

Explanatory Note

Voluntary Planning Agreement – Middleton Grange Town Centre

Environmental Planning and Assessment Regulation 2021 (NSW) (clause 205)

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 (**Planning Agreement**) under section 7.4 of the *Environmental Planning and Assessment Act 1979 (Act)*.

The Planning Agreement includes a number of elements that comprise works, and these works are necessary for the greater area including the Town Centre and beyond. Some of these works are not included in the *Liverpool Contributions Plan 2009*.

The successor to the *Liverpool Contributions Plan 2009* will be prepared having regard to the changes that the local area has undergone (and is otherwise in the process of undergoing), and many of the elements in this revised offer are likely to be included in the successor contributions plan.

This Explanatory Note has been prepared jointly between the parties in accordance with clause 205 of the *Environmental Planning and Assessment Regulation 2021 (Regulation)*.

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

Parties

Manta Group Pty Ltd (ACN 149 474 699) and Al-Somai Development Pty Ltd (ACN 601 533 019) (**Developer**) made an offer to Liverpool City Council (**Council**) to enter into the Planning Agreement, in connection with a Planning Proposal.

Description of subject land

The Planning Agreement applies to, and will be registered on the title to, the land legally described as Lots 2 - 6 in DP 1207518, Lot 1 in DP 1078564, and Lot 12 in DP 1108343 (**Developer Land**). The Planning Agreement also applies to Lot 102 DP 1128111 (**Council Land**).

In that regard, the Planning Agreement applies to both the Developer Land and Council Land (**Land**).

Description of the Planning Proposal to which the Planning Agreement applies

The Planning Agreement applies to the development of the Middleton Grange Town Centre (**Development**) subject to the amendments to the *Liverpool Local Environmental Plan 2008* (Amendment No. 63) approved under Planning Proposal PP-2020-4126 (**Planning Proposal**), which will come into effect on 1 November 2022. The Development will include redevelopment of the Land for mixed use buildings, retail and commercial uses, residential apartments, a town square and designated parklands and recreation areas.

Summary of Objectives, Nature and Effect of the Planning Agreement

Objectives of the Planning Agreement

The Planning Agreement will secure the provision of contributions required to be made by the Developer in connection with the Development. It will also clarify the timetable and cost of those contributions and how and when those contributions will be provided by the Developer.

The contributions will include monetary contributions, Works and the dedication of land to Council by the Developer.

Nature of Planning Agreement

The Planning Agreement is a planning agreement under section 7.4 of the *Environmental Planning and Assessment Act 1979* ('Act').

It is an agreement between Council and the Developer under which the Contributions (as defined in clause 2.1 of the Planning Agreement) are to be made by the Developer for public purposes (as defined in section 7.4(2) of the Act).

Effect of the Planning Agreement

The Planning Agreement:

- a. relates to the Planning Proposal for the Middleton Grange Town Centre and the Land,
- b. excludes the effect of sections 7.11 and 7.12 of the Act,
- c. does not exclude the effect of section 7.24 of the Act,
- d. requires the performance of Works on the Developer's Land and for the works to be completed prior to the issuing of the first occupation certificate for the Developer's Development on the Land (except for the upgrade on Southern Cross Avenue, which must be provided prior to the issuing of the first occupation certificate in relation to the retail development on Lot 5 and Lot 6 of DP1207518),
- e. requires embellishment works to and dedication of open space and parklands to the Council;
- f. is to be registered on the title to the Developer's Land,
- g. requires the Developer to provide security in the form of a bank guarantee for the Works prior to the issue of a construction certificate in respect of the Development other than a construction certificate with respect to that part of the Development undertaken in accordance with DA/64/2007/C,,
- h. requires the Developer to provide defects security in the form of a bank guarantee in an amount equivalent to fifteen (15%) of the Contribution Value of the relevant item of Work as a pre-condition to Completion of that item of the Works,
- i. imposes restrictions on the transfer of the Developer's land, or the assignment or novation of the Developer's obligations under the Planning Agreement,
- j. provides for dispute resolution by expert determination and mediation,
- k. provides that the Planning Agreement is subject to the law of New South Wales, and
- l. provides that the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) applies to the Agreement.

Contributions

The Planning Agreement provides development contributions, which consists of:

- a. works amounting to \$11,504,000;
- b. monetary contributions of up to \$8,000,000; and
- c. dedication of Designated Land at no cost to Council.

Works

The Planning Agreement includes a number of Works, which are necessary for the greater area including the Town Centre and beyond. The Planning Agreement includes the following:

B – Park 2 reservation and works

The Park 2 reservation has considerable benefits to Council as it facilitates an increase in public open space, which will be embellished to establish a local park.

C - Intersections to the Town Centre

This element of the Planning Agreement has considerable benefits to Council and the public as it demonstrates a commitment from the Developer to construct the intersections for the future Town Centre. The intersections will link to existing and new roads that have been long anticipated by the community of Middleton Grange and will significantly improve local traffic flows and pedestrian connections to the wider precinct.

