

ITEM 13 CARLTON AND UNITED BREWERIES SITE, CHIPPENDALE - DRAFT PLANNING CONTROLS FOR PUBLIC EXHIBITION

FILE NO: SO33483

SUMMARY

This report recommends that the Council endorse the public exhibition of draft planning controls for the Carlton and United Breweries site (CUB site), Chippendale. This includes a draft local environmental plan (draft LEP - to amend the yet-to-be-gazetted draft *Sydney Local Environmental Plan 2005* – LEP 2005) and draft development control plan (draft DCP) to amend *Central Sydney Development Control Plan 1996* (DCP 1996).

At the time of writing this report, the terms of a planning agreement had not been agreed between the City of Sydney and the owner of the site. Such an agreement is necessary prior to gazettal of any local environmental plan, to resolve issues such as the provision of open space for the site. Despite this, it is considered that public exhibition of the draft LEP and draft DCP occur, and negotiations continue on the planning agreement.

The report also recommends the Council endorse the draft Conservation Management Plan, which was prepared early in 2005 by Noel Bell Ridley Smith and Partners with the assistance of Godden Mackay Logan, with the exception of the level of significance attributed to two buildings within the site, being buildings known as “33” and “35C”. The City recommends that:

- (a) the level of significance for Building 33 be altered from “some significance” to “moderate significance”; and
- (b) the level of significance for Building 35C be altered from “neutral significance” to “moderate significance”.

RECOMMENDATION

It is resolved that:

- (A) The *Draft Carlton and United Breweries Site Heritage Conservation Management Plan*, as shown in **Attachment D** to the subject report, be adopted to inform the conservation of the site, with the exception of the findings in relation to Buildings 33 and 35C, which shall have their level of significance altered from “some” (Building 33) and “neutral” (Building 35C) to “moderate” significance;
- (B) The *draft Sydney Local Environmental Plan 2005 (Amendment No. 1) - Carlton and United Breweries site*, as shown at **Attachment B** to the subject report, be endorsed for public exhibition for a period of 28 days, subject to the issue of a Section 65 Certificate by the Department of Infrastructure, Planning and Natural Resources and in accordance with the requirements of Section 66 of the *Environmental Planning and Assessment Act 1979*;
- (C) The *draft Central Sydney Development Control Plan 1996 (Amendment No. 19) - Carlton and United Breweries site*, as shown in **Attachment C** to the subject report, be endorsed for public exhibition for a period of 28 days, concurrently with the draft local environmental plan referred to in (B) above;

- (D) Discussions with the owner of the site regarding a planning agreement of the site continue (noting that the gazettal and finalisation of the draft *Sydney Local Environmental Plan 2005 (Amendment No. 1) - Carlton and United Breweries site* is contingent upon a voluntary planning agreement being entered into) and the proposed increase in the height limit is predicated upon provision of a large area of public open space;
- (E) Authority be delegated to the Chief Executive Officer to make any minor drafting amendments to the draft *Sydney Local Environmental Plan 2005 (Amendment No. 1) - Carlton and United Breweries site* and/or draft *Central Sydney Development Control Plan 1996 (Amendment No. 19) - Carlton and United Breweries site* should amendments be required following consideration of the Draft Plan by the Department of Infrastructure, Planning and Natural Resources, the Council or the Central Sydney Planning Committee or to improve legibility.

ATTACHMENTS

- Attachment A:** Previous Resolutions of the Central Sydney Planning Committee and Council in relation to the Carlton and United Breweries Site
- Attachment B:** *Draft Sydney Local Environmental Plan 2005 (Amendment No. 1) - Carlton and United Breweries Site*
- Attachment C:** *Draft Central Sydney Development Control Plan 1996 (Amendment No. 19) – Carlton and United Breweries Site*
- Attachment D:** Draft Conservation Management Plan by Noel Bell Ridley Smith, assisted by Godden Mackay Logan (executive summary and Conservation Policies – full copy available on request)
- Attachment E:** Submission to the Heritage Office regarding the draft CUB Heritage Conservation and inclusion of additional buildings recommended for listing and additional information on buildings 33 and 25C provided by Godden Mackay Logan
- Attachment F:** Executive Summary (and selected extracts) of the CUB Site Market Assessment Report by SGS Economics and Planning (full copies can be provided on request).
- Attachment G:** Extracts of built form analysis undertaken by representatives for the owner of the site and the City (with information comparing the design schemes) and an acoustic report regarding location of the proposed open space towards the Abercrombie Street boundary of the site
- Attachment H:** Submission to the Roads and Traffic Authority regarding the external Road configuration to the site
- Attachment I:** Guiding Principles as previously adopted by the Council and the Central Sydney Planning Committee
- Attachment J:** Comments received in response to Section 62 Consultation

