

20 April 2020

15623

George Bramis
Executive Manager – Urban Planning, Policy and Strategy
PO Box 9
BONDI JUNCTION
NSW 2022

Attention: Jaime Hogan (Principal Strategic Planner)

Dear George,

**RE: RESPONSE TO REQUEST FOR ADDITIONAL INFORMATION
WAR MEMORIAL HOSPITAL WAVERLEY (125 BIRRELL STREET, WAVERLEY)**

Ethos Urban has prepared this letter on behalf of Uniting in response to the Request for Information (RFI) dated 20 December 2019, relating to Waverley Council's (Council) Planning Proposal for the Waverley Memorial Hospital at 125 Birrell Street, Waverley (the site).

Uniting has reviewed and considered the issues raised by Council. This letter provides a response to support Council's response to the Department of Planning, Industry and Environment's (DPIE) RFI. It represents the first RFI associated with the Council-led Planning Proposal for the site.

This letter is accompanied by the following supporting documentation:

- Built Form Assessment and Urban Design Study prepared by COX (**Attachment A**);
- Heritage Statement prepared by Hector Abrahams Architects (HAA) (**Attachment B**);
- Conservation Management Plan (2005) prepared by John Oultram and Susan O'Neill (**Attachment C**);
- Phase 1 Environmental Site Assessment prepared by JBS&G Environmental (**Attachment D**); and
- Traffic Impact Assessment prepared by Traffix (**Attachment E**).

1.0 Response to Matters Raised

1.1 Built Form

Comment

Built form modelling of the proposed development standards of height 15m and 21m, and an FSR of 1.2:1. An analysis of the land use, amenity and environmental impact of those development standards, including at a minimum:

- *Overshadowing;*
- *Visual impact;*
- *Privacy;*
- *View loss;*
- *Building footprints and related landscaping provision;*
- *Ability to achieve the intended outcomes of the planning proposal; and*
- *Impact upon the heritage significance of the site, and adjoining items and HCAs.*

Response

The level of detail requested generally forms part of the conditions of the Gateway. Notwithstanding, the built form modelling requested has been prepared by Cox (refer to **Attachment A**). It indicates, by the following reasons, an indicative built form outcome which supports the intended outcomes of the planning proposal.

- **Ensure the retention and ongoing functioning of the hospital.** Development envisioned under the indicative masterplan does not seek the removal of the hospital or its long-term function.
- **Maintain the heritage significance of the site.** The illustrative masterplan has been prepared in consultation with HAA, with the intent of implementing significant elements of the Conservation Management Plan applicable to the site (refer to Statement prepared by HAA at **Attachment B**). This includes (but is not limited to):
 - Retention of the existing heritage buildings on the site and their fabric by way of appropriate setbacks;
 - Retention of significant trees and gardens; and
 - Concentration of buildings in the lower garden, not upper garden.
- **Increase public accessibility within the site.** The illustrative masterplan has been designed to be accessible and encourage movement through the site (where appropriate, refer to **Section 1.6**).
- **Allow the expansion of existing aged care and seniors living uses.** The majority of the site is zoned SP2 (which does not permit seniors housing, unless a nexus which demonstrates it is incidental or ancillary to a health service facility is established) yet one of the primary objectives of the planning proposal is to increase the provision of seniors housing. Making seniors housing a stand-alone permissible use in the SP2 zone is fundamental to creating a planning framework which is intended to expand aged care and seniors living building as proposed in the indicative masterplan.
- **Provide for additional ancillary and associated uses.** The illustrative masterplan has been designed to consider associated and ancillary uses on the site. The specific quantum and detailed location of these uses within the envelopes will progress in line with the detailed design of the development.

The built form modelling has also been informed by heritage advice from HAA, who confirm that the built form in the indicative masterplan is suitable from a heritage perspective, with regards to the existing heritage of the site, and heritage items and heritage conservation areas surrounding the site.

1.2 Additional Permitted Uses

Comment

Provide further justification for including 'Health service facility and any development which is ordinarily incidental or ancillary to health service facility' as an additional permitted use for the land zoned R3, as a health service facility is already permissible in Zone R3.

