

GR9 – Public Exhibition of Draft Planning Agreement – 1-41 Marsh Road, Silverdale

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TRIM 1765

EXECUTIVE SUMMARY

- The purpose of this report is to advise Council of and seek Council support to public exhibit the Draft Planning Agreement that has been prepared for land at 1-41 Marsh Rd Silverdale (formerly part of the site occupied by the African Lion Safari Park).
- The Draft Planning Agreement is to accompany a development application for 425 lots to be developed on the site. The Sydney Western City Planning Panel is the consent authority for the DA and they may consider an application for the proposal soon.
- The Draft Agreement proposes a number of community benefits including dedication of land and its embellishment for recreational purposes, off site works such as traffic lights and a Regional Play Space, cash contributions, money for maintenance of stormwater infrastructure and cycle ways.
- It also provides for the deregistration from the site of an existing Planning Agreement which is now obsolete.
- It is recommended that Council agree for the Draft Planning Agreement to be exhibited subject to the following:
 - Any minor changes required before exhibition to be made by the General Manager.
 - Further consideration of the amount of money to be paid to manage land subject to a Biobanking Agreement, and if appropriate an amended amount included into the Agreement before exhibition.

REPORT

1.1 BACKGROUND

Simba Developments has lodged a development application (DA) for a residential subdivision and associated works for its site at 1-41 Marsh Road, Silverdale. The DA will allow the site to be developed for urban purposes involving development for 425 residential allotments, with the development of a residual portion for a further 22 lots to be subject to a future DA. The DA also provides for other associated works such as site remediation, earthworks, provision of open space areas and shared pathways on the site, a perimeter reserve and on site detention basins.

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The relevant planning authority for the DA is the Sydney Western City Planning Panel (Planning Panel) and a separate report on the DA is to be prepared for the Panel's consideration. In this regard it is relevant to note that a Council resolution arising from a Notice of Motion tabled at the Ordinary meeting on December 2016 resolved (inter alia) to object to the development in its current form. A copy of this resolution is included at Attachment 2.

Whilst noting Council's view on the development of the site as expressed in this resolution it is nevertheless important to ensure that if the DA is approved by the Planning Panel that it is supported by an appropriate level of local infrastructure. To this end, a Draft Planning Agreement has been prepared which aims to provide the development with an adequate level of infrastructure to support the incoming population. It also seeks to replace an existing planning agreement that was executed in 2006 and which is now out-dated.

The Draft Planning Agreement is now in a form that can be considered by the Council, and it is recommended that it be placed on public exhibition in order to seek public feedback on its terms. Resolving in this way would not be inconsistent with Council's previous resolution objecting to the DA, but is simply a means of Council gauging the community views on the benefits being offered through the proposed Planning Agreement and whether they are adequate to support any development which may be approved for the site.

Site Details and the Draft Planning Agreement

The site, subject to the Draft Agreement, occupies part of the land that was formerly occupied by the old African Lion Safari Park (ALSP). ALSP occupied the site at 1-41 Marsh Rd (now known as Lots 1301, 1302, 1303 and 1304 in DP 1236986) as well as the adjoining site to the south located at 65 Marsh Rd (Lot 2 in DP 588912). Although the site was previously in single ownership, the two sites are now under separate ownership and the owners are working independently to develop their sites. In this regard a separate DA for the site at No 65 Marsh Rd for 79 lots has been lodged, however the applicant is seeking for that DA to be determined by the Court.

1.2 MAIN FEATURES OF DRAFT PLANNING AGREEMENT

The Draft Planning Agreement for the Simba site (1-41 Marsh Rd) has been under preparation for many months. It is being reported to Council seeking a resolution that it be placed on public exhibition. A copy of the Draft Agreement is included at Attachment 3. At the time of writing this report, some minor aspects of the Agreement were still being finalised and subject to legal sign off, although no changes are expected that will significantly alter the benefits or contributions being provided.

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A table that summarises the contributions provided under the Draft Agreement is shown at Schedule 1. The Draft Planning Agreement represents \$12.18 million investment in infrastructure to support the additional development. This figure doesn't include the land value of the perimeter reserve or the land value and associated maintenance contribution for the biobank site.

As context for understanding the benefits, it is useful to consider that without a Planning Agreement, a Section 94 contribution of approximately \$8,940,000 would be payable to Council although this would be subject to the removal from title of the existing Planning Agreement as discussed later in this report.

