

ITEM 12.3	OUTCOME OF PUBLIC EXHIBITION OF PLANNING AGREEMENT FOR 3 CENTRAL ROAD, AVALON BEACH (VPA2021/0003)
REPORTING MANAGER	EXECUTIVE MANAGER STRATEGIC AND PLACE PLANNING
TRIM FILE REF	2022/226665
ATTACHMENTS	1 Table of Submissions and Council response (Included In Attachments Booklet) 2 Planning Agreement (Included In Attachments Booklet) 3 Community and Stakeholder Engagement Report (Included In Attachments Booklet)

SUMMARY

PURPOSE

To inform Council of the outcomes of the public exhibition of the draft Planning Agreement for 3 Central Road, Avalon Beach and to seek Council's endorsement of the Planning Agreement and give delegation to the Chief Executive Officer to execute the necessary documentation.

EXECUTIVE SUMMARY

On 30 August 2021, Council received an offer to enter into a Planning Agreement (the 'PA Offer') and a draft Planning Agreement Document (the 'draft PA'). The PA Offer and draft PA is an outcome of an approved development consent for demolition works and the construction of a seniors housing development at 3 Central Road, Avalon Beach (DA2020/0008). A Deferred Commencement Consent was granted on 9 December 2020, which imposed a condition for the Developer to submit an Offer to enter into a planning agreement with Council.

The draft Planning Agreement seeks to dedicate to Council, free of charge, land 1m wide immediately abutting Patterson Lane. This land, with an area of 70.5m², will contain a footpath to be constructed as required under the development consent.

Council considered an assessment of the PA Offer and draft PA at its meeting of 22 March 2022 and resolved as follows:

That Council:

- 1. Place the draft Planning Agreement and Explanatory Note on public exhibition for a minimum of 28 days in accordance with legislative requirements.*
- 2. Be presented with a report on the outcomes of the public exhibition of the draft Planning Agreement.*

The draft PA and supporting documentation were publicly exhibited in accordance with Council's resolution and the provisions of the Environmental Planning and Assessment Regulation 2021 from 25 March 2022 to 1 May 2022.

During the exhibition period, 565 people viewed the Have Your Say page on Council's website and ten submissions were received (seven against and three in support).

The issues raised in these submissions are addressed in the Response to Submissions Table (Attachment 1).

The main concerns raised in the submissions relate to:

- Technical matters specific to the DA itself, namely traffic, parking and access concerns, tree removal and vegetation loss, and scale of development proposed at 3 Central Road. These issues were assessed under the DA, considered by and subsequently determined by the Northern Beaches Local Planning Panel.

These issues are specific to the approved DA and not specific to the offer of land dedication that is the subject of the exhibited draft PA. The merits of the DA and the decision to grant approval to the DA can not be reviewed.

- Perceptions that the development consent for DA2020/0008 has been 'bought' by the Developer's Offer to dedicate land to Council free of charge.

These perceptions are not supported. In assessing an offer to enter into a Planning Agreement, consideration needs to be made to whether the offer has broader public benefit or not. This report includes a section titled "Assessment of the Offer", which concludes that the offer has broad public benefit. The assessment of the PA offer has been carried out independently of the assessment of the DA.

The dedication of land will enable a missing section of the footpath network to be delivered. The footpath connects well with the existing network of footpaths north and south of the subject property and facilitates a safe and accessible pathway to and from Dunbar Park. There is public benefit to current and future users in the Northern Beaches community from the proposed road reserve reconstruction and dedication of land to accommodate a public footpath between Avalon Village and Maria Regina Catholic Primary School and surrounding residential area.

Following the outcomes of the public exhibition, minor administrative edits to the exhibited draft PA are proposed. An amended Planning Agreement (Attachment 2) (the 'amended PA') is now presented to Council for consideration. If Council supports the amended PA, delegation to the CEO is sought for execution of the PA. Additionally, this will facilitate satisfaction of the Deferred Commencement Condition 1 of the approved development (DA2020/0008) and allow the operational conditions of consent to be enacted.

RECOMMENDATION OF DIRECTOR PLANNING AND PLACE

That Council:

1. Note the outcome of the public exhibition of the draft Planning Agreement.
 2. Agree to enter into the Planning Agreement.
 3. Delegate authority to the Chief Executive Officer to execute all necessary documentation to give effect to this resolution.
 4. Advise all submitters of Council's decision regarding the Planning Agreement.
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REPORT

BACKGROUND

A Planning Agreement (PA) is a legal arrangement made between a person (developer) and planning authority/authorities (such as Council) to dedicate land, monetary contributions or material public benefits for public purposes. These are additional arrangements to collect contributions that traditionally may not be done under an adopted Development Contributions Plan.

