

Item No: C08/21-823

## **FRESH HOPE CARE, DUNMORE STREET, PENDLE HILL - PLANNING PROPOSAL, SITE-SPECIFIC DEVELOPMENT CONTROL PLAN AND REVISED PUBLIC BENEFIT OFFER**

Responsible Division: Environment & Planning  
Officer: Director Environment & Planning  
File Number: PP2020/0012  
Community Strategic Plan Goal: *A resilient built environment*

### **SUMMARY**

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On 5 May 2021, Council considered a report on a revised Planning Proposal, draft site-specific Development Control Plan and Public Benefit Offer to enter into a Voluntary Planning Agreement for Fresh Hope Care, Dunmore Street, Pendle Hill. At the meeting, Council resolved to proceed to exhibition with the revised Planning Proposal and the draft site-specific Development Control Plan. Since this time, the revised Planning Proposal and draft site-specific Development Control Plan were publicly exhibited in accordance with policy and statutory requirements. The report outlines the feedback received during exhibition and the next steps to finalise the planning controls.

In relation to the Public Benefit Offer, Council resolved at the 5 May 2021 meeting to inform the Proponent that their original offer is not acceptable and to invite resubmission of an offer for further consideration. A revised Public Benefit Offer was submitted by the Proponent in June 2021 and considered by Council on 7 July 2021. At the meeting, Council resolved to defer finalisation of the proposal pending renegotiation of the monetary component of the offer. Consistent with the resolution, Council officers attempted to renegotiate the offer; however, the Proponent has confirmed that they are not able to increase the monetary contribution component beyond that outlined in their revised Public Benefit Offer.

Separately, the Proponent has written to the Department of Planning, Industry and Environment requesting that an alternate Planning Proposal Authority be appointed for the planning proposal under Section 3.32 of the *Environmental Planning and Assessment Act 1979*. The Department has written to seek Council's views on why an alternate Planning Proposal Authority should not be appointed, and Council officers have provided a response that outlines the reasons why Council should continue as the Planning Proposal Authority. It is noted that Council's work in progressing the Planning Proposal can continue while this process is underway.

It is recommended that Council finalises the Planning Proposal and site-specific Development Control Plan. It is also recommended that Council provides in-principle support for the revised Public Benefit Offer and outlines the next steps in formalising the offer through a Voluntary Planning Agreement.

## RECOMMENDATION

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### That Council:

1. **Adopt the exhibited planning controls for Fresh Hope Care, Dunmore Street, Pendle Hill, being:**
  - a. **Rezone part of the site from R2 Low Density Residential and R3 Medium Density Residential to R4 High Density Residential and RE2 Private Recreation**
  - b. **Amend the Height of Buildings control for the site from 9m and 11m to 12.5m, 23m and 32m**
  - c. **Amend the Floor Space Ratio control for the site from 0.5:1, 0:7:1 and 0.85:1 to 0.85:1, 1.2:1, 1.5:1 and 1.8:1**
  - d. **Amend Schedule 1 and additional permitted uses mapping to permit 'food and drink premises' on the Ashwood House portion of the site.**
2. **Finalise the Planning Proposal, as delegated by the Minister, following execution of the Voluntary Planning Agreement and registration on title.**
3. **Note that the Local Environmental Plan amendment will be published in the Government Gazette upon finalisation.**
4. **Adopt the site-specific Development Control Plan as an amendment to the Holroyd Development Control Plan 2013, as provided in Attachment 3, with the Development Control Plan coming into effect on the date of notification (gazettal) of the Local Environmental Plan amendment.**
5. **Endorse that the site-specific Development Control Plan provisions be carried over to the new Cumberland Development Control Plan when this is in force, as provided in Attachment 4.**
6. **Delegate to the Acting General Manager the authority to make minor, non-policy corrections or formatting changes to the draft Development Control Plan controls, if required, prior to it coming into effect.**
7. **Endorse in-principle the revised public benefit offer from the Proponent for Fresh Hope Care, Dunmore Street, Pendle Hill, as provided in Attachment 5.**
8. **Endorse and delegate authority for the Acting General Manager to prepare a draft Voluntary Planning Agreement for Fresh Hope Care, Dunmore Street, Pendle Hill, in accordance with the revised public benefit offer, and to exhibit the draft Agreement for 28 days in accordance with statutory and policy requirements.**
9. **Endorse and delegate authority for the Acting General Manager to finalise the Voluntary Planning Agreement for Fresh Hope Care, Dunmore Street, Pendle Hill, subject to no significant objections on the Agreement being received during exhibition.**
10. **Endorse and delegate authority for the Mayor and Acting General Manager to execute the Voluntary Planning Agreement on behalf of**

**Council for Fresh Hope Care, Dunmore Street, Pendle Hill, subject to no significant objections on the Agreement being received during exhibition.**

