

ITEM 5.1 **Proposed Amendment to Planning Agreement - Palms
Hotel Planning Proposal 165 - 168 Hume Highway,
Greenacre**

AUTHOR **Planning**

PURPOSE AND BACKGROUND

The purpose of this report is to advise Council on an administrative issue that has been raised by the Department of Planning and Environment (the Department) at the finalisation stage of the LEP Amendment making process for the planning proposal at 165-185 Hume Highway, Greenacre – which requires Council to nominate itself as the acquisition authority for a portion of the site to be zoned RE1 Public Recreation Zone for the provision of new open space.

On 24 May 2022, Council resolved to support a planning proposal to facilitate the redevelopment of the site as a mixed-use development comprising 131 dwellings, 3,584m² Gross Floor Area (GFA) of non-residential floor space and approximately 413 basement car parking spaces. As part of the Planning Agreement between Council and the proponent, 600m² of the site will be dedicated as RE1 zoned land to increase the adjacent Peter Reserve to a larger public park of approximately 1,200m².

ISSUE

In accordance with Clause 8 of the *Environmental Planning and Assessment Regulation 2021*, a planning proposal to amend a Local Environmental Plan must not contain a proposed reservation of land for the purposes of public open space unless a public authority is nominated as the public acquisition authority. Council resolved to support the planning proposal with the Executed Planning Agreement including a clause regarding the Dedication of Land, but not a clause regarding its compulsory acquisition should the dedication of land not proceed.

To manage the financial risk of nominating as the acquisition authority, it is proposed that a new clause is inserted into the Planning Agreement between the developer and Council, to allow Council to acquire the RE1 zoned portion of the land for a nominal fee, such as \$1, in the event that portion of land is not dedicated to Council as required under the Planning Agreement, accordingly it is recommended Council support the insertion a new clause into the Planning Agreement in relation to the compulsory acquisition of the RE1 zoned land and the inclusion the subject RE1 zoned land on the Bankstown LEP 2015 'Land Reservation Acquisition' map.

This amendment will be required to be exhibited for a period of 28 days and be reported back to Council for endorsement following a review of any submissions received.

RECOMMENDATION That -

1. Council nominate itself as the public acquisition authority for the RE1 Public Recreation Zone portion of land in connection with the Planning Proposal for the land at 167 Hume Highway, Greenacre; and
2. Council exhibit the draft amended Planning Agreement and consider a report post-exhibition before endorsing the CEO to execute the Planning Agreement. Once executed, Council write to the Department to advise of its decision to be nominated as the public acquisition authority.

ATTACHMENTS

- A. Revised Draft Planning Agreement
- B. Revised Draft Explanatory Note
- C. Draft Amended Land Acquisition Map for Bankstown Local Environmental Plan 2015
- D. Palms Hotel Post-Exhibition Report from 24 May 2022 Council Meeting

POLICY IMPACT

On 24 May 2022, Council resolved to support a Planning Proposal at 165-185 Hume Highway, Greenacre, for the redevelopment of the site as a mixed-use development. As part of the Planning Agreement between Council and the proponent, 600m² of the site that will be zoned RE1 Public Recreation Zone will be dedicated to Council, at no cost, to increase the adjacent Peter Reserve to a larger public park of approximately 1,200m². The amendments sought under this report do not change the outcome of the Planning Proposal supported and address administrative issues only. Therefore the nomination of Council as the public acquisition authority is consistent with the previous resolution of Council to support this Planning Proposal to be finalised and submitted to the Department for gazettal.

FINANCIAL IMPACT

There would be financial cost to Council if it was required to acquire the RE1 zoned portion of the site under the Just Terms Act. The proposed new clause within the Executed Planning Agreement significantly reduces the risk to Council by ensuring that should Council need to acquire the land, it would be for a nominal fee of \$1 only. The land owner has agreed to the insertion of the new clause in the amended Planning Agreement. It is noted that the Planning Agreement remains on title once registered and will remain current including in the event that land ownership may change.

Nothing in this report proposes to alter the outcomes sought in the endorsed planning proposal or public benefits to be delivered by the developer in connection with the planning proposal and Planning Agreement as previously executed. The amount of Section 7.11/7.12 Development Contributions payable by the future development on the site will not be modified as a result of the proposed amendment to the Planning Agreement.

COMMUNITY IMPACT

The proposed amendments to the Planning Agreement does not change the public benefits and infrastructure that has been previously agreed by the developer and Council to be delivered in connection with the Planning Proposal for this site. The Planning Proposal facilitates the redevelopment of the site into a mix of commercial and residential uses and enables the expansion of Peter Reserve by 600m². The proposal will retain the current B6 Enterprise Corridor zoning to ensure commercial uses compatible with the highway corridor can continue to be provided.

The Planning Proposal will provide positive community and social impacts to the Canterbury Bankstown LGA as it will attract private investment to rejuvenate the site and increase the amount of housing supply in the area as part of a mixed-use development outcome.

The provision of the expanded Peter Reserve, monetary contributions to improve the local bus stops/improvements to bus stop infrastructure, provision of an affordable housing contribution, and contribution towards provision of a district level community and recreation facility would assist in providing a positive amenity and quality of life of the future residents on the site and the surrounding local community.

