

Voluntary Planning Agreement

Newcastle City Council
ABN 25 242 068 129

22 Park Avenue Pty Ltd
ACN 604 598 316

23 April 2021

Newcastle

Level 7, Sparke Helmore Building, 28 Honeysuckle Drive, Newcastle NSW 2300
PO Box 812, Newcastle NSW 2300
t: +61 2 4924 7200 | f: +61 2 4924 7299 | DX 7829 | www.sparke.com.au
adelaide | brisbane | canberra | darwin | melbourne | newcastle | perth | sydney | upper hunter



NLS\AHZ\76223791\2

Contents

Parties	4
Background	4
Operative part	4
1 <i>Definitions</i>	4
2 <i>Interpretation</i>	5
3 <i>Planning Agreement under the Act</i>	7
4 <i>Application of this agreement</i>	7
5 <i>Operation of this agreement</i>	7
6 <i>Contributions to be made under this agreement</i>	7
6.1 <i>Monetary Contribution</i>	7
7 <i>Application of s 7.11, s 7.12 and s 7.24 of the Act to the Development</i>	7
8 <i>Registration</i>	8
8.1 <i>Registration</i>	8
8.2 <i>Removal from Register</i>	8
9 <i>Review of this agreement</i>	8
10 <i>Dispute Resolution</i>	9
10.1 <i>Reference to Dispute</i>	9
10.2 <i>Notice of Dispute</i>	9
10.3 <i>Representatives of Parties to Meet</i>	9
10.4 <i>Further Notice if Not Settled</i>	9
10.5 <i>Mediation</i>	9
10.6 <i>Litigation</i>	10
10.7 <i>No suspension of contractual obligations</i>	10
11 <i>Enforcement</i>	10
11.1 <i>Default</i>	10
11.2 <i>Restriction on the issue of Certificates</i>	11
11.3 <i>General Enforcement</i>	11
12 <i>Assignment and Dealings</i>	11
12.1 <i>Assignment</i>	11
12.2 <i>Transfer of Land or Interest</i>	11
13 <i>Approvals and consents</i>	12
14 <i>No fetter</i>	12
14.1 <i>Discretion</i>	12

14.2	No fetter	12
15	<i>Notices</i>	12
15.1	Notices	12
15.2	Notices sent by email	13
15.3	Receipt of Notices sent by email	14
16	<i>General</i>	14
16.1	Relationship between parties	14
16.2	Time for doing acts	14
16.3	Further assurances	14
16.4	Variation	14
16.5	No assignment	15
16.6	Counterparts	15
16.7	Legal expenses and stamp duty	15
16.8	Entire agreement	15
16.9	Representations and warranties	15
16.10	Severability	15
16.11	Invalidity	15
16.12	Waiver	15
16.13	GST	16
16.14	Governing law and jurisdiction	16
	Schedule 1 Summary of requirements (section 7.4)	17
	Annexure A Draft Explanatory note	19

Agreement

Date

Parties

First party

Name	Newcastle City Council (Council)
ACN	25 242 068 129
Contact	General Manager
Telephone	(02) 4974 2000

Second party

Name	22 Park Avenue Pty Ltd (Developer)
ACN	604 598 316
Contact	Peter Blake
Telephone	0423 851 901

Background

- A. The Developer is the owner of the Land.
- B. The Developer has entered into an agreement with Mr Peter Blake who has made a Development Application to the Council for Development Consent to carry out the Development on the Land.
- C. The Developer has offered to enter into this agreement in connection with the proposed Development.

