

Report of Planning and Economy to the Ordinary Meeting of Council held on Monday 18 September 2017

PE2 – Planning Agreement for Maintenance Contribution - 20, 30, 40, 60 and 61 Marion Street Thirlmere

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Planning Agreement for Maintenance Contribution – 20, 30, 40, 60 and 61 Marion Street, Thirlmere

263081

TRIM 8913

EXECUTIVE SUMMARY

- This report advises Council about a Voluntary Planning Agreement prepared to enable Council to accept drainage infrastructure and associated maintenance contribution for the development of land at 30 Marion Street, Thirlmere.
- Under legislation, a person who makes a relevant planning application or public submission is required to disclose any reportable political donations. The disclosure requirements extend to any person with a financial interest in the application or any associate of the person making a public submission. No disclosure of political donation has been made in association with this application.
- It is recommended that:
 - Council adopt the attached Voluntary Planning Agreement
 - Council agree to accept the dedication of the land for the purpose of a drainage reserve
 - Council agree for the land to be classified as Community Land under the Local Government Act 1993
 - Council delegate to the General Manager the power to finalise and execute the Voluntary Planning Agreement on behalf of the Council.

REPORT

BACKGROUND

This Voluntary Planning Agreement has been prepared in association with a Development Application (DA) for 30 Marion St Thirlmere, which involves subdivision, the construction of a road and an on-site detention (OSD) basin and the demolition of existing structures. Consent for the DA was granted on 30 June 2016. The DA did not involve subdivision for residential purposes, although ultimately it is intended to subdivide and develop the site into approximately 90 residential allotments.

One of the conditions of development consent required the preparation of a Voluntary Planning Agreement in a format that is consistent with a Letter of Offer that had been submitted by the applicant and which was included in the development consent. A copy of the Letter of Offer is attached.

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and 61 Marion Street Thirlmere**

The Voluntary Planning Agreement required by the condition of consent has now been prepared and exhibited, and is considered suitable for execution, subject to Council's Agreement. A copy of the Agreement recommended for adoption by Council is attached. It provides for the following:

- Dedication of the OSD basin (and the land on which it is constructed) to Council for the purpose of a drainage reserve. The land is shown on page 26 of Attachment 2.
- A monetary contribution to Council of \$207,550 for long term maintenance of the OSD basin, and which is to be paid prior to the issue of the subdivision certificate.
- That any future Section 94 contributions required as a result of the site's future development are not offset by the money paid under this Agreement.
- A security provision allowing Council to acquire the land for \$1 in the event of a breach of the Agreement by the developer.
- Mandatory requirements of the Act have been addressed.

In summary, this is a relatively simple planning agreement and is being prepared because it is the only legal means for Council to accept money and land from a developer outside of the Section 94 process. The money received through the Agreement represents a public benefit because it provides funding for the long term maintenance of the OSD basin required for the development without having to use public money for this purpose.

OTHER CONSIDERATIONS

The Voluntary Planning Agreement has been prepared with advice from Council's legal advisors.

It has been assessed against Council's Planning Agreements Policy and is considered to be consistent with it.

In accordance with the legislative requirements, the Draft Voluntary Planning Agreement was exhibited publicly between 7 June and 7 July 2017. No submissions from the public were received.

If Council accepts the dedication of the land then it will become public land and will need to be classified under the Local Government Act. As the land is being dedicated to manage drainage from the site and contains drainage infrastructure, it is considered that it is most appropriately classified as Operational land under the local Government Act. However according to legal advice that has been obtained, this could only be done through the preparation of a Local Environmental Plan and as a result it is proposed that the land be accepted by Council for the public purpose of a drainage reserve and that it be classified as Community land (drainage reserve) under the Local Government Act.

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CONSULTATION

The draft planning agreement was placed on public exhibition from Wednesday, 7 June 2017 through to Friday, 7 July 2017. During this period there were no submissions received.

FINANCIAL IMPLICATIONS

The proposed Voluntary Planning Agreement will result in a positive financial result, as Council will receive \$207,550 (indexed to the time of payment) to be used to fund the maintenance of the OSD basin. This will provide for approximately 35 years of maintenance based on an annual maintenance cost of \$5930 per annum.

This money is being paid as it is a requirement of Councils Dedication of Land Policy and does not offset the amount of Section 94 contributions that will be paid as a result of the future development of the site.

The Voluntary Planning Agreement provides for Council's legal costs to be paid by the applicant. A cheque from the applicant will be requested prior to execution of the Agreement.

CONCLUSION

The proposed Voluntary Planning Agreement will provide a beneficial outcome for Council. There are likely to be many more Agreements for further sites which aim to ensure that Council is not unfairly burdened by the maintenance costs of infrastructure associated with new developments.

ATTACHMENTS INCLUDED IN A SEPARATE BOOKLET

1. Letter of Offer
2. Planning Agreement for Execution

RECOMMENDATION

1. That Council adopt the attached Voluntary Planning Agreement.
2. That Council agree to accept the dedication of the land for the purpose of a drainage reserve.
3. That Council agree for the land to be classified as Community Land under the Local Government Act 1993.
4. That Council delegate to the General Manager the power to finalise and execute the Voluntary Planning Agreement on behalf of the Council.