

Planning Agreement

Explanatory Note

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

1 Summary

The purpose of this Explanatory Note is to provide a summary to support the notification of the proposed planning agreement between the parties listed in section 2 of this Explanatory Note, in relation to the subject land described in section 3 of this Explanatory Note (**Planning Agreement**), in accordance with section 7.4 of the *Environmental Planning and Assessment Act 1979* (NSW) (**EPA Act**).

This Explanatory Note has been prepared jointly by the parties as required by clause 25E of the *Environmental Planning and Assessment Regulation 2000* (NSW).

In this Explanatory Note, unless context indicates a contrary intention, capitalised terms are to be defined in accordance with the Planning Agreement.

2 Parties

The parties to the Planning Agreement are:

- (1) Willoughby City Council ABN 47 974 826 099 (**Council**);
- (2) Mirvac Residential (NSW) Developments Pty Ltd ABN 29 609 513 135 (**Owner**); and

3 Descriptions of Subject Land

The Land to which the Planning Agreement is as follows:

Folio Identifiers: Lot 1 DP820327, Lot 1 DP 327266, Lot 10 DP 1162507, Lot 13 DP 6849, and Lot 12 DP1162507

Location: 6-30 Artarmon Road, Willoughby, New South Wales and 13 and 25 Richmond Avenue, Willoughby, New South Wales

4 Introduction and Background

- (1) On 23 December 2014, the NSW Planning Assessment Commission granted a Part 3A Concept Approval to Modification Application (MP10_0198) (**Concept Plan Approval**).
- (2) The Concept Plan Approval provides approval for residential development and small scale non-residential uses on the Land including:
 - (a) building envelopes for five residential flat buildings above basement level parking and two rows of terrace houses incorporating;
 - (b) up to 400 dwellings;
 - (c) up to 500 m2 floor space of non-residential uses to support the development;
 - (d) retention and adaptive reuse of No 6 Artarmon Road for retail/commercial purposes;
 - (e) new internal roadways and other infrastructure works to support the development;
 - (f) publicly accessible open space and through site link;
 - (g) temporary exhibition homes and / or exhibition villages; and
 - (h) superlot subdivision.

- (3) The Concept Plan Approval provides that developer contributions will be payable to Council in accordance with the applicable development contributions plan for residential development that is in place at the time of lodgement for each Development Application, or subject to Council and the registered proprietor of the Land entering into a Voluntary Planning Agreement.
- (4) On 31 January 2019, Modification Application (MP 10_0198 MOD 2) (**Modification 2**) was approved by the Independent Planning Commission (IPC). The approval of Modification 2 (**Modification 2 Approval**) authorised the following modifications to the Concept Plan Approval:
 - (a) increased number of building envelopes by 2 (to 9);
 - (b) increased total gross floor area by 7,449 m² (to 43,907 m²);
 - (c) increased maximum number of dwellings by 60 (to 460 dwellings in total);
 - (d) reconfigured layout of buildings, open spaces and the internal road network; and
 - (e) allow child care facilities as a permissible use.
- (5) The Parties have formalised the terms of the Owner's offer to provide the Contributions (defined in the below section 5(2)) by entering into this Agreement in accordance with section 7.4 of the EPA Act.

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

- (1) The Planning Agreement relates to the provision of financial Contributions and Affordable Housing to support the increased demands for facilities arising from the development of the Land and is generally consistent with the *Willoughby Local Environmental Plan 2012 (LEP)* and the *Willoughby Development Control Plan 2006 (DCP)*.
- (2) The former owner of the Land has offered to provide the following Contributions in accordance with the Planning Agreement, and these include the following Contributions to public infrastructure and affordable housing within the locality:
 - (a) a monetary contribution of \$500,000 to Council towards any future intersection upgrade works to Willoughby Road/ Artarmon Road/ Small Road intersection;
 - (b) a monetary contribution of \$1,000,000 to Council towards future public access and regeneration works to Walter Street Reserve; and
 - (c) Residential gross floor area (GFA) of 1,435 m² (based on 4% of original concept approval GFA of 35,886m²); plus 5% of any residential gross floor area developed by the Owner above the approved 35,886m² (but only up to a total potential maximum GFA of 42,557 m²) to be transferred to Council as affordable housing.

6 Assessment of the Merits of the Planning Agreement

6.1 Promotion of the public interest

The public benefits to be secured by the Planning Agreement will flow from the achievement of the Planning Agreement's objectives (refer to section 5(2) of this Explanatory Note). That public benefit includes, in accordance with s 1.3(a) and (d) of the EPA Act, promotion of the social and economic welfare of the community and the delivery and maintenance of affordable housing.

Significant efficiencies will be achieved through the Planning Agreement by allowing the Owner:

- (1) greater involvement in the timing and scope of the material public benefits (ie Affordable Housing Units); and
- (2) the ability to assist with financing and coordinating the concurrent roll-out of lots and local infrastructure in the most efficient way.

The expected efficiencies, together with anticipated public benefits of the Planning Agreement, are that the Planning Agreement relieves Council of the obligation of sourcing funding for material public benefits required for the Proposed Development (which is more ably provided and, in the case of Affordable Housing, delivered by the Owner).

There are various provisions in the Planning Agreement relating to the implementation of the Planning Agreement which protect and uphold the public interest. These include the following:

- (1) provisions requiring the Owner to provide the Contributions in accordance with the Planning Agreement; and
- (2) various provisions relating to security including:
 - (a) registration of the Planning Agreement on the title of the Land; and
 - (b) providing a bank guarantee in the amount of \$1,500,000.

6.2 Promotion of Council's charter

The Planning Agreement promotes the Council's charter under section 8 of the *Local Government Act* 1993 by providing adequate, equitable and appropriate Affordable Housing and funding for services and facilities for the community.

6.3 The planning purposes served by the Planning Agreement

The Planning Agreement provides a reasonable means of achieving and securing outcomes envisaged by the LEP and the DCP through the provision of Affordable Housing consistent with cl 6.8 of the LEP and by identifying the works, method of payment and timing to ensure the public benefits secured by the Planning Agreement meet the increased demand for public facilities resulting from the Development.

6.4 Capital works program

The Planning Agreement will assist in the financing and delivery of infrastructure required to support growth within the Willoughby Local Government Area. The works contained within the Planning Agreement are to be financially contributed by the Owner and conforms with Council's existing capital works program (see, for example, p 28 of Council's Operational Plan 2019-2020).

6.5 Compliance matters

The Planning Agreement specifies that the timing for the provision of Contributions.

A monetary contribution of \$500,000 to Council for future intersection upgrade works to Willoughby Road, Artarmon Road, Small Street intersection is to be made within fourteen (14) days of a Final Occupation Certificate being issued for the Development or any part of the Development.

A monetary contribution of \$1,000,000 to Council for future public access and regeneration works to Walter Street Reserve is to be made within fourteen (14) days of a Final Occupation Certificate being issued for the Development or any part of the Development.

The Affordable Housing Units are to be transferred to the Council within two months of the registration of subdivision of the development creating the Affordable Housing Units and within 6 months of the issue of a Final Occupation Certificate being issued for the Development or any part of the Development.