

REPORT
PD/5.3/22.05

Subject: 87-99 Oxford Street and 16-22 Spring Street, Bondi Junction - Classification of Land

TRIM No: SF18/2505

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RECOMMENDATION:

That Council:

1. In accordance with section 34 of the *Local Government Act 1993*, publicly exhibits for 28 days its intent to classify as operational land the commercial office Suites 2, 4, 5 and 6 of 87–99 Oxford Street, Bondi Junction, and Suite 1 of 16–22 Spring Street, Bondi Junction (Lots 128, 129, 131, 132 and 133 of DP 1274466).
2. Creates a covenant under section 88D of the *Conveyancing Act* for transparency regarding the use of the premises.

1. Executive Summary

This report relates to the ongoing management of a voluntary planning agreement (VPA) associated with the approved development application (DA-498/2017) at 87–99 Oxford Street and 16–22 Spring Street, Bondi Junction. The Planning Agreement relates to the dedication of 505sqm of commercial floor space and associated common space to Council for the purpose of leasing the premises and 100% of the resultant funds being dedicated to Council's affordable housing fund.

In regard to the future use of these lots, under section 31(2) of the *Local Government Act 1993*, there is a requirement for Council to classify land before it acquires it, or within three months after it acquires it.

If this does not occur within three months of acquiring the land, then section 31(2A) states the land is taken to have been classified under the *Local Government Act* as community land and in the current circumstances these lots are unable to be leased out as required by the VPA.

In addition, this report recommends that a public positive covenant is created under section 88D of the *Conveyancing Act 1919* to impose obligations on the owner of the land to ensure the continuous public purpose of the use of the land.

2. Introduction/Background

The development application was approved by the Sydney Eastern City Planning Panel on 13 December 2018 for the demolition of existing buildings and construction of 14 storey mixed use building with four levels of basement car parking and offer to enter into a VPA to the value of \$5,164,236.85.

Council officers initiated negotiations for an in-kind dedication of commercial floor space on level one of the approved development in lieu of the monetary contribution. The contribution enabled the acquisition

of 505sqm of commercial floor space and associated common space. The net revenue from the leasing of commercial tenancies would fund a public purpose, in this instance the funds going directly to Council's affordable housing fund.

Council's Planning Agreement Policy allows for in-kind contributions, as well as monetary contributions. The main in-kind contributions that it allows for are affordable housing and commercial floor space. Commercial floor space dedication has been encouraged, particularly in Bondi Junction, given that it is important for Council to offset the loss of commercial floor space, achieve the aims of the following strategic documents: Bondi Junction Commercial Centre Review, Waverley Economic Development Strategy, Community Strategic Plan, draft Local Strategic Planning Statement as well as the commercial floor space focus and jobs targets for Bondi Junction as outlined in the Greater Sydney Commission's Eastern City District Plan.

Land and floor space in Waverley local government area is very expensive. The dedication of floor space provides a significant opportunity to create new dedicated and specialised community space for Bondi Junction and the broader community. The provision of a revenue generating asset also provides a sustainable long-term source of revenue towards a public purpose.

The VPA for the Whitton Lane office suites requires that the market rent received from leasing the suites be paid into the Affordable Housing Contributions Reserve to be used to expand Council's affordable housing portfolio.

Council has obtained legal advice in relation to its temporary use of the office suites to accommodate Council staff while the Council Chambers is undergoing refurbishment. The legal advice has confirmed that transferring funds equivalent to the market rent into the Affordable Housing Contributions Reserve meets the requirements of the VPA. Based on the legal advice on 4 April 2022 the Executive Leadership Team approved the use of office suites as temporary staff accommodation.

Once the refurbishment of these other buildings is complete council staff will return to them and an external leasing agent will be used to find suitable long-term tenants from the private market to occupy Whitton Lane.

This may only occur if the premises are classified operational land, as provided for under the *Local Government Act 1993*.

