

# **EXPLANATORY NOTE**

**Planning Agreement**

**Between**

**Warringah Road Developments Pty Ltd**

**&**

**Northern Beaches Council**

## Exhibit A - Explanatory Note

### Planning Agreement – Dedication of land at Warringah Road for public road

The purpose of this Explanatory Note is to provide a plain English summary to support the notification of a draft Planning Agreement (the “**Planning Agreement**”), under Section 7.4 of the *Environmental Planning and Assessment Act 1979* (the “**EPA Act**”), for the granting of a development consent (the “**Consent**”) involving the following:

- (a) the redevelopment of the Land by the construction of a centre based childcare facility for a maximum of 146 children; and
- (b) the dedication of land to the Council as a public road and carrying out of associated road and cycle way works,

(all known as the “**Proposed Development**”).

This explanatory note has been prepared jointly between the parties as required by clause 25E of the *Environmental Planning and Assessment Regulation 2000*.

#### 1. Parties to the Planning Agreement

The Parties to the Agreement are Northern Beaches Council (**Council**) and Warringah Road Developments Pty Limited (**Developer**).

The Developer is the developer and owner of the land described in section 2 below and has made an offer to the Council to enter into the Planning Agreement in conjunction with the Proposed Development and the Consent, for:

- (a) the dedication of part of the Land (namely a strip of land of at least 3.5m in width located on the northern boundary of the Land) (called the **Dedication Area**) to the relevant Roads Authority; and
- (b) the carrying out of associated road and cycleway works to the Dedication Area,

in lieu of Council having to pay for it (and the associated road works) so as to enable Warringah Road to be widened and provide an appropriate and safe trafficable public road. The provision of the Dedication Area (and associated road and cycle way works) is to be at no cost to the Council and free from all encumbrances.

#### 2. Description of the Subject Land

The land to which this Planning Agreement applies is described as follows:

- Lot 3 in DP 25050;
- Lot 2 in DP 25050; and

- Lot 1 in DP 25050,

known as 723-727 Warringah Road, Forestville.

### **3. Description of Proposed Change to Environmental Planning Instrument**

There is no change proposed to the *Warringah Local Environmental Plan 2011*.

### **4. Summary of Objectives, Nature and Effect of this Planning Agreement**

The Planning Agreement will assist Council in achieving its objectives in providing a material public benefit to users of Warringah Road and those residents adjoining the Development.

The objective of the Planning Agreement is to ensure that the Proposed Development may proceed by the implementation of the Dedication and carrying out of the associated road and cycle way works (at no cost to the Council) whilst ensuring that Warringah Road remains an appropriate and trafficable public road under the care and control of the relevant Roads Authority for the benefit of current and future generations.

The Planning Agreement meets the current and future demands created by the Proposed Development for new public infrastructure, amenities and services both by the provision of the Dedication Area and the carrying out of the associated road works.

The Planning Agreement is consistent with the Council's transport vision in that:

- it facilitates the freedom to choose between different modes of transport to the Proposed Development
- it provides a safe road network, and specifically, safe entry and exits from the proposed Development
- it improves the efficiency of the road/transport network but provision of deceleration and acceleration lanes
- it integrates the Proposed Development with the existing road network
- it facilitates sustainable development by providing the option of pick up and drop off of children via the transport network
- it effectively provides funding to the improvement of Warringah Road without adversely impacting on Council's revenue bottom line
- it links Forestville with the Dee Why to Chatswood public transport corridor
- it will assist in creating extra jobs on the Northern Beaches

The Planning Agreement is an enforceable arrangement between Council and the Developer under the EPA Act. The Planning Agreement requires the Developer to make a Development Contribution and comply with certain requirements including registration of the Planning Agreement; provision of a Bank Guarantee and Caveat upon/following execution of the Agreement pending delivery of the Development Contribution.

The Planning Agreement also contains provisions as to dispute resolution and

does not exclude application of s7.11, s7.12 or s7.24 of the EPA Act. No Occupation Certificate for the Development is to issue pending delivery of the Development Contribution.

