
Planning Agreement

Explanatory Note

22-28 Gardeners Road, Kingsford

Randwick City Council (ABN 77 362 844 121) (**Council**)

Gardeners at Kingsford Pty Ltd (ACN 622 880 639) in its own capacity and as trustee for Gardeners at Kingsford Land Unit Trust (ABN 99 655 166 188) (**Developer**)

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1 Introduction

This Explanatory Note has been prepared jointly between the parties in accordance with clause 25E of the *Environmental Planning & Assessment Regulation 2000* (NSW).

The purpose of this Explanatory Note is to provide a plain English summary to support the notification of a draft planning agreement (**Planning Agreement**) between the parties under s7.4 of the *Environmental Planning & Assessment Act 1979* (NSW) (**EPA Act**).

This Explanatory Note is not to be used to assist in construing the Planning Agreement.

2 Parties to the Planning Agreement

The parties to the Planning Agreement are:

- (1) Randwick City Council (ABN 77 362 844 121) (**Council**).
- (2) Gardeners at Kingsford Pty Ltd (ACN 622 880 639) in its own capacity and as trustee for Gardeners at Kingsford Land Unit Trust (ABN 99 655 166 188) (**Developer**).

3 Description of the Subject Land

The land to which the Planning Agreement applies, and to which the Planning Agreement will be registered, is set out in the table below (**Land**).

Folio Identifier	Location
Lot 1 in DP210743	28 Gardeners Road, Kingsford 2032
Lot 2 in DP210743	24-26 Gardeners Road, Kingsford 2032
Lot 3 in DP210743	22 Gardeners Road, Kingsford 2032

The Planning Agreement will also apply to certain Council land (**Council Land**) only to the extent that the Developer requires access to the Council Land to undertake the Works set out in Part 2 of **Schedule 1**.

4 Description of the Development

The development to which the Planning Agreement relates is the development permitted to be undertaken in accordance with DA/915/2015 as amended by development application DA/216/2021 (**Development**).

5 Summary of objects, nature and effect of the Planning Agreement

The **objective** of the Planning Agreement is to provide community infrastructure, amenities and resources to the Kingsford community by facilitating the delivery of development contributions consisting of:

- (1) Affordable Housing Levy Contribution – being a monetary contribution in the amount set out in Part 1 of **Schedule 1**; and
- (2) Community Infrastructure Contribution – being:
 - (a) Works to the value of the Contribution Value set out in Part 2 of **Schedule 1**; and
 - (b) monetary contributions in the amount determined by an approved Quantity Surveyor for any shortfall in the value of completed Works as set out in Part 1 of **Schedule 1**,

so that the community does not need to bear those costs (**Contributions**).

The **intent** of the Planning Agreement is to facilitate the provision of the Contributions by the Developer.

As security for the Developer's obligations to make the Contributions, the Planning Agreement will be registered on the title of the Land and Council will be able to withhold Occupation Certificates until such time as those Contributions are made. The Developer will provide Council with the following bank guarantees to ensure completion of the Contributions:

- (1) A bank guarantee for an amount equivalent to one hundred and twenty per cent (120%) of the sum of the Contribution Values for the Works set out in Part 2 of **Schedule 1** prior to the issue of a construction certificate in respect of the Development (**Primary Security**); and
- (2) A bank guarantee for an amount equivalent to fifteen per cent (15%) of the relevant Primary Security as a pre-condition to the completion of the Works to satisfy any defect in the Works (**Defects Security**).

The **nature** of the Planning Agreement is a contractual relationship between the Council and the Developer for providing the Contributions.

The **effect** of the Planning Agreement is that the Developer will provide the Contributions in the manner provided for by the Planning Agreement (as applicable) and as set out in **Schedule 1**.

6 Assessment of the merits of the Planning Agreement

6.1 The planning purposes served by the Planning Agreement

In accordance with section 7.4 of the EPA Act, the Planning Agreement promotes the following public purposes:

- (1) The provision of monetary contributions to meet the demands for infrastructure in relation to affordable housing, public amenities and public services.
- (2) Provision of contributions to accommodate and meet the demands of future developments and to mitigate the potential impacts of the Development on existing infrastructure.
- (3) Enables the Land to be developed in a timely and efficient manner to promote economic development and employment opportunities.

