

<b>ITEM 12.3</b>	<b>PUBLIC EXHIBITION OF DRAFT PLANNING AGREEMENT AT 321-331 CONDAMINE STREET, MANLY VALE</b>
<b>REPORTING MANAGER</b>	<b>EXECUTIVE MANAGER STRATEGIC &amp; PLACE PLANNING</b>
<b>TRIM FILE REF</b>	<b>2022/658140</b>
<b>ATTACHMENTS</b>	<b>1 <a href="#">⇒ Offer to Enter into Planning Agreement (Included In Attachments Booklet)</a></b> <b>2 <a href="#">⇒ Draft Planning Agreement (Included In Attachments Booklet)</a></b>

## PURPOSE

To seek Council's endorsement to publicly exhibit the draft Planning Agreement at 321-331 Condamine Street, Manly Vale.

## EXECUTIVE SUMMARY

On 22 December 2021, Manly Vale Developments No. 2 Pty Ltd submitted an offer to enter into a Planning Agreement (the 'Offer') with Northern Beaches Council for 321-331 Condamine Street, Manly Vale to dedicate land and construct and widen a laneway at the rear of the site (Somerville Place).

The Offer was associated with a development application which subsequently received a deferred commencement development consent from the Land & Environment Court on 11 February 2022 for demolition works and the construction of a four-storey shop-top housing development consisting of four (4) retail tenancies on the ground floor, twenty-six (26) residential apartments over three levels and a basement carpark for forty-three (43) vehicles.

Clarification was subsequently sought from Manly Vale Developments in relation to several details associated with the Offer.

An updated Offer was received on 12 August 2022, involving:

- Dedication of land 54.6m<sup>2</sup> in area (1.435m wide x 38.075m long) to Council free of charge for the Somerville Place road widening. The dedication will result in a 6m-wide road reserve.
- The dedication will occur via a Plan of Subdivision which will be registered once all building and civil works are complete and prior to issue of any Occupation Certificate.
- A right of footway on privately owned land will be created as an easement in gross (limited in height) in favour of Council.

Council's Development Contributions Panel has considered the Offer and determined there is a public benefit arising from the Offer.

A draft Planning Agreement has been prepared and is provided to Council for consideration.

If Council agrees, the draft Planning Agreement and supporting documentation will be publicly exhibited for 28 days in accordance with statutory requirements. The outcomes of the public exhibition will be reported to Council.

**RECOMMENDATION OF ACTING DIRECTOR PLANNING AND PLACE**

That:

1. Council place the draft Planning Agreement and supporting documentation on public exhibition for a minimum of 28 days.
  2. The outcomes of the public exhibition of the draft Planning Agreement be reported to Council.
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**REPORT**

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**BACKGROUND**

Planning Agreements are a legal arrangement made between a developer and Council to facilitate the delivery of a public benefit. Public benefits may include the dedication of land at no cost to Council, the payment of a monetary contribution, and/or the provision of infrastructure works.

Planning Agreements are voluntary and initiated by the developer. The current legal and procedural framework for Planning Agreements is set out in Division 7.1 of Part 7 of the Environmental Planning and Assessment Act 1979 (the 'Act') and Division 1 of Part 9 of the Environmental Planning and Assessment Regulation 2021.

In June 2022, Council adopted a Planning Agreements Policy (Council's Policy) and accompanying Guidelines to help guide developers on Council's preferred approach to Planning Agreements. It identifies legal and procedural obligations to be satisfied by the developer, and details the criteria Council uses to assess an Offer.

Council's assessment of an Offer and progression of a Planning Agreement to execution will be in accordance with Council's Policy and the Planning Agreements Practice Note (Department of Planning, Industry and Environment, February 2021).

**The Site**

The land that is the subject of the Offer is known as 321-331 Condamine Street, Manly Vale (the 'subject site') and comprises five (5) allotments:

- Lots 20, 21, 22 and 25 in Deposited Plan 11320, and
- Lot 123 in Deposited Plan 737259.

The subject site is located on the western side of Condamine Street and is at the north-western corner of the Condamine Street-Sunshine Street intersection.

