



northern
beaches
council

MEMOS

ORDINARY COUNCIL MEETING

TUESDAY 18 APRIL 2023

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Memo

Ordinary Council Meeting

Planning & Place

18 April 2023

To: Councillors
From: Peter Robinson Acting Director Planning & Place
Date: 18 April 2023
Subject: Memo – Item 12.1 Planning Proposal 159-167 Darley Street West, Mona Vale – PEX2023/0001
Record Number: **2023/245895**
Attachments: **1 Documents submitted by the Proponent**

Dear Mayor and Councillors

Item 12.1 on the Council Meeting Agenda 18 April 2023 regarding Planning Proposal (PEX2021/0001) for 159-167 Darley Street, Mona Vale, the report refers to the following documents submitted by the proponent -

- Letter of Offer Planning Agreement, s 7.4 of *Environmental Planning and Assessment Act 1979*, Planning Proposal – RR-2021-104 – 159-167 Darley Street West, Mona Vale – Intrec, dated 10 March 2023
- Letter RR-2021-104 – 159-167 Darley Street West, Mona Vale - Affordable Housing Contribution – Macroplan, dated 10 March 2023
- Development Feasibility Inputs - 159-167 Darley Street West, Mona Vale – Macroplan, undated

These documents are attached to this memo and are also available on Council's Application Search [Application Number PEX2021/0001 159-167 Darley Street West, Mona Vale](#)

Should you require any further information about matters raised in this memo please contact my office on Ph: 8495 6435.



Peter Robinson
Acting Director Planning & Place



Mr Ray Browlee PSM
Chief Executive Officer
Northern Beaches Council
PO Box 82
MANLY NSW 1655

Attention: Ms Louise Kerr, Director, Planning & Place

10 March 2023

Dear Sir/Madam

**RE: Letter of Offer – Planning Agreement
s7.4 of *Environmental Planning and Assessment Act 1979*
Planning Proposal – RR-2021-104 – 159-167 Darley Street West, Mona Vale**

I'm writing in relation to the Planning Proposal for 159-167 Darley Street West, Mona Vale (subject land) which seeks to rezone the subject land from the R2 – Low Density Residential zone to R3 – Medium Density Residential zone. I also refer to advice from the Northern Sydney Planning Panel regarding the gateway determination for the subject site and to the request from the panel for the applicant to progress a planning agreement addressing affordable housing requirements on the subject site.

This letter of offer is provided to Council in accordance with Council's Voluntary Planning Agreements Policy and Guideline adopted by Council on 12 December 2019. This letter of offer is also made having regard to the *Environmental Planning and Assessment (Planning Agreements) Direction 2019* made by the Hon. Anthony Roberts MP, Minister for Planning on 28 February 2019 and the Practice Note on Planning Agreements issued by the Department of Planning and Environment in February 2021.

This letter of offer recognises that an affordable housing contribution can only be required by Council as part of a development application and not as part of a planning proposal. The agreement is being entered into in advance of a development application being lodged and only commences when the subject land is included in the R3 – Medium Density Residential zone and as a condition of a subsequent development approval.

Proposed Offer

1. The developer undertakes to provide an Affordable Housing contribution (AHC) to Council as part of a development approval on the subject site for a residential flat building and multi dwelling development.
2. The parties agree that the contribution is to be determined in accordance with Council's AH Policy, noting that the development must remain viable.

3. The developer advises that based on the current proposal (12 x 1 bedroom apartments, 22 x 2 bedroom apartments, 4 x 3 bedroom apartments and 3 x 3 bedroom townhouses) and market conditions, an AHC equivalent to \$1,122,627 (2.085%) of the development is break-even for the subject site (detailed feasibility attached).
4. This equates to a contribution of \$183.44/m² of site area (6,120m²) across the subject site.
5. The Council agrees to amend the Northern Beaches Affordable Housing Contribution Scheme to include 159-167 Darley Street West, Mona Vale as a site to which the scheme applies.
6. The agreement is to be entered into prior to finalisation of the rezoning application with payment made in accordance with a subsequent development approval(s).

A detailed submission addressing the full policy requirements (including valuations and cost estimates from accredited professionals) will be submitted to Council as part of final negotiations on the planning agreement.

We look forward to progressing discussions with Council on this matter.