Response

We recognise that a health services facility is already permissible with consent on land zoned R3 Medium Density Residential (the R3 zone) because it is an 'open zone'.

It is our understanding that Council sought to include a health services facility (and any development which is ordinarily incidental or ancillary to a health services facility) as an additional permitted use in the R3 zone to ensure that it is clear that the use is permissible in the zone, on the basis it will reduce any uncertainty for future development.

We consider this approach as not common practice however given it does not have material impact on permissibility, it can be implemented if the DPIE and Council so chose.

Comment

Provide further justification for including 'Seniors housing' as an additional permitted use for the land zoned SP2, addressing the applicability of SEPP (Housing for Seniors or People with a Disability) 2004 to the land.

Response

Currently, seniors housing (unless it can be demonstrated to be incidental or ancillary to a health services facility) is not permissible with consent on land zoned SP2. This does not reflect one of the primary purposes of the site in its current state, or one of the key aims of the planning proposal which is to expand the ageing provision on the site.

The planning framework on the site must clearly allow the provision of seniors housing within the zone (SP2) which is overlaid across the majority of the site to ensure the intended outcome of expanding seniors housing can be realistically achieved.

On this basis, we do not consider a reliance on development which is *incidental or ancillary to a health services facility* as the most appropriate way of achieving seniors housing on the majority of the site. It is ambiguous, is based on subjective assessment and does not provide certainty on the provision of seniors housing on the site.

In addition to the above, in our view, *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004* (Seniors Housing SEPP), would still be an applicable instrument when considering any future Development Application (DA), even if the *Waverley Local Environmental Plan 2012* (WLEP 2012) was the instrument being relied upon for permissibility. This is because:

- The Seniors Housing SEPP applies to land within New South Wales zoned primarily for urban purposes, but only if development for the purposes of *hospitals or residential flat buildings* is permitted. Hospitals are permitted in the SP2 zone, and residential flat buildings are permitted in the R3 zone.
- The Seniors Housing SEPP does not affect the operation of other environmental planning instruments (which includes the WLEP 2012) as specified in Clause 5 of Chapter 1 of the SEPP.
- Clause 1.9 of Part 1 of the WLEP 2012 specifies that the plan is subject to the provisions of any state environmental planning policy that prevail over the plan as provided by Section 3.28 of the *Environmental Planning and Assessment Act 1979*.

More broadly, the need for additional seniors housing by way of permitted use in the SP2 zone is grounded in the following:

- The Eastern City District Plan identifies an 102% increase in people aged 85 and over, and a 64% increase in the amount of people aged between 65-84 by 2036. The strong growth in couple-only households (increasing by 31,750 households by 2036) will also require homes and aged care facilities.
- Council has found that the population of Waverley aged over 65 is expected to increase 38% by 2036, to a total of 8,800 residents¹.
- The expected increase in the aged population will result in increased demand for health, social and aged care services within the Waverley LGA.

Currently, the land use zoning does not support the expansion of additional services and infrastructure to support the growing aged population in Waverley.

The inclusion of seniors housing as an additional permitted use on the land zoned SP2 responds to this forecasted demand by enabling the staged expansion of the existing aged care and seniors housing. It will relieve pressure on existing aged care services by increasing the supply of housing that meets the needs of the ageing population of Waverley, including a mix of traditional residential aged care accommodation and independent living units.

The colocation of seniors housing and health services facilities will also provide opportunities for 'ageing in place' by enabling residents to access services close to home, without the need to travel. This is consistent with the Commonwealth Government's *Living Longer Living Better Act 2013*.

1.3 Heritage

Comment

Provide the 2005 Conservation Management Plan prepared for the site by John Oultram and Susan O'Neill.

Response

Provided at **Attachment C**.

