

**DECISION OF 3768<sup>th</sup> COUNCIL MEETING  
HELD ON MONDAY 14 NOVEMBER 2022**

**10.15. 12-14 Waters Road Neutral Bay - Voluntary Planning Agreement**

**AUTHOR:** Neal McCarry, Team Leader - Policy

The purpose of this report is to seek Council's in-principle acceptance of an offer to enter into a Voluntary Planning Agreement (VPA) related to a Planning Proposal at 12-14 Waters Road Neutral Bay. The VPA offer includes a contribution of \$1.9 million dollars towards public domain upgrades in the Neutral Bay town centre.

On 26 April 2022, Council resolved to refuse a Planning Proposal at 12-14 Waters Road Neutral Bay. The Planning Proposal sought to increase the maximum building height from 16m to 26m.

Following this decision, the applicant lodged a re-zoning review with the Department of Planning and Environment. The re-zoning review was considered by the Sydney North Planning Panel on 31 August 2022 which recommended that the Planning Proposal should proceed to Gateway Determination, subject to some modifications including a reduction in height to 22m.

The Department of Planning and Environment are yet to issue a Gateway Determination to allow formal public exhibition of the Planning Proposal, however, this is expected to be issued in the coming weeks.

The applicant (Central Element) wishes to continue with its offer to provide a contribution towards additional public benefits. The letter of offer provides for a monetary contribution of \$1.9 million towards public domain improvements in the Neutral Bay Town Centre.

This report seeks Council's acceptance of this offer and for Council staff to be delegated authority to negotiate the detailed terms of the offer. If accepted, it is intended to publicly exhibit the draft VPA concurrently with the Planning Proposal.

The proposed Voluntary Planning Agreement would result in the receipt of an additional \$1.9 million dollars to be utilised for the delivery of public domain improvements. These funds would be in addition to the (\$7.11) developer contributions applicable to the development.

**RECOMMENDATION:**

- 1. THAT** Council resolve to accept, in principle, the letter of offer provided at Attachment 2 to enter into a Voluntary Planning Agreement.
- 2. THAT** Council grant delegated authority to the General Manager to negotiate the detailed terms of the draft Voluntary Planning Agreement.
- 3. THAT** the draft Voluntary Planning Agreement be exhibited concurrently with the Planning Proposal.
- 4. THAT** the outcomes of the public exhibition be further reported to Council.

The Motion was moved by Councillor Beregi and seconded by Councillor Spenceley.

The Motion was put and **Carried**.

Voting was as follows:

For/Against 9 / 1

**For:** Councillor Baker, Councillor Beregi, Councillor Drummond, Councillor Gibson, Councillor Lamb, Councillor Santer, Councillor Spenceley, Councillor Mutton and Councillor Welch

**Against:** Councillor Bourke

**Absent:** Nil

**360. RESOLVED:**

- 1. THAT** Council resolve to accept, in principle, the letter of offer provided at Attachment 2 to enter into a Voluntary Planning Agreement.
- 2. THAT** Council grant delegated authority to the General Manager to negotiate the detailed terms of the draft Voluntary Planning Agreement.
- 3. THAT** the draft Voluntary Planning Agreement be exhibited concurrently with the Planning Proposal.
- 4. THAT** the outcomes of the public exhibition be further reported to Council.

## **10.15.12-14 Waters Road Neutral Bay - Voluntary Planning Agreement**

**AUTHOR:** Neal McCarry, Team Leader - Policy

**ENDORSED BY:** Joseph Hill, Director City Strategy

### **ATTACHMENTS:**

1. Panel decision - Rezoning Review 12-14 Waters Road Neutral Bay [**10.15.1** - 3 pages]
2. Revised Letter of Offer - 12-14 Waters Road Neutral Bay - 21 October 2022 [**10.15.2** - 1 page]

### **PURPOSE:**

The purpose of this report is to seek Council's in-principle acceptance of an offer to enter into a Voluntary Planning Agreement (VPA) related to a Planning Proposal at 12-14 Waters Road Neutral Bay. The VPA offer includes a contribution of \$1.9 million dollars towards public domain upgrades in the Neutral Bay town centre.

### **EXECUTIVE SUMMARY:**

On 26 April 2022, Council resolved to refuse a Planning Proposal at 12-14 Waters Road Neutral Bay. The Planning Proposal sought to increase the maximum building height from 16m to 26m.

Following this decision, the applicant lodged a re-zoning review with the Department of Planning and Environment. The re-zoning review was considered by the Sydney North Planning Panel on 31 August 2022 which recommended that the Planning Proposal should proceed to Gateway Determination, subject to some modifications including a reduction in height to 22m.

