

Ordinary Council Meeting

22 September 2020



City of
Newcastle

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DISTRIBUTED UNDER SEPARATE COVER

CPI means the All Groups Consumer Price Index applicable to Sydney published by the Australian Bureau of Statistics;

Dealing, in relation to the Land, means, without limitation, selling, transferring, assigning, mortgaging, charging, encumbering or otherwise dealing with the Land;

Development means the proposed mixed use development on the Land, including the alterations and additions to the approved development as described in Development Application DA2018/00773 lodged by the Developer on 25 July 2019;

Development Application has the same meaning as in the Act;

Development Consent has the same meaning as in the Act;

GST has the same meaning as in the GST Law;

GST Law has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition of or administration of the GST;

Land means Lot 110 DP 1018454, and Lot 11 DP 1106378 known as 73-79 Railway Lane, Wickham NSW;

Law means:

- (a) any law applicable including legislation, ordinances, regulations, by-laws and other subordinate legislation;
- (b) any Approval, including any condition or requirement under it; and
- (c) any fees and charges payable in connection with the things referred to in paragraphs (a) and (b);

Monetary Contribution means the monetary contribution payable by the Developer under clause 6 of this agreement;

Occupation Certificate means an occupation certificate as defined under section 6.4 of the Act, or section 109C of the Act if it continues to apply; and

Wickham Master Plan means the Wickham Master Plan adopted by Council on 28 November 2017.

2 Interpretation

In this agreement, unless the context indicates a contrary intention:

- (a) **(documents)** a reference to this agreement or another document includes any document which varies, supplements, replaces, assigns or novates this agreement or that other document;
- (b) **(references)** a reference to a party, clause, paragraph, schedule or annexure is a reference to a party, clause, paragraph, schedule or annexure to or of this agreement;
- (c) **(headings)** clause headings and the table of contents are inserted for convenience only and do not affect interpretation of this agreement;
- (d) **(person)** a reference to a person includes a natural person, corporation, statutory corporation, partnership, the Crown and any other organisation or legal entity and

- (u) **(year)** a reference to a year is a reference to twelve consecutive calendar months.

3 Planning Agreement under the Act

- (a) The parties agree that this agreement is a planning agreement within the meaning of section 7.4 of the Act.
- (b) Schedule 1 of this agreement summarises the requirements for planning agreements under s 7.4 of the Act and the way this agreement addresses those requirements.

4 Application of this agreement

This agreement applies to:

- (a) the Development; and
- (b) the Land.

5 Operation of this agreement

This agreement commences on and from the date it is executed by all parties.

6 Contributions to be made under this agreement

6.1 *Monetary Contribution*

- (a) The Developers will pay to Council a monetary contribution of \$955,000.00 indexed in accordance with increases in the CPI from the date of this agreement to the date of payment.
- (b) The Monetary Contribution must be paid to Council prior to the issue of an Occupation Certificate for the Development.
- (c) The Monetary Contribution must be paid by way of bank cheque in favour of Council or by deposit by means of electronic funds transfer into an account specified by Council.
- (d) The Monetary Contribution will be taken to have been made when the Council notifies the Developers in writing that the bank cheque has been received and cleared funds or electronic funds have been deposited in the Council's bank account for the full amount of the Monetary Contribution.
- (e) The parties agree and acknowledge that the Monetary Contribution will be used towards the provision of local public amenities or infrastructure to support implementation of the Wickham Master Plan.

7 Application of s 7.11, s 7.12 and s 7.24 of the Act to the Development

- (a) This agreement does not exclude the application of section 7.11 of the Act to the Development.
- (b) This agreement does not exclude the application of section 7.12 of the Act to the Development.
- (c) This agreement does not exclude the application of section 7.24 of the Act to the Development.

(either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.

- (b) The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another Party. A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

16.13 GST

- (a) Words and expressions which are not defined in this agreement but which have a defined meaning in GST Law have the same meaning as in the GST Law.
- (b) Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this agreement are exclusive of GST.
- (c) If GST is imposed on any supply made under or in accordance with this agreement, the Developer must pay the GST or pay to the Council an amount equal to the GST payable on or for the taxable supply, whichever is appropriate in the circumstances.