The main features of the Draft Agreement are as follows:

(1) Monetary Contributions and their Allocation

Council will receive a total monetary contribution of \$4,888,850 under the Agreement which amounts to almost \$11,000 per lot. This will be the amount payable when offsets for works and land to be received under the Agreement are taken into account. Of this amount, approximately \$2,293,316 has been allocated to some offsite works which are understood to be important to Council, including the following:

- Warragamba All Inclusive Regional Play space. This project has a high priority for Council and a \$300,000 grant has been received from the Federal Government to help fund it. The Draft Agreement proposes to fund the balance of the cost of this item (\$850,000) which will allow the works to be completed.
- Traffic Lights: A recent traffic study has recommended the installation of traffic lights at the intersection of Farnsworth Ave and Silverdale Rd as a means of improving traffic flow and public safety. Although a detailed costing for these lights is not yet available, they are anticipated to cost about \$1.35 million, which is approximately the amount that would be paid for traffic facilities through the Section 94 contribution. As a result this amount has been allocated towards these lights, and should there be any surplus available it will be paid back into the Traffic and Transport Category.
- Signage and Bus Shelters: \$90,000 has been earmarked for the establishment of a bus shelter and signage at the entrance to Silverdale.

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The use of the Planning Agreement to fund these works shows how Planning Agreements can be used to benefit the community. The regional play space and the traffic lights mentioned above are considered important, but as the need for them has arisen only relatively recently, they are not included in Council's current Section 94 Plan and therefore cannot be funded from Section 94 contributions. They can however be funded through this Planning Agreement by specifically allocating funds otherwise payable as Section 94 contributions for these purposes. The remaining monetary contribution (approximately \$2,595,534) will be allocated to the categories included in Council's Section 94 Plan.

(2) Land Dedications

The Draft Planning Agreement proposes to dedicate lands to Council for a number of purposes. A Plan of the lands to be dedicated is shown at Attachment 4 and they are explained below:

(a) Open Space Areas

A swathe of open space land located through the centre of the site is to be dedicated to Council to serve the recreational needs of the existing and incoming community. These areas are shown on Attachment 4 and comprise approximately 25,607 square metres. They include areas of natural bushland including stands of the endangered Shale Sandstone Transition Forest vegetation community, as well as areas that will be embellished and used for passive recreation. The provision by the developer of open space areas on the development site is Council's preferred approach for large developments like this one. The amount of open space proposed (approx 2.6 hectares) is considered appropriate because the area is considered to be well provided for with open space, noting the proximity of the Warragamba Recreational Reserve. The applicant will also pay an additional \$1,734,496 to make up the balance of the Section 94 contribution payable for the open space and recreation category and as a result it is considered that the total contribution towards this purpose is appropriate. A Section 94 offset of \$1,850,000 is being allowed based on the agreed value of the land to be dedicated, and in view of the fact that it has been valued 'en globo' and the area involved it is considered to represent a good outcome for Council.

As mentioned below the applicant will also embellish the open space to ensure that they will provide for a variety of recreational uses once they are fully embellished. The applicant will also provide some \$678,000 to be used for the long term maintenance of the bushland areas on the site.

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(b) OSD basins on Infrastructure Lands

Stormwater from the site will be managed by a network of on-site detention (OSD) basins. The indicative locations of these basins is shown on the Plan at Attachment 4. The basins are proposed to be dedicated to Council as an infrastructure asset and some of them serve a dual recreational function as well. In order to remove any ongoing burden to Council for the long term maintenance of the basins, an amount of approximately \$2.63 million will be paid to Council for their maintenance, ensuring that Council and the community is not burdened by ongoing maintenance costs. Some of the land occupied by the basins has been included in the land area identified for recreational use where they have genuine recreational value.

(c) Perimeter Reserve and other shared pathways

It is also proposed to dedicate a Perimeter Reserve located generally along the western boundary of the site and having a total area of some 14,500 square metres. This reserve is also shown in Attachment 4. It is essentially a road reserve containing a road for traffic, but it will also serve as a recreational corridor, as it includes a 2.5 metre wide shared pathway/cycleway which will link with the central reserves that were mentioned earlier. The cycleway is a development control plan requirement, and is also included in Council's current Sec 94 Plan, and it will provide a public benefit by providing connectivity around the western perimeter of the site, and by facilitating access to other off site destinations. The perimeter reserve will also serve as an Asset Protect Zone (APZ) to reduce bushfire hazard, although given its location adjoining Water NSW land, many of the mature trees will be retained. This will be beneficial as it will provide shade and add interest to the cycleway, and serve as a corridor for fauna movement. A Section 94 offset has not been agreed to for the perimeter reserve and a specific maintenance contribution was negotiated for it and is included within the \$678,000 to be provided for bushland maintenance as mentioned above.

