements Policy*, particularly:
 - Objective 'a' – *to provide an enhanced and more flexible development contributions system for Council*. The VPA encourages flexibility by enabling the dedication of land in place of Section 94A contributions, to the mutual benefit of the developer and the community.

- Objective 'b' – *to supplement or replace, as appropriate, the application of s94 and s94A of the Act to development.* The VPA replaces Council's Section 94A Plan because the VPA contribution is in place of established Section 94A contributions.
 - Objective 'e' – *to lever planning benefits from development wherever possible.* The VPA would facilitate the provision of public facilities, which represents a public benefit.
7. The VPA conforms to the fundamental principles governing the Council's use of planning agreements as set out in Clause 2.2 of the *Planning Agreements Policy*, particularly:
- *Principle 'a' – planning decisions may not be bought or sold through planning agreements.* Council is not obliged to support the DA proposal and, instead, each application must be considered on its merits. In this case, the determining authority is the JRPP which has enhanced the assessment process by providing an additional layer of independence.
 - *Principle 'd' – Council will not use planning agreements for any purpose other than a proper planning purpose.* The VPA would facilitate the provision of public facilities.
8. There are not considered to be any circumstances that may preclude the Council from entering into the VPA should it determine to do so.

Financial Implications

The VPA would provide for a future asset to Council in the form of 3,962sqm of office space, 55 car parking spaces and a linking bridge to Burwood Library. The VPA provides that Council would not seek any Section 94 or 94A contributions, nor other monetary developer contribution.

Conclusion

Council's endorsement is sought to enter into the VPA with the applicant of Nos. 39-47 Belmore Street, 6-14 Conder Street and 11-19 Wynne Avenue, Burwood. The VPA would provide Council with 3,962sqm of office space, 55 car parking spaces and a linking bridge to Burwood Library. It is recommended that arrangements be made for the further revision, negotiation and execution of the VPA by Council authorising the signing of the agreement, after the granting of consent for the DA.

Recommendation(s)

1. That Council enter into the Voluntary Planning Agreement (VPA) for Nos. 39-47 Belmore Street, 6-14 Conder Street and 11-19 Wynne Avenue, Burwood for the provision of commercial office space, car parking spaces and a linking bridge after the granting of consent for the Development Application, which would include a condition requiring that the VPA be entered into.
2. That Council authorise the General Manager to sign the VPA and any related documentation under his Power of Attorney.
3. That Council authorise the General Manager to endorse revisions of the VPA documents prior to execution.

Attachments

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| 1 | Voluntary Planning Agreement | 21 Pages |
| 2 | Explanatory Note | 3 Pages |