

Explanatory Note: Draft Planning Agreement

Hornsby Shire Council

May Harlow Pty Ltd

The Owners - Strata Plan 42931

Prepared in accordance with clause 25E of the
Environmental Planning and Assessment Regulation 2000

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gadens

77 Castlereagh Street
Sydney NSW 2000
Australia

T +61 2 9931 4999
F +61 2 9931 4888
Ref 34604238

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1. Introduction

This Explanatory Note has been prepared 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 (**Agreement**) between the parties under s93F of the *Environmental Planning & Assessment Act 1979* (NSW) (**Act**).

2. Parties

The proposed parties to the Agreement are:

- (a) Hornsby Shire Council (**Council**);
- (b) May Harlow Pty Ltd and The Owners – Strata Plan 4293 (**Developers**).

3. Summary of objectives, nature and effect

3.1 Objectives

The objective of the draft planning agreement (**the Agreement**) is to provide a mechanism by which an area of land may be dedicated to the Council. This area of land is within (but does not include all of) the following allotments:

- (a) Lot 1 SP 42931;
- (b) Lot 2 SP 42931;
- (c) The common property of SP 42931;
- (d) Lot 1 DP 303913;
- (e) Lot 2 DP 303913; and
- (f) Lot 1 DP 211638.

The allotments are also known as 39 Waitara Avenue and 26, 28 and 30 Orara Street, Waitara.

The Developers are either the owners or the prospective owners of these allotments.

The purpose of the dedication is to facilitate the future provision of public open space. Specifically, a public mid-block open space connection that links the dwellings on Orara Street and Romsey Street to existing public open space infrastructure to the east.

This land is already generally identified in the Land Reservation Acquisition Map of the *Hornsby Local Environmental Plan 2013* (**the LEP**) as 'Local open space (RE1)' and the Council is identified as the relevant authority to acquire land.

3.2 Nature

The Agreement involves the dedication of an area of land (**the dedicated land**). Dedicated land is to be substantially the same as the area as the hatched area marked as 'open space ownership dedication' on drawing No DA02.201[1] Revision 2 prepared by Bates Smart and dated 7 April 2014. This drawing is included in the Agreement as Annexure B.

A planning agreement cannot impose an obligation on a planning authority to grant development consent. A planning agreement cannot breach the provisions of an environmental planning instrument or a development consent applying to the relevant land.

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.

3.3 Effect

The effect of the Agreement, if implemented, is that the Developers would be unable to use the dedicated land for residential accommodation. This is because the Council would assume ownership of the land.

In the future the Council would be able to carry out works to convert the dedicated land into open space for use by members of the public. However, these possible future works are not part of the Agreement.

The Developers are not obliged to dedicate the land until immediately before the issue of an occupation certificate in relation to development for the purposes of residential flat buildings on a **broader site (Development)**. The development consent for the Development has not been granted at this time. This broader site is legally described as:

- (a) Lot 87 DP 660202;
- (b) Lot A DP 950827;
- (c) Lot 3 DP 129713;
- (d) Lot B DP 322006;
- (e) Lot A DP 322006;
- (f) Lot 2 DP 129713;
- (g) Lot B DP 170871;
- (h) Lot 1 DP 129713;
- (i) Lot 1 SP 42931;
- (j) Lot 2 SP 42931;
- (k) The common property of SP 42931;
- (l) Lot 100 DP 667424;
- (m) Lot 1 DP 945629;
- (n) Lot 2 DP 211638;
- (o) Lot 1 DP 211638;

(p) Lot 2 DP 303913; and

(q) Lot 1 DP 303913.

The land comprising the broader site is commonly known as 23, 25, 27, 29, 31, 33, 35, 37 and 39 Waitara Avenue and 20, 22, 24, 26, 28 and 30 Orara Street, Waitara.

The Agreement applies to this broader site.

The development for residential flat buildings would be generally in accordance with development application DA/1370/2013 as amended (**Development Application**). If Development Consent is not granted for (or work is not physically commenced on) the proposed residential flat building, the benefits of the Agreement will not be realised.

4. Assessment of the merits of the proposed agreement

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

The Agreement has a positive impact on the public, and in particular, the residents of the immediate locality. This is because the Agreement provides an opportunity to facilitate an increase in local open space enjoyed by the community. This open space will ultimately provide a link between dwellings on Orara Street and Romsey Street and existing public open space infrastructure to the east.