CONFIDENTIAL ATTACHMENT

- Attachment K:** Confidential draft Planning Agreement Principles

BACKGROUND

1. The review of the planning controls for the Carlton and United Breweries Site (CUB site) and related matters has been the subject of several reports to the Council and Central Sydney Planning Committee (CSPC). A copy of the prior resolutions resulting from these reports is at **Attachment A** to this report.
2. A summary of the resolutions is as follows:
 - (a) **May 2004:** resolutions to prepare a draft LEP for the CUB site. The resolutions required the draft LEP to address a range of issues.
 - (b) **October 2004:** the completion of draft consultant studies relating to traffic and transport, and open space and community facilities. These studies were then publicly exhibited for comment.
 - (c) **March 2005:** the outcomes of the exhibition of draft consultant studies were reported to Council and CSPC, as was the workshopping of the "Guiding Principles".
 - (d) **August 2005:** CSPC consideration of planning policy principles to inform the drafting of a draft LEP and draft DCP.
3. The resolutions of May 2004 were far-reaching in their content, as they set out the process that the Council and the CSPC expected to be followed in preparing the revised controls for the site, as well as specifying various technical studies that were required to inform the controls. It is considered that the resolutions of May 2004 have been met. Following is a discussion of how the key component, Section (H) of the overall resolutions has been met within the draft LEP and draft DCP:
 - (a) *appropriate built form controls for the site (such as height and floor space ratio controls), that achieve an appropriate scale, recognising the built form in the area (including providing adequate consideration to the objectives of the provisions under Amendment No. 1 to South Sydney (Heritage and Conservation) DCP 1998, and which seek to improve upon the existing controls applying to the site*

Comment: the draft LEP includes revised height and floor space ratio controls that have been developed following an extensive site analysis and built form exercise. This exercise has been in turn, informed by the range of technical studies undertaken for the site, of which the heritage research has been a central informing study. Whilst Amendment No. 1 to *South Sydney (Heritage Conservation) Development Control Plan 1998* does not apply to the CUB site, its content has been considered in the development of the built form controls.

- (b) *provisions to require a mix of uses*

Comment: the draft LEP requires a set mix of residential and non-residential uses and allows for flexibility of uses within the non-residential uses.

- (c) *traffic management to ensure the existing neighbourhood streets are not adversely effected by traffic generated by the site, and to facilitate the equitable distribution of traffic to the road network, appropriate to the role of such roads*

Comment: extensive traffic and transport research has informed potential road layouts and traffic management measures (such as street closures to prevent potential for “rat runs”) for the future development of the CUB site. This work is largely represented in the draft DCP.

- (d) *the effect of the development on the surrounding public transport networks*

Comment: again, research regarding this aspect of transport has been undertaken as part of previous traffic and transport studies. Whilst the access to public transport from the site is very high, there are some concerns regarding the capacity of existing public transport networks.

- (e) *heritage controls to ensure new development respects the significance of certain buildings and places on the site.*

Comment: research regarding the site’s significance has been central to informing the draft planning controls at **Attachments B** and **C** to this report. Specifically a number of new buildings and building elements are proposed for heritage listing in the draft LEP at **Attachment B** to this report. The draft controls seek to develop a richness in the future urban form on the site, developed through the mix of existing heritage buildings with new development.

- (f) *appropriate public open space, for both a future population on the site and the local community*

Comment: the planning controls accommodate the possibility of a large, single piece of open space, with a minimum area of 5,000 square metres. However it is acknowledged that the delivery of this open space is dependent on the successful completion of discussions regarding the voluntary planning agreement for the site.

- (g) *leading practices in sustainable development, including: design measures to reduce use, and encourage reuse, of resources such as water and energy; reduction in reliance on cars; appropriate use of landscaping*

Comment: the draft DCP includes provisions regarding water sensitive urban design including the reuse of water on the site.

- (h) *appropriate provision and design of the public domain, to encourage public use and maximise safety*

Comment: whilst the public domain has not been designed in detail at this stage, the planning controls at **Attachments B** and **C** are considered to facilitate the design and delivery of a high-quality, safe and accessible public domain, including pedestrian and cycling access to and within the CUB site.

- (i) *measures to integrate the site with the neighbourhood such that it does not function as a “gated community” and provides full integration with the fabric and heritage of the existing community*

Comment: there are a range of measures that will assist in integrating the redevelopment with its surrounds. In the first instance, the height controls in the draft LEP seek to concentrate higher buildings on Broadway, where the UTS tower and other buildings such as the Mercure Hotel at Central Station create more of a CBD context for development. Height controls also retain the existing height limit for the majority of land that faces Chippendale to the south, (15m). Whilst a road and public domain network for the redevelopment has not been prescribed, the planning controls encourage integration and the continuity and seamlessness of networks. Finally, the draft LEP seeks to retain significant built heritage form on site, whilst the draft DCP provides more detailed guidance as to managing the conversion of this form into new uses and purposes.

- (j) *any new planning controls provide adequate protection against overdevelopment of individual sites and maintain the integrity of any proposed planning controls for the entire site after any future and subsequent subdivision(s) of the site*

Comment: it is considered that the planning controls package at **Attachments B** and **C** to this report represent an integrated, coordinated approach to the redevelopment of this very important site. The controls also foreshadow that the site may be subdivided, or developed in smaller parcels and segments, and thus ensure that parameters set for future development will work whether the site is developed as a whole, or in segments.

- 4. The area to the immediate east of the CUB site was included as part of the “wider study area” in the initial resolutions to prepare a draft LEP. The study area was not intended to be part of the draft planing controls but was identified to ensure that planning controls considered this area, specifically its context and proximity to the CUB site.

