

ECONOMY

ITEM NUMBER	8.5
SUBJECT	55 Aird Street Parramatta - Clarification of Endorsed Resolution of 9 May 2016
REFERENCE	RZ/18/2015 - D05063546
REPORT OF	Project Officer Land Use
LANDOWNER	Charles Apartments Pty Ltd
APPLICANT	Think Planners Pty Ltd

PURPOSE:

To clarify the resolution adopted on 9 May 2016 to endorse a planning proposal seeking to remove the maximum height limit (currently 36 metres/11 storeys) and increase the floor space ratio for land at 55 Aird Street, Parramatta, for the purposes of requesting a Gateway Determination from the Department of Planning and Environment.

RECOMMENDATION

- a) **That** for the avoidance of doubt, Council confirms that in adopting the resolution made on 9 May 2016, its intention was to:
 - Permit a floor space ratio of 10:1, with a requirement that 1:1 commercial floor space be included in the 10:1 FSR, and with access to additional FSR through demonstrating compliance with the design excellence provisions consistent with the City Centre Planning Framework.
 - Apply no height limit but apply Clause 7.6 Airspace Operations to this site to require consideration of Federal Government airspace provisions.
- b) **That** a revised reference design and Site Specific DCP be prepared by the applicant at an FSR of 10:1 and submitted to Council.
- c) **That** the planning proposal as amended and revised reference design be forwarded to the Department of Planning and Environment for Gateway determination.
- d) **That** Council advise the NSW Department of Planning and Environment that the CEO will be exercising the plan-making delegations for this planning proposal as authorised by Council on 26 November 2012.
- e) **That** Council invite the applicant to submit a Voluntary Planning Agreement (VPA) consistent with the CBD Planning Proposal and Value Sharing Policy.
- f) **That** the outcome of the VPA negotiations and the Draft DCP be reported to Council prior to exhibition of the draft VPA, draft DCP with both to be exhibited with the planning proposal.
- g) **Further, that** Council authorise the CEO to correct any minor policy

inconsistencies and any anomalies of an administrative nature relating to the Planning Proposal, Draft DCP and VPA documentation that may arise during the plan amendment process.

THE SITE

1. The subject site is located at 55 Aird Street, Parramatta (refer to Figure 1). The legal description of the site is Lot 4 DP 310151. The site area is 658m² and currently contains a 2 storey commercial building with a vehicular right of way along the eastern boundary, providing access to the rear of the retail tenancies fronting Church Street. The site adjoins a Westfield loading dock and retail tenancies back onto the site.
2. The site is within the area identified as having a maximum FSR of 10:1 as per the *Draft Parramatta CBD – Planning Proposal*.



Figure 1 Location map

BACKGROUND

3. On 24 August 2015, Council received a planning proposal and supporting documents from the then applicant Statewide Planning Pty Ltd seeking to increase the FSR from 4.2:1 to 20:1 and height from 36 metres (11 storeys) to 120 metres (38 storeys). Following a preliminary assessment by Council officers,

the applicant submitted a revised planning proposal in March 2016 seeking an FSR of 15:1 (17.25:1 plus design excellence) and height of 120 metres.

4. The Parramatta CBD Planning Proposal (CBD PP) was endorsed by Council on 11 April 2016. Under the CBD PP a Floor Space Ratio (FSR) sliding scale applies to small sites. This provides an appropriate FSR that avoids overdevelopment whilst allowing flexibility for landowners to potentially reach the maximum 10:1 FSR. The purpose of a sliding scale for FSR is to control density on small sites and encourage amalgamation and facilitate better design outcomes.
5. On 9 May 2016, Council considered a report on the subject Planning Proposal and resolved to endorse the revised planning proposal. The resolution stated:
 - (a) **That** Council endorses the revised planning proposal contained at Attachment 1 to;
 - Permit a floor space ratio of 10:1 with design excellence and high performance building provisions and with any commercial floor space above the 1:1 not being included in the FSR consistent with the City Centre Planning Framework
 - Apply no height limit but apply Clause 7.6 Airspace Operations to this site to require consideration of Federal Government airspace provisions.
 - Require 1:1 commercial floor space (included in the 10:1 FSR).
 - (b) **That** a revised reference design and Site Specific DCP be prepared by the applicant at an FSR of 10:1 and submitted to Council.
 - (c) **That** the planning proposal as amended and revised reference design be forwarded to the Department of Planning and Environment for Gateway determination.
 - (d) **That** Council advise the NSW Department of Planning and Environment that the CEO will be exercising the plan-making delegations for this planning proposal as authorised by Council on 26 November 2012.
 - (e) **The** Council invite the applicant to submit a Voluntary Planning Agreement (VPA) consistent with the CBD Planning Proposal and Value Sharing Policy.
 - (f) **That** the outcome of the VPA negotiations and the Draft DCP be reported to Council prior to the exhibition of the draft VPA, draft DCP with both to be exhibited with the Planning Proposal.
 - (g) **Further, that** Council authorise the CEO to correct any minor policy inconsistencies and any anomalies of an administrative nature relating to the Planning Proposal, Draft DCP and VPA documentation that may arise during the plan amendment process.
6. In response to the resolution, on 14 November 2016 the current applicant submitted to Council a revised reference design to accompany the endorsed planning proposal to be forwarded to the Department of Planning and Environment for Gateway Determination. Contrary to Council's advice to the Applicant, the revised reference design incorporates:

- Base FSR of 10:1 (with a minimum 1:1 of commercial/retail)
- Design Competition Bonus of 15%
- High Performance Building Bonus of 0.5:1
- Additional 3:1 of commercial floor space
- TOTAL FSR – 15:1 (11:1 residential and 4:1 commercial).