Other shared pathways and cycleways are provided around and through the site, having a total length of approximately 4627 metres. The pathways will be dedicated to Council and will enhance the recreational options at the site as well as providing access to the centrally located reserves and to some off-site destinations as well. A Plan showing the pathways and cycleways is included at Attachment 5.

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It should be noted that all lands to be dedicated are presently zoned R2 Low Density Residential or E2 Environmental Conservation, so some of the lands will need to be rezoned to a Recreational Zone before they can be used for this purpose. This can occur should consent be granted to the DA and assuming the Planning Agreement is approved for exhibition by Council.

(d) Biobanking Land

In order for areas of the site to be cleared for development to proceed the applicant is to enter into a Biobanking Agreement (BBA) with the Minister for the Environment. The BBA is presently being finalised and provides for the in perpetuity conservation of the adjoining Lot 1301 shown on Attachment 4, which contains a stand of endangered vegetation as well as habitat for the Cumberland Land Snail. The Draft Planning Agreement proposes to dedicate the biobanking site to Council, and it is considered that accepting this land will help Council implement some of its long term strategic biodiversity aims for the Shire, including the protection of the headwaters of McGarrity's Creek. The BBA provides for in perpetuity funding for the site through money paid into a fund (known as the Total Fund Deposit (TFD)) to implement the management actions included in the BBA. The applicant will maintain the site for at least the first 5 years. However, once the land has been dedicated, Council will be responsible for implementing the actions identified in the BBA, using the TFD, although minus any funds that may have been spent by the applicant prior to the hand over occurring. Council staff have had input into the management actions, and their costs. The Planning Agreement will provide that Council will only accept the biobanking land once the TFD has been paid in its entirety, and as the funding is scheduled to last in perpetuity, Council will receive adequate funding through the BBA to implement the management actions.

At the time of writing this report the amount to be paid to the TFD by way of the Biobanking Agreement was \$270,850, and this amount is included in item 1 of Schedule 4 of the Draft Planning Agreement. However Council staff carried out a further review of the actions included in the BBA schedules, and the costs attributable to these actions. Based on this review and in discussions with the applicant it has been agreed that the amount of money in the BBA will be increased (subject to OEH agreeing) to provide additional money for fencing, litter removal, bush regeneration and feral animal control. The additional amount is still being finalised with the applicant but may be in the order of \$70,000.

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It is worth noting that this will be the first dedication to Council of land subject to a BBA, and the merits of accepting such land has been given much consideration by Council staff and Council's Land and Property Panel (LPP). It is considered that there are strategic benefits to Council being the custodian of these lands, particularly as they come with a funding source programmed to last in perpetuity so Council will not have to expend any of its own funds. As a result, the LPP recommended that the dedication of this land be accepted subject (inter alia) to Council staff being satisfied with the amount of money being provided.

Therefore, whilst this report supports the dedication to Council of the Biobanking land, this is subject to further advice being provided to the General Manager by Council staff that the amount of money to be paid into the TDF is satisfactory, and that it be included in the Draft Agreement prior to exhibition. It is considered likely that agreement on the amount of additional money will be reached. However should this not occur, then an alternative recommendation is included that the dedication of the Biobanking land should not proceed, and in this event references in the Draft Agreement to this land will be removed prior to its exhibition.

The dedication of the Biobanking land was previously considered by Council's Land and Property Panel, which recommended that the dedication only be accepted subject to (inter alia) Council staff being satisfied with the amount of money being provided. Therefore, whilst this report recommends that the Biobanking land be accepted, this recommendation is subject to further advice being provided to the General Manager by Council staff that the amount of money to be paid into the TDF is satisfactory, and that the agreed amount be included in the Draft Agreement prior to exhibition. It is considered likely that agreement on the amount of money will be reached. However should this not occur, then the references in the Draft Agreement to the dedication of the Biobanking land will be removed prior to its exhibition.

It is worth noting that this will be the first dedication to Council of land subject to a BBA. It is considered that there are strategic benefits to Council being the custodian of these lands. However it is of course open to Council to decide not to accept the dedication of the lands and of being responsible for implementing the BBA.

