

Proposed Development on 156-172 Franklin Street

Tuesday, 29 March 2022
Council

Strategic Alignment - Enabling Priorities

Program Contact:
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Public

Approving Officer:
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EXECUTIVE SUMMARY

The Loft Land at 156 – 172 Franklin Street Adelaide, formed part of the original Balfours/Bus Station redevelopment which was a strategic property project initiated in 2005.

The Loft Land was transferred to Zhengtang Pty Ltd in 2014 and a Land Management Agreement (LMA) was registered on the Certificate of Title to ensure minimum densities previously endorsed by Council as part of the Balfours redevelopment were achieved.

In July 2020 administration became aware that Greaton (on behalf of Zhengtang Pty Ltd) had submitted plans with the State Commission Assessment Panel (SCAP) to commence the planning pre-lodgement process for a scheme on the Loft Land.

The proposal, at 53 metres in height is consistent with the height provisions outlined in the Development Plan but at odds with the maximum height specified on the concept plan (which is incorporated into the LMA).

Following a refusal from the SCAP, (on the basis that the proposed height exceeded the height specified on the concept plan), the developer appealed to the Environment, Resources and Development (ERD) Court and on 13 September 2021 obtained a planning approval for the development.

In October 2021, the developer wrote to update Council on the outcome of the ERD Court appeal process. In addition, they advised that upon further deliberation it is their view that the proposal is consistent with the terms of the LMA and therefore a waiver is not required. The rationale for this position is that the developer contends that the clause ought to be read to set minimum heights to be achieved and not a maximum height.

It is acknowledged that the proposal cannot achieve the maximum height of both the concept plan at 25 metres and the Development Plan at 53 metres at the same time and it therefore raises uncertainty as to how this clause should be interpreted.

Council is aware of the concerns of adjacent apartment owners in relation to the scale of the proposed development and potential impact on residential amenity through a petition and correspondence received over the past 12 months. This report seeks direction to mediate a satisfactory outcome through engagement with the developer.

RECOMMENDATION

THAT COUNCIL

1. Notes the report.
2. Authorises the Chief Executive Officer to write to Greaton (on behalf of Zhengtang Pty Ltd) and invite the developer to formally state its position in relation to the Land Management Agreement and the proposed development at the Loft Land at 156 – 172 Franklin Street Adelaide within 14 days.
3. Authorises the Chief Executive Officer to write to Greaton (on behalf of Zhengtang Pty Ltd) for the purpose of seeking to explore options in relation to the design outcomes within 14 days.

4. Notes that a report will be brought back for Council consideration in May 2022 and, subject to Greaton's response, will step out Council's legal rights under the Land Management Agreement
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IMPLICATIONS AND FINANCIALS

City of Adelaide 2020-2024 Strategic Plan	Strategic Alignment – Enabling Priorities
Policy	Not as a result of this report.
Consultation	Not as a result of this report.
Resource	Not as a result of this report.
Risk / Legal / Legislative	<p>Council is a party to the LMA. Council’s influence relates only to its role as a party of the LMA and not as the statutory decision maker.</p> <p>An LMA can relate to the development, management, preservation, or conservation of land. In the context of development assessment, the legislation requires the existence of an LMA to be considered by the relevant authority.</p> <p>The relevance of an LMA and the weight that it carries in the assessment will depend on the extent to which development controls in the LMA remain consistent with current planning policy.</p>
Opportunities	The site is recognised as a significant development opportunity which has laid dormant for a number of years.
21/22 Budget Allocation	Not as a result of this report
Proposed 22/23 Budget Allocation	Not as a result of this report
Life of Project, Service, Initiative or (Expectancy of) Asset	Not as a result of this report
21/22 Budget Reconsideration (if applicable)	Not as a result of this report
Ongoing Costs (eg maintenance cost)	Not as a result of this report
Other Funding Sources	Not as a result of this report

DISCUSSION

Background

1. This purpose of this report is to seek direction from Council to mediate a satisfactory outcome given the current situation in relation to the Loft Land located at 156- 172 Franklin Street Adelaide.
2. The Loft Land formed part of the original Balfours/Bus Station redevelopment which was a strategic property project initiated in 2005.
3. The primary objective of this strategic project was to promote and support high scale residential development in the city at a time when the prevailing residential development comprised of two and three storey townhouses.
4. Detailed background information in relation to the progress of this project to date can be viewed [here](#).
5. A summary of the stages of development associated with the project can be viewed on the aerial plan [here](#).
6. A Land Management Agreement (LMA) which contains Development Criteria is registered over the Loft Land.

Land Management Agreements

7. An LMA can relate to the development, management, preservation, or conservation of land. The City of Adelaide is a party to many LMA's. Many of which relate to heritage preservation or management of land.
8. In the context of development assessment, the legislation requires the existence of an LMA to be considered by the relevant authority.
9. The relevance of an LMA and the weight that it carries in the assessment will depend on the extent to which development controls in the LMA remain consistent with current planning policy.
10. Our understanding is that an LMA cannot act as a permanent clog on development.

