

Item No: C1018(2) Item 11

Subject: **PLANNING PROPOSAL FOR 2-6 CAVILL AVENUE, ASHFIELD -
SUPPLEMENTARY REPORT ON AFFORDABLE HOUSING DELIVERY
MECHANISMS**

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SUMMARY

This report provides a response to Council's resolution of 25 July 2018 that sought additional information on mechanisms for securing affordable housing for the Planning Proposal for 2-6 Cavill Avenue, Ashfield, and updates on the proponent's new proposal for a Voluntary Planning Agreement (VPA). Seeks Council determination on whether to pursue affordable housing through the Ashfield Local Environmental Plan (LEP) provisions or a VPA. It also recommends that particular development consent conditions are applied for all development proposals in the Ashfield Town Centre that utilise Clause 4.3A(3) of the LEP to ensure affordable housing delivered is achieved in perpetuity.

RECOMMENDATION

THAT Council:

1. **Note this report and determine how it wishes to proceed with the making of the Planning Proposal for 2- 6 Cavill Avenue Ashfield with regard to the two following affordable housing delivery options :**
 - (i) **Proceeds to amend Ashfield Local Environmental Plan (LEP) 2013 now as indicated in the report to Council 24 July 2018, and implement the requirements of Clause 4.3A of the LEP by having future development consent conditions that ensure affordable housing is provided for management by a community housing provider while remaining in the ownership of the developer or successor; or**
 - (ii) **Defers amending Ashfield Local Environmental Plan (LEP) 2013 until a Voluntary Planning Agreement acceptable to Council is finalised as a mechanism for delivering affordable housing that will be owned by Council.**

If Council chooses option 1(i) above Council agrees to:

 - (a) **Liaise with Department of Planning and Environment and Parliamentary Counsel's Office to draft and finalise the LEP Amendment;**
 - (b) **Following completion of (a) above request the Department of Planning and Environment to notify the plan;**
 - (c) **Delegation be given to the Group Manager Strategic Planning to finalise the LEP amendments in accordance with the Gateway Determination and to finalise the amendments to the site specific Development Control Plan as indicated in the report to Council 24 July 2018;**
 - (d) **Adopt the site specific amendments for 2-6 Cavill Avenue, Ashfield to the "Inner West Comprehensive Development Control Plan 2016 for Ashbury, Ashfield, Croydon, Croydon Park, Haberfield, Hurlstone Park and Summer Hill" as recommended in the report 24 July 2018, to come into force in the event and at the same time Planning Proposal PP_2017_IWEST_012_00 LEP amendment is published on the Legislation website.**
2. **Resolves that for sites within "Area 1" in the Ashfield Town Centre identified on**

the Maximum Height of Building Map, where development is approved pursuant to Clause 4.3 A (3) of the Ashfield Local Environmental Plan 2013, Council confirms that that development consent conditions should be applied to ensure affordable housing is achieved and appropriately managed by a registered community housing provider in perpetuity.

1.0 Background

The proposal is for amendments to the Ashfield Local Environmental Plan 2013. For the part of the land zoned B4 Mixed Use it seeks an increase in the Maximum Floor Space Ratio from 2.0:1 to 3.0:1. It also seeks to apply a 7m height (2 storey) bonus to the site, which would be in addition to the existing 23m Maximum Height of Buildings (MHB) by being included in “Area 1”.

Council considered a post exhibition report on a Planning Proposal for 2-6 Cavill Avenue, Ashfield on 24 July 2018 (**Attachment 2**).

Council resolved as follows:

THAT Council defer consideration of the developer’s Planning Proposal for 2-6 Cavill Avenue Ashfield pending investigation of appropriate legal mechanisms by which Council can secure affordable housing as part of the anticipated affordable housing contribution.

This report responds to the above resolution, and in the following sections considers the two potential means of securing affordable housing at the site: under the clause 4.3A of the Ashfield LEP or under a Voluntary Planning Agreement (VPA).

The report also advises on the context in which a new affordable housing offer subsequently made from the site owner to provide a VPA could be pursued. A copy of correspondence on the VPA offer is in **Attachment 1**.

It should be noted that the proponent prefers to progress the Planning Proposal as it currently stands, utilising clause 4.3A of the Ashfield LEP.

2.0 Ashfield LEP 2013 and development applications

LEP clause 4.3A only applies to buildings in the Ashfield Town Centre shown in “Area 1” on the Maximum Height of Buildings map. This clause applies a bonus 7 metre height (above existing 23 m) when a development application is submitted. It is not linked to uplift in land value arising from a Planning Proposal.

