

## ITEM 3.1 CARLTON & UNITED BREWERIES SITE CHIPPENDALE - UPDATE

FILE NO:

### MINUTE BY THE LORD MAYOR

To Council:

On 26 June 2006, I provided to Council a Lord Mayoral Minute concerning the Minister for Planning decision to declare the Carlton & United Breweries (CUB) site a major project under Part 3A of the Environment Planning & Assessment Act (**Attachment A**).

Since then:

- The City has sought legal advice as to whether the Order made by the Minister on 23 June 2006 was valid. This is discussed below.
- On 21 July 2006, the Minister revoked the earlier Order and made a new Order in the same terms, except that a map was attached (**Attachment B**).
- On 15 August 2006, the expert panel advising the Minister held a public meeting. This is also discussed below.
- The Department of Planning has also published on its website a letter to the Minister dated 5 July 2006 from JBA Planning (acting for the site owner) and a 'Scoping Paper' (**Attachment C**). The Paper's attachments are not on the website.
- The Minister for Planning has provided no substantive response to the letters I sent him in accordance with the CSPC Resolution of 22 June 2006 and the Council Resolution on 26 June 2006. The Minister's letters and my further response are at **Attachment D**.

#### **Public Meeting – Scoping Paper**

A CUB meeting on 15 August was organised by the "expert advisory panel" established by the Minister after he took over planning control for the site on 21 June. The City was not formally invited to the meeting.

The public meeting was advised that Fosters, the site owner, had prepared a "Scoping Paper" as the basis for redevelopment and new planning controls on the site. The meeting was also told that Fosters would submit a Concept Plan, which the Department would assess—although there were no publicly available criteria for that assessment.

However, meeting participants report that important material was only presented briefly on screen and the proposal presented by the Panel's Chair, Chris Johnson of the Department of Planning, was based on material from Fosters. The important Scoping Paper was not presented to the meeting and requests to discuss it were refused.

#### **Summary of Foster's development proposal**

There are many issues needing clarification in the proposal presented to the public meeting and described in the Scoping Paper.

### *Floor space*

The Scoping Paper proposes 260,000 square metres of floor space (a density of around 4.5:1), comprising 1800 apartments, 97,000 square metres of commercial space and 12,000 square metres of retail space. As a comparison, this floor space is 80 per cent of the amount proposed for East Darling Harbour, which has a site area four times larger.

By comparison, based on expert advice and extensive consultation, the City and Central Sydney Planning Committee (CSPC) determined that a floor space ratio of 4:1 was at the absolute maximum end of acceptable density, contingent on public benefits and design excellence. The draft planning controls adopted for public exhibition by the CSPC and Council set floor space ratio in the range of 3.5:1 to 4.0:1.

### *Height*

The proposal presented at the public meeting indicated that building heights up to 110 metres were being considered, which is more than three storeys (10%) higher than permissible under the City's draft LEP for the site. Other towers proposed on the site are also taller than allowed under the draft LEP.

### *Heritage*

The proposal shown at the meeting on 15 August proposes demolition of up to five buildings with heritage significance, destroying the distinctive heritage precinct proposed by Council and the Central Sydney Planning Committee (CSPC) to give the redevelopment real interest and character, consistent with the social and industrial significance of the site.

### *Open Space*

The Scoping Paper proposes a single parcel of park area of 5,000 square metres maximum. The proposed park appears to incorporate land owned by the City of Sydney without the City's agreement.

Diagrams presented to the public meeting showed no protection for morning sun for the park, which was an important element of the draft planning controls endorsed by Council and the CSPC.

### *Car parking on site*

The Scoping Paper does not state what density of car parking is proposed on the site. However, it includes "retention of some 250 existing car spaces" which appears to be based on an existing public car park operating on the site, which is not an approved use.

### *Voluntary Planning Agreement*

The letter implies that negotiations in respect of the Voluntary Planning Agreement (VPA) are still underway. The basis for the City proposing to enter into a VPA was that the City's draft planning controls would be made and followed.