The Department of Planning and Environment are yet to issue a Gateway Determination to allow formal public exhibition of the Planning Proposal, however, this is expected to be issued in the coming weeks.

The applicant (Central Element) wishes to continue with its offer to provide a contribution towards additional public benefits. The letter of offer provides for a monetary contribution of \$1.9 million towards public domain improvements in the Neutral Bay Town Centre.

This report seeks Council's acceptance of this offer and for Council staff to be delegated authority to negotiate the detailed terms of the offer. If accepted, it is intended to publicly exhibit the draft VPA concurrently with the Planning Proposal.

**FINANCIAL IMPLICATIONS:**

The proposed Voluntary Planning Agreement would result in the receipt of an additional \$1.9 million dollars to be utilised for the delivery of public domain improvements. These funds would be in addition to the (s7.11) developer contributions applicable to the development.

**RECOMMENDATION:**

1. **THAT** Council resolve to accept, in principle, the letter of offer provided at Attachment 2 to enter into a Voluntary Planning Agreement.
2. **THAT** Council grant delegated authority to the General Manager to negotiate the detailed terms of the draft Voluntary Planning Agreement.
3. **THAT** the draft Voluntary Planning Agreement be exhibited concurrently with the Planning Proposal.
4. **THAT** the outcomes of the public exhibition be further reported to Council.

## LINK TO COMMUNITY STRATEGIC PLAN

The relationship with the Community Strategic Plan is as follows:

### 2. Our Built Infrastructure

#### 2.1 Infrastructure and assets meet diverse community needs

#### 2.2 Vibrant public domains and villages

### 5. Our Civic Leadership

#### 5.1 Lead North Sydney's strategic direction

## BACKGROUND

### 1. Strategic Planning Context

#### Military Road Corridor Planning Study Stage 1 – Future Directions Report (MRCPS)

On 22 February 2021, Council adopted the Stage 1 post-exhibition report of the Military Road Corridor Planning Study – Stage 1 Future Directions Report (MRCPS).

The report was the product of three community consultation periods. An initial community survey was run in mid-2018. The aim of this work was to provide a framework to guide ongoing discussion with local landowners about the future development of the Centre. Its intent was to manage jobs and housing growth, while maintaining the village atmosphere of the Neutral Bay Town Centre whilst leveraging public domain and facilities embellishments and improvements to achieve these outcomes.

The most specific direction of the Study relating to the subject site, was the identification of a height uplift of 1 storey (from five to six stories) and a corresponding increase in the non-residential floor space requirements. The rationale for this was to ensure commercial floor space was provided in the centre to arrest the decline of such floor space due to the new, mainly residential development that has occurred under the current planning rules. It was intended that more detailed provisions would be outlined in a future amendment to the North Sydney Development Control Plan (NSDCP) 2013. Such draft amendments, however, were subsequently rejected by Council at its meeting on 23 August 2021.

At its extraordinary meeting on 24 January 2022, Council resolved to rescind this study. Council resolved:

- 1. THAT Council notes the submissions received and the issues raised during the exhibition.*
- 2. THAT Council notes the strong community feedback on the height and scale of the existing report received during the recent election.*
- 3. THAT Council does not adopt the Future Directions Report (dated 22 February 2021), as amended, as the strategic development framework for the Neutral Bay town centre.*
- 4. THAT That Council conduct a briefing on the rescission of the Future Directions Report prior to proceeding to Point 5 below.*

*5. THAT Council adds to its program and budget, the creation of an updated strategic development framework for the Military Road Corridor including Neutral Bay centre by engaging with the community and stakeholders to prepare a revised recommendation that has a better balance between development height and the provision of additional public open space.*

Whilst the Planning Proposal at hand was prepared in response to the MRCPS, given the study has been formally rescinded, it was no longer a current policy of Council at the time of assessment. This was a fundamental consideration and is discussed in further detail in the North Sydney Local Planning Panel Assessment Report.

## **2. Development Application at the Site**

### Development Application No 92/21

On 27 October 2021, the Sydney North Planning Panel granted a deferred commencement consent for a five (5) storey shop top housing (mixed use) development with 36 apartments on the upper levels, with substantial commercial/retail tenancies on the ground and lower ground levels and basement parking for 100 cars at Nos. 12-14 Waters Road, Neutral Bay. Consent was issued on 22 December 2021. The approval of this development included the provision of a 1.5m setback to Water's Lane to provide an improved pedestrian environment.