Yours faithfully



Andrew Thurlow
Development Director
Intrec Management Pty Ltd

macroplan

Macroplan Holdings Pty Ltd
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10 March 2023

Mr Ray Brownlee PSM
Chief Executive Officer
Northern Beaches Council
PO Box 82
Manly NSW 1655

Attention: Mr Neil Cocks, Manager, Strategic & Place Planning
neil.cocks@northernbeaches.nsw.gov.au

Dear Sir

**RE: RR-2021-104 – 159-167 Darley Street West, Mona Vale
Affordable Housing Contribution**

Thank you for our recent meeting held on 1 March 2023 with the Department of Planning and Environment (Department) regarding the Planning Proposal (PP) for 159-167 Darley Street West, Mona Vale (subject site). Thank you also for providing a copy of the HillPDA peer review on the Affordable Housing Contribution viability assessment prepared by Macroplan for the subject site.

The purpose of this letter is to provide feedback on the approach to be adopted by Council for an affordable housing contribution on the subject site, and to provide feedback on the HillPDA peer review so Council can progress the PP to the Department. We note that more than 90 days have passed since the PP was required to be submitted to the Department and we trust that Council will be able to progress the matter as soon as possible noting our advice regarding the impacts that project delays is having on the extent of a viable affordable housing contribution.

We note that the items outlined in this letter were largely discussed in our recent meeting and are detailed herein to reflect Intrec Management Pty Ltd's (Intrec) offer in relation to an Affordable Housing Contribution for the proposed development.

On behalf of Intrec, we reaffirm our commitment to addressing affordable housing on the site. Our proposition was (and remains) to address affordable housing by introducing a variety of household sizes which are limited in the Mona Vale area. In addition, we agree to provide a financial contribution to Council to assist in delivering Council's affordable housing program, even though (in our view) there are limited grounds in the *Environmental Planning and Assessment Act 1979* (EP&A Act) to impose this requirement at the PP stage.

Notwithstanding, we recognise that this is an important consideration for the Northern Beaches and based on the fact that it may be required at a later stage, we are happy to demonstrate our commitment to addressing this requirement now, provided that project

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viability is retained and continues to be retained up to and including the timing of payment. Project viability is a key consideration supported by the North District Plan (p44) and remains a key consideration for Intrec, noting the likely timeframes associated with finalisation of the PP, approval of a DA and issue of CC (circa 18 months).

We note that the Northern Beaches Affordable Housing Contributions Scheme (Contributions Scheme) was formally adopted by Council on 28 September 2021 after lodgement of the planning proposal. We also note that this was done in parallel with approval of the Frenchs Forest Precinct Strategy and that the scheme also now includes a second site at 1294-1300 Pittwater Road and 2-4 Albert Street, Narrabeen. The Narrabeen site was added to the Contributions Scheme in February 2022 with a contribution of 5.7% and has since been reduced by Council to 1.71%.

The reduction in contribution applicable to the Narrabeen site was based on an error in the calculation of GFA uplift. We note that Council's approach to Narrabeen has been to apply a contribution to the uplift in GFA enabled by the PP only. In this regard, the Narrabeen PP sought to increase the allowable GFA by 30% (i.e. 30% uplift x 5.7% contribution = 1.71%).

Whilst acknowledged by HillPDA, the approach to recognise 'existing GFA' or 'potential GFA' has not been applied in their review of the Mona Vale PP. Intrec has recently engaged Giles Tribe Architects to confirm the existing GFA on the site, and to identify allowable GFA under the existing zoning (see attached plans). The existing GFA on the subject site is 792m² and if the same approach to the one adopted by Council for Narrabeen was applied, we have identified that a potential residential GFA of circa 4,400m² could be developed on the site which would completely offset an affordable housing contribution. We realise that this was unlikely to be Council's intent, but the approach (and now precedent) supports a contribution only applying to the uplift in residential floor area (above potential GFA), enabled by the planning proposal. Given the confusion that this precedent has established, we believe that recognition of existing GFA should be applied as an absolute minimum with clarity on the treatment of potential GFA to be provided.

We also note that Council's preferred approach is for the PP to include an amendment to the Pittwater LEP 2014 (similar to clause 6.11 of the Warringah LEP 2011), together with an amendment to the Affordable Housing Contributions Scheme. We raise concerns about how this approach can reflect changes in project viability over time. Given the almost certain changes in project viability over the next 18 months while development approval processes are progressed, the approach to be adopted by Council must be agile enough to reflect viability changes without the requirement for an LEP amendment. We recognise that Council's preference is to 'guarantee' a contribution at the DA/CC stage, and we draw Council's attention to section 4.15 of the *Environmental Planning and Assessment Act 1979* which requires the Council to take into consideration "any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4" in determining the application.