BACKGROUND – STUDIES UNDERTAKEN SINCE PRIOR RESOLUTIONS

- 5. There are 4 main matters which have not been previously reported to the Council. These are:
 - (a) the draft Heritage Conservation Management Plan (draft Heritage CMP – prepared by Noel Bell Ridley Smith assisted by Godden Mackay Logan);
 - (b) the market assessment report (SGS Economics);
 - (c) the built form analysis undertaken by the site owner and the City; and
 - (d) the traffic analysis, considering access to the site.

Conservation Management Plan

6. After a long iterative review process, the City received the final draft Heritage CMP on 18 June 2005. The draft was also lodged with the NSW Heritage Office on this day. The first draft of the draft Heritage CMP was undertaken by Noel Bell Ridley Smith, and was subject to further refinement by Godden Mackay Logan (both on behalf of the owner of the site, Fosters Ltd). The City of Sydney appointed Otto Cserhalmi and Partners to undertake an independent review of the draft Heritage CMP.
7. The site currently contains a number of listed heritage items (refer to **Attachment E**) including the Irving Street Brewing Precinct Chimney, a number of administration buildings on Kent Road, the Broadway street scape and two corner pubs on Broadway (County Clare and Australian Hotels). The draft CMP proposes to remove the Broadway street scape listing and a number of the Administration buildings from the CMP. The City's heritage consultants have supported this as no reasonable heritage grounds could be identified for their original listing.
8. The draft Heritage CMP has generally been completed to a high standard excepting one central issue – a difference of opinion on the significance of two buildings. **Attachment B** contains the policies contained within the draft Heritage CMP, the proposed heritage listings for inclusion in the draft LEP, and also identifies the two buildings in dispute.
9. Broadly, the draft Heritage CMP puts forward a three-level approach to the conservation and maintenance of the environmental heritage of the site:
 - (a) **statutory controls** – proposed listings of items in the draft LEP, with suggested levels of significance;
 - (b) **non-statutory controls** – relating principally to urban design and form, and the successful integration, recognition and interpretation of the site's heritage within any proposed redevelopment; and
 - (c) **conservation policies** – providing a basis for the future maintenance, conservation and interpretation of the site's environmental heritage.
10. Consultants engaged by the City of Sydney have identified the two buildings in question, being buildings "33" and "35C". Both buildings are located in the "Heritage Precinct" of the site and building 35C is a continuation of the Irving Street Group.
11. Both buildings are located on Carlton Lane. Building "33" is the old Malt Store and Building "35C" is part of the Irving Street Brewing Complex. The City's heritage consultants have advised that these buildings are more significant than shown in the draft Heritage CMP (refer to additional information on buildings 33 and 35C at **Attachment E**). Central to the City's argument on these two buildings is their importance in maintaining a precinct that reflects the site's (and Metropolitan Sydney's) industrial heritage, and that maintains the existing heritage grid pattern of streets and access within the site.

12. Fosters Ltd have argued that a central element of their preferred scheme for the development of the site - "Little Broadway" - is critical to the successful development of the site, as it offers buildings in the "Heritage Precinct" improved general access, address and sunlight access into the square (amongst other things). The City's perspective is that the "Heritage Precinct" in itself offers a unique development opportunity, and thus the loss of the buildings in question cannot be justified.
13. The City's heritage, built form and traffic consultants have reviewed the access issues and believe that whilst access to the "Heritage Precinct" is challenging, the development of the "Heritage Precinct" offers a unique opportunity for adaptation and reuse of heritage buildings to create a pedestrian scale, mixed-use precinct unique to Sydney, but more common in many other cities. Further, it is considered that options for a more ideal location for a shopping strip such as that proposed in "Little Broadway" are offered in Broadway, Balfour Street and Abercrombie Street, with both Balfour Street and Abercrombie Street offering connections into the established area of Chippendale.
14. As outlined above the draft CMP also contains 68 separate policy recommendations for the retention, management, maintenance and adoption of heritage. Of particular importance are the policies relating to the retention and adaptation of heritage items on the site which are linked to the items level of significance (refer to **Attachment B**). The policy for each level of significance is as follows:
 - (a) *Items of exceptional and high significance should be retained and conserved;*
 - (b) *Items of moderate significance should be retained and conserved but may be considered for removal;*
 - (c) *Items of some significance should be preferably retained but may be removed if retention is not feasible.*
15. All items proposed for listing within the draft CMP are graded at moderate of above significance. Further, the two buildings in dispute have been graded by the City's heritage consultants to be of "moderate significance".
16. At its meeting on 1 June 2005, the Heritage Council of NSW endorsed the draft Heritage CMP, "*subject to the issue of the level of significance of Building 33 and building 35C being resolved to the satisfaction of the director*". The City made representations to this meeting seeking approval of the draft Heritage CMP with a change regarding the two buildings in question – that they instead be identified as heritage items of local significance in a future local environmental plan. **Attachment E** contains the City's submission to the Heritage Office on this matter and outlines the significance of these two buildings in more detail.

17. On 15 August 2005, the Director of the Heritage Office notified the City that the draft CMP had been formally endorsed the CMP as it was submitted. The Heritage Council has a role regarding the draft Heritage CMP due to the ovoid drain being of recommended State significance (although it is not presently listed in *Central Sydney Local Environmental Plan 1996* or the State Heritage Register). However, the role of the Heritage Council in determining items of local significance is not clear, as it is usually the role of councils and consent authorities to put forward items of local significance for listing in local environmental plans. This means it is up to the Council and the CSPC to resolve to list the buildings notwithstanding the endorsement by the Heritage Council.