This is in accord with the Council's long term strategy for this area. This land is already generally identified in the Land Reservation Acquisition Map of the LEP as 'Local open space (RE1)' and the Council is identified by the LEP as the relevant authority to acquire land.

The dedicated land will, at some point, cease to be used for the purposes of residential accommodation (if the obligations of the Developers under the Agreement are triggered and the Council later decides to carry out the necessary embellishment works). However, the land neighbouring the dedicated land will be re-developed for residential accommodation.

Before the obligations of the Developers under this Agreement are triggered, Development Consent must first be granted for the development for the purposes of residential flat buildings, as generally described in development application DA/1370/2013.

If Development Consent is granted (in terms sought by the development applicant) for the Development, there will be no net loss of housing to the community because (even though the dedicated land will not be used for residential accommodation) the Developer would provide additional residential floor space on the neighbouring land. The proposal by the Developer is to realise the theoretical development potential of the dedicated land (had it remained zoned residential) on the balance of the land that comprises the broader site.

The Council would become responsible for the dedicated land and any future works that may be required for it to be embellished for the purposes of open space.

4.2 Promotion of the public interest and the objects of the Act

The Agreement promotes the following objects of the Act:

(a) Section 5(a)(i):

to encourage: ... the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment ...

- (b) Section 5(a)(iv):
to encourage ... the provision of land for public purposes ...
- (c) Section 5(a)(v):
to encourage ... the provision and co-ordination of community services and facilities ...
- (d) Section 5(a)(vi):
to encourage ... the protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats ...
- (e) Section 5(a)(vii):
to encourage ... ecologically sustainable development ...

The Agreement promotes the above objects of the Act, and the public interest, by:

- providing for an increase in the stock of public land available for use by the community; and
- by providing an opportunity, in the future, for there to be a public mid-block open space connection, linking dwellings on Orara Street and Romsey Street to existing public open space infrastructure to the east.

4.3 The purposes of the *Local Government Act 1993 (NSW)* (LG Act)

Council is the planning authority that would be a party to the Agreement. Council is a public authority constituted under the LG Act.

The Agreement promotes the following purposes of the LG Act:

- (a) Section 7(a):
to provide the legal framework for an effective, efficient, environmentally responsible and open system of local government in New South Wales ...
- (b) Section 7(d):
to give councils: ... the ability to provide goods, services and facilities, and to carry out activities, appropriate to the current and future needs of local communities and of the wider public ... to require councils, councillors and council employees to have regard to the principles of ecologically sustainable development in carrying out their responsibilities ...
- (c) Section 7(e):
to require councils, councillors and council employees to have regard to the principles of ecologically sustainable development in carrying out their responsibilities ...

The Agreement promotes the above purposes of the LG Act in the same way that is set out in section 4.2 above.

4.4 The council's charter

Section 8 of the LG Act sets out the 'council's charter'

The Agreement promotes the following elements of the council's charter:

- [T]o provide directly or on behalf of other levels of government, after due consultation, adequate, equitable and appropriate services and facilities for the community and to ensure that those services and facilities are managed efficiently and effectively
- to exercise community leadership ...
- 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
- to have regard to the long term and cumulative effects of its decisions
- 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 Agreement promotes the above elements of the council's charter in the same way that is set out in section 4.2 above.

4.5 The planning purpose

The planning purpose of the Agreement is to provide an opportunity to facilitate the creation of a new open space area to benefit the community, without adversely impacting on the supply of housing.

The Agreement provides a reasonable means of achieving that purpose because, in the absence of the Agreement, the dedicated land would continue to be used for residential accommodation. This would mean that, if the Council wanted to realise its strategic planning intent, public funds would need to be expended in the future.

The Agreement removes the need for the expenditure of public funds for land acquisition (in relation to the dedicated land).

4.6 The Council's capital works program

This opportunity has arisen outside the scope of the Council's capital works program. This means that the Agreement does not conform with that program.

4.7 Construction certificate, occupation certificate or subdivision certificate

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

The Agreement does specify that certain requirements must be complied with before an occupation certificate is issued. These requirements are the dedication of dedicated land to the Council.

5. Preparation of this explanatory note

This explanatory note has been prepared jointly by the parties proposing to enter into the Agreement.