

**GR3 – Draft Planning Agreement for Station Street, Menangle**

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263081

TRIM 9316

**Parties**

**Applicant:** Wollondilly Shire Council  
**Owner:** Mirvac Homes (NSW)  
El Bethel Pty, Ltd, The Central Creamery Pty Limited

**EXECUTIVE SUMMARY**

- This report advises Council about a Draft Planning Agreement that is being prepared for land at Station St Menangle.
- The Draft Planning Agreement is associated with a planning proposal to allow the rezoning and development of the site for approximately 350 dwellings and a range of other uses. The planning authority for the proposal is the South Western Sydney Planning Panel.
- It is recommended that the Council resolve as follows:
  - Note the general terms of the Draft Planning Agreement as described in this report
  - Delegate to the General Manager the decision to exhibit the Draft Agreement following advice from staff that all relevant outstanding matters have been resolved and legal advice has been obtained that it is in a form suitable for exhibition
  - Provide advice to the South West Sydney Planning Panel and to the Department of Planning when the Draft Planning Agreement is in a form that is considered by the General Manager to be suitable for exhibition
  - To consider a further report following the completion of the public exhibition period.

**REPORT**

**1.1 BACKGROUND**

Mirvac Homes (NSW) Pty Ltd is the proponent for a Planning Proposal to rezone the site known as Station Street Menangle for predominantly urban purposes. The proposal seeks to rezone the subject land mainly to R2 Low Density Residential with a small area of B1 Neighbourhood Centre and two areas of RE1 Public Recreation (refer Attachment 1). The proposal will allow for the development of approximately 350 dwellings as well as redevelopment of the site for a range of other uses including adaptive reuse of the "Creamery" site".

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The Planning Proposal was publicly exhibited from 1 July 2015 to 28 July 2015. No significant changes have been made to the proposal following exhibition. However, Council deferred further consideration of the Planning Proposal which resulted in the South West Sydney Planning Panel (the Planning Panel) becoming the relevant planning authority. As part of their consideration of the proposal the Planning Panel directed Council to work with the developer to ensure the infrastructure required to serve the community resulting from the development will be provided. In particular the Planning Panel included the following recommendation as an outcome of the public meeting held in July 2016.

*Arrangements be made to provide certainty that the necessary infrastructure required to support the development will be available in a timely manner.*

To help implement this recommendation, Council and the developer have prepared a Draft Planning Agreement (the Draft Agreement) which will provide approximately \$13.4 million of infrastructure including:

- Traffic management
- Drainage basins
- Passive open space
- Shared pathways
- Shared pathway over rail line
- Restoration of the historic 'Creamery' precinct.

A contribution will also be made to the maintenance of the open space and drainage facilities in the short to medium term. In addition to the provision of the above facilities, the developer is offering to make a monetary contribution towards those facilities that are not to be provided on site such as active open space and community facilities as well as shire-wide facilities such as the library.

The developer has also requested that the subject site be incorporated into the Greater Macarthur Priority Growth Area. Council considered a report on this matter at its meeting on 15 May 2017 and resolved to advise the Department of Planning and Environment that it did not support its inclusion as the assessment of the proposal is already well advanced. No response has been received from the Department on this matter and the negotiation of the Draft Agreement is proceeding.

A separate report to this Council meeting seeking support to publicly exhibit a Draft Development Control Plan which includes site specific planning controls to guide future development on the Station Street site is also included in this Business Paper.

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**1.2 THE MAIN FEATURES OF THE DRAFT AGREEMENT**

The main features of the Draft Agreement are as follows.

**Land Dedications**

The Draft Agreement proposes the following land dedications:

Item	Description	Area (m2)
Station St/Menangle Road Roundabout	Additional land required to provide the roundabout	216
Eastern Public Park	Local park	3,379
Western Public Park	Local park	14,045
Eastern Detention Basins	Five (5) small detention basins	9,200 (total)
Western Detention Basin	Single detention basin	5,400
Shared pathway crossings	Two (2) crossings across the riparian corridor through the site (the corridor is to remain in private ownership)	387

These proposed dedications have been assessed against Council's *Draft Land Dedication Policy* and a report prepared for the Land and Property Panel. The proposed dedications generally meet the requirements of Council's *Draft Land Dedication Policy* and are discussed in more detail below.

**Traffic Management and Roads**

The construction of a single lane roundabout at the corner of Station Street and Menangle Road has been incorporated into the Draft Agreement as this facility will serve demand that is not solely attributed to the development of the subject land. This roundabout will be constructed in conjunction with the first stage of the development. The cost of providing this roundabout will be offset against the contribution that would otherwise be required for Traffic and Transport under Council's Section 94 Plan.



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All other traffic management facilities and roads will be constructed as part of the general construction works associated with the development as required through conditions of consent of any future development application and therefore do not form part of the Draft Agreement.

**Drainage Basins**

Approximately six (6) on site detention (OSD) basins are to be constructed to manage stormwater from the site. At this stage, a single large basin will serve the western area of the development whilst a network of five basins will serve the eastern areas of the development. These basins are proposed to be dedicated to Council through the Draft Agreement and a monetary contribution paid to Council for ongoing management of the basins. This contribution for management will be calculated in accordance with Council's *Draft Dedication of Land Policy*.

