

Appendix

(Clause 55)

Environmental Planning and Assessment Regulation 2021

(Section 205)

Explanatory Note

Draft Planning Agreement

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

Parties

City of Canada Bay Council ABN 79 130 029 350 of Locked Bag 1470 DRUMMOYNE NSW 2047 (Council)

New Concord Development Pty Limited ABN 68 615 291 088 of 160 Burwood Road (Developer)

Description of the Land to which the Draft Planning Agreement Applies

This draft Planning Agreement applies to the land comprised in Lot 5 in DP129325, Lot 2 in DP230294, Lot 398 in DP 752023 and Lot 399 in DP 752023 otherwise known as 160 Burwood Road, Concord, and any lot created by a subdivision or consolidation of those lots.

Description of Proposed Development

This draft Planning Agreement applies to a Planning Proposal endorsed by Council at its meeting of 28 March 2023, proposing to:

- (a) rezone part of the Land from IN1 General Industrial to part B1 Neighbourhood Centre, part R3 Medium Density and part RE1 Public Recreation;
- (b) amend Part 6 of the LEP to:
 - (i) apply the Foreshore Building Line to the Land;
 - (ii) introduce a development standard for the Land that sets out a minimum provision of 7,500m² gross floor area for non-residential uses, of which a minimum 3,000m² gross floor area shall be light industrial uses;

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- (c) amend Schedule 1 to permit the following additional permissible uses within portion of the Land proposed to be zoned R3: *office premises, shops, restaurants and cafes*;
- (d) list the Land as an item of local heritage;
- (e) increase the maximum height of buildings for the Land from 12m to 11m, 15m, 17m, 18m and 20m;
- (f) apply a maximum Floor Space Ratio control for the Land of 0.96:1 or 1.11:1 where the Central Roasting Hall is retained and adaptively reused and the chimney and "B" sign are retained.

This draft Planning Agreement applies to development, within the meaning of the Act, on the Land in accordance with any Development Consent (as modified or substituted from time to time under the Act) granted as a consequence of the making of the LEP Amendment.

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

Objectives of Draft Planning Agreement

The objectives of the Draft Planning Agreement are to facilitate the dedication of land for the purposes of a public park and recreation area and associated embellishment works on the public park land and land to be publicly accessible.

Nature of Draft Planning Agreement

The Draft Planning Agreement is a planning agreement under s7.4 of the EPA Act. It is a voluntary agreement, under which the Developer and Landowner make Development Contributions (as defined in clause 1.1 of the Draft Planning Agreement) for various public purposes (as defined in s 7.4(2) of the EPA Act) if the LEP Amendment is made and if development consent is granted to the carrying out of the Development.

Effect of the Draft Planning Agreement

Specifically, the Developer will make the following contributions:

- dedication of the New Foreshore Park as shown on the Dedication Plan;
- embellishment of the New Foreshore Park in accordance with the requirements in Schedule 6 and embellishment of the Public Domain Land in accordance with the Public Domain Plan and Schedule 6;
- monetary contribution to Council for the purpose of Council maintenance of the New Foreshore Park; and
- registration of an easement over the Public Domain Land to enable public access to the open space.

The Draft Planning Agreement:

- requires the Developer to dedicate land, carry out embellishment works to open space, pay monetary contributions for the maintenance of the New Foreshore Park and the register an easement on land for ongoing public access to the open space,
- contains preconditions to the dedication of the new park, including reconstruction of the seawall,
- relates to the carrying out by the Developer of the Development,

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- does not exclude the application of ss 7.11, 7.12 or 7.24 of the EPA Act to the Development,
- is to be registered on the titles to the Land,
- imposes restrictions on the Developer transferring the Land or part of the Land and on the Developer from assigning an interest under the draft Planning Agreement,
- provides a dispute resolution method where a dispute arises under the draft Planning Agreement, being expert determination and mediation,
- provides that the draft Planning Agreement is governed by the law of New South Wales,
- provides that the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) applies to the draft Planning 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 the Planning Agreement applies,
- captures the shared uplift value of land through the delivery of public services and public amenities,
- provides and co-ordinates community services and facilities,
- provides increased opportunity for public involvement and participation in the form of public notification of the draft Planning Agreement.

The Draft Planning Agreement provides a reasonable means of achieving these planning purposes by requiring the Developer to make development contributions as described further above to Council, to facilitate the development of the Land in connection with the provision of necessary infrastructure, open space community facilities.

How the Draft Planning Agreement Promotes the Public Interest

The Draft Planning Agreement promotes the public interest by:

- promoting the objects of the EPA Act set out in sections 1.3(a),(b), (c), (g) and (j), and
- delivering land for public parks and recreation, including embellishment works on the public park land and other publicly accessible land which will benefit the local and wider community.

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

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N/A

Councils – How the Draft Planning Agreement Promotes the Guiding Principles for Councils in section 8A of the Local Government Act 1993 (previously the Elements of the Council's Charter)

The Draft Planning Agreement promotes the guiding principles for Councils by:

- working with others to secure appropriate services for local community needs,
- promoting Council's long-term strategic planning on behalf of the local community.

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

The draft Planning Agreement conforms with the 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

This draft Planning Agreement includes requirements that must be complied with before Occupation Certificates are issued.