

Planning Agreement – DA 8/2022 Explanatory Note

This Explanatory Note has been prepared jointly by the parties and is not to be used to assist in construing the Planning Agreement.

Draft Planning Agreement

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

Parties

Gwydir Shire Council ABN 11 636 419 850 of Gwydir Shire Council, Locked Bag 5, Bingara NSW 2404 (**Council**)

Daniel Gavin Shepherd and Yvette Andree Shepherd of 89 Lovegrove Drive, Quakers Hill NSW 2763 (**Developer**)

Description of the Land to which the Draft Planning Agreement Applies

The Draft Planning Agreement applies to all of the land shown as proposed Lots 1, 2, 3, 4, 5, 6 and 7 as shown in Figure 1 below.

Description of Development

The development as approved on 21 March 2023 was for the 7 Lot urban subdivision of the existing 4 urban allotments known as lots 1, 2 & 3 in section 3 of DP 759052 and Lot 233 in DP 751137, as shown in Figure 1 and 2 below.

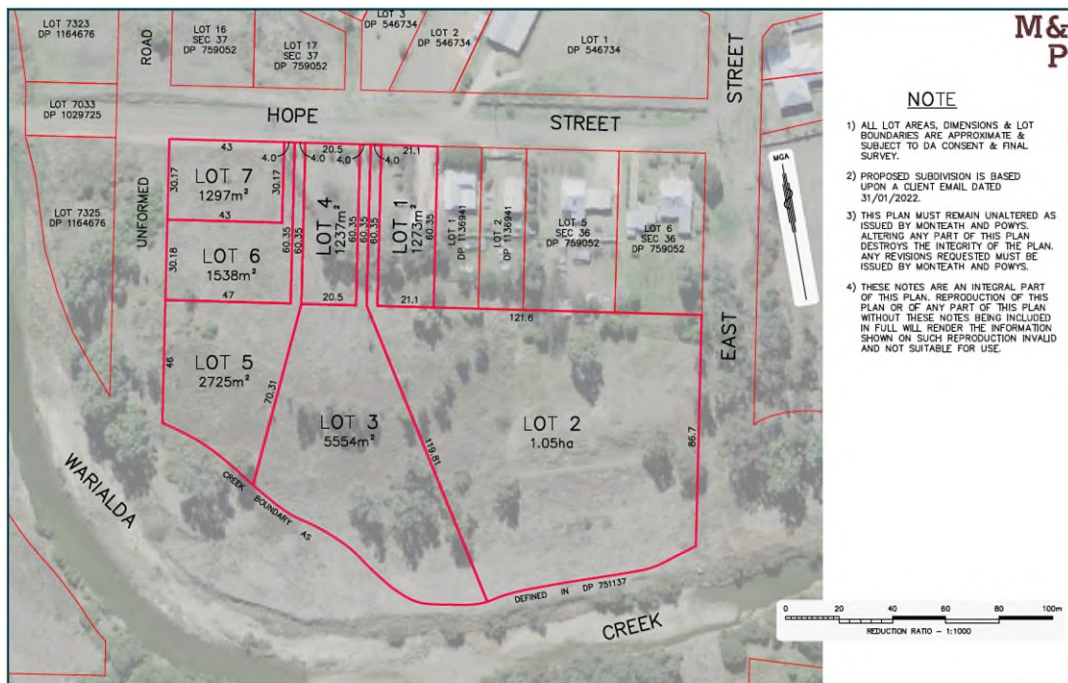


Figure 1 – Layout of 7 lot urban subdivision



Figure 2 – Existing allotment layout and location of planning agreement 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 effective ongoing stormwater management and vehicle access to each of the proposed lots. This is to be achieved by the provision of kerb and guttering along the southern side of Hope Street for the full length of the development site as approved under DA 8/2022, dated 21 March 2023.

Nature of Draft Planning Agreement

The Draft Planning Agreement is a planning agreement under s7.4 of the Environmental Planning and Assessment Act 1979 (**Act**). The Draft Planning Agreement is a voluntary agreement under which the Developer, at its own cost, is to carry out and complete the Works as detailed at Clause 7 of the Development Consent, being DA 8/2022 approved by Council on the 21 March 2023. A copy of Clause 7 of DA 8/2022 is provided below. The planning agreement includes various public purposes as defined under 7.4(2) of the Act.

DA 8/2022, Clause 7

“Kerb and gutter, including all associated driveway laybacks, stormwater drainage and earthworks, are to be constructed across the frontage of lots 1-7 in accordance with Council’s specifications. The design is to be provided to and approved by the Council’s Director of Engineering Services prior to the issue of a Subdivision Construction Certificate.