Operative part

1 Definitions

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

Act means the *Environmental Planning and Assessment Act 1979* (NSW);

Address means a party's address set out in the Notices clause of this agreement;

Approval means any certificate, licence, consent, permit, approval or other requirement of any Authority having jurisdiction in connection with the activities contemplated by this agreement;

Authority means any government, semi-governmental, statutory, administrative, fiscal or judicial body, department, commission, authority, tribunal, public or other person;

Business Day means a day on which banks are open for general banking business in Sydney, excluding Saturdays and Sundays;

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 their personal representatives, successors, substitutes (including persons taking by novation) and permitted assigns;

- (e) **(party)** a reference to a party to a document includes that party's personal representatives, executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns;
- (f) **(president, CEO or managing director)** the president, CEO or managing director of a body or Authority means any person acting in that capacity;
- (g) **(requirements)** a requirement to do any thing includes a requirement to cause that thing to be done, and a requirement not to do any thing includes a requirement to prevent that thing being done;
- (h) **(including)** including and includes are not words of limitation, and a list of examples is not limited to those items or to items of a similar kind;
- (i) **(corresponding meanings)** a word that is derived from a defined word has a corresponding meaning;
- (j) **(singular)** the singular includes the plural and vice-versa;
- (k) **(gender)** words importing one gender include all other genders;
- (l) **(parts)** a reference to one or more things includes each part and all parts of that thing or group of things but nothing in this clause implies that part performance of an obligation constitutes performance of that obligation;
- (m) **(rules of construction)** neither this agreement nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting;
- (n) **(legislation)** a reference to any legislation or provision of legislation includes all amendments, consolidations or replacements and all regulations or instruments issued under it;
- (o) **(time and date)** a reference to a time or date in connection with the performance of an obligation by a party is a reference to the time and date in , Australia, even if the obligation is to be performed elsewhere;
- (p) **(joint and several)** an agreement, representation, covenant, right or obligation:
 - (i) in favour of two or more persons is for the benefit of them jointly and severally; and
 - (ii) on the part of two or more persons binds them jointly and severally;
- (q) **(writing)** a reference to a notice, consent, request, approval or other communication under this agreement or an agreement between the parties means a written notice, request, consent, approval or agreement;
- (r) **(replacement bodies)** a reference to a body (including an institute, association or Authority) which ceases to exist or whose powers or functions are transferred to another body is a reference to the body which replaces it or which substantially succeeds to its power or functions;
- (s) **(Australian currency)** a reference to dollars or \$ is to Australian currency;
- (t) **(month)** a reference to a month is a reference to a calendar month; 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.
- (d) The benefits under this agreement are not to be taken into consideration in determining a development contribution under section 7.11 of the Act.

8 Registration

8.1 Registration

- (a) The Developer agrees to procure the registration of this agreement under the *Real Property Act 1900* (NSW) in the relevant folios of the Register of the Land in accordance with section 7.6 of the Act.
- (b) The Developer at its own expense will, promptly after the execution of this agreement, take all practical steps, and otherwise do anything that the Council reasonably requires to procure:
 - (i) the consent of each person who:
 - (A) has an estate or interest in the Land registered under the *Real Property Act 1900* (NSW); or
 - (B) is seized or possessed of an estate or interest in the Land,
 - (ii) the execution of any documents; and
 - (iii) the production of the relevant certificates of title.
- (c) The Developer at its own expense, will take all practical steps, and otherwise do anything that the Council reasonably requires:
 - (i) to procure the lodgement of this agreement with the Registrar-General as soon as reasonably practicable after this agreement comes into operation, but in any event, no later than 30 Business Days after that date; and
 - (ii) to procure the registration of this agreement by the Registrar-General in the relevant folios of the Register for the Land as soon as reasonably practicable after this agreement is lodged for registration.

8.2 Removal from Register

- (a) The Council will provide a release and discharge of this agreement so that it may be removed from the folios of the Register for the Land (or any part of it):
 - (i) provided the Council is satisfied the Developer and Owner have duly fulfilled their obligations under this agreement, and are not otherwise in default of any of the obligations under this agreement; or
 - (ii) in the event any Development Consent granted on determination of Development Application DA 2018/00773 lodged with the Council on 25 July 2019 lapses or is determined by a Court to be invalid.