The subject site is regular in shape with a frontage of 36m to Condamine Street, a frontage of 31m to Sunshine Street, a frontage of 38m to Somerville Place, and a depth of 34m. This land has a total surveyed area of 1,274m<sup>2</sup>.

All land within the subject site is zoned B2 Local Centre under the Warringah Local Environmental Plan 2011.

Access into the subject site comprises pedestrian access from Condamine Street and vehicular access is from the rear lane by entering Somerville Place.



Figure 1: Location Map, 321-331 Condamine Street, Manly Vale



### Vehicular Access to Somerville Place

Somerville Place is a one-way laneway that runs parallel to Condamine Street and provides rear lane access to the properties fronting Condamine Street. Access into Somerville Place can only be gained via King Street, with vehicles travelling in a southbound direction to exit onto Sunshine Street.

Somerville Place is a public road and has a varied width. Currently, the section of Somerville Place immediately abutting the rear of the subject site is approximately 4.56m wide. Adjacent to 339 Condamine Street, Somerville Place is only 3m wide. Some sections of Somerville Place are already 6 metres wide, including:

- 341-343 Condamine Street – the subject of a Planning Agreement between the former Warringah Council and Joesandra Pty Ltd and CES Developments Pty Ltd. This agreement was executed on 30 June 2016. A 2.34m-wide section of land for road widening was transferred to Council on 17 May 2016.
- 333 Condamine Street, which is the property immediately north of the subject properties.

The land dedication proposed as part of the Offer will result in an increased road reserve width of 6m adjacent to the subject site.

### **The Approved Development (DA2020/0824)**

On 11 February 2022, the Land & Environment Court approved a development application (DA2020/0824) on the subject site, subject to a deferred commencement condition. The deferred commencement consent is for demolition works and the construction of a four-storey shop-top housing development consisting of four (4) retail tenancies on the ground floor, twenty-six (26) residential apartments over three levels and a basement carpark for forty-three (43) vehicles.

The development consent also includes the reconstruction and widening of Somerville Place to provide a 6m-wide road reserve adjacent to the subject site. A Planning Agreement is the legal mechanism required to facilitate the dedication of land containing the widened road to Council.

The deferred commencement condition reads as follows:

#### ***“1 Planning Agreement for the Dedication of Land***

*The developer shall enter into a Planning Agreement (PA) with Northern Beaches Council pursuant to section 7.4 of the Environmental Planning and Assessment Act, 1979 to dedicate a 1.4m wide x 38.075m long strip of land adjacent to Somerville Place for the purpose of road widening and consistent with the developer’s offer dated 22 December 2021.*

*The Executed Planning Agreement is to be in place before this condition is satisfied.*

*Note: Please be advised that no decision as to whether Council will enter into a Planning Agreement has been made and there is no representation that such a decision will be made until the draft Planning Agreement has been exhibited, assessed and determined by Council in accordance with the Environmental Planning and Assessment Act, 1979.*

*Evidence required to satisfy the deferred commencement condition must be submitted to Council within two (2) years of the date of this consent, or the consent will lapse in accordance with Section 95 of the Environmental Planning and Assessment Regulation 2000.*

*This evidence is to be submitted along with a completed ‘Deferred Commencement Review Form’ (available on Council’s website) and the application fee, as per Council’s Schedule of Fees and Charges.”*

### Offer to Enter into a Planning Agreement

On 22 December 2021, Manly Vale Developments No. 2 Pty Ltd (the 'Developer') lodged an Offer to Enter into a Planning Agreement (the 'Offer'). On initial review of the Offer, several inconsistencies were identified. The Developer was requested to address the following deficiencies:

1. Insufficient details on the proposed land to be dedicated particularly regarding dimensions.
2. Inconsistencies between engineering plans and the plan of land dedication.
3. Clarification on intent to dedicate footpath which is on private land.

On 12 August 2022, an updated Offer was received. The Offer (Attachment 1) proposes:

- Dedication of land 54.6m<sup>2</sup> in area (1.435m wide x 38.075m long) to Council free of charge for Somerville Place road widening. The dedication of land will occur by registration of the Plan of Subdivision once the Developer has reconstructed Somerville Place and prior to issue of any Occupation Certificate.
- A right of footway will be created as an easement in gross (limited in height) on the footpath located adjacent to the road reserve of Somerville place, on land that will remain in private ownership.

