

Explanatory Note:

Ku-ring-gai Council and Roseville Returned Servicemen's Memorial Club Limited

Proposed Planning Agreement

Prepared in accordance with clause 205 of the
Environmental Planning and Assessment Regulation 2021

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Level 7, 151 Clarence Street
Sydney NSW 2000
Australia

T +61 2 8289 5800
F +61 2 9247 1315
Ref 3368628

Contents

1. Introduction	1
2. Summary of objectives, nature and effect	1
3. Assessment of the merits of the proposed agreement	3
4. Status of this explanatory note	6

1. Introduction

Clause 205(1) of the *Environmental Planning and Assessment Regulation 2021* (**the Regulation**) requires that an explanatory note must be prepared to accompany a planning agreement.

The explanatory note must address the requirements of clause 205(1)(a)-(b) of the Regulation. This explanatory note has been prepared to address these requirements.

Additionally, in preparing the explanatory note, the planning authority must consider any relevant practice note prepared by the Planning Secretary under clause 203(6). The relevant practice note is *Planning agreements: Practice note – February 2021* published by the former NSW Department of Planning, Industry and Environment (now the Department of Planning and Environment).

This practice note has been considered by the parties in the course of preparing this explanatory note.

2. Summary of objectives, nature and effect

2.1 Parties and offer

A draft planning agreement (**the agreement**) has been prepared. The proposed parties to the agreement are:

- Ku-ring-gai Council (**the Council**) on one hand; and
- Roseville Returned Servicemen's Memorial Club Limited (**the developer**) on the other.

The agreement to which this explanatory note relates has been the subject of an offer by the developer.

2.2 Land

The land to which the agreement applies is:

- Lot 1 DP 202148; and
- Lot 2 DP 505371,

this land is privately owned and known as 'The Roseville Club' 64-66 Pacific Highway Roseville (**the Land**); and

- part of Lot 2 DP 202148 (shown as 'Lot 3' in the draft 'Plan of subdivision of Lot 2 DP 202148' dated 17 November 2022, as set out in Sheet 3 of Schedule 2 of the agreement),

this land is presently Council owned land, fronting Larkin Lane Roseville adjacent to Roseville Memorial Park (**the Acquisition Land**).

2.3 The development

The agreement relates to the following development application:

- (a) a development application (being DA0049/23) for a development that will be for, generally as follows:
 - (i) demolition of existing structures;
 - (ii) subdivision of the site and construction of a seven-storey mixed use development (residential accommodation above ground floor registered club premises) with four levels of basement; and
 - (iii) a basement that will extend into a subsurface portion of the Acquisition Land from a depth of approximately three metres below the ground level and a width of six metres (**subsurface part of the Acquisition Land**);
 - (iv) stratum subdivision to create a new stratum lot for dedication to the Council free-of-cost.

2.4 Objectives

The objective of the agreement is to provide a mechanism by which part of the Acquisition Land may be dedicated to the Council free of cost.

2.5 Nature

The agreement will be a voluntary agreement under section 7.4 of the *Environmental Planning and Assessment Act 1979 (the Act)*.

An agreement of this kind may require a developer to dedicate land free of cost, pay a monetary contribution, or provide any other material public benefit to be used for or applied towards a public purpose.

In this particular case, the agreement provides for the following:

- The dedication of land free of cost, namely a parcel of land generally consistent with the land shown as 'Lot 101' in the draft plan of subdivision shown in Sheet 4 of Schedule 2 of the Agreement. This land is described as being 190m² in area and extending from a point in space measured at 'RL107.76' upward. An 'RL' is a measure of height relative to sea level. 'RL107.76' is approximately three metres below the existing level of the ground at this location (which has been surveyed as being generally around RL110.76 (**the Dedication Land**)).
- The public purpose of the development contribution is the provision of land for public amenity and access. Any future works to be constructed on the land will be for the public benefit. The land will be owned and managed by the Council.

2.6 Effect

Most of the land that is to be dedicated forms part of the 'Acquisition Land'. The Agreement requires the Developer to enter into an option deed for the purchase of the Acquisition Land from the Council. The option deed is annexed to the Agreement. The purchase price for the Acquisition Land is specified in the option deed and the sale of land contract.

The Agreement requires the relevant land to be dedicated to the Council prior to the issue of an Occupation Certificate for the Development — or by 1 July 2030 — whichever occurs first.

The land that is to be dedicated may be used for or applied towards transport or public recreation.

The Agreement provides the enforcement of the Agreement by a suitable means if there is a breach by the Developer.

The Council has the power to compulsorily acquire the Dedication Land and the interest in land for \$1 each if the relevant contributions are not made by the required point-in-time.

Where it is relevant to a development application, a consent authority is to take into consideration a planning agreement, or any draft planning agreement that a developer has offered to enter into.

However, a planning agreement cannot impose an obligation on a planning authority to actually grant a development consent. A merit assessment of the relevant development application must still be carried out.