9 Review of this agreement

- (a) This agreement may be reviewed or modified. Any review or modification of this agreement will be conducted in the circumstances and in the manner determined by the parties.
- (b) No modification or review of this agreement will be of any force or effect unless it is in writing and signed by the parties to this agreement.
- (c) A party is not in breach of this agreement if it does not agree to an amendment to this agreement requested by a party in, or as a consequence of, a review.

10 Dispute Resolution

10.1 *Reference to Dispute*

If a dispute arises between the parties in relation to this agreement, the parties must not commence any court proceedings relating to the dispute unless the parties have complied with this clause, except where a party seeks urgent interlocutory relief.

10.2 *Notice of Dispute*

The party wishing to commence the dispute resolution process must give written notice (**Notice of Dispute**) to the other parties of:

- (a) The nature of the dispute,
- (b) The alleged basis of the dispute, and
- (c) The position which the party issuing the Notice of Dispute believes is correct.

10.3 *Representatives of Parties to Meet*

- (a) The representatives of the parties must promptly (and in any event within 10 business days of the Notice of Dispute) meet in good faith to attempt to resolve the notified dispute.
- (b) The parties may, without limitation:
 - (i) resolve the dispute during the course of that meeting;
 - (ii) agree that further material about a particular issue or consideration is needed to effectively resolve the dispute (in which event the parties will, in good faith, agree to a timetable for delivery of that material and further meetings); or
 - (iii) agree that the parties are unlikely to resolve the dispute and, in good faith, agree to a form of alternative dispute resolution (including arbitration or mediation) which is appropriate for the resolution of the relevant dispute.

10.4 *Further Notice if Not Settled*

If the dispute is not resolved within 20 Business Days after the nominated representatives have met, either party may give to the other a written notice calling for determination of the dispute (Determination Notice) by mediation under clause 10.5.

10.5 *Mediation*

If a party gives a Determination Notice calling for the dispute to be mediated:

- (a) The parties must agree to the terms of reference of the mediation within 10 Business Days of the receipt of the Determination Notice (the terms shall include a requirement that the mediation rules of the Institute of Arbitrators and Mediators Australia (NSW Chapter) apply;
- (b) The mediator will be agreed between the parties, or failing agreement within 10 Business Days of receipt of the Determination Notice, either Party may request the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter) to appoint a mediator;

- (c) The mediator appointed pursuant to this clause 10.5 must:
 - (i) Have reasonable qualifications and practical experience in the area of the dispute; and
 - (ii) Have no interest or duty which conflicts or may conflict with his or her function as a mediator he or she being required to fully disclose any such interest or duty before his or her appointment;
- (d) The mediator shall be required to undertake to keep confidential all matters coming to his or her knowledge by reason of his or her appointment and performance of his or her duties;
- (e) The parties must within 10 Business Days of receipt of the Determination Notice notify each other of their representatives who will be involved in the mediation;
- (f) The parties agree to be bound by a mediation settlement and may only initiate judicial proceedings in respect of a dispute which is the subject of a mediation settlement for the purpose of enforcing that mediation settlement; and
- (g) In relation to costs and expenses:
 - (i) Each party will bear its own professional and expert costs incurred in connection with the mediation; and
 - (ii) The costs of the mediator will be shared equally by the parties unless the mediator determines that a party has engaged in vexatious or unconscionable behaviour in which case the mediator may require the full costs of the mediation to be borne by that party.

10.6 *Litigation*

If the dispute is not *finally* resolved in accordance with this clause 10, then either party is at liberty to litigate the dispute.

10.7 *No suspension of contractual obligations*

Subject to any interlocutory order obtained under clause 10.1, the referral to or undertaking of a dispute resolution process under this clause 10 does not suspend the parties' obligations under this agreement.