16.14 Governing law and jurisdiction

- (a) The laws applicable in New South Wales govern this agreement.
- (b) The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.

Schedule 1 Summary of requirements (section 7.4)

| Subject and subsection of the Act | Planning Agreement |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Planning instrument and/or Development Application – Section 7.4(1)</p> <p>The Developer has:</p> <p>(a) Sought a change to an environmental planning instrument</p> <p>(b) Made, or propose to make a Development Application</p> <p>(c) Entered into an agreement with, or are otherwise associated with, a person to whom paragraph (a) or (b) applies</p> | <p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> |
| <p>Description of the application- Section 7.4(3)(b)</p> | <p>Proposed alterations and additions to an approved mixed use development (residential building and commercial premises) on the Land as described in Development Application DA2018/00773 lodged 25 July 2018.</p> |
| <p>Description of the land to which the planning Agreement applies – Section 7.4(3)(a)</p> | <p>Lot 110 DP 1018454, and Lot 11 DP 1106378 known as 73-79 Railway Lane, Wickham NSW.</p> |
| <p>The scope, timing and manner of delivery of contribution required by the Planning Agreement – Section 7.4(3)(b)</p> | <p>Monetary contributions in the sum of \$955,000.00 indexed in accordance with increases in the CPI. See clause 6.</p> |
| <p>Applicability of section 7.11 of the Act – Section 7.4(3)(d)</p> | <p>Not excluded. See clause 7.</p> |
| <p>Applicability of section 7.12 of the Act – Section 7.4(3)(d)</p> | <p>Not excluded. See clause 7.</p> |
| <p>Applicability of section 7.24 of the Act – Section 7.4(3)(d)</p> | <p>Not excluded. See clause 7.</p> |
| <p>Contributions to be taken into account under s 7.11- Section 7.4(3)(e)</p> | <p>Contributions are not to be taken into account when determining contributions under s 7.11.</p> |
| <p>Mechanism for dispute resolution – Section 7.4(3)(f)</p> | <p>Clause 10.</p> |
| <p>Enforcement of the Planning Agreement – Section 7.4(3)(g)</p> | <p>Clause 11 restricts the issue of an occupation certificate for the Development.</p> |

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|------------------------------------------------------------------------------|----------------------------|
| No obligation to grant consent or exercise functions – Section 7.4(9) | See clause 14 (no fetter). |
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DRAFT

Executed as an agreement

Signed for and on behalf of **Newcastle**)
City Council ABN 25 242 068 129 by its)
 authorised representative who warrants)
 that they are duly authorised to execute)
 this document on behalf of **Newcastle**)
City Council in the presence of:)
)
)
)

.....

Signature of Witness

.....

Signature of Authorised Representative

.....

Print name of Witness

Executed by 22 Park Avenue Pty Ltd)
 ACN 604 598 316 in accordance with)
 section 127 of the *Corporations Act 2001*)
 (Cth) by:)
)
)

.....

Signature of Director

.....

Signature of Director/Secretary

.....

Print name of Director

.....

Print name of Director/Secretary

Annexure A Draft Explanatory note

Explanatory Note
Exhibition of draft Voluntary Planning Agreement
Lot 110 DP 1018454, known as 73-79 Railway Lane, Wickham

Environmental Planning & Assessment Regulation 2000 (clause 25E)

Planning Agreement

The purpose of this Explanatory Note is to provide a plain English summary to support the notification of a draft voluntary Planning Agreement (**the Planning Agreement**) under Section 7.4 of the *Environmental Planning and Assessment Act 1979 (the Act)*.

The Planning Agreement will require the provision of monetary contributions in connection with proposed development of land at Lot 110 DP 1018454 and Lot 11 DP 1106378, known as 73-79 Railway Lane, Wickham NSW.

This Explanatory Note has been prepared jointly between the parties as required by clause 25E of the *Environmental Planning and Assessment Regulation 2000 (the Regulations)*.

This Explanatory Note is not to be used to assist in construing the Planning Agreement.

Parties

22 Park Avenue Pty Ltd (**the Developer**) made an offer to Newcastle City Council (**the Council**) to enter into a voluntary Planning Agreement, in connection with a Development Application relating to the subject land.