The current legal and procedural framework for PA obligations is set out under the Environmental Planning and Assessment Act 1979 and Environmental Planning and Assessment Regulation 2021 as amended.

The Northern Beaches Voluntary Planning Agreement Policy (“Council Policy”), adopted on 17 December 2019, guides Council’s assessment and management of planning agreements. This policy requires all parties to a Planning Agreement to decide whether a Planning Agreement is appropriate in the circumstances.

The Site

The subject land is located on the southern side of Central Road, Avalon Beach. It is irregular in shape with frontages of 23.25m along Central Road, Avalon Beach and 70.44m along Patterson Lane, Avalon. It has a surveyed area of 1,416m².

Patterson Lane, Avalon abutting the eastern property boundary, is an existing trafficable sealed two-way public road with kerb and gutter on both sides. The western side of the Patterson Lane road reserve contains a retaining wall for its full length. It is closed at the southern end where it meets Elba Lane, Avalon (unformed road) and Dunbar Park.

There is currently no footpath on Patterson Lane, Avalon although it provides pedestrian access between Avalon Village and the Maria Regina Catholic Primary School on Central Road, Avalon Beach.

Avalon Fire Station is to the east, at 67 Old Barrenjoey Road, Avalon.



Figure 1: Location Map, 3 Central Road, Avalon Beach

An existing retaining wall on the eastern boundary of the 3 Central Road, Avalon Beach is to be relocated as part of the development consent DA2020/0008. The relocated retaining wall will be owned and maintained by the development. As such, the land to be dedicated to Council will not contain the retaining wall.

The Approved Development (DA2020/0008)

On 9 December 2020, the Northern Beaches Local Planning Panel on behalf of Northern Beaches Council (as the consent authority) approved DA2020/0008. The Deferred Commencement Consent was for demolition works and the construction of a seniors housing development consisting of seven self-contained dwellings and a basement carpark for eight vehicles.

Deferred commencement condition 1 reads as follows:

“1. VPA for dedication of land to relevant roads authority

The developer shall enter into a Voluntary Planning Agreement (VPA) with Council pursuant to s7.4 of the Environmental Planning and Assessment Act, 1979 (NSW) to dedicate to Council, free of cost to Council, land at least one metre wide adjoining the whole of the eastern boundary of the subject land adjoining Patterson Lane.

Evidence required to satisfy the deferred commencement condition must be submitted to Council within five 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.

Evidence required to satisfy the deferred commencement condition/s must be submitted to Council within two 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 Consent Document Review Form’ (available on Council’s website) and the application fee, as per Council’s schedule of Fees and Charges.

Upon satisfaction of the deferred commencement condition/s, the following conditions apply:...”

Vehicular access for this development is via Patterson Lane only. As Patterson Lane is a trafficable road reserve lacking a formalised pedestrian pathway, a condition was imposed on the development requiring the construction of a minimum 1.5m wide footpath in accordance with:

- clause 38 of the then State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004; and
- clause 1.24 of the Pittwater Development Control Plan (Pittwater DCP).

As there is insufficient available land within the current Patterson Lane road reserve to accommodate a 1.5m wide footpath, part of the footpath is approved to be built on the development site. Accordingly, condition 42 of the consent reads as follows:

“42. Footpath Construction

The applicant shall construct a 1.5-metre-wide footpath along the eastern boundary of the subject land of which at least one metre will be over the land dedicated to council under deferred commencement condition 1 and the balance will be over the council’s adjoining land.

The works shall be in accordance with the following:

- a) All footpath works are to be constructed in accordance with the Section 138 Road Act approval.*
- b) Council is to inspect the formwork prior to pouring of concrete to ensure the works are in accordance with Section 138 Road Act approval for footpath.*

Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To ensure compliance of footpath works with Council's specification for engineering works."

The Planning Agreement

The Planning Agreement involves the dedication of land to Council free of charge. This land, approximately 70.5m² (1.00m wide x 70.455m long), immediately abuts the western alignment of Patterson Lane.

If Council agrees to support the Planning Agreement, the land dedication will be effected by a Plan of Subdivision and will become part of the Patterson Lane road reserve. The execution of the Planning Agreement will satisfy the Deferred Commencement Condition 1, which will in turn enable the operational conditions of the development consent to commence.

Assessment of the Offer

The purpose of the Offer is to bring privately owned land, 70.5m² in area (1.00m wide x 70.455m long), into Council ownership free of charge. This land will:

- Contain a section of footpath, 1.00m wide and 70.455m in length, required to be constructed as part of the development consent, and
- At time of dedication, not contain any other structures, footings, or encumbrances other than a footpath and a kerb and gutter "made good" with the road surface.

When completed, the total footpath section will be 1.5m wide (in total – 1.0m will be in the land dedicated to Council) x 70.455m long and will be part of the Patterson Lane road reserve.