Market Assessment Report

18. The City appointed SGS Economics and Planning to provide advice on the potential land-use mix at the CUB site, and the planning measures that might support this in September 2004.
19. The completed report (refer to **Attachment F** for executive summary – full copy available on request) was submitted to Council officers on 16 May 2005, and its principal findings are summarised below:
 - (a) land use should be predominantly residential, rather than commercial. The report supports a land-use mix of 70% residential, 30% commercial;
 - (b) the intensity/density of development should be determined on urban design and amenity principles rather than be based on market forces;
 - (c) retention of the Irving/Carlton Street heritage grouping (the “Heritage Precinct”) could assist in enriching the character and amenity of any development, and in “branding” or marketing the site and surrounding area; and
 - (d) educational uses at the site will tend to reinforce existing creative industry clusters, and provide a vital link in the creative/cultural crescent that extends from Pyrmont to Sydney University through the CUB.
20. Primary to this report has been the support of a 70% residential, 30% non-residential land use split and advice highlighting the potential of retaining the heritage buildings in the heritage precinct to enrich the area and to “brand the site”.

Built Form Analysis

21. The owner of the site, Fosters Ltd, engaged Cox ATA (a combined team from Cox Richardson and Alexander Tzannes and Associates), who were the designers of the preferred scheme for the CUB site design competition. It is understood that Cox ATA was given a brief to further refine and analyse built form for the site.
22. The City engaged Bligh Voller Nield (BVN) to undertake separate and independent analysis of the site, to inform built form controls for the CUB site.
23. Extracts of work undertaken by both firms is contained at **Attachment G**. Discussion of the options/analysis is following.

BVN Analysis

24. BVN prepared two options for future planning controls for the site as follows:

- (a) a low-scale option within with current planning controls and not including an area proposed for open space; and
 - (b) an option including a piece of open space with the floor space that may have been allocated to the open space area transferred into additional building height elsewhere on the site.
25. The preferred option which reaches a density of approximately FSR 3.5:1 (identified as (b) above) is at **Attachment G**, shown in a 3D model and 2D plan. It should be noted that the BVN option uses a 15% efficiency factor (excluding an allowance for 2 metre deep balconies for residential buildings) that allows for modulation of buildings within the envelopes shown. Additional key elements of the preferred BVN built form option include:
- (a) **retention of heritage buildings in the north western quadrant of the site** (Irving Street/Carlton Street “Heritage Precinct”) and elsewhere, generally consistent with the draft Heritage CMP, except also including buildings “33” and “35C”. The street layout for BVN’s planning option is based on the historic grid pattern that already exists on the site and in the surrounding area.
 - (b) **location of approximately 5,000 sq.m of open space in the south-western quadrant of the site**, with its “short” face (i.e. width) to Abercrombie Street: an acoustic report (Attachment H) raises some issues with locating a park on Abercrombie Street, but also outlines options to mitigate the impacts of traffic noise to allow for passive uses (noise levels below that recommended for a National Park – 55dBA) using boundary treatment measures. It is arguable the noise rate chosen may be too low for an inner city environment.
 - (c) **State Environmental Planning Policy No. 65 Residential Flat Design Code solar amenity guideline** on a development site-by -site basis: this requires 70% of units to have at least 2 hours of sunlight between 9am and 3pm at mid-winter. The BVN option seeks to apply this control on a block-by-block basis.
 - (d) **location of taller buildings in the north-eastern quadrant of the site** running north-south with a residual predominant height of 31 metres: this predominant height is set by the height of nearby heritage buildings, amenity controls and *Building Code of Australia* requirements for fire stair access.
26. BVN propose to divide the site into “precincts” to allow more detailed planning controls to relate to each specific area. **Attachment G** contains the proposed precincts, including a “Heritage Precinct”, “Open Space Precinct” and three other precincts that would allow varying densities and mixes of development responding to the context of the area.

Fosters Ltd Preferred Scheme

27. Fosters Ltd and their consultants have also refined their development scheme (refer to **Attachment G**) which varies from the BVN planning option in a number of critical areas outlined below.
28. The main elements of the Fosters Ltd preferred scheme are:

- (a) **proposal of “Little Broadway”**: a commercial and shopping street that would require the partial or complete demolition of a number of heritage buildings including the “sun-burst” buildings along Balfour Street and Carlton Lane (one of which is a recommended heritage item in the draft CMP and the two others that are in dispute – buildings “33” and “35C”). Some other differences in internal road layouts also occur, particularly the alignment of O’Connor Street.
- (b) **location of approximately 5,000 sq.m of open space in the centre of the southern part of the site** (generally straddling both sides of what is Balfour Street): however the quantum of open space is consistent with the recommended quantum in the CUB *Community Facilities and Open Space Study* by Heather Nesbitt Planning and Fosters Ltd preferred quantum of open space.
- (c) **taller buildings along Broadway, as opposed to a north-south orientation**: the Fosters Ltd preferred scheme includes differences in the distribution of height across the site, and specifically in the south-eastern and south-western areas of the site.