The land to be dedicated to Council is shown by notation (R) in Figure 2. The easement is identified by notation (A).

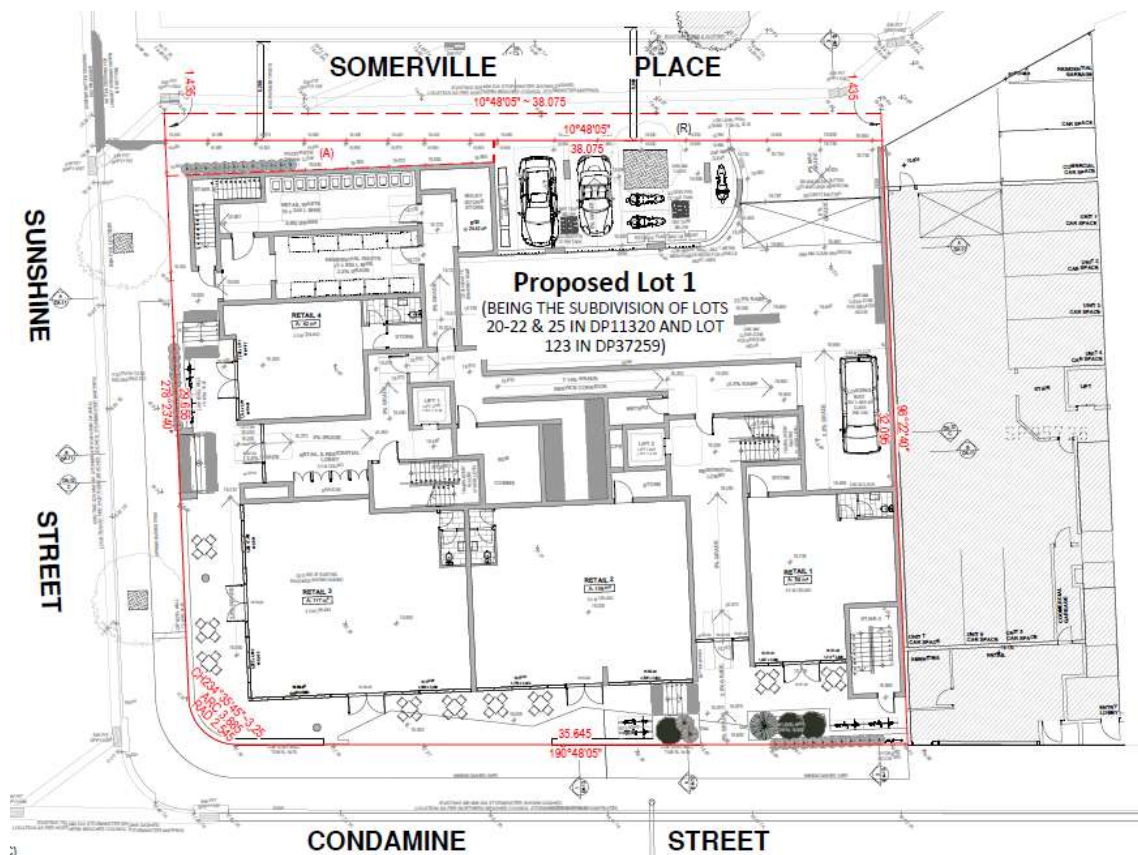


Figure 2: Land to be dedicated to Council

### The Public Benefit of the Offer

In accordance with its charter, Council's Development Contributions Panel (the 'Panel') has considered an assessment of the Offer and determined there is public benefit arising from the Offer, being:

- The Somerville Place road reserve adjacent to the site is currently 4.56m wide. Dedication of land and road widening will result in a 6m-wide reserve that will improve the efficiency of the existing road and will contribute to the future anticipated two-way operation, improving traffic movements. The road will be constructed by the Developer to Council's standards and will help improve the road conditions in that section of Somerville Place.
- An easement will be provided that will allow public access over privately owned property. Currently, there is no footpath along this section of the Somerville Place road reserve. Public access, by way of a registered easement over the privately-owned land (that will contain a footpath constructed under DA2020/0824) provides a safe pedestrian access to the local road network. Construction of the footpath will be as per Council approved standards and will provide appropriate stormwater management.