1.4 Contamination

Comment

The planning proposal does not address whether Clause 6 of SEPP 55—Remediation of Land applies. Should Clause 6 apply, a detailed consideration of its provisions should be included. In considering whether the clause applies, please have regard to the recent decision of the Court of Appeal at the Supreme Court of NSW, Moorebank Recyclers Pty Ltd v Tanlane Pty Ltd [2018] NSWCA 304. See the judgement here: <https://www.caselaw.nsw.gov.au/decision/5c0de981e4b0b9ab40211eac>

Response

Clause 6 of *State Environmental Planning Policy No 55—Remediation of Land* (SEPP 55) refers to the consideration of contamination and remediation in zoning and rezoning proposals. A planning authority must not, when preparing an environmental planning instrument, include in a particular zone any land for residential purposes (amongst other things) if the inclusion of the land in that zone would permit a change of use of the land, unless:

- *the planning authority has considered whether the land is contaminated, and*

¹ Waverley Council Assessment Report on the Uniting led Planning Proposal for the War Memorial Hospital, dated 8 May 2019

- *if the land is contaminated, the planning authority is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for all the purposes for which land in the zone concerned is permitted to be used, and*
- *if the land requires remediation to be made suitable for any purpose for which land in that zone is permitted to be used, the planning authority is satisfied that the land will be so remediated before the land is used for that purpose.*

Clause 6 of SEPP 55 applies to the planning proposal by virtue of Clause 6(4)(c). Therefore, a Phase 1 Environmental Site Assessment has been completed by JBS&G Environmental (**Attachment D**)². JBS&G Environmental identified the following potential sources of contamination:

- Fill material observed across the site;
- Buildings and former buildings in the northern and western portion of the site;
- Paint and petrol storage shed in the eastern portion of the site;
- Grease trap in the south eastern portion of the site;
- Former incinerator in the north western portion of the site; and
- Garden shed and garden material storage area.

JBS&G conclude that although areas have been impacted to varying extents by contamination, standard remediation and/or management techniques could ensure the land is suitable for the proposed uses. The remediation of the land, required to ensure that the land is suitable for the proposed uses, will be addressed as part of any subsequent Development Application in accordance with the Planning Proposal and informed by a Phase 2 Detailed Environmental Site Investigation.

A distinction can therefore be drawn between the current Planning Proposal and the circumstances in *Moorebank Recyclers Pty Ltd v Tanlane Pty Ltd* [2018] NSWCA 304, where there had been no specific report prepared to satisfy the requirements of SEPP 55 and the various documents that were prepared were found to be inadequate because they did not, even when read together, set out the 'findings' of a preliminary investigation. This led the Court to conclude that:

- the applicant did not provide a report in the form required by Clause 6 of SEPP 55, and
- while the consent authority was satisfied that the land would be remediated and made suitable for the proposed use, its satisfaction was based on incorrect information.

As discussed above, unlike *Moorebank Recyclers Pty Ltd v Tanlane Pty Ltd*, a Phase 1 Environmental Site Assessment has been completed in the form required by SEPP 55. Consistent with Clause 6 of SEPP 55, Council can therefore be satisfied that:

- The potential contamination impacts have been identified;
- The land will be suitable, after remediation, for all of proposed uses; and
- The land will be remediated before the land is used for the proposed uses.

1.5 Transport

Comment

Provide an updated traffic report reflecting the reduced development standards. Should the traffic impacts be the same, the proponent's Traffic Impact Assessment should be submitted to the Department for assessment. Should the traffic impact of Council's planning proposal be different, a revised assessment, and if necessary, a revised

² The Phase 1 Environmental Site Assessment was prepared for the Uniting led Planning Proposal for the War Memorial Hospital, which did not proceed. However, the Phase 1 Environmental Site Assessment still relates to the same land as the Council led Planning Proposal and has therefore been resubmitted.

traffic report should be submitted. Lastly, the revised section should clearly state whether any provisions are proposed to address traffic impacts.

Response

Prepared and provided at **Attachment E**.

1.6 Planning Mechanisms

Comment:

In addition to the issues outlined above, consistent with the masterplan and Council's amended Planning Proposal submitted to the DPIE, Council will seek to incorporate affordable housing, publicly accessible open space, landscaping, deep soil and open space provisions. These items are intended to be achieved through the LEP, with further detail in a Site Specific DCP. In your response, please outline a proposed mechanism to achieve:

- a. An Affordable Housing Contribution of at least 10% delivered across the site (including dwelling mix and target demographic, and tenure).*
- b. A requirement that the shared open space on site be accessible by the general public at all times.*
- c. A requirement for maximum site coverage, to ensure adequate deep soil and landscaped area to protect ample open space on the site, as well as the habitat corridors that run through the site.*

Response

A) Affordable Housing

Uniting is and has always been open to the provision of affordable housing on the site. The specific affordable housing contribution of 10% (which has its genesis in Council's existing VPA Policy³) however appears to have been put forward by Council. A specific affordable housing contribution did not form part of Uniting's proposal and while we are happy to put forward a recommendation and potential method of implementation, we believe it is a matter for Council to also respond to the DPIE.

