

Appendix

(Clause 53)

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**)

815 Pacific Highway Pty Limited ACN 633 597 403 of Level 17, 275 Alfred Street, North Sydney NSW 2060 (**Developer**)

Description of the Land to which the Draft Planning Agreement Applies

815 Pacific Highway, Chatswood legally known as Lot 1 in Deposited Plan 547585

Description of Planning Proposal and Proposed Development

The Draft Planning Agreement is in connection with planning proposal PP2018/12 (Council's Ref) the subject of a gateway determination PP-2021-2473 (Planning Portal's Ref) which seeks to amend the *Willoughby Local Environmental Plan 2012* to facilitate a commercial development on 815 Pacific Highway and 15 Help Street, Chatswood by:

- a) Increase the maximum permitted building height from 60m at 815 Pacific Highway and 90m at 15 Help Street to 142.8m (RL246.8m);
- b) Increase the maximum FSR from 5:1 to no maximum FSR applicable;
- c) Amending the minimum lot size and adding this site to the Lot size map

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

Objectives of Draft Planning Agreement

The objective of the Planning Agreement is to record the terms of the offer made by the Developer for public benefits to be made by way of monetary Development Contributions in connection with the LEP amendment to which the Planning Proposal relates.

The Planning Agreement is consistent with the Council's City Strategy in that it:

- Meets the current and future demands of the community by providing a monetary contribution that may be allocated to rebuilding the community, providing services and facilities and contributing to the health and wellbeing of the community;
- Facilitates economic opportunities for the business community, if the Development proceeds; and
- Facilitates the provision of land use planning controls to support viability of local centres, if the Planning Proposal is gazetted.

If an amendment to the LEP to which the Planning Proposal relates is made, the Planning Agreement requires the Development Contribution to be made in three instalments. The first instalment within 28 days of the LEP Amendment, the second instalment prior to the issuing of the first Construction Certificate for the Development on either the Land or both the Land and the Adjoining Land and the third instalment prior to the issuing of the first Occupation Certificate for the Development on either the Land or both the Land and the Adjoining Land.

The Planning Proposal and LEP Amendment will relate to 815 Pacific Highway and 15 Help Street, Chatswood. However, only the landowner of 815 Pacific Highway has offered to enter into this Planning Agreement with the Council. The monetary Development Contributions required to be paid by the landowner of 815 Pacific Highway under this Planning Agreement relate to the LEP Amendment and the development of 815 Pacific Highway and 15 Help Street.

The Planning Agreement is an enforceable arrangement between Council and the Developer under the EPA Act. The Planning Agreement requires the Developer to make a monetary contribution and comply with certain requirements including registration of the Planning Agreement, the granting of a Charge and Caveat upon/following execution of the Deed pending delivery of the Development Contribution.

The Planning Agreement also contains provisions as to dispute resolution and does not exclude application of s7.11, s7.12, or s7.24 of the EPA Act. No Construction Certificate or Occupation Certificate for the Development is to be issued pending delivery of the relevant instalments of the Development Contribution.

The Planning Agreement details that the developer will make a monetary contribution of \$1,500,000 (to be indexed in accordance with CPI and 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 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*.

Nature and 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,

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- requires the Developer to provide financial security to the Council,
- imposes restrictions on the Parties transferring the Land or part of the Land or assigning, or novating an interest under the agreement.

Assessment of the Merits of the Draft Planning Agreement

The Planning Purposes Served by the Draft Planning Agreement

The Draft Planning Agreement:

- 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,
- serves the public purpose and promotes section 1.3, object (a) of the Act by securing the provision of the Development Contribution in the nature of a monetary payment for the purposes of public benefit works or services.

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(a); (c) of the Act.

For Planning Authorities:

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

N/A

Other Public Authorities – How the Draft Planning Agreement Promotes the Objects (if any) of the Act under which it is Constituted

N/A

Councils – 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,
- assists to provide appropriate services and facilities for the community in the form of funding for such service as a result of monetary contributions;
- enabling Council to allocate additional funding to appropriate service to promote strong, health and prosperous a community.

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

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Yes. The proposed contributions are consistent with the community infrastructure identified in the Council's *Planning Agreement Policy and Procedures Manual* and aligns with Council's Capital Works Program.

All Planning Authorities – 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 Planning Agreement provides that no Construction Certificate or Occupation Certificate may be issued in relation for the Development on either the Land or both the Land and the Adjoining Land if the relevant instalment of monetary contribution required to be made by the Developer has not been made in accordance with the Deed.