Explanatory Note

Hornsby Shire Council and the Trustees of the Sisters of Mercy (Parramatta)

Planning Agreement - 36-56 David Road, Castle Hill

Introduction

This Explanatory Note has been prepared jointly between the parties in accordance with clause 205 of the Environmental Planning & Assessment Regulation 2021 (NSW).

The purpose of this explanatory note is to provide a plain English summary to support the notification of the draft voluntary 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 is not to be used to assist in construing the Planning Agreement.

Parties to the Planning Agreement

The parties to the Planning Agreement are the **Trustees of the Sisters of Mercy (Parramatta)** ABN 30 161 863 296 (the **Registered Proprietor** of the **Land**) and Hornsby Shire Council ABN 20 706 996 972 (the **Council**).

Whilst the Registered Proprietor is currently the **Trustees of the Sisters of Mercy (Parramatta)** ABN 30 161 863 296, the Planning Agreement has been drafted to provide for the transfer of obligations under the Planning Agreement to any future Registered Proprietor of the Land.

Description of the Subject Land

The Planning Agreement applies to Lot 2 DP 565458, commonly known as 36-56 David Road, Castle Hill NSW 2154 (the **Land**).

Description of the Proposed Development

The Planning Agreement applies to the development (as generally described in DA/1022/2021) comprising of the staged subdivision of the Land.

Stage 1 consists of the Torrens Title subdivision to create Lot 100 (Marymount Forest Conservation Reserve) and Lot 101 (Balance Land). As part of Stage 1, Lot 100 would be transferred to Council.

Stage 2 consists of the Community Title subdivision of Lot 101 (Balance Land) to create 63 residential lots (Lots 2-64) and Mercy Park (Lot 1) to be maintained by the Community Association. As part of Stage 2, the Roads and Infrastructure and Lot 65 (Tahlee Park Extension) would be dedicated to Council.

Summary of Objectives, Nature and Effect of the Planning Agreement

The **objectives** of the Planning Agreement are to provide environmental conservation / protection and education, open space for community enjoyment, and public domain upgrades within the locality.

The **intent** and **effect** of the Planning Agreement is to facilitate the timely delivery of:

(i) The creation of Marymount Conservation Reserve to be protected through transfer of ownership to Council at no cost.

(ii) Provision of funding for capital works and ongoing maintenance of the Marymount Conservation Reserve enabling appropriate educational opportunities for the local community through provision of signage and an elevated walkway (to be constructed by the Council) while protecting Marymount Conservation Reserve trees and understorey.

(iii) Effectively doubling the size of the existing Tahlee Park through the provision of the Tahlee Park Extension of 3315sqm.

(iv) Provision of an accessible pathway within Council's existing Tahlee Park connecting to the Tahlee Park Extension, to enable universal access.

(v) Widening of David Road and installation of pedestrian refuge improving pedestrian access and safety for the local community.

(vi) Creation of pedestrian and cycle linkages to and from the subdivision for the local community.

The Proposed Development (Works) described above are in addition to the paying of Section 7.11 contributions applicable to the Proposed Development.

The Works will be completed by professional contractors in accordance with Hornsby Shire Council's standards, policies, procedures and approvals and delivered on the date which is:

(i) As part of Stage 1, transfer Lot 100 (Marymount Forest) to Council as Marymount Forest Conservation Reserve to be held by Council in perpetuity, within 14 Business Days of receipt of the Subdivision Certificate associated with Stage 1.

(ii) No later than receipt of the Construction Certificate for Stage 2, pay to Council (and subject to a prior receipt of a tax invoice from Council) the Registered Proprietor's Contribution as follows:

a. An amount of $750,000 as a contribution toward the provision of elevated boardwalk**,** pathway infrastructure, educational signage, and ancillary works to be erected by Council within the Marymount Forest Conservation Reserve (the Registered Proprietor is not required to contribute any amount in excess of the $750,000 regardless of the actual cost of such works).

b. A further amount of $918,000 to be held by Council in trust to cover the cost of on-going conservation and maintenance of the Marymount Forest Conservation Reserve for a period of 20 years from the date of transfer (the Registered Proprietor is not required to contribute any amount in excess of the $918,000 regardless of the actual cost of the conservation and maintenance).

The Developer will be required to register the Planning Agreement on the title to the Land in accordance with Section 7.6 of the Act.

The Council acknowledges and agrees that despite any provision to the contrary, the Agreement shall not be registered on the titles to Stage 2 Land being sold by the Registered Proprietor in Stage 2 of the Development, subject to the Registered Proprietor having fully complied with its obligations under the Planning Agreement.

Council will be able to withhold Subdivision Certificates and Occupation Certificates in connection with the Proposed Development until such time as those Works are delivered.

Upon completion of the Works, the relevant roads will be trafficable subject to acquisition by the Council and dedication as a public road.

The **nature** of the Planning Agreement is a contractual relationship between the Council and the Registered Proprietor to facilitate the provision of the Works in connection with the Proposed Development.

Assessment of Merits of Planning Agreement

The Public Purposes Served by 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 provision of (or the recoupment of the cost of providing) public amenities or public services
- The funding of recurrent expenditure relating to the provision of public amenities or public services, affordable housing or transport or other infrastructure
- The conservation or enhancement of the natural environment

The Council and the Registered Proprietor 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.

How the Planning Agreement Promotes the Public Interest

The Planning Agreement promotes the public interest by achieving the objectives of the Act by promoting:

- certainty for the Registered Proprietor and Council as to the provision of development contributions directed towards community infrastructure within the Castle Hill community.
- the social and economic welfare of the community by requiring construction of local infrastructure as determined by the General Manager of Council from time to time.
- delivery of infrastructure, facilities and services to satisfy needs of the community including those that arise from the Proposed Development.
- the orderly and economic use and development of land and good design and amenity of the built environment by ensuring improved infrastructure.

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:

- The exhibition of the Planning Agreement facilitates the involvement of members of the public in the consultation process for the Planning Agreement.
- To plan strategically for the provision of effective and efficient services and regulation to meet the diverse needs of the local community.
- To act fairly, ethically and without bias to the interests of the local community.
- To have regard to the long term and cumulative effects of its decisions on future generations.
- To engage in long-term strategic planning on behalf of the local community.
- 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.
- The Planning Agreement makes it clear that Council has a statutory role as consent authority in relation to the Proposed Development and that the Planning Agreement is not intended to unlawfully influence the exercise of Council's regulatory functions.

Whether the Agreement Conforms with Council's Capital Works Program

The Planning Agreement does not conform to Council's capital works program.

Requirements relating to Construction, Occupation and Subdivision Certificates

The Planning Agreement specifies standards as to construction of the roads infrastructure with which the Developer must comply prior to the issue of a subdivision works certificate or final subdivision certificate under the Act (as relevant) for the Proposed Development.