- 11. Note that the Department of Planning, Industry and Environment has written to seek Council's views on why an alternate Planning Proposal Authority should not be appointed, and Council officers have provided a response that outlines the reasons why Council should continue as the Planning Proposal Authority.**

## REPORT

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### **Background**

On 5 May 2021, Council considered a report on a revised Planning Proposal, site specific Development Control Plan and Public Benefit Offer for Fresh Hope Care, Dunmore Street, Pendle Hill. At the meeting, Council resolved to:

- "1. Note the revised Planning Proposal for Fresh Hope Care, Dunmore Street, Pendle Hill, following receipt of a Gateway Determination by the Department of Planning, Industry and Environment.*
- 2. Endorse the site-specific Development Control Plan for Fresh Hope Care, Dunmore Street, Pendle Hill, to be placed on public exhibition for a period of 28 days.*
- 3. Inform the proponent of the Public Benefit Offer for Fresh Hope Care, Dunmore Street, Pendle Hill, that the offer is not acceptable to the Council and invite resubmission of an offer for further consideration.*
- 4. Defer preparation of a draft Voluntary Planning Agreement subject to Council providing in-principle support or acceptance of a resubmitted Public Benefit Offer."*

Consistent with Council's resolution, Council officers entered into further discussions with the Proponent regarding the potential to increase the monetary component of the public benefit offer.

On 7 July 2021, Council considered a report on the Planning Proposal, site-specific Development Control Plan and revised public benefit offer for Fresh Hope Care, Dunmore Street, Pendle Hill. At the meeting, Council resolved as follows:

*"That Council not proceed with the planning proposal at this stage and seek to renegotiate the monetary component of the public benefit offer."*

### **Public Exhibition**

Consistent with Council's 5 May 2021 resolution, the revised Planning Proposal and draft site-specific Development Control Plan were publicly exhibited as required by existing statutory and policy requirements from 13 May 2021 to 9 June 2021. The exhibition involved online notification of the exhibition material, with hard copies made available at selected customer service centres and libraries, and written notification to owners and occupiers within 400 metres of the site.

As required by the Gateway Determination, Council consulted with the following public agencies:

- Heritage NSW
- Transport for NSW
- NSW State Emergency Service
- DPIE's Environment, Energy and Science Group
- Department of Education
- Sydney Water.

A total of 19 public submissions were received as part of this process. These included:

- One submission to object to the proposal in relation to building heights and potential overshadowing and 'wind tunnel' effects. The submission included a request to reduce the proposed 32 metre height of building control to 23 metres.
- 18 submissions in support of the proposal on the basis that it will deliver a wide range of social and economic benefits to be enjoyed by the local community, now and in the future. These included submissions from Fresh Hope Care and Pathways Community Church who operate the existing retirement village and church on the site.

A total of four public authority submissions were also received as part of this process, with the key items in these submissions outlined in Table 1.

<b>Public Authority</b>	<b>Key Items in Submission</b>
Department of Planning, Industry and Environment's Environment, Energy and Science Group	Consider site-specific development controls on flooding by setting appropriate floor levels, requiring underground parking to be free from flood, and development of a Flood Management Plan for emergency management and flood awareness
Transport for NSW	Consider a range of matters, including opportunities to minimise the provision of on-site parking, improvements to public and active transport facilities, provide a shelter at local bus stops, and potential cumulative traffic and transport impacts
Heritage NSW	Confirmed that the proposal will not impact on any items of State heritage significance. Consider a range of matters in relation to the assessment and management of 'relics' and potential impacts on local heritage items
Endeavour Energy	No objections to the planning proposal. Consider a range of matters for the development application stage.

Table 1: Key Items in Public Authority Submissions

### ***Planning Proposal***

The Planning Proposal was revised in response to the Gateway Determination prior to public exhibition. Key changes to the document that were included in the revised planning proposal for public exhibition included the following items:

- Height of buildings mapping amended to provide a transition to lower density residential development to the west along Pendle Way. Amendments broadly reflect the indicative masterplan while maintaining flexibility for future building design at DA stage
- Floor Space Ratio mapping amended to respond to the amended maximum height of buildings across the site
- Additional permitted use mapping amended so that the proposed use only applies to the Ashwood House portion of the site
- Various other amendments to further demonstrate the proposal's consistency with the broader planning framework and policy context, and to ensure clarity and legibility of mapping for public exhibition.

The issues raised in community and public authority submissions have been considered by Council officers and are matters which can be addressed in detail at the development application stage. In relation to the cumulative traffic and transport impacts of development in the area as outlined in the submission by Transport for NSW, this will be considered as part of work on Pendle Hill, with the timing of this work in accordance with Council's strategic planning work program.

Following consideration of the submissions, no changes are proposed to the planning proposal. It is recommended that Council adopt the planning controls provided during public exhibition and finalise the planning proposal (Attachment 1).

