

## REPORTS TO COUNCIL - FOR COUNCIL DECISION

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<b>ITEM NUMBER</b>	0.0
<b>SUBJECT</b>	Planning Agreement Amendment: 264-268 Pennant Hills Road, Carlingford (also known as 1 Martins Lane, Carlingford)
<b>REFERENCE</b>	F2024/00282 - D09361117
<b>REPORT OF</b>	Team Leader Infrastructure Planning

**CSP THEME:** FAIR

**WORKSHOP/BRIEFING DATE:** 15 April 2024

### PURPOSE:

To seek Council endorsement to publicly exhibit a Draft Deed of Variation to a Planning Agreement relating to land at 264-268 Pennant Hills Road Carlingford (now known as 1 Martins Lane, Carlingford).

### RECOMMENDATION

- (a) **That** Council endorse the Draft Deed of Variation to the Planning Agreement relating to land at 264-268 Pennant Hills Road Carlingford (now known as 1 Martins Lane, Carlingford) as provided at **Attachment 1** for public exhibition purposes.
- (b) **That** Council delegate authority to the CEO to make any necessary administrative changes of a non-policy nature to the Draft Deed of Variation, and to prepare the required Explanatory Note to accompany the draft Deed prior to public exhibition.
- (c) **That** the draft Deed of Variation to the Planning Agreement and associated Explanatory Note be publicly exhibited for 28 days.
- (d) **Further that**, the outcomes of the public exhibition be detailed in a report to Council.

### BACKGROUND

1. At its meeting of 27 May 2019, Council resolved to enter into a Planning Agreement with Baptistcare NSW & ACT relating to land at 264-268 Pennant Hills Road Carlingford (now known as 1 Martins Lane, Carlingford).
2. The Planning Agreement was made in conjunction with a Planning Proposal for the site that amended the land zoning from R2 Low Density Residential to R4 High Density Residential. The planning proposal also increased the maximum height control and FSR control from 9m and 0.5:1, to 14m and 1:1, respectively.
3. The Planning Agreement required the following deliverables:
  - (a) signalisation of the intersection of Baker Street and Pennant Hills Road, Carlingford.

- (b) upgrade and resurfacing to Martins Lane, including a new left turn bay to Pennant Hills Road.
  - (c) land dedication (as road) adjacent to the western side of Martins Lane, and the provision of public domain improvements including footpaths, landscaping, street lighting and the like.
  - (d) creation of new internal road network including dedication to Council (as road).
  - (e) creation of a 20m wide public access easement at the rear of the site within a high ecological constraint zone.
  - (f) provision of 162 affordable housing units to remain in the ownership of the Developer, but to be used as affordable housing until 2045 in accordance with separate agreement with NSW Department of Family and Community Services.
4. On 23 December 2020 Council issued development consent to Development Application No. DA/242/2020 for the consolidation of the existing lots, re-subdivision to create 2 lots (Site A and Site B), associated road and civil infrastructure and construction of an affordable housing development comprising 162 apartments with basement parking on Site A.
5. In January 2022, the applicant lodged a State Significant Development Application (SSD-33631237) for an aged care and seniors living development comprising independent living units, residential aged care facilities and a respite day care centre on Site B. This matter is still under assessment with the Department of Planning, Housing and Infrastructure.
6. In May 2023 an occupation certificate was issued for the works authorised by DA/242/2020, relating to Site A, that is, the 162 unit affordable housing development and associated works. Recent aerial images of the site at Figure 1 below show the new buildings adjacent to Pennant Hills Road and new internal road known as Wulaba Place. The vacant portion of the site forms 'Site B' which is subject to the SSD application.



Figure 1: Aerial image showing recent completion of works

7. On 20 November 2023 Council approved Subdivision Certificate No. SC/54/2023 to subdivide the land into 9 lots which includes proposed Lots 3, 5, 6, 7, 8 and 9 to be dedicated to Council as road as shown in Figure 2 below. Proposed Lots 1 and 2 will continue to be owned by the Developer and proposed Lot 4 will remain in the ownership of the developer until such time that is required by Transport for NSW as part of future road widening to Pennant Hills Road. This transfer of Lot 4 falls outside the scope of the Planning Agreement.
8. This Subdivision Plan has been lodged with NSW Land Registry Services (LRS) and is awaiting registration, noting that Lot 6 will not be dedicated to Council until a later date. This is discussed further below.

