

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*.

Introduction

The purpose of this explanatory note is to provide a plain English summary to support the notification of the draft planning agreement (the Planning Agreement) prepared under Subdivision 2 of Division 7.1 of Part 7 of the *Environmental Planning and Assessment Act 1979* (the **Act**).

This explanatory note has been prepared having regard to the Planning Agreements Practice Note and its contents have been agreed by the parties.

Parties

The parties to the Draft Planning Agreement are:

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

Metro NSWSPV 26 Pty Ltd ABN 84 646 450 688 of Level 5, 54 Miller Street, North Sydney, New South Wales 2060 (**Developer**).

The Developer has lodged development applications for the Proposed Development (being Development Application No DA 2022/229 and Development Application No DA 2022/228) and has offered to enter into a planning agreement with Council for the Proposed Development.

The current owner of the Land is the Royal Society for the Welfare of Mothers and Babies ABN 28 521 424 723 of Locked Bag 1003, Campsie, New South Wales 2194 who have also provided owners consent to Development Application No DA 2022/229 and Development Application No DA 2022/228.

The Developer has exchanged contracts with the Landowner to purchase the Land, and settlement is presently scheduled for 29 February 2024. The Draft Planning Agreement will not to be entered into until such time as the Developer is also the Landowner of the Land. This will ensure that the landowner of the Land will be a party to the Planning Agreement.

Description of the Land to which the Draft Planning Agreement Applies

The Draft Planning Agreement applies to land held within Lot D in DP 314721, also known as 2-6 Second Avenue, Willoughby East (**Land**).

Description of Proposed Development

The Developer has offered to enter into the Draft Planning Agreement with Council in connection with the Proposed Development which comprises:

- Development Application No DA 2022/229 which seeks consent for partial demolition and alterations and additions to heritage dwelling 'Tresillian' (being the **Heritage Works**), new swimming pool, garage, courtyard, landscaping, tree removal and associated works at the land at Lot D in DP 314721, also known as 2-6 Second Avenue, Willoughby East.
- Development Application No DA 2022/228 which seeks consent for the Torrens Title subdivision of the existing allotment at the Land into four separate lots and provision of new access driveway and service to all new lots and associated works.

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

Objectives of Draft Planning Agreement

The objective of the Draft Planning Agreement is to provide a mechanism to ensure that the Heritage Works are undertaken to benefit the community within 3 years of the date of the grant of the relevant development consent.

Nature of Draft Planning Agreement

The Draft Planning Agreement will be a voluntary agreement under section 7.4 of the Act.

An agreement of this kind may require a developer a material public benefit to be used for or applied towards a public purpose.

In this particular case, the Draft Planning Agreement provides that the Developer will undertake and complete the Heritage Works within 3 years of the date of the grant of the relevant Development Consent.

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, and
- provides for the enforcement of the Draft Planning Agreement by a suitable means if there is a breach by the Developer.

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, and
- contributes to the retention of important heritage items within the Willoughby LGA.

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), (g), (h) 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,
- ensure the restoration and retention of heritage items within the Willoughby LGA.

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

Yes.

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

Deferred commencement conditions are proposed for the Development Application No DA 2022/229 and Development Application No DA 2022/228 so that neither development consents operate until such time as the Draft Planning Agreement is entered into and registered on the title of the Land.

The Draft Planning Agreement provides, at clause 33.2, that the Deed must be registered on the title of the Land on commencement of the Draft Planning Agreement and prior to the commencement of any demolition works in accordance with any development consent issued in respect of Development Application DA 2022.229.

The Draft Planning Agreement also provides, at clause 33.3, that the Deed must be registered in accordance with clause 33.2 prior to the issue of any subdivision certificate for the Subdivided Lots.