### ***Site-specific Development Control Plan***

Consistent with Council's September 2020 resolution, a draft site-specific Development Control Plan has been prepared to guide the future development of the site. Following review of the submissions, minor changes to the site-specific Development Control Plan are included on flooding and transport matters.

It is recommended that Council adopt the site-specific Development Control Plan for the site, as provided in Attachment 3, as an amendment to the Holroyd Development Control Plan 2013 under Part J – Site-Specific Controls. It is also recommended that Council endorse the carryover of the site-specific Development Control Plan to the new Cumberland Development Control Plan Part F1 – Residential Site Specific (Attachment 4) when in force.

### ***Revised Public Benefit Offer and Voluntary Planning Agreement***

Following Council's resolution in May 2021 on the public benefit offer, a revised public benefit offer has been provided in June 2021, which indicates that the Proponent will enter into a Voluntary Planning Agreement with Council. The details of the Public Benefit Offer are provided at Attachment 5.

Council officers have carried out an analysis of the revised Public Benefit Offer and consider it to be consistent with the Cumberland City Planning Agreements Policy and Guideline (Attachment 6).

On 7 July 2021, Council considered a report on the Planning Proposal, site-specific Development Control Plan and revised public benefit offer for Fresh Hope Care, Dunmore Street, Pendle Hill. At the meeting, Council resolved as follows:

*“That Council not proceed with the planning proposal at this stage and seek to renegotiate the monetary component of the public benefit offer.”*

Consistent with Council’s resolution, Council officers entered into discussions with the Proponent seeking to further increase the monetary component of the public benefit offer. On 23 July 2021, the Proponent wrote to Council confirming that they are not in a position to increase the monetary contribution of the offer beyond that outlined in the revised letter of offer in June 2021 (Attachment 7).

It is recommended that Council endorse the revised Public Benefit Offer, as well as endorse and delegate the Acting General Manager to prepare and exhibit the draft Voluntary Planning Agreement that is consistent with the public benefit offer. Subject to no significant objections during the notification process, it is also recommended that Council endorse the finalisation of the Agreement, and delegate the Mayor and Acting General Manager to execute the Voluntary Planning Agreement.

### ***Proponent Request for an Alternate Planning Proposal Authority***

Separate to the planning proposal process underway, the Proponent has written to the Department of Planning, Industry and Environment requesting that an alternate Planning Proposal Authority be appointed for the planning proposal under Section 3.32 of the *Environmental Planning and Assessment Act 1979*. The Department has written to seek Council’s views on why an alternate Planning Proposal Authority should not be appointed, and Council officers have provided a response to outline the reasons why Council should continue as the Planning Proposal Authority. It is noted that Council’s work in progressing the Planning Proposal can continue while this process is underway.

## **COMMUNITY ENGAGEMENT**

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Community engagement for the proposal is outlined in the main body of the report.

## **POLICY IMPLICATIONS**

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Policy implications are outlined in the body of this report.

## **RISK IMPLICATIONS**

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Any Voluntary Planning Agreement for the site will include terms and conditions to minimise risk to Council, including a requirement to have the Agreement registered on title and to include an appropriate mechanism to ensure public access to part of the site zoned RE2 Private Recreation.

## **FINANCIAL IMPLICATIONS**

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Financial implications for Council are outlined in the body of this report.

## CONCLUSION

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As required by the Council resolution of 5 May 2021, the Planning Proposal and site-specific Development Control Plan for Fresh Hope Care, Dunmore Street, Pendle Hill were publicly exhibited as required by policy and statutory requirements.

As required by the Council resolution of 7 July 2021, Council officers attempted to renegotiate the monetary component of the revised public benefit offer in June 2021. The Proponent has confirmed that they are not in a position to increase the offer.

It is recommended that Council finalise the planning proposal as exhibited and adopt the site-specific Development Control Plan for the site. It is also recommended that Council supports in-principle the public benefit offer and progress the preparation, notification and finalisation of a Voluntary Planning Agreement. If Council proceeds on this basis, it will allow the finalisation of the amending LEP within the timeframes identified in the Gateway Determination.

## ATTACHMENTS

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1. Planning Proposal [↓](#)
2. Gateway Determination [↓](#)
3. Site-specific Development Control Plan (Holroyd DCP) [↓](#)
4. Site-specific Development Control Plan (Cumberland DCP) [↓](#)
5. Revised Public Benefit Offer (confidential)
6. Analysis of Revised Public Benefit Offer (confidential)
7. Update on the Proponent's Position on the Revised Public Benefit Offer (confidential)
8. Summary of Community and Public Agency Submissions [↓](#)
9. Letter to Council re Request for Alternate Planning Proposal Authority (PPA) (confidential)
10. Letter to DPIE re Request for Alternate Planning Proposal Authority (PPA) (confidential)