11 Enforcement

11.1 *Default*

- (a) In the event a party considers another party has failed to perform and fulfil an obligation under this agreement, it may give notice in writing to the other party (**Default Notice**) giving all particulars of the matters in respect of which it considers default has occurred and by such notice require the default to be remedied within a reasonable time not being less than 21 days.
- (b) In determining a reasonable time, regard must be had to both the nature of the default and the work or other action required to remedy it and whether or not the continuation of the default constitutes a public nuisance or raises other circumstances of urgency or emergency.
- (c) If a party disputes the Default Notice it may refer the dispute to dispute resolution under clause 10 of this agreement.

11.2 *Restriction on the issue of Certificates*

- (a) In accordance with section 6.10 of the Act and any associated regulations (or if the Former Building and Subdivision Provisions apply, section 109H of the Act) an Occupation Certificate must not be granted for the Development or any part of the Development unless the Monetary Contribution has been paid in full.
- (b) For the purposes of this clause 11.2, "Former Building and Subdivision Provisions" has the same meaning as in clause 18 of the *Environmental Planning and Assessment (Savings, Transitional and Other provisions) Regulation 2017*.

11.3 *General Enforcement*

- (a) Without limiting any other remedies available to the parties, this agreement may be enforced by any party in any Court of competent jurisdiction.
- (b) Nothing in this agreement prevents:
 - (i) a party from bringing proceedings in the Land and Environment Court to enforce any aspect of this agreement or any matter to which this agreement relates; and
 - (ii) the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this agreement or any matter to which this agreement relates.

12 Assignment and Dealings

12.1 *Assignment*

- (a) A party must not assign or deal with any right under this agreement without the prior written consent of the other parties.
- (b) Any change of ownership or control (as defined in section 50AA of the *Commonwealth Corporations Act 2001*) of a party (excluding the Council) shall be deemed to be an assignment of this agreement for the purposes of this clause.
- (c) Any purported Dealing in breach of this clause is of no effect.

12.2 *Transfer of Land or Interest*

- (a) The Developer (**Transferor**) may not transfer, assign or dispose of the whole or any part of its right, title or interest in the Land (present or future) or in the Development to another person (**Transferee**) unless before it sells, transfers or disposes of that right, title or interest:
 - (i) The Transferor satisfies the Council that the proposed Transferee is financially capable of complying with the Developer's obligations under this agreement;
 - (ii) The Transferor satisfies the Council that the rights of the Council will not be diminished or fettered in any way;
 - (iii) The Transferee delivers to the Council a novation deed signed by the Transferee in a form and of such substance as is acceptable to the Council containing provisions under which the Transferee agrees to comply with all the outstanding obligations of the Transferor under this agreement;

- (iv) Any default under any provisions of this agreement has been remedied or waived by the Council, on such conditions as the Council may determine, and
- (v) The Transferor and the Transferee pay the Council's reasonable costs in relation to the assignment.

13 Approvals and consents

Except as otherwise set out in this agreement, and subject to any statutory obligations, a party may give or withhold an approval or consent to be given under this agreement in that party's absolute discretion and subject to any conditions determined by the party. A party is not obligated to give its reasons for giving or withholding consent or for giving consent subject to conditions.

14 No fetter

14.1 *Discretion*

This agreement is not intended to operate to fetter, in any manner, the exercise of any statutory power or discretion of the Council, including, but not limited to, any statutory power or discretion of the Council relating to the Development Application or any other application for Development Consent (all referred to in this agreement as a "**Discretion**").

14.2 *No fetter*

No provision of this agreement is intended to constitute any fetter on the exercise of any Discretion. If, contrary to the operation of this clause, any provision of this agreement is held by a court of competent jurisdiction to constitute a fetter on any Discretion, the parties agree:

- (a) They will take all practical steps, including the execution of any further documents, to ensure the objective of this clause is substantially satisfied,
- (b) In the event that (a) cannot be achieved without giving rise to a fetter on the exercise of a Discretion, the relevant provision is to be severed and the remainder of this agreement has full force and effect, and
- (c) To endeavour to satisfy the common objectives of the parties in relation to the provision of this agreement which is to be held to be a fetter on the extent that is possible having regard to the relevant court judgment.

