

Explanatory Note
Minister for Planning ABN 38 755 709 681
and
Benaughton Calderwood Pty Ltd ACN 617 534 844
and
Gerhard Josef Fischl
and
Suzanne Margaret Fischl
Draft Planning Agreement

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 jointly by the parties as required by clause 25E of the *Environmental Planning and Assessment Regulation* 2000 (the **Regulation**).

Parties to the Planning Agreement

The parties to the Planning Agreement are the Minister for Planning ABN 38 755 709 681 (the **Minister**), Benaughton Calderwood Pty Ltd ACN 617 534 844 (the **Developer**) and Gerhard Josef Fischl and Suzanne Margaret Fischl (together, the **Landowners**).

Description of the Subject Land

The Planning Agreement applies to:

- Lot 8 of Deposited Plan 259137 known as 128 North Macquarie Rd Calderwood NSW 2557 (**Subject Land**).

Description of the Proposed Development

The Developer is seeking to subdivide the Subject Land into 227 Torrens Title Lots generally in accordance with Development Application 577/2017 which has been lodged with Shellharbour City Council (**Proposed Development**). The Developer and the Landowners have made an offer to the Minister to enter into the Planning Agreement in connection with the Proposed Development. The 'Developer' includes the Developer and the Landowners for the purposes of the Planning Agreement.

Summary of Objectives, Nature and Effect of the Planning Agreement

The Planning Agreement provides that the Developer will make a monetary contribution of \$58,247 per hectare of net developable area (subject to indexation in accordance with the

Planning Agreement) for the purposes of the provision of designated State public infrastructure within the meaning of clause 30 of Schedule 3, Part 28 to State Environmental Planning Policy (State Significant Precincts) 2005 ("SEPP").

The monetary contribution will be payable prior to the issue of each relevant Subdivision Certificate in accordance with Schedule 4 to the Planning Agreement.

The Developer is required to provide a bank guarantee.

The objective of the Planning Agreement is to facilitate the delivery of the Developer's contributions towards the provision of infrastructure, facilities and services referred to in clause 30 of Schedule 3, Part 28 to the SEPP.

No relevant capital works program by the Minister is associated with the Planning Agreement.

Assessment of Merits of Planning Agreement

The Planning Purpose of the Planning Agreement

In accordance with section 7.4(2) of the Act, the Planning Agreement has the following public purpose:

- the provision of (or the recoupment of the cost of providing) transport or other infrastructure relating to land.

The Minister and the Developer have assessed the Planning Agreement and both hold the view that the provisions of the Planning Agreement provide a reasonable means of achieving the public purpose set out above. This is because it will ensure that the Developer makes appropriate contributions towards the provision of infrastructure, facilities and services referred to in clause 30 of Schedule 3, Part 28 to the SEPP.

How the Planning Agreement Promotes the Public Interest

The Planning Agreement promotes the public interest by ensuring that an appropriate contribution is made towards the provision of infrastructure, facilities and services to satisfy needs that arise from development of the Subject Land.

How the Planning Agreement Promotes the Objects of the Act

The Planning Agreement promotes the objects of the Act by encouraging:

- the promotion of the orderly and economic use and development of land.

The Planning Agreement promotes the objects of the Act set out above by requiring the Developer to make a contribution towards the provision of infrastructure, facilities and services referred to in clause 30 of Schedule 3, Part 28 to the SEPP.

The Developer's offer to contribute towards the provision of State infrastructure will have a positive public impact as funds from the Developer will be available towards the provision of infrastructure, facilities and services referred to in clause 30 of Schedule 3, Part 28 to the SEPP.

Requirements relating to Construction, Occupation and Subdivision Certificates

The Planning Agreement does not specify requirements that must be complied with prior to the issue of a construction certificate or an occupation certificate.

The Planning Agreement requires each instalment of the Development Contribution to be paid prior to the issue of the relevant subdivision certificate and therefore contains a restriction on the issue of a subdivision certificate within the meaning of section 6.15(1)(d) of the Act.