As this proposal is still at the strategic planning proposal stage, some of the details of the stormwater management system and hence the details of the OSD basins and their associated maintenance costs have not been finalised. However, the applicant has agreed in principle to pay a maintenance contribution to Council in accordance with the *Draft Dedication of Land Policy* though there will be some flexibility included in the Draft Agreement to allow the OSD design to be varied.

**Open Space**

Two (2) areas of open space are proposed within the development. A large linear park of approximately 1.4 hectares is located in the western area of the site, and a smaller local park of approximately 0.34 hectares is located on the eastern boundary of the site.

There are two (2) areas in which the proposed development does not meet Council's standards in relation to open space. Firstly, the eastern park does not meet the 5,000m<sup>2</sup> minimum size requirement for parks under Council's *Draft Dedication of Land Policy*. This park will, however, only serve the open space needs of the development surrounding it and embellishment will be low maintenance in nature and is considered acceptable in these circumstances.

Secondly, based on the commonly adopted 2.83ha/1000 persons standard this development has a shortfall of approximately 11,300m<sup>2</sup> in the total amount of open space required. As a result of discussions with the developer it was agreed that in lieu of the provision of this additional open space a contribution would be made to the embellishment of the park on the old school site as this would provide an area of useable open space that will serve the central area of the development whilst also providing a broader benefit to the existing community. This contribution will reflect the cost of providing and embellishing an equivalent area of open space to the shortfall although some more details as to the nature of the embellishment works will be sought.

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This has been agreed to by Council's Facilities & Recreation Planner and will be included in the Draft Agreement before it is exhibited.

As the local open space is to be provided on site an offset will be provided against the contribution that would otherwise be payable for Precinct Level open space and recreation.

**Shared Pathways**

Under the Draft Agreement a network of shared pathways approximately 1.6kms long will be constructed and dedicated to Council. These pathways are mostly contained within the road reserves and public reserves in the estate and as such will not be dedicated separately. There are, however, two (2) locations where the pathways cross a riparian area which will remain in private ownership. In these locations the pathways will be dedicated to Council to ensure continuity of ownership and public access. The dedication of these pathways is included in the Draft Agreement and it is recommended that the pathways be accepted by Council. There may also be a need to investigate further the need for any Right of Ways over the pathways remaining in the riparian area (i.e. those in private ownership).

As part of this shared pathway network, a shared pathway bridge will be constructed over the rail line. Due to the extent of the works required and the nature of the item, it has been separately listed as a works item. Under the Draft Agreement the developer will be responsible for the design and construction of the bridge including any associated approvals. Once completed Council will assume responsibility for the ongoing maintenance and repair of the bridge under licence with ARTC (Australian Rail Track Corporation).

**Monetary Contribution**

Although the Draft Agreement switches off Section 94 and Section 94A contributions for the development, it contains provisions for the payment of a monetary contribution for those items of infrastructure that will not be provided on site such as active open space and community facilities as well as shire-wide facilities such as the library and aquatic and indoor sports centre. The value of the contributions and the timing for payment will be incorporated in to the Draft Agreement before it is exhibited.

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**Heritage Works**

The Planning Panel, as part of its assessment, recommended the restoration of some important heritage buildings within the subject site be undertaken. These buildings (known as the Creamery precinct) have an association with the Macarthur Onslow family and the historical significance of the site and its contribution to the development of rural and pastoral industries. The required works have been determined through a Conservation Management Plan prepared by a heritage consultant and are included in the Draft Agreement. The estimated value of these works for the purposes of the Draft Agreement is \$358,000. These need to be confirmed before the exhibition of the Draft Agreement can proceed.

**1.3 OUTSTANDING ISSUES**

The Draft Agreement is progressing in a form so that, when complete, it will adequately address the infrastructure requirements for the development. There are, however some outstanding issues that will need to be addressed before the Draft Agreement can be placed on exhibition. These issues were identified earlier in this report and are summarised again below:

**Monetary Contribution Rate**

The monetary contribution rate is yet to be finalised however an indicative cost of \$3,963 per lot has been provided to the developer. This amount has been based on the value of works under Council's current Section 94 Plan for which there is no equivalent facility to be provided on site. The purpose of this monetary contribution is to ensure that the proposed development can fully meet its infrastructure requirements with minimal financial impact on Council. Consideration will also be given to including in the total rate a contribution for other types of development which would normally be subject to a Section 94A Contribution under the Wollondilly Development Contributions Plan.

**Land Valuation**

The developer has submitted a formal valuation for the land to be dedicated. A separate independent valuation will be sought by Council to confirm the valuation submitted by the developer is reasonable. Any variation between the Council and developer valuations and their implications for the benefits under the Draft Agreement will be addressed prior to the plan being placed on exhibition.

Although these valuations assist in determining the benefit arising from the Draft Agreement and the value of the future assets of Council, they have little impact on the final monetary contribution to be paid by the developer.