Clause 4.3 A states:

4.3A Exception to maximum height of buildings in Ashfield Town Centre

- (1) *The objective of this clause is to increase the supply of affordable rental housing by providing height incentives for the development of certain types of affordable rental housing.*
- (2) *This clause applies to development for the following purposes on land identified as “Area 1” on the Height of Buildings Map:*
 - (a) *residential flat buildings,*
 - (b) *shop top housing that forms part of a mixed use development.*

- (3) *Despite clause 4.3 (2), development consent may be granted to development to which this clause applies that exceeds the maximum height shown for the land on the Height of Buildings Map (the maximum height) by no more than 7 metres if:*

- (a) the development will contain at least 1 dwelling used for the purpose of affordable rental housing, and*
- (b) at least 25% of the additional floor space area resulting from the part of the building that exceeds the maximum height will be used for the purpose of affordable rental housing.*

- (4) *In this clause, affordable rental housing has the same meaning as in State Environmental Planning Policy (Affordable Rental Housing) 2009.*

In accordance with the clause, application of 25 percent to the additional floorspace within the additional 7m height in the case of the Cavill Avenue proposal would equate to approximately 18 dwellings (a mix of one, two and three bedrooms).

It has been Council's practise (former Ashfield Council) when assessing a development application that chooses to take up the additional height (and resulting additional floor space) under Clause 4.3A to apply Development Consent conditions requiring the site owner to provide dwellings for management by a Community Housing Provider.

The Ashfield LEP 2013 references the definition of affordable housing in Clause 6 of the Affordable Rental Housing SEPP and this does not state there is any 10 year time limit. Clause 17 of the SEPP strictly applies to "Infill Affordable Housing" which has a 10 year limit. This Planning Proposal does not seek such development and any affordable housing provided would be provided in perpetuity.

For future development applications within "Area 1" Council can improve and give more legal certainty to this outcome by using the following development approval conditions:

DA Condition Restriction as to user in relation to Clause 4.3 A (3) of the Ashfield LEP 2013

Prior to the issue of a Construction Certificate (interim or Final), a Restriction on Use shall be created over Lot X pursuant to the provisions of Section 88E of the Conveyancing Act 1919 in the following terms:

The Restrictions are:

- a. A minimum of 25 percent of the floor space of Levels X and Y shall be used for the purpose of affordable Housing as defined in Clause 6 of the *State Environmental Planning Policy (Affordable Rental Housing) 2009*.
- b. All accommodation that is used for affordable housing will be managed by a community housing provider as defined by the Affordable Rental Housing SEPP
- c. *The Community Housing Provider shall provide an annual report to Council identifying that the dwellings are being managed and occupied as Affordable Housing.*
- d. Name and authority empowered to release, vary or modify the above restrictions shall be Inner west Council
- e. *Evidence is to be submitted to Inner West Council that restrictions A and B have been complied with prior to issue of the Occupation Certificate.*

New parts to the current condition are (c) and (e) shown in italics and would give increased certainty that the dwellings have been secured to be managed by a community housing provider. It is proposed that Council resolves that Development Assessment officers apply the above conditions for all applications in the Ashfield Town Centre utilising Clause 4.3 A (3) of the Ashfield LEP 2013.

In this scenario the provision of affordable housing is solely reliant on the land owner choosing to take up the option of the additional height and floor space.

3.0 Voluntary Planning Agreement (VPA)

3.1 VPA Policy

As advised by Council's VPA team the current practise undertaken for any VPA negotiation using the VPA policy is to seek 50% of the uplift in land value that would arise through a successful Planning Proposal. This value capture is not solely for affordable housing, and can cover other community benefit items which are not accounted for in Section 94 contributions.

To work out the uplift in "land value" Council commissions an independent assessment to determine the current value of the land (with the current zoning) and the future value of the land if the Planning Proposal is adopted. The difference between the two values is established and Council seeks 50% of the total as a VPA value.

The VPA team can seek to apply the above method to address Council's Affordable Housing Policy which states: "Council's share of land value uplift will be taken as 15% of Gross Floor Area of the development for developments with Gross Floor Area of 1700 sqm or greater, or where a development results in 20 or more dwellings".

Council's VPA team would negotiate a suitable contribution and this would be exhibited while the LEP amendment was being finalised. A pre-requisite for the making of the LEP would be that there was a mechanism in place, such as a restriction on the land title that would ensure that Council secured ownership of the affordable units.

