

Appendix

(Clause 56)

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**)

Greycliff Castlecrag Pty Ltd ABN 31 613 199 518 of: Level 10, 488 Kent
Street, Sydney, NSW 2000 (**Developer**)

Description of the Land to which the Draft Planning Agreement Applies

100 Edinburgh Road, Castlecrag is land legally known as Lot 11 DP 611594 and Lot 1 DP 43691.

Description of Proposed Development

The Draft Planning Agreement is in connection with a proposed amendment to the *Willoughby Local Environmental Plan 2012 (WLEP)* relating to a Planning Proposal with the Department of Planning and Environment under PP2021/6 (Council's Ref) or PP2021-5395 (DPE's Ref) which seeks to amend the LEP to facilitate a mixed use development comprising residential and retail/commercial uses on the Land by:

- a) Increasing the maximum floor space ratio (FSR) for the site from 1:1 to FSR not exceeding 1.8:1 of which not more than 1.6:1 shall be above the level of Edinburgh Road
- b) Increasing the maximum building height for the site from 9m to height that would not exceed AHD 97.490 subject to the any reference made to clause 4.3A Exceptions to height of buildings of the *WLEP 2012*.

The Draft Planning Agreement also applies to development on the 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 Draft Planning Agreement provides for:

1. the payment of a monetary contribution of \$100,000 (indexed in accordance with the CPI) by the Developer to be applied towards public art.
2. Works and upgrade to the public pathway to the south-east corner (rear) of site to The Postern
3. Provision of eight (8) car spaces within development to replace those lost by conversion of Council car park to pocket park, over and above the site specific Development Control Plan car parking requirements to service the Development subject of the Development Consent
4. provision of access and use of a public meeting area of an area not less than 9 metres x 6 metres (54 sqm) to accommodate 10 people within the site

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 Development Contributions.

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 for public art, and providing upgraded 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 the Planning Proposal is gazetted and Development Consent is granted for the Development Application, the Planning Agreement requires the Development Contributions to be made prior to Construction Certificate, and prior to the issuing of an Occupation Certificate for the Development.

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 carry out works, as well as dedicating car parking spaces and comply with certain requirements including providing Security and registration of the Planning Agreement, 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 Occupation Certificate for the Development is to be issued pending delivery of the Development Contribution.

Nature and Effect of the Draft Planning Agreement

The Draft Planning Agreement:

- relates to the Planning Proposal and 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.

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 Contributions in the nature of a monetary payment for the purposes of public art, works for the purposes of upgrading pedestrian footpaths, and the provision of public car parking spaces.

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

The Agreement does not relate to works in the Council’s current capital works program. However, it can be expected that, in due course, the works to be delivered by the Developer will conform with Council’s expected delivery of public works in the 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 Occupation Certificate may be issued in relation for the Development if a Development Contribution required to be made by the Developer has not been made in accordance with the Deed