

Explanatory Note: Ku-ring-gai Council Roseville Returned Servicemen's Memorial Club Limited Planning Agreement

Ku-ring-gai- Council

Roseville Returned Servicemen's Memorial Club
Limited

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



Level 7, 151 Clarence Street
Sydney NSW 2000
Australia

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

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1. Summary of objectives, nature and effect

Clause 25E(1) of the *Environmental Planning and Assessment Regulation 2000* (**the Regulation**) requires that an explanatory note must be prepared to accompany a planning agreement. The explanatory note must address the requirements of clause 25E(1)(a)-(b) and clause 25E(2)(a)-(g) of the Regulation.

This explanatory note has been prepared to address these requirements.

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.

The land to which the Agreement applies is privately owned land known as Lot 1 DP 202148 and Lot 2 DP 505371 (the site of 'The Roseville Club' 64 Pacific Highway Roseville).

The Agreement also applies to part of Lot 2 DP202148 (presently Council owned land, fronting Larkin Lane, Roseville adjacent to Roseville Memorial Park) (**the Acquisition Land**).

The Agreement relates to the following development applications:

- (a) development application DA0134/18 made to the Council on or around 12 April 2018;
- (b) any development application that seeks to modify any development approved by a development consent granted to development application DA0134/18 under section 4.55 of the Act;
- (c) any development application that is made after the date of execution of this Agreement for the:
 - (i) demolition of existing structures;
 - (ii) subdivision of the site and construction of a shop-top housing development with basement car parking;
 - (iii) the provision of a club on the ground floor and residential dwellings above; and
 - (iv) the provision of works on the Acquisition Land, including a walkway, to facilitate the rights as set out in Schedule 1 of this Agreement,

and including any development application that seeks to modify any such development which is approved.

DA0134/18, as lodged, is for the demolition of the existing club and the construction of shop top housing — consisting of ground floor club and 33 residential dwellings above, with basement parking.

1.2 Objectives

The objective of the Agreement is to provide a mechanism by which:

- (a) a right of footway; and
- (b) a right of carriageway,

can be created over the Acquisition Land as a material public benefit to the community.

1.3 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 a material public benefit, namely the creation of the two rights of way over the Acquisition Land.

A summary of these contributions is set out below.

1.4 Effect

Contributions are to be made concurrently at the time of the registration of the subdivision of the Acquisition Land from the balance of Lot 2 DP202148. The Agreement also 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 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 Acquisition Land for \$1 if the rights of way are not created 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.

2. Assessment of the merits of the proposed agreement

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

The Agreement will have a positive impact for the local community.

The Acquisition Land is presently owned by the Council. It is not open space, it is 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* (**the LEP**) has 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 imposition of easements in gross. This will ensure that public works constructed on the Council land (under a development consent granted to DA0134/18 or another development application as set out at section 1 above) remain available for the benefit of the Council in perpetuity (even after the ownership of the land changes).

The Council will retain the right to construct replacement works if/when it desires to do so, as if it was the freehold owner. However, the Council will not have the maintenance burden of a freehold owner. This is because the owner of the land (for example, the future owners corporation) would be obliged to maintain the works. In short, the Council gets all the necessary benefits — as if it was a freehold owner — but without the maintenance burden that would ordinarily arise. This is of substantial public benefit.

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 its part of Roseville Memorial Park.

The Agreement:

- (a) provides a reasonable means of achieving the LEP's planning intent for the Acquisition Land;
- (b) preserves public access to the Acquisition Land; and
- (c) provides a favourable regime (to the Council) for the maintenance of the Acquisition Land into the future.

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

The Agreement promotes the following objects of the Act:

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

The Agreement promotes the above objects of the Act, and the public interest, by providing contributions set out in section 1.3 above with the benefits outlined in section 2.1 above.

2.3 The purposes of the *Local Government Act 1993*

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 this Act:

(a) Section 7(e):

to provide for a system of local government that is accountable to the community and that is sustainable, flexible and effective ...

The Agreement promotes the above purposes of the Act in the same way that is set out in section 2.2 above.

2.4 The principles for local government

Chapter 3 of the *Local Government Act 1993* sets out principles for local government

The Agreement promotes the following elements of the principles:

(a) Section 8A(b):

Councils should carry out functions in a way that provides the best possible value for residents and ratepayers.

(b) 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.

(c) Section 8A(g):

Councils should work with others to secure appropriate services for local community needs.

The Agreement promotes the above principles in the same way that is set out in section 2.2 above.

2.5 The planning purpose

The planning purpose of the Agreement is set out in section 2.1 above.

2.6 The Council's capital works program

The Contribution proposed under the Agreement does not conform with the Council's capital works program. This opportunity has arisen outside of the program. Nonetheless, the Agreement will not have an adverse effect on this capital works program.

2.7 Construction certificate, occupation certificate or subdivision certificate

The Agreement does not specify any requirements that must be complied with before a construction certificate, occupation certificate or subdivision certificate

3. Preparation of this explanatory note

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