ISSUES/OPTIONS/CONSEQUENCES

7. Council officers are not of the view that the additional information provided in the revised reference design is in keeping with the City Centre Planning Framework as per Part (a), which states:

*“(a) **That** Council endorses the revised planning proposal contained at Attachment 1 to:*

- *Permit a floor space ratio of 10:1 with design excellence and high performance building provisions and with any commercial floor space above the 1:1 not being included in the FSR consistent with the City Centre Planning Framework.”*

8. There is an inherent inconsistency in this part of the resolution. The wording of the resolution includes reference to high performance building provisions and to commercial floor space above 1:1 not being included in the FSR, however the final part of the resolution uses the term “consistent with the City Centre Planning Framework”. Under the City Centre Planning Framework adopted by Council the high performance building provisions and any provisions related commercial floorspace above 1:1 being excluded from the FSR do not apply to the site due to its size and dimensions. The applicant is relying on the fact that the resolution makes reference to the high performance buildings and additional commercial floor space, however the end of the resolution requires compliance with the City Centre Planning Framework.

9. To reiterate, the City Centre Planning Framework:

- Only permits additional commercial floor space in excess of the minimum 1:1 required where the site has a minimum area of 1,800m² (refer to Clause 7.11(4) of the Draft CBD PP); and
- While providing for a high performing building bonus, requires the development site to be at least 24 metres wide at the front building line and have a minimum site area of at least 1,800 square metres (refer to Clause 7.17 of the Draft CBD PP).

10. As the subject site is only 658m² with a primary frontage of 14.325m, it does not meet the criteria to be eligible for additional commercial floor space outside of the permitted 10:1 FSR, or the high performing building bonus.

11. The site is however capable of accessing the design excellence bonus FSR of 15%, subject to achieving the eligibility criteria. Subject to the applicant

demonstrating compliance with the design excellence criteria, a maximum of 11.5:1 FSR may be permitted on the site.

12. The applicant has communicated with Council officers on a number of occasions following the Council resolution to challenge the interpretation described above. The applicant is of the opinion that the wording of Part (a) of the Resolution permits a future development to access the additional commercial floor space and high performance building provisions, despite this interpretation not being consistent with the interpretation of Council officers, or the City Centre Planning Framework.
13. On 31 March 2017 the applicant met with senior Council staff to attempt to reconcile the differing interpretations of the endorsed resolution. The applicant made reference to statements made by Councillors during debate of the item at the Council meeting. It should be noted that resolutions reflect the final decision of Council and it is not unusual for elements of debate to be different from the final Council resolution.
14. For the avoidance of doubt, it is recommended that Council affirm the resolution of 9 May 2016.
15. Alternately, should Council concur with the interpretation of the Applicant, an alternate resolution is provided below:
 - a) **That** for the avoidance of doubt, Council confirms that in adopting the resolution made on 9 May 2016, its intent was to:
 - Permit a base floor space ratio of 10:1, with access to additional FSR through demonstrating compliance with the design excellence and high performance building provisions;
 - Require 1:1 commercial floor space (included in the base 10:1), with any commercial floor space above 1:1 excluded from the FSR calculation;
 - Apply no height limit but apply Clause 7.6 Airspace Operations to this site to require consideration of Federal Government airspace provisions.
 - b) **That** a revised reference design and Site Specific DCP reflecting a) above be prepared by the applicant and submitted to Council.
 - c) **That** the planning proposal as amended and revised reference design be forwarded to the Department of Planning and Environment for Gateway determination.
 - d) **That** Council advise the NSW Department of Planning and Environment that the CEO will be exercising the plan-making delegations for this planning proposal as authorised by Council on 26 November 2012.
 - e) **That** Council invite the applicant to submit a Voluntary Planning Agreement (VPA) consistent with the CBD Planning Proposal and Value Sharing Policy.

- f) **That** the outcome of the VPA negotiations and the Draft DCP be reported to Council prior to exhibition of the draft VPA, draft DCP with both to be exhibited with the planning proposal.
- g) **Further, that** Council authorise the CEO to correct any minor policy inconsistencies and any anomalies of an administrative nature relating to the Planning Proposal, Draft DCP and VPA documentation that may arise during the plan amendment process.

CONCLUSION

16. Clarification of the intended interpretation of Council's resolution of 9 May 2016 will facilitate the progression of the Planning Proposal and allow it to be forwarded to the Department of Planning and Environment for Gateway Determination.

Joshua Coy
Project Officer – Land Use Planning

Robert Cologna
Manager Land Use Planning

Sue Weatherley
Director Strategic Outcomes and Development

Sue Coleman
Director City Services

ATTACHMENTS:

There are no attachments for this report.