At its meeting of 20 September 2022, the Panel agreed in-principle to support the Offer and to allow the negotiation and preparation of the draft Planning Agreement. At this meeting the Panel recommended:

*"That:*

1. *The Development Infrastructure Contributions Panel (the 'Panel') give in-principle support to the Offer to Enter into a Planning Agreement subject to:*
  - A. *The terms for the draft Planning Agreement being negotiated with the developer, being:*
    - i. *Council staff inspect the civil works – road reserve and footpath – during and at final stage/completion and are duly satisfied before the land dedication is effected and easement registered.*
    - ii. *An application for Subdivision Certificate is lodged with Council in regard to the land dedication – public road reserve – and the easement for public access in regard to the private land containing a section of footpath.*
  - B. *Council's Principal Development Infrastructure Officer be nominated as Council's Responsible Officer in negotiating the terms of obligations listed in recommendation 1A, in accordance with Council's Planning Agreements Policy.*
  - C. *Legal Counsel is instructed to prepare the draft Planning Agreement in accordance with the terms negotiated by Council's Responsible Officer.*
  - D. *The draft Planning Agreement is to be distributed to the Panel ahead of the matter being reported to Council, with the view to recommending it be placed on public exhibition.*
2. *The Development Contributions Working Group be advised of the Panel decision."*

### **The Draft Planning Agreement**

The draft Planning Agreement (Attachment 2) was prepared by Council and has been reviewed and agreed by the Developer. The draft Planning Agreement encompasses the following elements:

1. Dedication of land to Council free of charge
2. Easement for public access over private land
3. Timing of the Developer's obligations, including appropriate inspections by Council staff.

## CONSULTATION

The Development Infrastructure Contributions Panel has reviewed the draft Planning Agreement to ensure it is consistent with its recommendations of 20 September 2022.

If the Council agrees, the draft Planning Agreement and supporting documents will be publicly exhibited for 28 days in accordance with statutory requirements.

## TIMING

If the Council agrees, the public exhibition will commence following the Council's decision. The outcomes of the public exhibition will be reported back to Council for consideration.

## LINK TO STRATEGY

This report relates to the Community Strategic Plan outcomes of:

- Places for People - Goal 8: Our neighbourhoods inspire social interaction, inclusion and support health and wellbeing.
- Transport and Infrastructure - Goal 16: Our integrated transport networks meet the needs of our community.
- Good Governance - Goal 19: Our Council is transparent and trusted to make decisions that reflect the values of the community.
- Participation and Partnership - Goal 22: Our Council builds and maintains strong partnerships and advocates effectively on behalf of the community.

## FINANCIAL CONSIDERATIONS

The draft Planning Agreement facilitates the dedication of land and an easement for public access at no cost to Council. The Developer has provided a valuation report for the land to be dedicated. The report identifies that this land is valued at \$491,400.

All costs associated with the preparation and execution of this Planning Agreement will be borne by the Developer.

The draft Planning Agreement does not exclude the Developer from paying the development contributions imposed under Condition 7 of the development consent for the subject properties.

## SOCIAL CONSIDERATIONS

The draft Planning Agreement facilitates the dedication of 54.6m<sup>2</sup> of land to Council for the purpose of road widening at Somerville Place. The dedication of land and provision of a footpath on private land adjacent to Somerville Place facilitates a safe and accessible pathway which is a social benefit for future users of this footpath and road.

## ENVIRONMENTAL CONSIDERATIONS

The road widening works on the land to be dedicated to Council provides for appropriate management of stormwater and the improved efficiency of the existing road condition.

## GOVERNANCE AND RISK CONSIDERATIONS

An assessment of the Offer and preparation of the draft Planning Agreement has occurred in accordance with Council Policy and the Planning Agreements Practice Note (Department of Planning, Industry and Environment, February 2021).



The draft Planning Agreement has been prepared in accordance with the legislative requirements of Division 7.1 of Part 7 of Environmental Planning and Assessment Act 1979 and Division 1 of Part 9 of the Environmental Planning and Assessment Regulation 2021.

The Panel has reviewed the draft Planning Agreement to ensure it is consistent with the Panel's recommendations of 20 September 2022.