The Loft Land and the Planning Approval Process

11. In July 2020 administration became aware that Greaton (on behalf of Zhengtang Pty Ltd) had submitted plans in relation to the Loft Land with the State Commission Assessment Panel (SCAP) to commence the planning pre-lodgement process.
12. The application was officially lodged with SCAP in September 2020 and was assessed against the relevant provisions of the Adelaide (City) Development Plan. At the time of the assessment the site was located within the Capital City Zone which envisaged high scale development with active street frontages.
13. The planning assessment process takes into consideration a range of matters such as the appearance of buildings, building heights and setbacks, car parking and traffic impacts, overlooking, overshadowing, and visual privacy. The assessment concluded that the proposed height was acceptable. The Franklin Street and East Elevation can be viewed [here](#).
14. SCAP was presented with a report from the planning officer with a recommendation of support for the proposal. SCAP resolved to defer the application and requested that the developer seek a decision from Council in relation to the LMA.
15. On 18 December 2020, the developer wrote to Council and requested that it waive any obligation with clause 3.1 of the LMA insofar as it applies to paragraph (d) of the Development Criteria listed at Appendix 1 (being the height requirement).
16. However, following some discussion and further consideration, the developer decided to request that SCAP determine the application. Council understands that this is a legally valid approach.
17. On 10 March 2021, SCAP refused the development application. The developer appealed this decision, and the development application was approved by the Environment, Resources, and Development (ERD) Court on 13 September 2021.

Interpretation and Rationale of the LMA

18. In October 2021, the developer wrote to update Council on the outcome of the ERD Court appeal process. In addition, they advised that upon further deliberation they are of the view that the proposal is consistent with the terms of the LMA and therefore a waiver is not required.

19. The rationale for this position is as follows:
 - 19.1 Paragraph (d) of the Development Criteria states:

The maximum building heights as outlined on this concept plan and prescribed in the Adelaide (City) Development Plan are achieved within a twenty percent (20%) tolerance, noting the setback requirements and different height levels will result in a building that has a podium along Franklin Street.
 - 19.2 The developer contends that the clause ought to be read to set minimum heights to be achieved and not a maximum height.
 - 19.3 There is a conflict between the height proposed on the concept plan at 25 metres versus the Development Plan which provides a maximum height of 53 metres.
 - 19.4 The proposal at 53 metres in height achieves the maximum height within the Development Plan.
20. At the time the LMA was drafted, (that is, at the commencement of the negotiations for the Deed of Variation with the West Central Joint Venture) the concept plan formed part of the Development Plan policy. Therefore, the Development Criteria was essentially a reflection of the key Development Plan principles which applied to the Balfours Land.
21. The Capital City Development Plan Amendment (DPA) was introduced in April 2012, and this resulted in significant changes to allowable building heights across the city. It appears that this process has inadvertently caused the conflict in the LMA between the heights anticipated in the concept plan and those specified in the Development Plan.
22. It is acknowledged that the proposal cannot achieve the maximum height of both the concept plan at 25 metres and the Development Plan at 53 metres at the same time and it therefore raises uncertainty as to how this clause should be interpreted.
23. Putting aside the interpretation of the clause, the developer has now obtained a planning approval for the proposal.

Conclusion

24. Paragraph (d) of the Development Criteria (as noted in 4.2.1 above) within the LMA is unclear.
25. The height provision could be interpreted as seeking to achieve a development at a minimum height and therefore the approved development would not amount to breach in terms of the height provision.
26. The Developer has informed Council of its position which is that they are of the view that the approved scheme at 53 metres in height is consistent with the terms of LMA for the reasons described in 4.2 above.
27. The proposal has been assessed against the relevant provisions of the Development Plan and has received a planning approval.

Next Steps

28. The following actions are recommended:
 - 28.1. Authorises the Chief Executive Officer to write to Greaton (on behalf of Zhengtang Pty Ltd) and invite the developer to formally state its position in relation to the Land Management Agreement and the proposed development at the Loft Land at 156 – 172 Franklin Street Adelaide within 14 days.
 - 28.2. Authorises the Chief Executive Officer to write to Greaton (on behalf of Zhengtang Pty Ltd) for the purpose of seeking to explore options in relation to the design outcomes within 14 days.
 - 28.3. Notes that a report will be brought back for Council consideration in May 2022 and subject to Greaton's response will step out Council's legal rights under the Land Management Agreement.

DATA AND SUPPORTING INFORMATION

Link 1 – Balfours Redevelopment Background Information

Link 2 – Aerial Plan

Link 3 – Approved Development - Franklin Street Elevation and East Elevation

ATTACHMENTS

Nil

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