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(3) On Site Works

On site works to the value of \$2,200,700 are proposed. An indicative list of works is included in Schedule 6 of the Draft Agreement included in Attachment 3. The list of works has been provisionally agreed to and they range from the construction and embellishment of the open space areas including installation of playground equipment, a boardwalk, seating and signage as well as weed control and establishment planting in the bushland areas and the cycleways. Some of the works (e.g. signage) retain the associations of the site with its former use as the African Lion Park. The works will require a DA and the Planning Agreement requires that a detailed Landscape Masterplan be submitted for Council's approval, and this will ensure an appropriate level of Council scrutiny in the development of the embellishment works. The Agreement also provides that any cost overrun in providing these works will be at the risk of the developer so Council will receive the embellishment works whether or not they exceed the value nominated against them in the Draft Agreement.

The drainage works/OSD basins to be built on the infrastructure lands that will be dedicated to Council will also be constructed under the category of on-site works. No Section 94 offset has been allowed for these.

Staging of the embellishment works has wherever possible been timed to ensure that they will be completed and available for use before the adjoining lands have been developed and the occupants have moved in, though in some cases this has been precluded due to safety or construction considerations.

The Draft Agreement also includes a security bond to be paid to Council equal to 120% of the value of the works.

(4) Maintenance Contributions

As has been mentioned, monetary contributions for the maintenance of both the bushland areas and the OSD basins are included in the Agreement, with the total amount to be paid for these purposes being approximately \$3.24 million. This amount has been calculated in accordance with Council's Dedication of Land Policy and will ensure that there are sufficient funds to cover the long term maintenance of these areas. As a result the ongoing maintenance of these areas should not be a burden to either Council or the community.

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1.3 OTHER MATTERS

(1) Council Policies

The Draft Planning Agreement has been assessed against the checklist included in Council's Planning Agreements Policy. The outcome of this assessment is included in Attachment 6. In summary the Draft Agreement was found to comply with the matters included in this checklist and so is appropriate for exhibition.

As noted above the Planning Agreement also provides for land dedications for OSD basins and bushland areas within the central reserves and these are all generally in accordance with Council's Dedication of Land (DoL) Policy. In particular, the applicant is providing some \$3.24 million to fund the maintenance of the OSD basins on site and the bushland areas within the public reserves. Some matters included in the DoL policy may need further advice (eg Clause 4.2.7 - that any hazardous trees are rendered safe), but this is best addressed closer to the time that dedication occurs. Under Clause 4.2.1 of the Policy, Council will need to be satisfied that the land has been remediated before any land dedication occurs, and this would normally be completed through consent conditions if the DA is approved.

Regarding the Biobanking land this is not specifically covered in Council's DoL Policy. However its dedication is generally consistent with the Policy including Objective 1.5, which is to "ensure that environmental conservation lands are only dedicated to Council if a funding source is available for their long term maintenance". The BBA provides this long term funding source, though as noted earlier the amount to be paid is still under consideration by Council staff.

(2) Existing Planning Agreement

In 2006 Council executed a Planning Agreement applying to the two (2) allotments that formed the African Lion Safari Park. The 2006 Planning Agreement reflected the infrastructure that Council considered appropriate at the time to support the development proposal. This agreement still technically applies if the Simba site is developed. However the terms of the Agreement are obsolete in comparison to the new Draft Agreement so at some stage it will need to be removed from the title of the site.

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The Draft Agreement is considered to offer a better deal than the existing Agreement. In particular, the existing Agreement does not include the \$3.3 million in maintenance contributions that are included in the Draft Agreement. It also does not include the offsite works such as the regional play space and the traffic lights at Farnsworth Ave and Silverdale Rd, so the new Agreement is much more current in the infrastructure that it proposes to deliver. The existing Agreement is also written in a way that seems to preclude the separate development of the two (2) lots unless they remain in single ownership, and it also precludes the application of Section 94 to any development of the site. Unless it ceases to apply it will continue to stymie the development of the site, and will limit the infrastructure that can be provided to support any new development.

The existing Agreement can't be repealed because this would require the consent of the original party to the Agreement, and Council's legal advisors have advised that this party no longer exists as a legal entity. However the Agreement can be de-registered from the site and this will make it non-binding on the current owners. The process for de-registering the Agreement is provided for in the Draft Planning Agreement, and will commence upon execution of the new Agreement.

1.4 NEED FOR PROGRESSING DRAFT PLANNING AGREEMENT

The Draft Planning Agreement is considered to represent a good outcome for the community should the current DA be approved. It will provide for a range of facilities on site that will be available to serve the existing and incoming population such as a fully embellished recreational facility consisting of play equipment, passive bushland areas and riparian areas. The Planning Agreement has also been used to allocate funding towards priority works for the local area, such as the regional play space and the traffic lights at Farnsworth Drive and Silverdale Rd, and to provide some \$3.3 million to be used for the maintenance of some assets being provided to Council under the Agreement.