15 Notices

15.1 *Notices*

Any notice given under or in connection with this agreement (**Notice**):

- (a) must be in writing and signed by a person duly authorised by the sender;

15.3 *Receipt of Notices sent by email*

- (a) A Notice sent under clause 15.2 is taken to be given or made:
 - (i) when the sender receives an email acknowledgement from the recipient's information system showing the Notice has been delivered to the email address stated above;
 - (ii) when the Notice enters an information system controlled by the recipient; or
 - (iii) when the Notice is first opened or read by the recipient,whichever occurs first.
- (b) If under clause 15.3 a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent, or later than 4.00 pm (local time), it will be taken to have been given or made at the start of business on the next Business Day in that place.

16 General

16.1 *Relationship between parties*

- (a) Nothing in this agreement:
 - (i) constitutes a partnership between the parties; or
 - (ii) except as expressly provided, makes a party an agent of another party for any purpose.
- (b) A party cannot in any way or for any purpose:
 - (i) bind another party; or
 - (ii) contract in the name of another party.
- (c) If a party must fulfil an obligation and that party is dependent on another party, then that other party must do each thing reasonably within its power to assist the other in the performance of that obligation.

16.2 *Time for doing acts*

- (a) If the time for doing any act or thing required to be done or a notice period specified in this agreement expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.
- (b) If any act or thing required to be done is done after 5.00 pm on the specified day, it is taken to have been done on the following Business Day.

16.3 *Further assurances*

Each party must promptly execute all documents and do all other things reasonably necessary or desirable to give effect to the arrangements recorded in this agreement.

16.4 *Variation*

A provision of this agreement can only be varied by a later written document executed by or on behalf of all parties and in accordance with the provisions of the Act.

16.5 No assignment

A party cannot assign or otherwise transfer its rights under this agreement without the prior written consent of the other party.

16.6 Counterparts

This agreement may be executed in any number of counterparts. All counterparts taken together constitute one instrument.

16.7 Legal expenses and stamp duty

Each party will pay their own legal costs and disbursements in connection with the negotiation, preparation and execution of this agreement.

16.8 Entire agreement

The contents of this agreement constitute the entire agreement between the parties and supersede any prior negotiations, representations, understandings or arrangements made between the parties regarding the subject matter of this agreement, whether orally or in writing.

16.9 Representations and warranties

The parties represent and warrant that they have the power and authority to enter into this agreement and comply with their obligations under the agreement and that entry into this agreement will not result in the breach of any law.

16.10 Severability

If a clause or part of a clause of this agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this agreement, but the rest of this agreement is not affected.

16.11 Invalidity

- (a) A word or provision must be read down if:
 - (i) this agreement is void, voidable, or unenforceable if it is not read down;
 - (ii) this agreement will not be void, voidable or unenforceable if it is read down; and
 - (iii) the provision is capable of being read down.
- (b) A word or provision must be severed if:
 - (i) despite the operation of clause (a), the provision is void, voidable or unenforceable if it is not severed; and
 - (ii) this agreement will be void, voidable or unenforceable if it is not severed.
- (c) The remainder of this agreement has full effect even if clause 16.11(b) applies.

16.12 Waiver

- (a) A right or remedy created by this agreement cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right or remedy does not constitute a waiver of that right or remedy, nor does a waiver

(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>
<p>No obligation to grant consent or exercise functions – Section 7.4(9)</p>	<p>See clause 14 (no fetter).</p>

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:

[Handwritten signature]

Signature of Witness

[Handwritten signature]

Signature of Authorised Representative

Michelle Bissop

Samantha Cross.

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:

[Handwritten signature]

Signature of Director

[Handwritten signature]

Signature of Director/Secretary

EDDIE TRAN

Print name of Director

PETER STEWART BLAKE

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.

Handwritten signatures in black ink, appearing to be initials or names, located in the bottom right corner of the page.