The Development Contributions Working Group (the 'Working Group'), in its assessment of the Offer, advised as follows:

- The land proposed to be dedicated to Council is not identified for acquisition in any statutory plans – the Pittwater Local Environmental Plan Land Reservation Map, or an adopted development contributions plan.
- The land dedication containing the footpath will help to ensure Patterson Lane remains a safe and trafficable public road, with the land containing the footpath enabling a missing section of the footpath network to be delivered.
- The footpath connects well with the existing network of footpath north and south of the subject property.
- There is public benefit to current and future users in the Northern Beaches community from the proposed road reserve reconstruction and dedication of land to accommodate for a public footpath between Avalon Village and Maria Regina Catholic Primary School

Council's Principal Engineer for Major Developments advised that the Civil Engineering Plans for the footpath are suitable, and that the land dedication is sufficient.

On 2 November 2021, The Development Infrastructure Contributions Panel (formerly known as Development Contributions Committee) gave in-principle support for the Offer, and resolved as follows:

"That:

1. *The Development Contributions Committee give their in-principle support to the Offer to Enter Into a Planning Agreement subject to:*

- a) *The survey plan confirming the section of footpath, 1.00m wide and 70.455m on length, required to be constructed as part of the development consent is accommodated on that land being dedicated to Council.*
 - b) *An updated Plan of Subdivision showing the land to be dedicated to Council dimensioned and showing any encumbrances on and adjacent to; and notated as "Public Road Reserve".*
 - c) *The land valuation report for the land being dedicated to Council is agreed to by Council.*
 - d) *The land to be transferred to Council, under an updated Plan of Subdivision being submitted to the NSW Land Registry showing the land dedication as public road reserve, does not occur until such time as Council has inspected the infrastructure constructed on the land being dedicated to Council and the infrastructure is confirmed to be to Council's satisfaction (as the future Asset owner).*
2. *If recommendation 1 is agreed to, upon completion of a legal review of the draft Planning Agreement that the draft Planning Agreement is presented to Council with a view to placing it on public exhibition.*
 3. *The proponent and Council's Development Assessment Officer (responsible for this consent) are to be advised of the Committee's decision to the Offer."*

The above matters were provided by the proponent and following assessment, is considered satisfactory.

On 30 December 2021, the proponent agreed to the timing of the land dedication, including the requirements for Council to inspect the footpath construction at specific stages as the footpath will be on land dedicated to Council.

At its meeting of 22 March 2022, Council considered the assessment of the Planning Agreement Offer and draft Planning Agreement and Explanatory Note and resolved as follows:

That Council:

1. *Place the draft Planning Agreement and Explanatory Note on public exhibition for a minimum of 28 days in accordance with legislative requirements.*
2. *Be presented with a report on the outcomes of the public exhibition of the draft Planning Agreement.*

CONSULTATION

The draft Planning Agreement and Explanatory Note were publicly exhibited from 25 March to 1 May 2022 in accordance with Council's resolution of 22 March 2022 and the provisions of the Environmental Planning & Assessment Regulation 2021 and the Community Participation Plan.

During the exhibition on the 'Your Say page' 110 letters were sent that included the Avalon Preservation Association and those who made submissions to the Development Application. The Plan of Subdivision was also placed on public exhibition. The Community and Stakeholder Engagement Report can be reviewed in Attachment 3.

As part of the exhibition package, the following additional documents were included as background information only:

- Item 12.1 "Draft Planning Agreement at 3 Central Road, Avalon Beach (VPA2021/0003) for Public Exhibition" Agenda, Council meeting of 22 March 2022

- Confirmed Minutes to Item 12.1 Council meeting of 22 March 2022
- Aerial image of the approved seniors housing 3 Central Road, Avalon Beach (DA2020/0008)

Outcomes of Exhibition

During the exhibition period, 565 people viewed the Have Your Say page on Council's website and ten submissions were received (seven against and three in support).

The issues raised in these submissions are addressed in the Response to Submissions Table (Attachment 1).

The main concerns raised in the submissions objecting to the PA relate to:

- Technical matters specific to the DA itself, namely traffic, parking and access concerns, tree removal and vegetation loss, and scale of development proposed at 3 Central Road. These issues were assessed under the DA, considered by and subsequently determined by the Northern Beaches Local Planning Panel.

These issues are specific to the approved DA and not specific to the offer of land dedication that is the subject of the exhibited draft PA. The merits of the DA and the decision to grant approval to the DA can not be reviewed.

- Perceptions that the development consent for DA2020/0008 has been 'bought' by the Developer's Offer to dedicate land to Council free of charge.

These perceptions are not supported. In assessing an offer to enter into a Planning Agreement, consideration needs to be made to whether the offer has broader public benefit or not. This report includes a section titled "Assessment of the Offer", which concludes that the offer has broad public benefit. The assessment of the PA offer has been carried out independently of the assessment of the DA.