## **3. Planning Proposal**

A detailed history to the background of the Planning Proposal is contained in Council's Assessment Report which was considered by the North Sydney Local Planning Panel (NSLPP) on 13 April 2022, a copy of which can be viewed at:

[https://www.northsydney.nsw.gov.au/files/assets/public/docs/1\\_council\\_meetings/committees/nslpp/13\\_april\\_2022/pp03\\_12-14\\_waters\\_road\\_neutral\\_bay\\_-\\_pp222\\_rpt.pdf](https://www.northsydney.nsw.gov.au/files/assets/public/docs/1_council_meetings/committees/nslpp/13_april_2022/pp03_12-14_waters_road_neutral_bay_-_pp222_rpt.pdf)

On 26 April 2022, Council resolved to refuse a Planning Proposal at 12-14 Waters Road Neutral Bay. The Planning Proposal sought to increase the maximum building height from 16m to 26m and apply a non-residential floor space ratio (FSR) of 1.2:1. The reasons for refusal were the absence of an endorsed strategic study supporting the change and the height being excessive (for the provision of an additional story). An offer to enter into a Voluntary Planning for the provision of public benefits was provided by the applicant, however, due to Council's non-support of the Planning Proposal, the VPA was not supported.

Following Council's refusal of the Planning Proposal, the applicant lodged a re-zoning review with the Department of Planning and Environment. This was considered by the Sydney North Planning Panel who on 1 September 2022 issued a recommendation, subject to amendments, in support of the progression of the Planning Proposal. This is provided at Attachment 1.

## **CONSULTATION REQUIREMENTS**

Community engagement will be undertaken in accordance with Council's Community Engagement Protocol.

## **DETAIL**

The Sydney North Planning Panel considered the re-zoning review application at its meeting of 31 August 2022. Council officers made written and verbal representations to the panel, highlighting key issues of concern.

The Panel, in its decision of 1 September 2022 (refer Attachment No 1), found that the proposal had demonstrated strategic merit and could, subject to amendment, satisfy the test of site-specific merit. The panel recommended that the Planning Proposal be amended to provide a maximum building height of 22m with a 2m allowance for lift overrun and roof top facilities. This represented a reduction from the 26m height limit initially sought by the applicant.

In making this recommendation, the Panel was satisfied that the Planning Proposal as amended would be consistent with Council's objective of finding an appropriate balance between additional height, employment generating opportunities and additional open space.

Since the issuance of this recommendation, the applicant has been addressing the recommendations of the panel and it is understood that the Department of Planning will consider the issuing of a Gateway Determination in the coming weeks. The Planning Panel will act as the Principal Planning Authority (PPA) in accordance with the State Government's new (December 2022) LEP making guidelines. This will mean that the Panel will host the public exhibition of the Planning Proposal.

The applicant (Central Element) has indicated that it wishes to honor its earlier offer to enter into a VPA for the delivery of public benefits. This offer has been updated and simplified, and is provided at Attachment 2. The offer comprises a monetary contribution towards public domain improvements. This contribution would be in addition to the site frontage upgrade works ordinarily associated with a Development Application of this nature. The offer is also in addition to the developer contributions applicable under the (section 7.11) North Sydney Local Infrastructure Contributions Plan 2020.

The additional height being sought under the Planning Proposal may facilitate the delivery of approximately 7 additional apartments on the site, when compared to the approved DA. As a proportion of the development uplift, the offer of \$1.9 million dollars is significant. Given the recommendations of the Sydney North Planning Panel and impending Gateway Determination, Council has limited basis upon which to seek a greater quantum of public benefits under a Voluntary Planning Agreement.

Notwithstanding Council's objections to the progression of the Planning Proposal, the provision of significant funding (\$1.9 million) towards public domain upgrades and initiatives within the Neutral Bay Town Centre, is considered a worthwhile contribution in this context.

## **NEXT STEPS**

Should Council accept the offer tabled by the applicant, the detailed terms of the VPA (including timing of payment, registration of the agreement on title, security etc.) will be negotiated by Council staff. It is noted that the letter of offer seeks to provide the contribution prior to the issue of an occupation certificate of the upper level of the development. In order to reduce risk of non fulfilment of obligations under the VPA, it is recommended that Council accept the offer on the basis of payment of the monetary contribution be made prior to issue of any occupation certificate on the site.

Upon satisfactory completion of drafting, the VPA would be placed on exhibition concurrently with the Planning Proposal. Whilst Council is not acting as the PPA on this matter, following exhibition, the outcome of the VPA exhibition would be reported to Council for a final decision as to whether to enter into the agreement. It is preferable that this occurs prior to the finalisation of any amendment to the LEP.