Traffic Management In and Around the Site - Internal Road Layout and Circulation

- 29. The proposed internal road layout (shown at **Attachment G**) is based on the heritage grid pattern that exists in the site and in the surrounding area. Both the BVN and Fosters Ltd options are similar in respect of maintaining the heritage grid pattern, with the main difference being “Little Broadway” and the retention of the “Heritage Precinct” and the alignment of O’Connor Street.
- 30. The City commissioned Traffic and Transport Planning Associates (TTPA) to review the internal road layout prepared by BVN and have determined this layout option would provide appropriate traffic circulation and access for the development, while limiting “rat runs”.
- 31. Fosters Ltd have raised the internal road layout as a key problem within the BVN preferred option. In particular they are concerned that the street pattern in the heritage precinct:
 - (a) will not allow for vehicular access;
 - (b) will not allow for adequate turning of service vehicles;
 - (c) will cause pedestrian/vehicular conflict; and
 - (d) will not give individual sites an address.
- 32. However, advice from TTPA is that the street pattern as shown in **Attachment G** would provide satisfactory entry and exit arrangements for service vehicles as well as the opportunity to provide entry and exit points for basement car parks and pedestrian circulation.

Traffic Management In and Around the Site - Proposed External Road Configuration

33. To support the proposed development, a number of external road configuration changes have been proposed. This work has been managed by officers of the City with the assistance of traffic and transport consultants TTPA (commissioned by the City) and with the input of Masson Wilson Twiney (commissioned by Fosters Ltd).
34. Fosters Ltd have indicated support for the road configuration changes proposed as a result of this process.
35. A summary of the preferred position is as follows:
 - (a) two-way of Abercrombie Street between O'Connor Street and Cleveland Street. The configuration for this street would be one parking lane (eastern side of street), one south bound lane and two north bound lanes.
 - (b) new intersections at:
 - (i) Broadway and Balfour Street: full right hand turn in and out intersection including a pedestrian crossing;
 - (ii) Regent and "Old Kent" Streets: right hand turn in, no right hand turn out; and
 - (iii) Abercrombie and Irving Streets: right and turn in, no right hand turn out including a pedestrian crossing to Blackfriars.
 - (c) an amended configuration on Broadway between Railway Square and Abercrombie Street that reduces the number of westbound lanes to two car lanes and a bus lane (from three car lanes and a bus lane), moves the bus only right hand turn at Jones Street to Wattle Street.
 - (d) a pedestrian crossing across City Road at Myrtle Street.
36. **Attachment H** to this report is a submission made to the Roads and Traffic Authority (RTA) on these proposed changes. It contains more detail on the nature and rationale of the proposed changes. The RTA has been requested to work with the City to undertake the modelling required to test the proposal.
37. It should be noted that a key part of both Fosters Ltd's and BVN's options is a main right hand in-out intersection at the intersection of Balfour Street and Broadway.
38. Initial modelling undertaken by Fosters Ltd's consultants suggests that the above changes could be integrated into the arterial road network without significantly impacting on the functionality of these roads. This will need to be further tested with the RTA, which has agreed to use their regional road modelling tool "PARAMICS" to assess the impact of these proposed changes. However, development of the site can occur without RTA concurrence, although this would not be optimal for the wider area. It should be noted that the RTA has not yet endorsed any of the proposed changes.

THE DRAFT LOCAL ENVIRONMENTAL PLAN

39. The draft LEP recommended for exhibition is at **Attachment B** to this report.

40. The draft planning controls for the site were developed after considering the principles adopted by the CSPC on 18 August 2005, the guiding principles previously adopted and the various extensive analyses undertaken. The resolution of the CSPC from 18 August 2005 is included within **Attachment A** to this report.
41. The draft LEP, as far as possible, seeks to allow for the beneficial aspects of the work undertaken by built form consultants (and other consultants) for both the City and the owner of the site.
42. The draft LEP is framed as an amendment to the yet-to-be-gazetted draft Sydney LEP 2005.
43. The draft LEP contains written provisions applying to the following areas:
 - (a) **revised height limits (refer to maps in Attachment B)**: the recommended height controls seek to provide a gradation of height from the northern part of the site down to the southern part of the site. Five (5) building height limits have been set that allow this gradation to occur while offering some flexibility to increase heights where performance criteria can be met (this is consistent to a number of other controls in draft Sydney LEP 2005 and is discussed further below). The draft LEP amends the current height limit as it applies to the site by setting predominant heights that fall into five main numeric limits, which are:
 - (i) 12 metres (located on the eastern edge of the site in the “Kensington Precinct”, where the form of existing development is essentially low in scale). Additional height maybe considered as part of a development plan and subject to performance criteria;
 - (ii) 15 metres (located on the southern fringe of the site, adjoining Chippendale – this is essentially the existing height limit proposed in draft Sydney LEP 2005, however 30 metres is now proposed to be permissible on Abercrombie Street);
 - (iii) 30 metres (located in the central – western area of the site, known as the “Heritage Precinct”, and modelled upon the predominant height of heritage buildings to be retained on the site). Additional height may be considered as part of a development plan and subject to meeting specified performance criteria related to heritage considerations;
 - (iv) 45 metres (located in the central - eastern area of the site, known as the “Broadway Precinct” and essentially retaining the existing maximum height limit for the site). Additional height may be considered as part of a development plan and subject to meeting specified performance criteria; and
 - (v) existing height: a notation that acknowledges that the height of an existing building is predominant and permissible height. This mechanism is used in other parts of the CBD, usually to regulate the height of selected heritage buildings). This includes buildings 35C and 33 which are not recommended for retention in the heritage CMP.
 - (b) **provisions regarding “potential areas of increased height”**: this provision allows for height above the height limits providing certain design conditions are met. These conditions include:

- (i) that the additional height falls within a sun access plane for sun access to open space;
 - (ii) that the proposed additional height responds to specific requirements set by the draft LEP for the three sub-precincts within the draft LEP where additional height may be permitted. These precincts have been identified as different criteria for increased height appropriate to each area;
 - (iii) that the additional height is an appropriate design, exhibiting design excellence and resulting from a site analysis that would be conducted as part of a development plan;
 - (iv) that the proposal complies with clause 26 of draft Sydney LEP 2005 (i.e. design excellence requirements);
 - (v) that the proposed development is consistent with the public open space conditions of the draft LEP (refer below);
 - (vi) that the proposed development complements the height of any adjacent existing buildings proposed for retention; and
 - (vii) that any impact on the solar amenity of the public domain and surrounding residential buildings is considered acceptable.
- (c) **provisions regarding public open space:** the draft LEP introduces a new clause relating to design and location criteria for a central piece of public open space to be provided with the development. These criteria include:
- (i) a single area of open space within a minimum size of 5,000 square metres is to be provided;
 - (ii) the height buildings surrounding the open space are to be no greater than 31m in height;
 - (iii) less than 40% of the total area of the major piece public open space should be under shadow between 11am and 3pm, in midwinter, with the possibility of varying this control if the shadow cast arises from a heritage building that is proposed to be retained;
 - (iv) the open space is to be generally located in the vicinity of the southern and western boundaries and must provide opportunities for high quality pedestrian and visual linkages to areas immediately south and west of the site including Abercrombie Street; and
 - (v) the open space must be designed to provide for deep soil planting, and no vehicular access or parking is to be permitted below the open space.
- (d) **Provisions requiring a minimum 30% non residential land use.**
- (e) **sun access planes controlling overshadowing onto open space.** The sun access planes ensure that buildings will not overshadow open space. Flexibility for the location of the open space is provided, consistent with the CSPC resolution of 18 August 2005.

- (f) **identification of the north-western “Heritage Precinct” of the site as a new “Special Area”.** A character statement for this proposed Special Area is included in the draft LEP in a form and content that is generally consistent with other Special Areas.
- (g) **the removal of selected heritage listings and the addition of new heritage listings** (refer to Schedule 8 of **Attachment B**). The southern part of the administration block of the CUB site was assessed by both the owner’s and the City’s Heritage Consultants at a level of significance not requiring listing, hence this listing is proposed to be removed. Also the Broadway Street frontage has been recommended for removal with the support of the City’s heritage consultants. However a number of other potential heritage items that are currently not recognised are proposed to be listed within the draft LEP.
- (h) **floor space ratio controls (FSR)** (refer to maps in **Attachment B**). The draft LEP proposed for public exhibition contains a flat-rate of maximum FSR across the site, of 3:5:1. A previous report to the CSPC suggested an achievable FSR maybe in the vicinity of 3.5:1 to 4:1. However further design analysis has shown that an FSR of 4:1 would result in unacceptable urban design and amenity impacts. While there are some areas of possible increased height and density that are not contained within the BVN scheme (particularly along Broadway), there is concern with the height proposed along Kent Street to the east, and particularly towards the southern boundary.

Whilst the importance of the site in a metropolitan perspective is understood and is not disputed, an FSR of 4:1 for the site for a predominantly residential development is considered very dense and is considered to jeopardise the achievement of an acceptable standard of residential amenity for future dwellings on the site and an appropriate built form for the surrounding area. While the site’s owner has a skilled consultant team that has analysed the site and its potential extensively, the achievement of a 4:1 FSR results in building heights and relationships between buildings which are not appropriate. The height and bulk distribution is particularly problematic in the south-eastern and south-western areas of the site.

It should also be noted that roads and public domain are included in the FSR calculation meaning the actual building-by-building FSR is likely to be much higher (generally around 60% higher depending on mix of streets, open space and public domain). If roads were not included a base FSR of 3.5:1 would be in the vicinity of 4.2:1. Further, if roads and the public domain (including park) are excluded then the apparent FSR would reach approximately 6:1.

Further adding to the issue is the lack of “room” or space for further building articulation in the Fosters Ltd scheme. It seeks to achieve a 4:1 FSR and it also relies on only a 5% efficiency factor (compared to 15% for the BVN preferred option). This means that the massing model shown for the Fosters Ltd scheme would more closely resemble the real bulk, height and shape of the end built form, whereas the massing model for the BVN preferred option would have the capacity to accommodate some diversity in the form of building articulation.

FSR controls in the City's LEP are expressed as a maximum with no guarantee that this will be achieved. This point was reiterated by the design competition jury in its report of 3 June 2004 that noted "All schemes illustrated that the maximum development potential on the site (FSR of 4.4:1), under existing planning standards for a predominately residential use, cannot be reached on urban design, environmental and amenity grounds".

For these reasons a maximum FSR of 3.5:1 is recommended. Given the increase in maximum height controls and other considerations above this is not considered to be a "down zoning" as the achievable FSR is likely to be increased.