Council has previously expressed its opposition to the development of the site. However the merits of the Draft Planning Agreement are best considered separately from the DA, and it may be the case that the benefits under the Agreement may help to ameliorate Council's concern about the DA, by giving it some comfort that if the DA is approved by the Planning Panel that an appropriate level of local infrastructure will be provided for the community. In this regard, the views of the community on the DA are not known, although it is often the case that communities do not like developments that are not supported by appropriate services or infrastructure. The exhibition of this Draft Planning Agreement will allow Council and the Planning Panel to gauge the views of the community about the services and infrastructure to be provided, should the DA be approved by the Planning Panel.

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It is understood that report on the DA may be submitted to the Planning Panel in the near future so it is appropriate for Council to consider this Draft Planning Agreement before this occurs.

If Council agrees to exhibit the Draft Agreement it should be exhibited with an explanatory note and with the development application.

As noted previously it is appropriate that the existing Planning Agreement that applies to this site be de-registered from the title to the site and replaced by this Agreement once it has been executed.

This Draft Agreement is still being fine-tuned, though no changes are anticipated that will significantly alter the operation of the Draft Agreement, or the contributions to be provided (other, possibly, than the money to be paid in relation to dedication of the Biobanking land as mentioned earlier). For this reason it is recommended that Council resolve to exhibit the Draft Agreement. It is also recommended that the General Manager be given delegation to finalising the Draft Agreement prior to exhibition. If the General Manager considers that any changes are significant they can be referred to Council for further consideration.

If Council agrees to exhibit the Draft Planning Agreement as per the above, then another report will be provided at the conclusion of the exhibition period advising on the outcome of the exhibition process.

1.5 CONCLUSION

The Draft Planning Agreement has been prepared to ensure that if development consent is granted for this site that it will be supported by a range of suitable facilities for the incoming community. It also provides for the existing Planning Agreement to be de-registered from the site. It is appropriate that the Draft Agreement now be exhibited to seek public feedback on what is proposed. It is considered that it is appropriate for exhibition to occur, given that the development application may soon be a matter for consideration by the Planning Panel, and the views of the community may be significant in informing Council's submission to the Panel.

FINANCIAL IMPLICATIONS

Overall the Draft Planning Agreement represents a good financial outcome for Council. As noted, the existing Planning Agreement applying to the site prevents Council charging a Section 94 contribution to the redevelopment of the site and the infrastructure that it includes does not reflect Council's current priorities. However if the existing Agreement is replaced and the infrastructure provided through the new Draft Agreement is delivered then the benefits that Council will receive in money, works and land will eclipse the \$9,840,000, which would be the amount payable in Section 94 contributions if these could be collected.

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In this regard the Draft Agreement provides for \$3,307,779 to fund the in perpetuity maintenance of the OSD basins and the bushland within the reserve system. This is not included in the existing Agreement, and its inclusion will mean that Council and the community will not be burdened by this expense in the future. Similarly, the Draft Agreement provides money for the maintenance of Biobanking land though the exact amount is still under consideration.

ATTACHMENTS INCLUDED IN A SEPARATE BOOKLET

1. Summary of Contributions under the Draft Agreement
2. Council resolution from December 2016
3. Copy of Draft Planning Agreement
4. Site plan with Open Space Areas, OSD Basins
5. Shared pathway and cycleway plan
6. List of matters to Consider for exhibition of Draft Agreement

RECOMMENDATION

1. That Council note the attached Draft Planning Agreement (included in Attachment 3) that has been prepared to support a development application for residential subdivision at 1-42 Marsh Road, Silverdale.
2. That the Draft Planning Agreement be publicly exhibited in accordance with the Act, subject to:
 - Delegation being given to the General Manager to authorise any changes to the Draft Planning Agreement that he considers minor prior to the exhibition commencing.
 - The General Manager authorising alterations to Schedule 4, Item 1 of the Draft Agreement in relation to the amount of money to be paid into the Total Fund Deposit (TFD) to carry out management actions required for the Biobanking site (Lot 1301 DP1236986) pursuant to the Biobanking Agreement, upon advice from Council staff that the amount of money is satisfactory.
 - The General Manager authorising the deletion of any reference to the dedication of the Biobanking Land prior to the exhibition of the Draft Agreement should Council staff advise that the money to be paid is not considered satisfactory.
3. That a further report be provided to Council to consider the outcome of the public exhibition of the Draft Planning Agreement.