Including a provision in the Pittwater LEP 2011 like the Warringah LEP 2011 will create a major impediment with changes in financial viability. If a provision is included in the LEP, an amendment to the LEP will be necessary prior to approval of a revised contribution if project viability changes. This will involve significant time and further uncertainty. We note from our discussions at the meeting on 1 March 2023 that Council is unlikely to determine a review of this nature to be minor or correcting an error.

Whilst Council rightly advised on the timeframes associated with a planning agreement being executed, there are no impediments to this process being run in parallel with the PP, including coordinated public consultation and this would still meet the direction provided by the Sydney North Planning Panel. The planning agreement could reflect the circumstances and processes to be followed including how changes to project viability are managed. We also note that Council's Contributions Scheme pre-empts Council undertaking negotiations through a proposed planning agreement for the provision of affordable housing, in connection with a development application or proposed development application, noting that the *Minister's Direction Environmental Planning and Assessment (Planning Agreements) Direction 2019* is to be considered.

We therefore respectfully request that our offer be considered in the context of a planning agreement (see Attachment A), noting that Council retains absolute certainty in relation to the payment given that Council will be the consent authority for the subsequent development application. Should Council wish to progress an amendment to the Pittwater LEP 2014 like clause 6.11 of the Warringah LEP 2011, we would recommend against including a "X%" in the associated mapping and instead identify the subject land only and reference in the relevant LEP drafting that a contribution is applicable in accordance with the Affordable Housing Scheme and/or Planning Agreement. This approach would ensure that future changes as a result of viability do not trigger unnecessary LEP amendments.

In relation to the peer review undertaken by HillPDA, we note that several of our comments raise items of consistency with Council's treatment of the Frenches Forest and the Narrabeen site. We note and agree with Council's comments from the meeting with the Department that it would be very helpful if the Department issued guidelines on the assessment of affordable housing contributions. In doing so, this would remove any inconsistency, particularly as additional projects are required to make a contribution. In the absence of this, we believe that the approach adopted by Council should be consistent with the approaches already adopted for these existing sites.

As detailed at our recent meeting, Macroplan drew its feasibility modelling for the subject site from the methodology prepared and approved by Council (and their consultants, SGS) for the Frenches Forest Precinct and the Narrabeen PP's. We did this to ensure consistency in approach to Council's determination of an appropriate Affordable Housing Contribution. We would seek for Council to take the same approach for the subject site and in doing so, this will necessitate some amendments to the modelling prepared by HillPDA.

We note that most of the assumptions adopted by HillPDA have come from the Macroplan feasibility assessment, except for some changes to:

- construction timeframes
- bank interest
- construction contingency
- treatment of GST on sales

Each of these issues are addressed in this review. Importantly, the HillPDA feasibility does not appear to account for the existing or potential GFA on the site (as outlined above) and this will result in a significant variation to the calculations attached in their review, even though they have noted it in section 1.2 of their report.

HillPDA Review

The HillPDA approach to the peer review included undertaking a review of the Macroplan feasibility study and testing the base case, 5% and 10% contributions and a tipping point if any of the contribution options were unfeasible. This was a similar approach to the one adopted by Macroplan, except the Macroplan review relied on the viability assessment assumptions agreed by Council for Frenches Forest and Narrabeen rather than establishing new assumptions not previously accepted by Council. It is understood that HillPDA's scope did not include a consistency check with previous applications of the affordable housing contribution.

In general, Macroplan agrees with many of the comments and recommendations made by HillPDA including comments on identified unit mix and treatment of GST. Specific comments are listed in Table 1 below on items discussed at our recent meeting and Macroplan's comments.

Table 1 – Macroplan – HillPDA Viability Model - Comparison

Item	Macroplan	HillPDA	Comment
Professional Fees	10% of construction costs	10% of construction costs	HillPDA have noted that this is on the high side. Approximately \$650,000 has already been spent by Intrec on technical studies. It is likely that 10% will be well under the real cost of progressing the PP, DA and CC for the site. 10% has been retained notwithstanding costs incurred to date for the PP
Credit for existing GFA	Yes – 742m ² which has now been calculated as 792m ² by the project architects	Acknowledged in Section 1.2 but has not been applied to any of the calculations	See comments above – Should be reflected in AH calculations
Contingency	10% of construction costs	5% of construction costs	Given the issues associated with supply chains, labour costs, inflation, interest rates and the fact that it is expected to be at least 18 months until construction can commence, 10% is an absolute minimum. It should be noted that Council adopted and applied 10% contingency at Frenches Forest and Narrabeen. 5% should only be used once a construction contract has been issued.

