

Explanatory Note

Revised Voluntary Planning Agreement

**(proposed by Roger Simpson and Sally Irwin,
version received by Council on 5 February 2013)**

Environmental Planning & Assessment Regulation 2000 (clause 25E)

Revised Planning Agreement

The purpose of this Explanatory Note is to provide a plain English Summary to support the notification of a draft revised Voluntary Planning Agreement ("**the Planning Agreement**") under Section 93F of the *Environment Planning and Assessment Act 1979* ("**the Act**"), for the transfer of land and the provision of public amenities and services in relation to development of land at 2 Vale Street, Cammeray.

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

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

Parties

Roger Simpson and Sally Irwin ("**the Owner**") made an offer to North Sydney Council ("**the Council**") to enter into a revised voluntary Planning Agreement, in connection with Development Application No 305/05 approved by the Land and Environment Court on 1 September 2010, as modified by Section 96AA application No 305/05/2..

Description of subject land

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

Lot 10 DP748772, known as 2 Vale Street, Cammeray (the "**Land**").

The Land has an area of 4,754 m². Improvements on the Land include a dwelling house, an associated swimming pool, garage, tennis court and garden. Vehicle access is via a driveway off Vale Street. The northern and north-west slopes of the Land comprise remnant bushland.

The whole of the Land is zoned Residential C under the provisions of the North Sydney Local Environmental Plan 2001, with the exception of 750 m² of the Land at its north-western corner which is zoned Public Open Space.

Description of the approved development to which the existing Planning Agreement applies

Development application No 305/05 was approved by the Land & Environment Court on 1 September 2010 as a 'deferred commencement' consent (the "**Court Consent**"). The development comprises the following elements:

Removal of the existing tennis court and swimming pool, erection of a multi-level apartment building comprising 21 units with basement parking for 37 vehicles, a two-car lift, new vehicle

access to the corner of Cambridge and Abbott Streets, removal of trees, associated vegetation management and landscape works, creation of asset protection zone for bushfire, alterations and additions to the existing dwelling house, new pool community title subdivision of the development and land into three (3) lots, and gifting to Council of 750 m² of site which is zoned Public Open Space.

Condition AA1 of the Court Consent, a 'deferred commencement' condition, required a planning agreement to be entered into and registered to enable the consent to be activated. This condition was satisfied by the registration of the planning agreement at NSW Land & Property Information on 23 August 2011.

Summary of Objectives, Nature and Effect of the revised Planning Agreement

The objectives, nature and effect of the revised Planning Agreement remain essentially the same as those of the existing agreement, that is, representing an offer by the Developer to transfer to Council all that portion (750m²) of the Land at its north-western corner which is zoned Public Open Space and to give Council a monetary contribution to the provision and upgrading of public facilities which is an amount which represents a discounted amount of the contribution which would be payable under the applicable s94 contributions plan. The portion of land to be transferred comprises remnant bushland and is part of the bushfire asset protection zone proposed for the development.

The revised Planning Agreement carries over the terms and obligations of the existing agreement, summarised as follows:

- The obligation upon the Developer to make a development contribution to Council in association with the granting of consent by Council to development application No 305/05, comprising:
 - the transfer of that portion of the Land zoned Public Open Space to Council (the "**Public Open Space Land**"), subject to the creation of an easement burdening the Public Open Space Land and benefiting the portion of the Land zoned Residential C for the purpose of the maintenance of the bushfire Asset Protection Zone and the Riparian Zone on the Land,
 - implementation and ongoing maintenance of the bushfire Asset Protection Zone and Riparian Zone on the Land in accordance with the requirements of the Rural Fire Service and the Department of Environment, Climate Change and Water (now the NSW Office of Water) respectively, and
 - payment of a monetary contribution of \$270,000 to Council for the provision and upgrading of public facilities.
- the transfer of the Public Open Space Land and payment of the monetary contribution of \$270,000 shall take place prior to the issue of an Occupation Certificate for the approved development DA No 305/05 or the issue of a subdivision certificate for the subdivision, whichever will occur first, and
- Other than the monetary contribution of \$270,000 offered in the planning agreement, the Council will not be able to require, as condition(s) of consent to the development, any monetary or other contributions towards the provision or improvement of amenities or services under s94 or s94A of the Act.

The revised Planning Agreement seeks to alter the terms of the existing Planning Agreement so as to render it consistent with the proposed Torrens title subdivision plan and associated easements in S.96 application No 305/05/2 to modify the consent, and to exclude the proposed lot containing the existing house from the obligation to create and maintain the bushfire Asset Protection Zone and the Riparian Zone.

Assessment of the Merits of the Planning Agreement

How the revised Planning Agreement promotes the Objects of the Act and the public interest

The objects of the Act in Section 5 of the Act encourage the proper management development and conservation of natural and artificial resources including agricultural lands, cities, towns and villages for the purposes of promoting the social and economic welfare of the community and a better environment.

The development application promotes and co-ordinates the orderly and economic use and development of the Land and in accordance with the objects of the Act, the Planning Agreement as revised provides for:

- (1) the provision of land for public purposes;
- (2) the provision and co-ordination of community services and facilities;
- (3) the protection of the environment; and
- (4) ecologically sustainable development.

The draft planning agreement promotes the public interest by providing for:

- the provision of bushland for public open space at no monetary cost to Council; and
- ensure that the bushland is appropriately enhanced, revegetated, managed and conserved as an Asset Protection Zone and Riparian Area in perpetuity at no cost to Council; and
- payment of a reduced monetary contribution to reflect the value of the Public Open Space Land transferred to the Council while also ensuring an appropriate contribution towards public facilities and services required by approved residential development.

The Planning Purposes Served by the revised Planning Agreement

The revised Planning Agreement facilitates the implementation of the Court Consent as modified, and provides for contribution by the Developer of land and funds for the following planning purposes:

- the conservation and enhancement of the natural environment; and
- the provision of public amenities and services.

How the revised Planning Agreement Promotes the Elements of the Council's Charter

The Planning Agreement promotes the following two elements of the Council's Charter under s8(1) of the *Local Government Act 1993*:

- To 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.

This element of the Council's Charter is promoted through the recoupment of costs for public amenities and services.

- 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 element of the Council's Charter is promoted by the preservation and enhancement of remnant bushland

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

The Planning Agreement as revised does not conform with Council's Capital Works Program as no funds have been specifically allocated for works involving bush regeneration on or near this site in the current Capital Works Program.