3.2 VPA and LEP plan making process

The procedure for incorporating the VPA into the plan making process is:

- The Planning Proposal would be amended and be presented to a future Council meeting for Council to resolve to adopt the proposed land use zoning and amended LEP development standards.
- Approval is sought from the DPE to allow Council to continue to finalise the LEP amendments without carrying out further community consultation for the Planning Proposal.
- The making of the LEP amendment is deferred to account for the VPA process. Council officers negotiate a suitable VPA with the proponent. Council then receive a completed draft VPA offer which if acceptable is placed on public exhibition. A post exhibition report is made to Council and Council can then resolve to adopt the VPA. The LEP amendment would not be made until both parties had signed the final agreement.

The Applicant's VPA offer

Since the matter was considered by Council at its meeting on 24 July 2018 the applicant has made an offer to enter into a VPA so that Council could secure affordable housing in perpetuity – (see **Attachment 1**) as an alternative to the LEP approach in section 2 above. The VPA offer has been assessed as equating to the provision of three affordable housing units.

The VPA would only apply to the "uplift" of residential floor area above the existing 23 metres Maximum Building Height and above the 2.0:1 Maximum Floor Space Ratio. In this situation, (if a VPA is agreed by Council as the preferred mechanism) the proponent has requested that the site not be included in "Area 1" of the Ashfield LEP 2013 as they would have already provided their contribution to affordable housing via the VPA.

Also, the applicant is seeking to achieve the same Maximum Floor Space Ratio of 3.0:1 (as exhibited), and a Maximum Building Height limit of 30m to account for the 7m bonus (above current 23m) available under Area 1 via Clause 4.3 A of the Ashfield LEP 2013. This would be appropriate as the VPA would capture the “uplift” in the land value and is a similar mechanism to Clause 4.3 A which gives a bonus height if affordable housing is provided. As Council is the Planning Proposal Authority this amendment is permitted in accordance with section 3.35 of the Environmental Planning Assessment Act 1979, and allows Council to finalise the Planning Proposal subject to approval of the Minister for Planning.

4.0 Comparison of Ashfield LEP 2013 and VPA delivery mechanisms

Table 1

Ashfield LEP 2013	VPA
Mandatory - if Floorspace Bonus is taken up	Voluntary – subject to negotiation
Would provide approximately 18 affordable units (mix of 1,2,3 bedrooms) equating to 25 percent of the approved additional floorspace, in perpetuity.	Would provide between 3 units (under the proponent’s offer in Attachment 1) and up to 13 affordable units (under the 15 percent of uplift of Gross Floor Area requirement in Council’s Affordable Housing Policy).
Developer owns units.	Council owns units - receives rental income - offset by annual costs for management, upkeep and levies.
Managed by a community housing provider.	Managed by a community housing provider on behalf of Council.
Affordable homes are the only community benefit provided.	VPA negotiation might deliver mixture of fewer homes and other community benefits.
LEP amendment can be made quickly possibly by Feb 2019.	LEP amendment delayed possibly to mid to late 2019.
Applicant’s preferred approach.	Applicant has offered equivalent of 3 units under a VPA.

Additional information.

The proponent’s letter (**Attachment 1**) makes reference to the history of the Planning Proposal and previous time lines. The application was lodged in December 2016 which was the first time the actual Planning Proposal document was considered by Council officers. Prior to that the proponents had submitted a conceptual design for 16 storey buildings and was advised by letter in August 2016 that this would not be supported.

FINANCIAL IMPLICATIONS

Nil if Council determines to adopt the Ashfield LEP approach.

If Council determines to seek to negotiate a VPA and secures Council ownership of affordable housing units

OTHER STAFF COMMENTS

Council’s Property Team that manages VPA negotiations has been consulted.

PUBLIC CONSULTATION

Nil.

CONCLUSION

Council needs to determine which of the two delivery options identified in the report and compared in Table 1 that it wishes to pursue. The Ashfield LEP option would deliver 18 affordable housing units if the floorspace bonus is taken up. A VPA would deliver at least 3 affordable housing units, and potentially more subject to negotiation. The affordable housing units would only be transferred to Council ownership under the VPA approach.

ATTACHMENTS

1. [!\[\]\(444b1eae2189e5cd8d096594c07a0a6e_img.jpg\)](#) Proponent letter to Council
2. [!\[\]\(b81fe50bc966474a9bf510149094d8e3_img.jpg\)](#) Report to Council 24 July 18