6.2 How the Planning Agreement promotes the public interest

In accordance with the objects of the EPA Act, the Planning Agreement promotes the public interest in the following manner:

- (1) By providing certainty for the Developer and Council as to provision of the Contributions directed towards community infrastructure within the Kingsford community.
- (2) The proper management and development of land.
- (3) The promotion and co-ordination of the orderly and economic use and development of Land to which the Planning Agreement applies.
- (4) The Planning Agreement will provide an opportunity for involvement and participation by members of the community in development assessment, and are invited to make comment on the Planning Agreement.

6.3 How the Planning Agreement promotes Council's guiding principles

The Planning Agreement promotes a number of Council's guiding principles under section 8A of the *Local Government Act 1993* (NSW), as follows:

- (1) The exhibition of the Planning Agreement facilitates the involvement of members of the public in the consultation process for the Planning Agreement;
- (2) To plan strategically for the provision of effective and efficient services and regulation to meet the diverse needs of the local community;

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- (3) To act fairly, ethically and without bias to the interests of the local community;
 - (4) To recognise diverse local community needs and interests.
 - (5) To have regard to the long term and cumulative effects of its decisions on future generations.
 - (6) To engage in long-term strategic planning on behalf of the local community;
 - (7) To bear in mind that it is the custodian and trustee of public assets and to effectively plan for, account for and manage the assets for which it is responsible.
 - (8) The Planning Agreement makes it clear that Council has a statutory role as consent authority in relation to the development proposal and that the Planning Agreement is not intended to unlawfully influence the exercise of Council's regulatory functions.

7 Identification of whether the Planning Agreement conforms with the Council's capital works program

The Planning Agreement conforms to Council's capital works program.

Schedule 1: Contributions

Part 1: Monetary Contributions

Item	Time for Completion	Contribution Value
Affordable Housing Levy Contribution	Prior to the issue of the first Occupation Certificate in respect of the Development.	The amount of the contribution is calculated in accordance with Clause 6.18 of the <i>Randwick Local Environmental Plan 2012</i>, the <i>Kensington and Kingsford Town Centres - Affordable Housing Plan</i> adopted by the Council on 10 December 2019 and is based on the relevant indexed Affordable Housing Contribution Rate (being an amount of \$373.13 per square metre as at the date of this document) for a total floor area of 4,023.36 square metres. The Affordable Housing Contribution Rate is indexed twice a year, being the first day of January and July, with reference to the most recently published median strata dwelling price in Randwick City Local Government Area. As at the date of this document, the Contribution Value is estimated to be \$1492103.29 (being 4,023.36 square metres of floor space payable at a rate of \$370.86/sqm)
Community Contribution Infrastructure	Subject to clauses Error! Reference source not found. , the earlier of twenty four (24) months after the issue of a Construction Certificate for the Development, or the issue of the first Occupation Certificate in respect of the Development.	The amount of the contribution is calculated in accordance with Clause 6.17 of the <i>Randwick Local Environmental Plan 2012</i>, the <i>Kensington and Kingsford Town Centres – Community Infrastructure Contributions Plan</i> adopted by the Council on 10 December 2019 and is based on a Community Infrastructure Contribution Rate of \$475 per square metre for a total floor area of 307.26 square metres, and in accordance with the conditions of the Development Consent As at the date of this document, the Contribution Value is estimated to be \$157,296.25 (being 333.15 square metres of floor space payable at a rate of \$475/sqm) .

Part 2: Works

Works	Specifications	Time for Completion	Contribution Value
Local road improvements and upgrades including but not limited to Gardeners Road frontage	240m² of pavement removal and replacement to the Gardeners Rd footpath outside 14-20, 22-28 & 30-34 Gardeners Rd, Kingsford. Pavement to be replaced with similar materials/colours as approved in accordance with clause 5.6 of this agreement. Any Council fees or charges associated with carrying out the Works are to form part of the Contribution Value. The works exclude realignment off pits/lids and removal/replacement of kerb and gutter.	Within twenty four (24) months after the issue of a construction certificate for the Development and prior to the issue of an Occupation Certificate for the Development.	The Contribution Value ascribed to the Community Infrastructure Contribution in Schedule 3 which, for the purpose of clause Error! Reference source not found. is \$157,296.25.