44. The draft LEP is generally a simple instrument that contains the basic built form controls that will enforce the height, bulk and nature of the built form. More detailed planning controls that will influence the detailed site design and planning are contained in the draft DCP recommended for exhibition (see below).

THE DRAFT DEVELOPMENT CONTROL PLAN

45. The draft DCP recommended for exhibition is at **Attachment C** to this report. The Draft DCP forms an amendment to the *Central Sydney Development Control Plan 1996* (DCP 1996). Because the new development control plan is an amendment, it only contains provisions that are beyond those in the existing DCP 1996. In the event of any inconsistencies between the amending draft DCP for the CUB site and any other parts of the DCP 1996, it is intended the provisions of the amending draft DCP will prevail.
46. The draft DCP contains provisions applying to the following areas:
 - (a) **aims and objectives:** the draft DCP includes the *Guiding Principles* developed by the City to guide the redevelopment of the CUB site.
 - (b) **land use:** The draft DCP contains provisions to encourage the development of an appropriate mix of land uses and delivery of open space in an orderly fashion, by:
 - (i) stipulating a minimum 30% non-residential uses;
 - (ii) defining the land use character of each of the four precincts; and
 - (iii) identifying where ground floor retail should be provided.
 - (c) **building design and form:** contains provisions that will:
 - (i) provide definition to the public domain; and
 - (ii) encourage the use of construction materials that complement and enhance the characteristics of the historic built form on the site.
 - (d) **residential amenity/State Environmental Planning Policy No. 65 (SEPP 65) application:** these provisions ensure that a high level of internal amenity is provided to all residential apartment buildings (although aggregated per precinct). Generally they are based on *SEPP 65 Residential Flat Design Guidelines: A*.

- (e) **public open space:** stipulates a delivery time within the staging of the development for the proposed public open space and provides design guidelines to ensure the park has:
 - (i) high amenity, including sun access, weather protection, safety and acoustic protection;
 - (ii) high connectivity to other local and regional open space; and
 - (iii) acts as an effective 'connector' between the old and new communities of Chippendale.
- (f) **pedestrian environment and amenity:** the draft DCP recognises the potential to significantly improve the pedestrian connectivity and amenity in an important urban area, by:
 - (i) providing awnings for all pedestrian routes, or colonnades where awnings are not appropriate;
 - (ii) encouraging ground floor uses that activate the public domain; and
 - (iii) establishing a network of local pedestrian connections between recognised 'pedestrian generators'.
- (g) **Community facilities:** encourages the provision of facilities which will encourage the long-term social sustainability of the development, including child care.
- (h) **vistas:** identifies those views which are considered significant, and provides controls to deal with their protection.
- (i) **urban water cycle management:** the CUB site redevelopment offers an opportunity to reduce the level of pollutants discharged into the Blackwattle Bay system, encourage maximum reuse of stormwater harvested from the site, and encourage reduction in the use of potable water in commercial development and the public domain.
- (j) **traffic and access:** develops access/egress points and an internal road layout that minimises the impacts on the surrounding residential areas, whilst allowing for good traffic access and circulation for the CUB site. The draft DCP also encourages the development of a positive cycling environment.

POLICY CONSISTENCY WITH THE GUIDING PRINCIPLES

47. The following outlines the recommended planning policies meet the earlier endorsed "Guiding Principles" (refer to **Attachment I** for Guiding Principles).
48. **Sense of Place:** the planning controls seek to "optimise" the site's capacity with increased height controls and an FSR of 3.5:1. The gradation of heights from Broadway down to the interface with the existing area of Chippendale will further integrate the site into Chippendale. The draft DCP also requires a mix of uses with a broad maximum of 70% residential uses and minimum 30% non residential uses. The greater protection of heritage fabric than currently protected will help engender a sense of place, together with opportunities for leading environmental management.

49. **Conserving our heritage:** the draft LEP contains a number of new heritage listings that have resulted from the extensive heritage analysis of the site. The draft LEP also identifies the north western quadrant as a “Special Area”.
50. **High quality design:** the draft DCP proposed for exhibition contains detailed design controls that are aimed to bring about a high quality urban form. The draft LEP is also subject to existing provisions within draft Sydney LEP 2005 that relate to design excellence.
51. **Diverse uses:** the draft LEP and DCP requires that the development contain a maximum 70% residential and minimum 30% non residential uses. Moreover, the adaptation and re-use of heritage buildings is encouraged.
52. **Sustainable transport:** the planning controls seek to build on the site’s excellent location in regard to public transport by optimising the site’s capacity. In regards to other forms of transport, bike and pedestrian paths have been planned to integrate the site into the wider area. Also, the development will be required to provide trip end facilities such as bike parking and showers in non residential buildings.
53. **Parks and open space:** the draft planning controls (both the draft LEP and draft DCP) provide guidance on the size location and quality of the open space to be provided.
54. **Public places and streets:** the draft planning controls are designed around retaining the “heritage grid pattern” for the future public domain. The draft DCP also contains provisions on the quality of the public domain.
55. **Social diversity:** the redevelopment of the site will need to comply with the City of Sydney’s existing residential apartment mix requirements. While it is an aim of the City that new development should provide for or contribute to affordable housing, in the case of the CUB site the *Redfern Waterloo Act 2005* allows the Redfern-Waterloo Authority/Department of Infrastructure, Planning and Natural Resources to levy for affordable housing from the site.
56. **Community services:** the provision of a child care centre and a community facility are currently being negotiated as part of a planning agreement between the City and Fosters Ltd.
57. **Environmental leadership:** the draft DCP contains provisions on urban water cycle management. This primarily relates to non residential buildings and public domain areas. The draft DCP aims for best practice standards in this regard. Residential buildings are covered by the *BASIX* State Environmental Planning Policy.