3. Assessment of the merits of the proposed agreement

3.1 Impact on the public or any relevant section of the public

The agreement has a positive impact for the local community and promotes the public interest. This is because of the following:

- Public access is provided to the relevant part of the Acquisition Land.
- Existing private land (some land held within Lot 2 DP 505371) will be added to the relevant part of the Acquisition Land and will be available for public access.
- The Acquisition Land is presently owned by the Council. It is not open space. It is principally a car park. It is not used for recreation, it is used for the parking of cars servicing the club. The *Ku-ring-gai Local Environmental Plan (Local Centres) 2012 (Amendment No 4)* reclassified the land as operational land (Schedule 4, Part 2). This means that it is not subject to the *Ku-ring-gai Council Generic Plan of Management Parks (20 September 2005)* and is available for disposal.
- If the option is exercised by the Developer, the Acquisition Land will be purchased by the Developer at a fair market value.
- The Agreement provides for the return of a portion of the Acquisition Land (and part of the existing private land held within Lot 2 DP 505371) to the Council free of cost. This will enable a portion of the land to be managed by the Council, as it sees fit, including as a public road. (The land is adjacent to the existing Larkin Lane public road reserve.)
- The land to be dedicated will extend to RL107.76, being three metres below ground level to allow for deep soil for tree planting, in accordance with the site-specific *Ku-ring-gai Development Control Plan (the DCP)* provision Part 14L.3(1)(vii) for 'Part 62 and 64-66 Pacific Highway, Roseville'.
- This will ensure that public works constructed on the land to be dedicated (under the development application as set out at section 1 above) remain available for the benefit of the Council. These public works may involve the removal of the existing club car park and the construction of a public footpath. Such works, if required under the development consent, will improve pedestrian access adjacent to Larkin Lane and the Council's park.
- The Council will, as the landowner, have the right to construct replacement works if/when it desires to do so.

- The use of the Acquisition Land in conjunction with the Land fulfils the planning intent for the land as expressed in the LEP. The Acquisition Land is zoned 'B2 Local Centre' and the balance of Lot 2 DP202148 is zoned 'RE1 Public Recreation'. The LEP anticipates that the Acquisition Land will not be treated as if it is part of Roseville Memorial Park.
- The dedication of the land is made for the public purpose of provision of public amenities.
- The subsurface part of the Acquisition Land (and a subsurface part of the existing private land held within Lot 2 DP 505371) will be retained by the Developer at RL 107.76 downwards — as a basement providing car parking and services.
- The footprint of the basement extending below the Dedication Land is consistent with the site-specific DCP provision Part 14L.3(1)(vii), that permits basement levels to extend (substratum) to the Larkin Lane boundary. The design of the footprint of the basement enables the car parking to be fully functional in accordance with the DCP provisions and Australian standards.
- All off-street car parking is contained in the basement levels of the development (part 14L.2(4) of the DCP) and provides 45 resident spaces, 6 visitor spaces, 37 club spaces (2 spaces for club staff) and 1 car share space in compliance with the DCP requirements (part 14L.2(3) and part 8B.2(15), (16) and (18)). The off-street car parking capacity of the development is enhanced whilst not increasing the traffic generation of the development.
- The following additional public benefits will be delivered by the Developer retaining a subsurface portion of the Acquisition Land for a basement:
 - the car parking needs of the development, including by residents, visitors and patrons and staff of the Roseville Memorial Club will be adequately catered for by the off-street in the basement of the development;
 - will reduce the current and future demand for the use of the Larkin Lane Council car park by users of the development;
 - will reduce the demand for on-street parking on Larkin Lane; and
 - a functional basement has been designed to be provide additional car parking for members of the public who visit the Roseville Memorial Club.
- The agreement provides:
 - a reasonable means of achieving the LEP's planning intent for the Acquisition Land; and
 - preserves public access to the relevant part of the Acquisition Land (and augments that land with additional land, to be dedicated free-of-cost).

3.2 Promotion of the public interest and the objects of the Act and the *Local Government Act 1993*

The agreement promotes the following objects of the Act:

- Section 1.3(a):
 - to promote the social and economic welfare of the community and a better environment by the proper management, development ... of the State's ... resources...

- Section 1.3(c):
to promote the orderly and economic use and development of land...
- Section 1.3(g):
to promote good design and amenity of the built environment...

The Council is the planning authority that would be a party to the Agreement. The Council is a public authority constituted under the *Local Government Act 1993*.

The agreement promotes the following purposes of the *Local Government Act 1993 (the LG Act)*:

- Section 7(e):
to provide for a system of local government that is accountable to the community and that is sustainable, flexible and effective

Chapter 3 of the LG Act sets out principles for local government

The Agreement promotes the following elements of the principles:

- Section 8A(b)::
Councils should carry out functions in a way that provides the best possible value for residents and ratepayers
- Section 8A(f):
Councils should manage lands and other assets so that current and future local community needs can be met in an affordable way
- Section 8A(g):
Councils should work with others to secure appropriate services for local community needs

The Agreement promotes the above objects of the Act, the LG Act and the public interest, by providing for the dedication of land set out in 2.5 above with the benefits outlined in section 3.1 above.

3.3 Whether the planning agreement conforms with the planning authority's capital works program, if any

The agreement does not conform with the planning authority's capital works program. This is because the development contribution is not relevant to the authority's capital works program.

3.4 Whether the agreement specifies that certain requirements of the agreement must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued

The agreement requires the dedication of the relevant part of the Acquisition Land (and some additional private land currently held within Lot 2 DP 50537) prior to the issue of an occupation certificate. (If an occupation certificate is not issued by 1 July 2030, the land will need to be dedicated in any event.)

The agreement does not specify any requirements that must be complied with before a construction certificate or subdivision certificate is issued.

4. Status of this explanatory note

This explanatory note has been agreed by parties proposing to enter into the agreement.

The parties have agreed that this explanatory note is not to be used to assist in construing the agreement.