

Appendix A

(Clause 55)

Environmental Planning and Assessment Regulation 2021

(Clause 205)

Explanatory Note

Draft Planning Agreement

Under s7.4 of the *Environmental Planning and Assessment Act 1979*

Parties

Willoughby City Council ABN 47 974 826 099 of Level 4, 31 Victor Street, Chatswood, New South Wales 2067 (**Council**)

Pacific Chatswood Pty Ltd ABN 69 630 101 478 of Level 37, Australia Square, 264 George Street, Sydney NSW 2000 (**Developer**)

Description of the Land to which the Draft Planning Agreement Applies

The Draft Planning Agreement applies to land held within Lots 9-14 DP 4138, also known as 629-639 Pacific Highway Chatswood. The land is shown visually in this image:



Description of Proposed LEP Amendment and Development

The Draft Planning Agreement is in connection with planning proposal PP2017/3 (Council's Ref) the subject of a gateway determination PP-2021-2470 (Planning Portal's Ref) which seeks to amend the *Willoughby Local Environmental Plan 2012* to facilitate a mixed use development comprising residential and commercial uses on this Land by:

- a) rezoning the land from B5 Business Development to B4 Mixed Use;
- b) increasing the maximum building height from 20 metres to 90 metres;
- c) increasing the maximum floor space ratio from 2.5:1 to 6:1 (including affordable housing); and
- d) amending the Special Provisions Areas Map (Sheet SPA_004) to include the Land as 'Area 9', 'Area 11' and 'Area 12'.

This Draft Planning Agreement applies to the development on this Land as authorised by the future Development Consent granted as a result of the LEP Amendment.

Summary of Objectives, Nature and Effect of the Draft Planning Agreement

Objectives of Draft Planning Agreement

The objective of the agreement is to provide a mechanism by which monetary contributions can be made to benefit the community.

Nature of Draft Planning Agreement

The agreement will be a voluntary agreement under section 7.4 of the *Environmental Planning and Assessment Act 1979 (the Act)*.

An agreement of this kind may require a developer to dedicate land free of cost, pay a monetary contribution, or provide another material public benefit to be used for or applied towards a public purpose.

In this particular case, the agreement provides that the developer will make a monetary contribution of \$2,085,008 (to be paid in 3 instalments) towards the Council's Community Infrastructure Contribution scheme (**CIC**) for the Chatswood CBD. The public purpose of the monetary development contribution will be to ensure there is adequate funding for civil infrastructure, public domain and open space and community facilities as set out in the Council's CIC in the *Willoughby Planning Agreement Policy Procedures Manual*.

Effect of the Draft Planning Agreement

The Draft Planning Agreement:

- relates to the carrying out of the Development (as defined in clause 1.1 of the Draft Planning Agreement) on the Land by the Developer,
- does not exclude the application of s7.11, s7.12 or s7.24 of the Act to the Development,
- is to be registered on the title to the Land,
- imposes restrictions on the Parties transferring the Land or part of the Land or assigning, or novating an interest under the agreement,
- the agreement provides for the enforcement of the agreement by a suitable means if there is a breach by the developer,
- where it is relevant to a development application, a consent authority must take into consideration a planning agreement – or any draft planning agreement – that a developer has entered into or offered to enter into (respectively),
- however, a planning agreement cannot impose an obligation on a planning authority to actually grant a development consent – a merit assessment of the proposed development must still be carried out.

Assessment of the Merits of the Draft Planning Agreement

The Planning Purposes Served by the Draft Planning Agreement

The Draft Planning Agreement:

629-639 Pacific Highway, Chatswood - Planning Agreement

Willoughby City Council

Pacific Chatswood Pty Ltd

- promotes and co-ordinates the orderly and economic use and development of the Land to which it applies,
- provides increased opportunity for public involvement and participation in environmental planning and assessment of the Development,
- facilitates the provision of a monetary contribution to meet the demands for infrastructure in relation to roads, public open space, drainage and stormwater management, public transport infrastructure and public community facilities in the Chatswood CBD, and
- contributes to the public infrastructure required for future growth in the Chatswood CBD. enables the development to mitigate the potential impacts of the Development on existing infrastructure.

How the Draft Planning Agreement Promotes the Public Interest

The Draft Planning Agreement promotes the public interest by promoting the objects of the Act as set out in s1.3(c) and (j) of the Act.

If the planning proposal is finalised and implemented, the Draft Planning Agreement will promote the public interest by securing a monetary contribution from the Developer to the Council which will be used to support new public infrastructure generally of the kind set out in Appendix A of the *Willoughby Planning Agreement Policy - Procedures Manual*, as published by the Council.

This Draft Planning Agreement provides a public benefit to the community, above and beyond the normal contributions regime. The Developer will also still need to make the routine contributions to local infrastructure and affordable housing.

For Planning Authorities:

Development Corporations - How the Draft Planning Agreement Promotes its Statutory Responsibilities

N/A

How the Draft Planning Agreement Promotes the Principles for Local Government Contained in Chapter 3 of the Local Government Act 1993

The Draft Planning Agreement promotes the principles for local government by:

- keeping the local and wider community informed about its activities,
- Providing adequate, equitable and appropriate service and facilities for the community and to ensure that those services and facilities are managed efficiently and effectively.

Whether the Draft Planning Agreement Conforms with the Authority's Capital Works Program

Yes. The proposed contributions are consistent with the community infrastructure identified in the Council's *Planning Agreements Policy - Procedures Manual* and aligns with Council's capital works program.

Whether the Draft Planning Agreement specifies that certain requirements must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued

The agreement requires that the third instalment of the monetary development contribution is made prior to the issue of the first construction certificate and also provides that payment of the second and third instalments and any other unpaid monetary development contributions is a precondition to the issuing of the first construction certificate (excluding any Construction Certificate for demolition, preparatory site works, excavation and/or shoring)

The agreement does not specify any requirement that must be complied with before any subsequent construction certificates, any occupation certificate or any subdivision certificate is issued.

Status of this explanatory note

This explanatory note has been agreed by parties proposing to enter into the agreement.

Clause 205(1) of the *Environmental Planning and Assessment Regulation 2021* requires that an explanatory note must be prepared to accompany a planning agreement.

The explanatory note must address the requirements of clause 205(1)(a)-(b) of the Regulation. This explanatory note has been prepared to address these requirements.

Additionally, in preparing the explanatory note, the planning authority must consider any relevant practice note prepared by the Planning Secretary under clause 203(6). The relevant practice note is *Planning agreements: Practice note – February 2021* published by the former NSW Department of Planning, Industry and Environment (now the Department of Planning and Environment).

This practice note has been considered by the parties in the course of preparing this explanatory note.

The parties have agreed that this explanatory note is not to be used to assist in construing the agreement.