That basis for a VPA no longer exists and, since the Minister has taken over planning control at the site, the City has had no discussions with Fosters about a VPA.

The Scoping Paper also proposes ultimate dedication to the City of streets, laneways and shared zones. While included in the previous draft VPA, the City has not been consulted or informed about this current proposal.

### *Planning certainty*

The letter refers to a “necessary level of flexibility for the more detailed design phase of the project”. It is not clear what is intended, but this raises concern that there could be a further increase in actual FSR after approval of a design concept.

### *City ‘section 61’ development levy*

Clause 8.3 in the Scoping Paper states that Section 61 still applies in relation to development contributions, but it inaccurately states that the “nature and extent of development contributions were matters that were being discussed with the City of Sydney”. The development contribution is 1% of the development cost, and is set under the City of Sydney Act.

### **Legal Advice**

The City has obtained preliminary legal advice on the validity of the Minister’s order. A copy will be circulated on a confidential basis to Councillors.

The advice is preliminary at this stage as there is a limited amount of information available publicly to enable a proper review of whether the Minister’s actions are within power. The preliminary findings of the legal advice can be summarised as follows:

1. The original Order dated 23 June 2006 appeared to be invalid as it did not identify the land to which it applies. This has been rectified by the further Order made on 21 July 2006 with a map attached.
2. An Order under Part 3A must relate to a project, not a site. At the time the Orders were made, there is doubt that a project had been identified with sufficient certainty for the Order to be valid.
3. An order must be made for proper reasons in order to be valid. To date the only reasons available are set out in the Minister’s press release on 21 June. These do not appear to be proper reasons for the project to be determined as a major project under Part 3A.
4. The Minister has apparently appointed an expert advisory panel. The membership of this panel is not consistent with the relevant legislative provisions as it includes an employee of the Department of Planning. In addition, the role of the expert advisory panel is unclear as no documents, other than a press release, have been made available on this issue.
5. Without further relevant documents, if they exist, it is difficult to have any certainty about the prospects of challenging the Minister’s order.
6. Ultimately, as has already occurred, the Minister can keep making fresh orders until they are sufficiently clear and valid so as to overcome being challenged. However, this is hardly a satisfactory process.
7. In relation to the expert advisory panel, it appears they have been appointed prematurely and may be invalidly constituted. A fresh panel could be constituted validly by the Minister.

For all the above reasons, the hasty “calling in” by the Minister has been and will continue to be problematic and has led to greater uncertainty about the future of the site and the timeframe for the development.

Transparency and accountability continue to be a major concern. The CSPC's and City's complex and balanced redevelopment proposal, worked out through extensive planning studies, numerous public forums and negotiations with the site owner, could be compromised.

While the public may be provided with an opportunity to comment on the site owner's proposal, there is no publicly established process, no established criteria for assessing the proposal, no further public forums, the Minister is not required to take public concerns into account, and there is no recourse for appeal.

## **RECOMMENDATION**

It is resolved that Council work with the local Chippendale community to gain public commitment from the Minister for Planning to:

- (A) full consideration of the findings of the Central Sydney Planning Committee's and Council on the CUB site, including the extensive research, heritage studies, public consultation and draft planning controls;
- (B) a clear process and timeframe, including public consultation, for assessing Fosters' proposal to redevelop the CUB site; and
- (C) a further public meeting to ensure comprehensive and informed public debate on issues unresolved or unaddressed at the public meeting on 15 August 2006.

## **COUNCILLOR CLOVER MOORE MP**

Lord Mayor

### **Attachments**

- Attachment A** Lord Mayoral Minute from 26 June 2006 and Resolution of Council
- Attachment B** Order dated 21 July 2006 (including attached map)
- Attachment C** Letter from JBA Planning to the Minister for Planning dated 5 July 2006 and 'Scoping Paper'
- Attachment D** Letter of 3 July 2006 from the Minister for Planning; letter of 12 July 2006 from the Minister; and letter to the Minister of 19 July 2006.