**REZONING REVIEW  
RECORD OF DECISION  
SYDNEY NORTH PLANNING PANEL**

<b>DATE OF DETERMINATION</b>	1 September 2022
<b>DATE OF PANEL DECISION</b>	1 September 2022
<b>PANEL MEMBERS</b>	Julie Savet Ward (Acting Chair), Chris Wilson, Sue Francis
<b>APOLOGIES</b>	Peter Debnam and Brian Kirk
<b>DECLARATIONS OF INTEREST</b>	Nil

**REZONING REVIEW**

Request for a Rezoning Review - RR-2022-13 - 12-14 Waters Road, Neutral Bay

The rezoning review request seeks to amend the North Sydney Local Environment Plan 2013 on land at 12-14 Waters Road, Neutral Bay to facilitate a 5-6 storey mixed-use development by increasing the maximum height of buildings from 16m to 24m, to introduce a minimum floor space ratio of 1.2:1 and introduce a site-specific clause to enable rooftop facilities for an overall height of 26m.

Reason for Review:

- ☒ The Council has notified the proponent that the request to prepare a planning proposal has not been supported
- ☐ The Council has failed to indicate its support 90 days after the proponent submitted a request to prepare a planning proposal or took too long to submit the proposal after indicating its support

**PANEL CONSIDERATION AND DECISION**

The Panel considered: the material listed at item 4 and the matters raised and/or observed at meetings and site inspections listed at item 5 in Schedule 1.

Based on this review, the Panel determined that the proposed instrument:

- ☒ **should** be submitted for a Gateway determination because the proposal has demonstrated strategic and site-specific merit
- ☐ **should not** be submitted for a Gateway determination because the proposal has
  - ☐ not demonstrated strategic merit
  - ☐ has demonstrated strategic merit but not site-specific merit

**PANEL CONSIDERATION AND DECISION**

The Panel met with the Department, Council officers and the Proponent and discussed the planning proposal, including suggestions made by the Proponent to adjust the planning proposal to better address the concerns of Council outlined in their assessment of the planning proposal.

The Panel was cognisant of the existing approval on the site for a five-storey mixed use development with open space and community facilities on its rooftop with a clause 4.6 variation to a maximum height of 21.3 metres. This development is under construction.

The Panel recognised the process for the Neutral Bay Town Centre – Future Directions Planning Study and Council's rescission and directive for the preparation of a new development framework and strategy which was to find a 'better balance between height and the provision of additional public space'




The Panel unanimously agreed that the planning proposal has strategic merit given its alignment with Council's planning and community consultation over the last four years for the local area and Council's direction to find a balance between additional height, employment generating opportunities and additional open space.

However, in terms of site-specific merit, the Panel unanimously agreed that the planning proposal needs to be amended to decrease the maximum mapped height of the building from 26 metres to 22 metres with a site-specific provision of 2 metres for rooftop open space and community facilities. The Panel also recommends reconsideration of the floor to ceiling height of the below ground commercial area and the ground level void in light of the overall maximum height of the building to better allow equitable access to roof top facilities. All documentation, including the site-specific DCP, needs to be adjusted accordingly.

The Panel was satisfied that the Planning Proposal as amended would be consistent with Council's objective of finding an appropriate balance between additional height, employment generating opportunities, and additional open space. Consequently, the proposal is suitable to proceed to Gateway Determination.

In accordance with Section 3.32(1) of the Environmental Planning and Assessment Act 1979, the Planning Panel, as delegate for the Minister for Planning, has determined to appoint itself as the Principal Planning Authority for this planning proposal.

The Panel's decision was unanimous.

PANEL MEMBERS	
 Julie Savet Ward (Acting Chair)	 Sue Francis
 Chris Wilson	

SCHEDULE 1		
1	PANEL REF – LGA – DEPARTMENT REF - ADDRESS	RR-2022-13 – North Sydney - 12-14 Waters Road, Neutral Bay
2	LEP TO BE AMENDED	North Sydney Local Environment Plan 2013
3	PROPOSED INSTRUMENT	The rezoning review request seeks to amend the North Sydney Local Environment Plan 2013 on land at 12-14 Waters Road, Neutral Bay to facilitate a 5-6 storey mixed-use development by increasing the maximum height of buildings from 16m to 24m, to introduce a minimum floor space ratio of 1.2:1 and introduce a site-specific clause to enable rooftop facilities for an overall height of 26m.
4	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> <li>Rezoning review request documentation</li> <li>Briefing report from Department of Planning and Environment</li> </ul>
5	BRIEFINGS AND SITE INSPECTIONS BY THE PANEL/PAPERS CIRCULATED ELECTRONICALLY	<p><b>Site inspection</b> has been curtailed due to COVID-19. Panel members to undertake site inspection individually.</p> <ul style="list-style-type: none"> <li><b>Briefing with Department of Planning and Environment (DPE):</b> 31 August 2022 <ul style="list-style-type: none"> <li>Panel members in attendance: Julie Savet Ward (Acting Chair), Chris Wilson, Sue Francis</li> <li>DPE staff in attendance: Matthew Rothwell, Brendan Metcalfe, Charlene Nelson</li> </ul> </li> </ul>