DETAILED INFORMATION

Request from Department of Planning and Environment

On 9 December 2022, the Department requested clarification regarding whether Council nominates itself as public acquisition authority for the RE1 zoned portion of the site. In accordance with Clause 8 of the *Environmental Planning and Assessment Regulation 2021* (EP&A Regulation), a planning proposal may not contain a proposed reservation of land unless a public authority is designated as the acquisition authority, in this instance, Council.

To enable the LEP Amendment to be gazetted, Council must notify the Department to confirm it grants concurrence to be the public acquisition authority for the RE1 zoned portion of land. Council will notify the Department following exhibition of the proposed amendment to the Executed Planning Agreement.

Proposed Amendment to Executed Planning Agreement

The following clause is proposed to be inserted into the Planning Agreement. Council has provided the draft clause wording to the proponent and received in principle support for its inclusion.

40. Acquisition of land required to be dedicated

- 40.1. *If the Developer does not dedicate the Dedication Land at the time at which it is required to be dedicated under the terms of this Agreement, the Developer consents to Council compulsorily acquiring the land for compensation in the amount of \$1 without having to follow the pre-acquisition procedure under the Just Terms Act.*
- 40.2. *The Council is to only acquire land pursuant to clause 40.1 if it considers it reasonable to do so having regard to the circumstances surrounding the failure by the Developer to dedicate the land required to be dedicated under this Agreement.*
- 40.3. *Clause 40.1 constitutes an agreement for the purposes of s30 of the Just Terms Act.*
- 40.4. *If, as a result of the acquisition referred to in clause 40.1, the Council is required to pay compensation to any person other than the Developer, the Developer is to reimburse the Council that amount, upon a written request being made by the Council.*
- 40.5. *The Developer indemnifies and keeps indemnified the Council against all Claims made against the Council as a result of any acquisition by the Council of the whole or any part of the land concerned except if, and to the extent that, the Claim arises because of the Council's negligence or default.*
- 40.6. *The Developer is to promptly do all things necessary, and consents to the Council doing all thing necessary, to give effect to this clause 40, including without limitation:*
 - 40.6.1 *signing any documents or forms,*
 - 40.6.2 *giving landowners' consent for lodgement of any Development Application,*
 - 40.6.3 *producing certificates of title of the Registrar-General under the Real*

*Property Act 1900 and,
40.6.4 paying the Council's cost arising under this clause 12.*

At the applicant's request, the following amendments to additional clauses shown in **red** within the Planning Agreement and Explanatory Note are also proposed. The items to be removed are shown as ~~striked~~:

PLANNING AGREEMENT PART 2 DEVELOPMENT CONTRIBUTIONS

Clause Number	Clause Content
7.5	<p>The Development Contributions described as:</p> <ul style="list-style-type: none"> i. the Item of Work is to be completed prior to the issue of the final Occupation Certificate for the development; and ii. the Dedicated Land is to be dedicated no later than 12 months 30 months after the issue of the first Construction Certificate linked to the redevelopment of the subject site. <p>The Monetary Contributions as set out in Schedule 3 shall be indexed by the increase in the Consumer Price Index (All Groups Index) for Sydney as published by the Australian Bureau of Statistics at the quarter immediately prior to the payment.</p>
9.3	<p>The Dedicated Land must be dedicated or transferred to Council no later than 12 months 30 months after the issue of the first Construction Certificate linked to the redevelopment of the subject site.</p>

PLANNING AGREEMENT SCHEDULE 3 DEVELOPMENT CONTRIBUTION

The proponent has advised Council that the reason for the increase from 12 months to 30 months is to allow for an adequate timeframe for the construction of the project to provide flexibility in terms of staging and timing of the various components on the development. Given the timeframe is the only aspect that is proposed to be changed, and the public benefit item being the dedication of land is not changing, this change is considered to be acceptable.

Part A- Dedicated Land			
Item	Public Benefit	Agreed Contribution Value	Timing of Dedication
Dedicated Land	Dedication of 600sqm of land to increase the size of Peter Reserve	\$660,000.00	No later than 12 months 30 months after the issue of the first Construction Certificate linked to the redevelopment of the subject site.

Implications if Council does not include the draft clause in the Amended Planning Agreement

Given the minor nature of this particular matter, the Chief Executive Officer (CEO) of Council will exercise his delegation to nominate Council as the acquisition authority to acquire the RE1 zoned portion of the site, should acquisition be required in the future. Currently, the Planning Agreement does not contain a clause which allows Council to acquire the RE1 zoned portion of the site for a nominal fee of \$1.

If the land is not dedicated in accordance with clause 12 of the Planning Agreement, Council risks the following:

- Losing the parcel of land and therefore public open space for community use, and
- The land may have to be purchased at market value resulting in financial loss for Council.

It is noted that the Planning Agreement remains on title once registered and will remain current including in the event that land ownership may change.

Next Steps

Subject to Council's resolution to endorse the recommendations of this report, the following steps will apply:

- Council exhibit the draft amended Planning Agreement and draft 'Public Reservation Acquisition' LEP map for 28 days in accordance with Council's Community Participation Plan
- Council considers all submissions received during the public exhibition period and prepares a report for council
- Council considers a report and makes a resolution to proceed with executing the draft amended Planning Agreement
- Council write to the Department to advise the Council nominates itself to be the acquisition authority, subject to the execution of the draft amended Planning Agreement, and
- Provide the amended Land Reservation Acquisition map to the Department to include as part of the LEP amendment gazettal process.