Description of subject land

The land to which the Planning Agreement applies is described as Lot 110 DP 1018454 and Lot 11 DP 1106378, known as 73-79 Railway Lane, Wickham NSW (**the Land**).

Description of the Development Application to which the Planning Agreement applies

Proposed alterations and additions to an approved mixed use development (residential building and commercial premises) on the Land as described in Development Application DA2018/00773 lodged 25 July 2018.

Summary of Objectives, Nature and Effect of the Planning Agreement

The Planning Agreement requires a monetary contribution in the amount of \$955,000.00 adjusted in accordance with increases in the Consumer Price Index from the date of the agreement to the date of payment.

The monetary contributions are to be used by Council towards the provision of public amenities and infrastructure to support implementation of the Wickham Master Plan 2017.

Assessment of the Merits of the Planning Agreement

How the Planning Agreement Promotes the Objects of the Act and the public interest

The draft Planning Agreement will contribute to the provision of public amenities and infrastructure in the vicinity of the development and increasing the connectivity and amenity for

people who will live, work or visit the locality. In doing so, the Agreement promotes the following objectives of the *Environmental Planning and Assessment Act 1979*:

- To promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources (section 1.3(a) EP&A Act).
- To facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment (section 1.3(b) EP&A Act).
- To promote the orderly and economic use and development of land (section 1.3(c) EP&A Act).
- To promote good design and amenity of the build environment (section 1.3(g) of the EP& Act).

The delivery of the contributions under the Agreement will be in the public interest because they will result in the provision of public infrastructure and will improve amenity for residents and visitors to the Wickham area. The provision of these items will promote the social and economic welfare of the community.

The Planning Purposes served by the Planning Agreement

The delivery of the contributions will provide community benefits that will facilitate the redevelopment of the Land envisaged by relevant planning strategies, including the Wickham Master Plan. The monetary contribution will be used to provide public amenities and infrastructure in the vicinity of the Development as proposed in the Wickham Master Plan. This contribution will assist in implementing the Council's strategy and vision for the Wickham area as identified in the Wickham Master Plan. The contributions to be delivered under the Planning Agreement will contribute to providing appropriate facilities and infrastructure for the Development and the surrounding area, producing a good planning outcome for the Development of the Land. As it would be difficult to obtain these benefits through other statutory means, the Planning Agreement is the most suitable instrument by which the contributions can be delivered.

How the Planning Agreement promotes the objectives of the *Local Government Act 1993* and the elements of the Council's Charter

The Planning Agreement is consistent with the following purposes of the *Local Government Act 1993*:

- 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 the wider public;
- to give councils a role in the management, improvement and development of the resources of their areas.

By enabling Council to provide public infrastructure and improve public domain areas, the Planning Agreement is consistent with the following guiding principles for councils, set out in section 8A of the *Local Government Act 1993* (replacing the Council's Charter):

- Councils should provide strong and effective representation, leadership, planning and decision-making.
- Councils should carry out functions in a way that provides the best possible value for residents and ratepayers.

- Councils should plan strategically, using the integrated planning and reporting framework, for the provision of effective and efficient services and regulation to meet the diverse needs of the local community.
- Councils should manage lands and other assets so that current and future local community needs can be met in an affordable way.
- Councils should consider the long term and cumulative effects of actions on future generations.
- Councils should consider the principles of ecologically sustainable development.
- Councils should actively engage with their local communities, through the use of the integrated planning and reporting framework and other measures

Whether the Planning Agreement Conforms with the Council's Capital Works Program

The public amenities and infrastructure to be provided will assist Council in implementing the Wickham Master Plan. The Planning Agreement will provide capital infrastructure and public benefits beyond those set out in Council's capital works program and will enable Council to advance the construction of relevant infrastructure. The Planning Agreement provides for infrastructure needs that will arise as a consequence of the proposed development of the Land.

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

The contributions under the Planning Agreement must be delivered prior to the issue of an occupation certificate for the Development. The Planning Agreement restricts the issue of an occupation certificate if the obligation to deliver the contributions has not been satisfied.