		<ul style="list-style-type: none"> <li>• <b>Briefing with Council:</b> 31 August 2022 <ul style="list-style-type: none"> <li>○ Panel members in attendance: Julie Savet Ward (Acting Chair), Chris Wilson, Sue Francis</li> <li>○ DPIE staff in attendance: Matthew Rothwell, Brendan Metcalfe, Charlene Nelson</li> <li>○ Council representatives in attendance: Marcelo Occhiuzzi, Neal McCarry</li> </ul> </li> <li>• <b>Briefing with Proponent:</b> 31 August 2022 <ul style="list-style-type: none"> <li>○ Panel members in attendance: Julie Savet Ward (Acting Chair), Chris Wilson, Sue Francis</li> <li>○ DPIE staff in attendance: Matthew Rothwell, Brendan Metcalfe, Charlene Nelson</li> <li>○ Council representatives in attendance: Marcelo Occhiuzzi, Neal McCarry</li> <li>○ Proponent representatives in attendance: Daniel Barber, Benjamin Knowles, Adam Haddow, Wesley Grunsell</li> </ul> </li> <li>• Papers were circulated electronically on 24 August 2022.</li> </ul>
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Letter of Offer – 12-14 Waters Road, Neutral Bay



21 October 2022

General Manager  
North Sydney Council  
200 Miller Street  
North Sydney, NSW 2060

Attention: Neal McCarry, Team Leader Policy

**Planning Agreement Offer - Planning Proposal No.2/22 at 12-14 Waters Road, Neutral Bay**

CE Waters Pty Ltd a subsidiary of Central Element Pty Ltd offers to enter into a Planning Agreement with North Sydney Council under section 7.4 of the Environmental Planning and Assessment Act 1979 in connection with Planning Proposal No.2/22. CE Waters Pty Ltd accepts the terms as generally set out in the Council's Planning Agreement template and in the following table.

Item	Terms
<b>Parties</b>	North Sydney Council and CE Waters Pty Ltd
<b>Land</b>	Legally described as SP68360 and Lot 18 in DP537700 at 12-14 Waters Road, Neutral Bay
<b>Planning Proposal / Development Application</b>	<p>The proposal seeks amendments to the North Sydney Local Environmental Plan 2013 (NLEP 2013) including:</p> <ul style="list-style-type: none"> <li>• Increase the maximum Height of Building Standard from 16m to 22m to enable an additional six storey to be accommodated;</li> <li>• The introduction of a site-specific provision to enable community facilities, plant and vertical circulation to achieve a maximum height of 24m; and</li> <li>• Increase the minimum non-residential floor space ratio (FSR) Standard from 0.5:1 to 1.2:1 to provide more employment opportunities and services in the Neutral Bay Town Centre.</li> </ul>
<b>Monetary Contribution</b>	Monetary Contribution to value of <b>\$1,900,000</b> payable prior to the issue of an Occupation Certificate for the sixth storey.
<b>Application of section 7.11, 7.12 and 7.24</b>	The offer is not subject to the exclusion of sections 7.11, 7.12 or 7.24 of the Act.
<b>Dispute Resolution</b>	The future planning agreement based on North Sydney Council proforma template and will detail terms relating to dispute resolution are accepted or are to be amended.
<b>Security</b>	No security is to be provided as no works on North Sydney Council's land are proposed.
<b>Restrictions on Issue of Certificates</b>	The provision restricts the issue of an Occupation Certificate for the six storey until the voluntary monetary contribution is receipt by North Sydney Council.
<b>Costs</b>	CE Waters Pty Ltd agrees to pay Council's reasonable costs of and incidental to the negotiation, preparation and entering into the agreement, as well as administration and enforcement of the planning agreement in accordance with the terms set out in the template planning agreement.

Yours faithfully.

Daniel Barber  
Head of Planning  
CE Waters Pty Ltd

Suite 4, Level 17  
100 Miller Street  
North Sydney NSW 2060

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