CURRENT CONTEXT

58. The stage of background studies has been completed. Subsequent to the work and analysis which has been completed and outlined in this report, City officers have prepared draft planning controls for consideration by the consent authorities of the Council and the CSPC.
59. It is recommended that exhibition of the draft planning package occur in September/October 2005. The planning package proposed for exhibition includes:

- (a) a site-specific draft LEP to amend the yet-to-be-gazetted *Central Sydney Local Environmental Plan 2005* (CSLEP 2005) containing necessary statutory planning controls for the site;
- (b) a draft DCP amendment to *Central Sydney Development Control Plan 1996* (DCP 1996) containing any necessary non-statutory controls (such as detailed design controls and land use controls); and
- (c) the draft planning package was developed in accordance with the Guiding Principles which were reported to the CSPC and Council in March 2005.

KEY IMPLICATIONS

60. This report will set in train a process whereby the draft LEP and DCP which are the subject of this report will be publicly exhibited for a period of 28 days.

FINANCIAL IMPLICATIONS

61. **Confidential Attachment K** to this report contains draft planning agreement principles. The draft planning agreement principles were forwarded to Fosters Ltd on 29 July 2005.
62. A planning agreement is a mechanism for the provision of necessary infrastructure as there will be a range of items required to support the development that are not included in the City's works or S61 Plan. However, as stated in the draft, if it is not agreed by the time the draft planning controls are endorsed, a statement relating to the need to include "satisfactory arrangements" for the provision of infrastructure can be included in the draft LEP. This meets DIPNR's best practice requirements for the recent *Environmental Planning and Assessment Amendment (Development Contributions) Act 2005* (new S. 93(f) of the *EP and A Act*).

OPTIONS

63. The main options are:
- (a) Endorse the draft LEP and DCP for exhibition;
 - (b) Make amendments to the draft LEP and DCP prior to exhibition;
 - (c) Defer exhibition of the draft plans until a planning agreement is finalised, and exhibit this at the same time. While there is some logic in awaiting a planning agreement, it is also important to set appropriate planning controls for the site unaffected by "comparisons" that may be inherent negotiating a planning agreement.

The draft planning controls have been drafted to only allow for height where other provisions are met. In this regard, controls are not "forced" on the owner.

RELEVANT LEGISLATION

64. The relevant legislation is:
- (a) *Environmental Planning and Assessment Act 1979*;
 - (b) *City of Sydney Act 1988*; and
 - (c) *Redfern-Waterloo Authority Act 2005*.

CRITICAL DATES / TIME FRAMES

65. It is planned that public exhibition of the draft planning controls for the CUB site will occur over September/October for a period of 28 days. Under the terms of recent state legislation, any planning agreement will also need to be publicly exhibited.

PUBLIC CONSULTATION

66. An important part of the research and preparation of planning controls has been community consultation. All stages of the planning of the CUB site have included community workshops, regular e-mail updates and web site exhibition of draft planning studies.
67. A community forum was held on Saturday 27 August 2005, whereby the principles behind the draft planning controls were presented to the Chippendale community (those who attended). Further, draft planning controls will undergo formal consultation prior to finalisation of plans.

Section 62 Consultation

68. The draft LEP has considered all agency advice gained through the S.62 (of the *Environmental Planning and Assessment Act 1979*) consultation. **Attachment J** contains a summary of all submissions and how issues raised in each submission have been addressed and or considered in site planning. Agency submissions were received from:
- (a) NSW Department of Education and Training;
 - (b) Rail Corporation NSW;
 - (c) NSW Department of Community Services;
 - (d) NSW Department of Housing;
 - (e) NSW Heritage Office;
 - (f) Roads and Traffic Authority;
 - (g) Sydney Water;
 - (h) Notre Dame University;

- (i) Catholic Archdiocese of Sydney; and
 - (j) State Transit Authority.
69. It is anticipated that draft planning controls will be exhibited for 28 days during September and October 2005. The exhibition will include:
- (a) updating the CUB web page with all exhibition material;
 - (b) a letter box drop to residents in Chippendale; and
 - (c) placing exhibition material at all customer service centres and at Pine Street Creative Arts Centre.
70. Exhibition may occur without a voluntary planning agreement. However, it should be noted such an (voluntary) agreement is necessary prior to gazettal, and will require public exhibition in accordance with a recently gazetted SEPP (quote).

CONCLUSION

71. The draft LEP and DCP recommended for public exhibition are considered to provide controls that will lead to a high quality, mixed use and environmentally sustainable development. These planning controls meet the original objectives of Council and the CSPC when it was resolved to prepare draft planning controls for the site in May 2004 and further meet the objectives of the *Guiding Principles* developed by the City to guide the development of policy for the site and broadly state the outcomes it wishes to achieve at the CUB site.

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