Uniting remain willing to enter into a Voluntary Planning Agreement (VPA) with Council to ensure the delivery of a portion of affordable housing as part of the redevelopment of the WMH. In regard to timing, it is considered that any VPA would be most appropriately negotiated with Council post-Gateway.

However, it is noted that the development potential of the land has now been reduced, comparative to the original Planning Proposal submitted by Uniting. Therefore, while Uniting remain willing to explore opportunities to provide affordable housing as part of any future redevelopment of the WMH, the reduction in development potential will however require a review of the overall amount of affordable housing that can be feasibly provided on the site.

It is also noted that Uniting, as a not-for-profit provider of seniors housing, already provides a substantial public benefit for the community. This should be accounted for when determining the amount of affordable housing to be provided by Uniting.

³ Waverley Council Assessment Report on the Uniting led Planning Proposal for the War Memorial Hospital, dated 8 May 2019.

B) Shared Open Space (Public Access)

Uniting is committed to the creation of an area of shared open space accessible by the public. However, the provision of shared open space needs to align with the functional requirements of Uniting. In particular, as an aged care service provider, perceptions of safety and privacy for residents is of high importance. This is because many residents move into seniors housing because of the additional support and security it provides.

It is therefore necessary that Uniting retain control of publicly accessible shared open space, particularly in instances where there is the opportunity for safety and security issues (e.g. night-time loitering or antisocial behaviour) to ensure resident comfort.

Hence, while Uniting will support the development to be permeable and provide access opportunities for the community, it must be recognised that the land is still private land and Uniting needs to retain space for its private uses, and create a hierarchy of spaces for both its residents as well as the broader public.

Uniting provides residential aged care and seniors housing, hospitals, and children and youth services. Uniting therefore understand the operational requirements of each of these services. We are happy to understand more of what Council are looking for and negotiate and outcome for a shared vision for open space. This is something that could be addressed post-Gateway through a Site-Site Specific Development Control Plan (DCP) or a VPA between Uniting and Council.

C) Maximum Site Coverage

A requirement relating to maximum site coverage, aimed at ensuring adequate landscaping, open space and habitat corridors, is not a provision appropriate for inclusion in an LEP. It is a provision that would be most appropriately included within the Site Specific DCP, prepared post-Gateway, to guide the finer-grain design for any future redevelopment of the site. Its inclusion within the LEP is not supported by Uniting as it does not conform standard LEP practice.

It is also noted that while the site does provide opportunities for landscaping, it does not contain any identified biodiversity and is not located within a recognised biodiversity corridor.

However, the planning proposal is capable of facilitating future development that provides adequate high-quality open space for the benefit of both residents and the community. This includes the retention and enhancement of the existing heritage gardens, as well as new landscaped connections through the site.

1.7 Birrell Street Lots

Uniting, in their proponent-lead Planning Proposal for the site, sought the inclusion of the lots fronting Birrell Street. This however was not supported. Uniting will lodge a separate Planning Proposal for these lots, seeking the same controls as the broader site. This pathway, compared to preparing a submission to the Gateway exhibition of this Council-lead Planning Proposal, is the preferred option of Uniting which removes the need to amend this current Planning Proposal post-gateway.

Conclusion

Uniting and its consultant team have considered the request made by Council in response to the Department's RFI regarding the Planning Proposal for the Waverley Memorial Hospital at 125 Birrell Street, Waverley. A considered response has been provided within this letter and in the accompanying documentation.

We trust this information satisfies the requirements of Council. We look forward to the Department progressing the assessment of Council's Planning Proposal. If you have any further queries or require any additional information, please do not hesitate to contact me on 9409 4984 or aantoniuzzi@ethosurban.com.

Sincerely,



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