Post-Exhibition Changes

Minor formatting changes are proposed to the exhibited Draft PA, namely:

- removal of "DRAFT" watermark from behind the Agreement text, and;
- The date of Agreement statement being moved from Page 6 'Background' to Page 26 'Execution Page'. The date of Agreement statement reads as follows, "This Planning Agreement has been made on ___ / ___ /2022"

The intent and overall context in the PA remains.

TIMING

Subject to Council support (and the developer's reliance) of the amended Planning Agreement, the Agreement can be entered into. It is recommended that Council delegate authority to the Chief Executive Officer to execute the Planning Agreement (PA) on Council's behalf.

If the PA is entered into, Deferred Commencement Condition 1 of DA2020/0008 will be satisfied and the consent becomes operational.

The Executed PA requires the Developer is to register the PA on the subject land. As this will be on the title of the land, it is legally binding and can only be extinguished with agreement of both parties.

LINK TO STRATEGY

This report relates to the Community Strategic Plan Outcome 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

All planning agreements must state the relationship to other development contributions including section 7.11 and section 7.12 of the Environmental Planning and Assessment Act 1979. This Planning Agreement does not exclude the application of section 7.11 or section 7.12 contributions applicable to this land.

If the approved development were to proceed in accordance with the development consent already issued, development contributions will be payable to Council in accordance with the consent condition.

The land dedication is valued at \$236,880, based on the land valuation prepared by Ray White Valuations was submitted to Council. On 9 November 2021, Council's Property team confirmed the valuation as acceptable.

SOCIAL CONSIDERATIONS

The amended PA seeks to dedicate land approximately 1m wide and 70.5m² in area to Council, free of charge. The land dedication, abutting Patterson Lane, Avalon and the subject property at 3 Central Road, Avalon Beach will contain the majority of a footpath required to be constructed for this development. After the land dedication occurs, the total footpath will be in Council ownership.

The provision of a footpath along Patterson Lane, between Dunbar Park and Central Road, Avalon Beach facilitates a safe and accessible pathway to and from Dunbar Park. It also provides pedestrian access to Maria Regina Catholic Primary School from Avalon Village, Northern Beaches residents, workers and visitors making use of the bus stops along Central Road, Avalon.

The land dedication allows Council to take responsibility for the upkeep and maintenance of the road reserve in total, to ensure it remains safe and comfortable in perpetuity.

ENVIRONMENTAL CONSIDERATIONS

To mitigate against any risks with regards to the relocation of the retaining wall under the approved plans of DA2020/0008, Council have conditioned within the PA that a boundary survey plan accompanies any application for subdivision to demonstrate the building works under DA2020/0008 are fully within the proposed new boundary alignment.

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

GOVERNANCE AND RISK CONSIDERATIONS

An assessment of the Planning Agreement has occurred in accordance with the Northern Beaches Council Voluntary Planning Agreement Policy 2019. The public benefit of this PA will allow Northern Beaches residents, workers, and visitors of the area to safely walk along Patterson Lane on public land.

The public exhibition of the draft Planning Agreement has occurred in accordance with legislative requirements under the Environmental Planning and Assessment Regulation 2021.

A Delegated Authority to the Chief Executive Officer is required to execute the Planning Agreement on behalf of Council.

12.3 OUTCOME OF PUBLIC EXHIBITION OF PLANNING AGREEMENT FOR 3 CENTRAL ROAD, AVALON BEACH (VPA2021/0003)

150/22 **RESOLVED**

Cr Amon / Cr Gencher

That Council:

1. Note the outcome of the public exhibition of the draft Planning Agreement.
2. Agree to enter into the Planning Agreement.
3. Delegate authority to the Chief Executive Officer to execute all necessary documentation to give effect to this resolution.
4. Advise all submitters of Council's decision regarding the Planning Agreement.

VOTING

FOR: Cr Heins, Cr Gencher, Cr Amon, Cr Bingham, Cr De Luca, Cr Crvelin, Cr Robins, Cr Menano-Pires, Cr Grattan and Cr Ryburn

AGAINST: Cr Glanville and Cr Korzy

CARRIED

13.0 TRANSPORT AND ASSETS DIVISION REPORTS

13.1 PROPOSAL TO RENAME UNDERCLIFF RESERVE IN FRESHWATER IRENE CRUMP RESERVE

151/22 **RESOLVED**

Cr Korzy / Cr Heins

That:

1. Council places the proposal to rename Undercliff Reserve in Freshwater, Irene Crump Reserve on public exhibition for a minimum of 28 days.
2. A report on the outcome of the public exhibition is reported back to Council.

VOTING

FOR: Unanimous

CARRIED