## **5. Timing of delivery of the public community benefit**

The dedication of the public benefit, namely the dedication of the Dedication Area (and consequent carrying out of the associated road and cycle way works – all at no cost to the Council), will occur prior to the issue of an occupation certificate for the Proposed Development. It is anticipated that the Dedication will occur prior to the close of 2021. Importantly, the Dedication will have no ongoing or recurring costs for the Council.

## **6. Assessment of the Merits of this Planning Agreement**

### **(a) The Planning Purposes Served by this Planning Agreement**

In accordance with Section 7.4(2) of the EPA Act 1979, this Planning Agreement promotes the following public purpose;

- *the provision of (or the recoupment of the cost of providing) public amenities or public services*

The parties have assessed this Planning Agreement and state that the provisions of this Planning Agreement, in particular the Proposed Development, provide a reasonable means of achieving the public purposes set out above by reason that the Dedication Area (and works within it) will be vested under the care and control of the relevant Roads Authority at the Developers sole cost.

In addition, both the Planning Agreement and the Consent impose obligations upon the Developer to provide bonds (and or carry out rectification works) to make good any damaged public infrastructure when carrying out the Proposed Development. This ensure that Council will have no out of pocket expenses either in acquiring the land or in the physical works themselves.

### **(b) How this Planning Agreement Promotes the Objects of the Environmental Planning and Assessment Act 1979**

In accordance with the EPA Act 1979, this Planning Agreement and the Proposed Development promotes its intent to encourage;

- (ii) *the promotion and co-ordination of the orderly and economic use and development of the Land; and*
- (v) *the provision and co-ordination of community services and facilities; and*

The Planning Agreement achieves these Objects by requiring the Developer to make the dedication of the Dedication Area which will enable Warringah Road to

be widened and the area to be controlled by the relevant Roads Authority as a public road.

By providing the dedication of land the Planning Agreement will result in:

- promotion of the social and economic welfare of the community and a better environment;
- promotion and co-ordination of the orderly and economic use and development of land (a better trafficable public road and provision of long day care facilities); and
- provision and co-ordination of community services and facilities (being a public road) as well as a long day care centre.

**(c) How this Planning Agreement Promotes the Public Interest**

This Planning Agreement's intent is to promote the Public Interest through the acquisition of land (and provision of associated road and cycle way works) for public purposes to the relevant Roads Authority without the relevant Roads Authority having to pay for the land or works. This in turn promotes further Public Interest by ensuring that the scarce and valuable resources of the relevant Roads Authority (and State government at large) are maintained and preserved for the betterment and enjoyment of the community at large.

**(d) How this Planning Agreement Promotes one or more of the elements of Council's Charter under section 8 of the *Local Government Act 1993***

This Planning Agreement promotes the following elements of the Council's Charter:

- to provide directly or on behalf of other levels of government, after due consultation, adequate, equitable and appropriate facilities for the community and to ensure that those facilities are managed efficiently and effectively; and
- to properly manage, develop, protect, restore, enhance and conserve the environment of the area for which it is responsible, in a manner that is consistent with and promotes the principles of ecologically sustainable development

This Planning Agreement promotes the above elements of the Council's Charter by providing an appropriate and trafficable public road and cycle way within the Council's local government area under the care and control of the relevant Roads Authority for the benefit of current and future generations at no cost.

**(e) The Impact of this Planning Agreement on the Public or any Section of the Public**

The growing population of Warringah, and the Northern Beaches local government area requires public roads – particularly those that are both appropriate and safe. This Planning Agreement provides the relevant Roads Authority with land which

will be dedicated to the relevant Roads Authority for use as a public road. As a public road, the Dedication Area will be available to all road users to use. The fact that that dedication (and associated road and cycle way works) is at no cost to the Council is a significant positive impact on the public as it frees up funds that might otherwise have been earmarked for the road upgrade works or cycle way works that are proposed as part of this Planning Agreement.

**(f) Identify whether the Planning Agreement conforms with Council's capital works program (if any)" CI 25E(2)(f)**

The Planning Agreement is not inconsistent with Council's Capital Works program.

**State whether the agreement, amendment or revocation specifies that certain requirements of the agreement must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued CI 25E(2)(g)**

The Planning Agreement includes a provision that the Dedication of the Dedication Area must be complied with before an occupation certificate is issued.