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**Maintenance Contributions**

As noted the value of the maintenance contribution to be paid for the maintenance of the OSD basins following their dedication to Council has not been determined. The applicant has agreed to the amount being calculated in accordance with Council's *Draft Dedication of Land Policy* though has requested some flexibility as the OSD design is still to be finalised. This is considered acceptable in principle and options to accommodate this will be considered further before the Draft Agreement is exhibited.

**Heritage Works**

A review of the scope of the restoration works proposed for the Creamery precinct and the cost as presently included in the Draft Agreement is to be undertaken and the costs confirmed or amended prior to the Draft Agreement being exhibited.

**Land Dedications**

A number of dedications are proposed in the Draft Agreement which will dedicate land to Council for recreational purposes as well as land to be used as an on-site detention basin and shared pathways. Council's Land and Property Panel sought more information about these dedications before they would agree to accept them. As a result they will be resubmitted to this Panel before the Draft Agreement is exhibited.

**Relevant Council Policies**

The Draft Agreement has been assessed against the Planning Agreements Policy. The proposal was found to meet the acceptability test requirements. The contents of the draft agreement complied with all policy matters with the exception of the inclusion of a clause allowing the pooling of monetary contributions. This, however, will be rectified prior to exhibition.

**Legal Advice**

The Draft Agreement has been referred to Council's legal counsel for review and they have advised that a number of issues remain to be resolved. Most of the legal matters requiring further review relate to the procedures for obtaining benefits, or issues of security and risk management for Council. These matters will need to be reviewed before the Draft Agreement can be exhibited.

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**1.4 FURTHER ACTION**

As noted above, further work on the Draft Agreement is required to refine the full extent of the benefits to be provided and to resolve some important legal matters. However, it is expected that Council and the applicant will agree to a final version of a Draft Agreement in which the benefits to be provided are substantially as described earlier in this report. The outstanding legal issues will be negotiated further between the two (2) parties and as mostly occurs, a compromise situation acceptable to both parties will be reached. When this occurs, and our legal advisors have confirmed that the Draft Agreement is suitable for exhibition, it can be placed on exhibition. As a result, the Draft Agreement is not being recommended for exhibition at this time. Instead, it is being recommended that Council agree to delegate the General Manager the authority to exhibit the Draft Agreement when he is satisfied, based on advice from Council staff that the outstanding issues including (inter alia) those identified above have been resolved and when legal advice has confirmed that it is in a form suitable for exhibition.

When this occurs, the Draft Agreement and accompanying Explanatory Note will be exhibited for at least 28 days for public feedback.

The outcome of the exhibition will be reviewed and a further report prepared for Council.

Proceeding in this way is consistent with Council's Planning Agreements Policy in which a resolution to exhibit a Draft Planning Agreement is not a necessary requirement. However a Council resolution to endorse a final Planning Agreement is required and this will occur when Council has considered a report on the outcome of the exhibition process and recommends a final Planning Agreement for adoption.

If possible the Draft Agreement should also be exhibited with the Draft Development Control Plan being prepared for the site.

As noted earlier the Planning Panel initially directed Council to ensure that the development is provided with an adequate range of services and infrastructure required to serve the local community. It would be appropriate to advise both the Planning Panel and the Department of Planning and Environment that this will be done through the Draft Agreement at such time the Draft Agreement is in a form suitable for exhibition.

**FINANCIAL IMPLICATIONS**

Under the Draft Agreement the developer will bear the financial risk of providing the infrastructure required. Council will hold a bank guarantee from the developer that will cover the cost of providing the infrastructure until such time as it is satisfactorily completed which further minimises the financial risk to Council.



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Although the infrastructure within the Draft Agreement will be dedicated to Council, and Council will assume responsibility for its maintenance, provision has been made within the Draft Agreement to ensure the developer will fund the maintenance of some of these items.

It is acknowledged that the development will impact on demand for infrastructure beyond the site for which Council is responsible for funding. Arrangement has been made within the Draft Agreement for a monetary contribution towards the provision of this infrastructure, thus minimising the financial impact on Council.

**CONCLUSION**

The Draft Agreement is being prepared to comply with the requirements of Council's *Planning Agreement Policy* and is considered to adequately address the infrastructure requirements arising from the development.

Some further work is still required to resolve the benefits to be provided under the Draft Agreement and to resolve some outstanding legal matters.

**ATTACHMENTS INCLUDED IN A SEPARATE BOOKLET**

1. Map of Land Subject to Draft Planning Agreement and proposed land use zones
2. Assessment against Council's Planning Agreements Policy

**RECOMMENDATION**

1. That Council note the general terms of the Draft Planning Agreement as described in this report.
2. That the General Manager or his delegate be given delegation to exhibit the Draft Planning Agreement following advice from staff that all relevant outstanding matters have been resolved and legal advice has been obtained that the agreement is in a form suitable for exhibition.
3. That the South West Sydney Planning Panel and the Department of Planning & Environment be advised once the Draft Planning Agreement is in a form suitable for exhibition.
4. That the outcome of the public exhibition be reported back to Council.