All costs of the installation of the kerb and gutter and any associated works are the entirely responsibility of the owner/developer. These works are required to be completed prior to the issue of a Subdivision Certificate.

Reason:

To ensure appropriate street drainage and stormwater drainage systems are installed for the subdivision. To ensure the supply adequate vehicle access to each allotment. To protect the public from development costs.

Advisory Note:

Planning Agreement - s7.4-s7.10 of Environmental Planning & Assessment Act, 1979

A Planning Agreement is a voluntary agreement between a planning authority (Council) and a person (the developer) who has made a development application under which the developer is required to dedicate land free of cost, pay a monetary contribution, or provide any other material public benefit, or any combination of them, to be used for or applied towards a public purpose. Public purposes include, among other things, the provision of infrastructure relating to land.

As an alternative to the above condition, Council advises that an agreement to enable the issue of the Subdivision Certificate is possible prior to the construction and completion of the required kerb and guttering. In generally terms, a planning agreement could be entered into that allows the following:

- Upon sale of lots 1, 4 and 7, kerb and gutter is to be constructed across the frontage of lots 1-7 in accordance with Council specifications and a design approved by Council's Director of Engineering Services.
- Prior to this construction, rural style access are to be provided for lots 2, 3, 5 and 6 consisting of pipe culverts, if required and a suitably graveled turning path into the lots. Any such agreement will need to be available for inspection by the public for a period no less than 28 days prior to being entered into and will be required to be finalised prior to the issue of a Subdivision Certificate. "

Effect of the Draft Planning Agreement

The Draft Planning Agreement:

- Relates to the carrying out of a 7-lot urban subdivision development on the land by the developer,
- Impose obligations on the Developer to undertake and complete works,
- Does not exclude the application of s7.11, s7.12 or s7.24,
- Makes provision for the:
 - Sale of proposed Lots 1, 4 and 7 by the developer prior to the commencement of kerb and gutter construction works which includes all associated driveway laybacks, stormwater drainage and earthworks, as required by Clause 7 of DA 8/2022 approval,
 - Completion of kerb and gutter construction works which includes all associated driveway laybacks, stormwater drainage and earthworks, as required by Clause 7 of DA 8/2022 approval prior to the sale of proposed Lots 2, 3, 5 & 6,
 - Developer to hand-over the completed works to Council after the issue of a written "Acceptance of the Works as Completed" by Council,
 - Protection of Council and the public from financial expenditure during the Defects Liability Period, which covers a period of 12 months commencing from the date of issue of the written "Acceptance of Works as Completed",

- Requires the Developer to carry out works to construct and complete kerb and gutter, including all associated driveway laybacks, stormwater drainage and earthworks, as required by Clause 7 of DA 8/2022 approval dated 21 March 2023.
- Is to be registered on the land,
- Imposes restrictions on the Developer transferring the land or part of the land or assigning or novating an interest under the agreement,
- Provides that the agreement is governed by the law of New South Wales, and
- Provides that the A New Tax System (Goods and Services Tax) Act 1999 (Cth) applies to the agreement.

Assessment of the Merits of the Draft Planning Agreement Including the Impact on the Public

How the Planning Agreement Promotes the Objects of the Act and the public interest The Planning Purpose Served by the Draft Planning Agreement

The draft Planning Agreement:

- Provides for stormwater infrastructure for a part of Hope Street which previously did not have any type of stormwater management, and
- Provides consistent and appropriate vehicular access and defined road verges for to the proposed lots.

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), (i) and (j) of the Act

Whether the Draft Planning Agreement Conforms with the Authority's Capital Works Program Council will need to consider the ongoing maintenance of the kerb and gutter when determining the annual Capital Works Program at the time the works are to be dedicated to Council, ie once a written Acceptance of the Works as Completed has been issued and the Defect Liability Period has lapsed.

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 following must be undertaken prior to issue of a Subdivision Certificate for DA 8/2022 for the 7-lot urban subdivision as depicted in Figure 1 of this explanatory note:

a) The developer shall endorse this draft planning agreement

The Draft Planning Agreement provides that the kerb and gutter, including driveway laybacks, stormwater drainage and earthworks is to be dedicated to Council upon the issue of an "Acceptance of the Works as Completed". However, any structural defects occurring within the following 12-month Defect Liability Period will be the responsibility of the Developer. The maintenance of the kerb and gutter, including driveway laybacks, stormwater drainage and earthworks, in accordance with Clause 7 of DA 8/2022 as approved on the 21 March 2023, will commence on the day after the expiry day of the 12-month Defect Liability Period