These Works will include the following:

- a. Construction of a signalised intersection at Main Street and Flynn Avenue and the intersection for the new proposed access lane and Flynn Avenue.
- b. Construction of a roundabout at Southern Cross Avenue and Main Street
- c. Construction of a T-intersection at Southern Cross Avenue and Middleton Drive (Road No.9).
- d. Construction of a T-intersection at Southern Cross Avenue and Bravo Avenue.

D - Flynn Avenue and Qantas Boulevard provision of an additional lane works to enable delivery of 4 lanes

The methodology for the Traffic Impact Assessment in connection with the Planning Proposal was endorsed by Transport for NSW. The traffic modelling in the Traffic Impact Assessment prepared for the Planning Proposal showed that the above roads are only required to be 2 lanes.

It was concluded that it would be a better outcome for the community if the road was constructed as four lanes and linked to the new proposed signalised intersections on Flynn Avenue servicing the Town Centre. The Developer also proposes to deliver the four-lane road and the upgraded intersection to Cowpasture Road at the first stage of the Developer's Development. Bringing forward the delivery timeframe at the first stage has significant benefits to Council and the community as it will lead to an improved road outcome by delivering 4 lanes and the new intersections at the first stage of the Development and will significantly assist in ameliorating existing and future background growth traffic impacts from the wider precinct not related to the Planning Proposal.

Therefore, this Work will involve the construction of an upgrade to Cowpasture Road intersection and Flynn Avenue from Qantas Boulevard to Ulm Street as a widened 4 lane road within the existing road reserve, in consultation with Council.

E - Upgrade of Southern Cross Drive

The Developer will deliver the road upgrade of Southern Cross Avenue between the western boundary of the Land to the Middleton Grange Primary School.

The upgrade will be included in the development application for Lot 5 and Lot 6 in DP1207518, which is land forming part of the Middleton Grange Town Centre.

F - Culvert, Drainage and Road works to Council land in central open space area

The Developer will construct the culvert and drainage works approved under the Modification DA-64 2007C, wholly within the Council Land.

These works have considerable benefits to Council as they provide necessary infrastructure to the community and the wider drainage catchment that does not directly relate to the Development on the Developer's Land. Provision of this infrastructure will greatly accelerate the provision of other necessary public infrastructure of great benefit to the broader community.

Dedication of Land

The Developer will reserve the area of land proposed to be zoned RE1 for open space for public recreation, which will be dedicated at no cost to Council.

Prior to dedicating Park 2, the Developer will carry out park embellishment works.

Monetary Contributions

The Developer will make a total monetary contribution of up to \$8,000,000 to Council calculated by reference to the Gross Floor Area of each building in the Development above the threshold of 72,000 m² of Gross Floor Area in the Development.

Assessment of the Merits of the Planning Agreement

The Planning Purposes served by the Planning Agreement

The Planning Agreement promotes the following objectives of the Act:

- to promote the orderly and economic use and development of land;
- facilitates ecologically sustainable development by integrating economic, environmental and social considerations in the Developer's Development of the Developer's Land; and
- to promote good design and amenity of the built environment.

The Planning Agreement promotes the public interest as it will result in the improvement of the public domain within Middleton Grange.

How the Planning Agreement Promotes the Public Interest

In accordance with section 7.4(2) of the Act, the Planning Agreement will require contributions to be used towards the provision of community infrastructure within Middleton Grange.

The Planning Agreement promotes the public interest by addressing the objects of the Act as set out in section 1.3 (b), (c).

Development Corporations - How the Planning Agreement Promotes its Statutory Responsibilities

Not applicable.

Other Public Authorities – How the Planning Agreement Promotes the Objects (if any) of the Act under which it is Constituted

Not applicable.

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; and

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

By enabling Council to provide public amenities 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.

The Planning Agreement promotes the guiding principles by:

- ensuring the management of lands and other assets so that current and future local community needs can be met in an affordable way,
- working with others to secure appropriate services for local community needs,
- engaging with the local community, through the public notification of this Planning Agreement.

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

The *Liverpool Contributions Plan 2009* is over a decade old, and the area has undergone significant growth since that time due to factors such as the Western Sydney Aerotropolis. The successor to the *Liverpool Contributions Plan 2009* will update a number of areas within the catchment.

The Planning Agreement includes a number of Works, which are necessary for the greater area including the Town Centre and beyond. Some of these works are not included in the now dated *Liverpool Contributions Plan 2009*.

The successor to the *Liverpool Contributions Plan 2009* will be prepared having regard to the changes that the local area has undergone (and is otherwise in the process of undergoing), and many of the elements in this revised offer are likely to be included in the successor contributions plan.

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

The Developer must deliver to Council separate Bank Guarantees prior to the issue of a construction certificate in respect of the Development other than a construction certificate with respect to that part of the Development undertaken in accordance with DA/64/2007/C for the

amount equivalent to the Security Value (**Primary Security**) for each item of Work required to be completed prior to the issue of a Subdivision Certificate or an Occupation Certificate with respect to that part of the Development to which the relevant Construction Certificate relates.