3. Relevant Council Resolutions

Meeting and date	Item No.	Resolution
Council 18 February 2020	CM/7.12/20.02	<p>That Council:</p> <ol style="list-style-type: none"> Notes that Council authorised the Mayor and General Manager to sign and execute the planning agreement and affix the Council seal to the documentation at the December Council 2019 meeting. Notes that the VPA contribution is for the in-kind dedication of commercial floor space in perpetuity and that, in part, some of the floor space must be used for community purposes. Requires that all commercial units, with the exception of the multi-purpose community facility, be rented at market rates, and ensures that 100% of the total revenue generated by the properties is allocated to

		Waverley's Affordable Housing Program.
Council 10 December 2019	CM/7.9/19.12	<p>That Council:</p> <ol style="list-style-type: none"> 1. Endorses the draft Planning Agreement attached to this report applying to land at 87–99 Oxford Street and 16–22 Spring Street, Bondi Junction. 2. Authorises the Mayor and General Manager to sign and execute the agreement and affix the Council seal to the documentation. 3. Notes that the VPA is for the provision of floor space, and that, generally, Council's policy is that monetary VPA contributions are spent in the immediate vicinity of the development to which they relate. 4. Investigates allocating 15–25% of any monies generated by the VPA to affordable housing, and that a report comes back to Council.

4. Discussion

Council has obtained legal advice that confirms Council may lease some of the suites to itself at market rental while the Chambers and Mill Hill buildings are undergoing refurbishment which require staff to be temporarily housed elsewhere.

Once the refurbishment of these other buildings is complete, Council staff will return to them and an external leasing agent will be used to find suitable long-term tenants from the private market to occupy Whitton Lane.

This may only occur if the premises are classified operational land, as provided for under the *Local Government Act 1993*.

Classification of land

Public land is managed under the *Local Government Act 1993* based on its classification. All public land must be classified as either community land or operational land. The purpose of classification of land is to identify clearly that land made available for use by the public is community land and land which is not is operational land.

How public land is classified determines the ease or difficulty with which a council can have dealings in public land, including its sale and leasing or licencing. It also provides for transparency in councils strategic asset management or disposal of public land.

Under section 31(2), before a council acquires land, or within three months after it acquires land, a council may resolve that the land be classified as community land or operational land. If the land is not classified under subsection (2), it is at the end of the three-month period taken to have been classified under a local environmental plan as community land.

While the land remains unclassified, the land may not be used for any purpose other than that for which it was being used immediately before it was acquired. In this instance, being a newly built development, there are no alternative uses available to Council, hence classification is required.

Accordingly, it is recommended that Council resolve to classify the land as operational as soon as reasonably possible, and at the latest within three months of acquiring the land. The land was acquired by Council on 12 April 2022. In addition, the provisions of the VPA provide the commercial suites are leased out and/or used for a community tenancy hub with 100% of the revenue to go towards social and affordable housing.

Under section 34 of the *Local Government Act 1993*, Council must provide public notice of the intent to classify the land and allow for 28 days for the public to make a submission. Accordingly, it is proposed that Council resolve the intent to classify the land, and place a public notice including the terms of the proposed resolution and a description of the public land concerned on exhibition for 28 days only, in order to ensure that the three month deadline is met.

Covenant

Council has obtained legal advice that the creation of a public positive covenant under section 88D of the *Conveyancing Act 1919* would be advisable for Council to ensure public transparency over the use of the land. A covenant of this nature would ensure in an ongoing way that the following information is clearly available in the public realm:

- How Council came to own and manage the subject lots via the process of the planning agreement.
- The purpose for which the management of the subject lots is for, that is for the purpose of commercial rental and the income of which is to be dedicated to Council's affordable housing program for the life of the development.

Once Council has endorsed the covenant, Council officers will instruct the preparation of the covenant by Council's consultant solicitors.

5. Financial impact statement/Time frame/Consultation

There are no financial implications as a result of classifying the land.

The classification of the land is required within three months of Council acquiring the land, and a public exhibition period of 28 days is required. Council acquired the lots on 12 April 2022, meaning that the land needs to be classified by 12 July 2022. Council will therefore need to classify the land at its meeting on 21 June 2022, subject to any feedback received during the public exhibition.

6. Conclusion

Council at its meeting on 18 February 2020 endorsed the VPA for the premises of 87–99 Oxford Street, which has now been executed. For the premises to comply with the VPA that has been executed, the classification of the land as operational is required. It is recommended that Council endorse the intent to classify the land and place the intent to classify on public exhibition for 28 days in accordance with the *Local Government Act 1993*.

In addition, the creation of a public positive covenant on the site is recommended to ensure public transparency over the use of the land is advisable, which requires Council's endorsement to proceed.

7. Attachments

Nil.