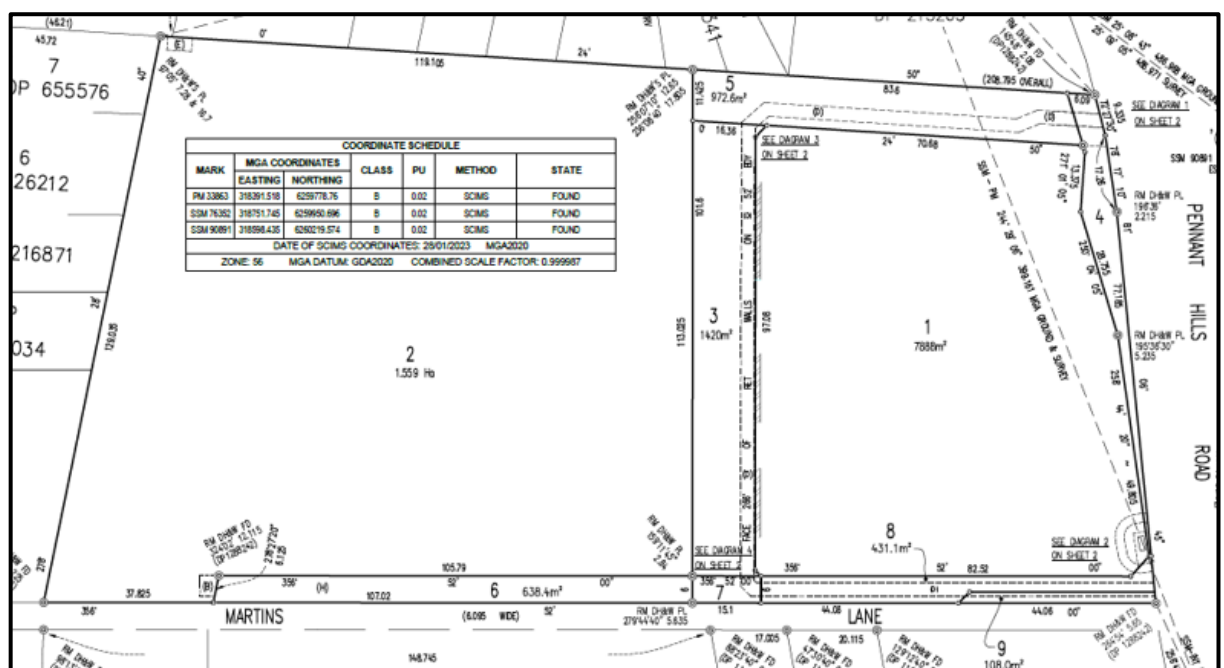


Figure 2: Proposed Plan of Subdivision approved by SC/54/2023

9. In conjunction with DA/242/2020, the majority of the Planning Agreement deliverables have been completed. The outstanding deliverables include:
- (a) land dedication of proposed Lots 3, 5, 7, 8 and 9 (as road). As noted above the enabling subdivision plan has been lodged with LRS and is awaiting final registration to enable transfer to Council. It is expected this will occur in the two (2) months.
  - (b) land dedication of proposed Lot 6 (as road) and completion of public domain works in this space, namely footpath and landscaping and any ancillary matters. This matter is sought to be deferred as part of the subject Deed of Variation to the Planning Agreement to align with the redevelopment of Site B. This is discussed further below under the heading '*Proposed Draft Deed of Variation*'.
  - (c) creation of the 20m wide public access easement in proposed Lot 2 (known as Site B). This item is not required to be delivered until prior to the issue of an occupation certificate for the development on Site B. There are no changes proposed to the timing of this deliverable as part of this Deed of Variation.
10. The landowner Baptistcare NSW and ACT is in the process of establishing a separate subsidiary for the purpose of owning and operating Baptistcare's community housing assets. As such, moving forward proposed Lots 1 and 4 (that contain the recently constructed affordable housing units) will be transferred to the new subsidiary of Baptistcare. The remaining parcels (Lots 2 and 6) will continue to remain in the ownership of Baptistcare NSW & ACT, noting that proposed Lot 6 will eventually be dedicated to Council and proposed Lot 4 will eventually be transferred by TfNSW.

## **PROPOSED DRAFT DEED OF VARIATION**

11. It is proposed to amend the Planning Agreement via a Deed of Variation to enable the following changes:
- (a) to modify Schedule 1 to change the timing of dedication of proposed Lot 6 and the completion of the public domain works within proposed Lot 6. The works will be required to be finalised within 18 months of issue of the first occupation certificate for development on Site B, noting that a further 6 months can be authorised at Council's discretion if required.
  - (b) to modify clause *12.2 Transfer of Land* to enable the transfer of the VPA obligation for proposed Lots 1 and 4 (being the ongoing obligation to use the land as affordable housing until 2045) to the new subsidiary of Baptistcare.
  - (c) other administrative drafting changes to enable/support the above changes.
12. In relation to Item (a), the current timing for this deliverable was in conjunction with the broader works along Martins Lane as a whole. This was required to be finalised within 18 months of the occupation certificate for the last building on Site A, which occurred in May 2023. The majority of this work has already been completed and the timing has not been breached as it has only been 12 months since an OC was issued for Site A.

13. However, given that Site B is yet to be constructed it is likely that any public domain works delivered within proposed Lot 6 (which currently forms part of Site B) will be damaged during the construction process on Site B.

Furthermore, the pedestrian safety in this area would likely be impacted during construction works on Site B. Therefore, it is proposed to delay the timing to enable the delivery to align with the completion of the first buildings on Site B.

This request to change timing was sought by the Developer and agreed in-principle by Council staff. The exact timing of construction works on Site B is not yet known as the SSD application is still under assessment. However, Baptistcare have advised that construction is currently forecast to commence in 2026 and be complete by 2029.

14. In relation to Item (b) above, the reason to vary Clause 12.2 is to enable the transfer of the VPA obligation to proposed Lots 1 and 4 to the new subsidiary of Baptistcare without requiring the existing Planning Agreement to be novated (in part) to the new subsidiary. As a result, the Planning Agreement will continue to remain on the title of proposed Lot 1 until 2045, and on proposed Lot 4 until it is transferred to TfNSW for road widening purposes. The change is administrative in nature and has no impact on the deliverable which has already been achieved.

## **CONSULTATION & TIMING**

### Stakeholder Consultation

15. The following stakeholder consultation has been undertaken in relation to this matter:

<b>Date</b>	<b>Stakeholder</b>	<b>Stakeholder Comment</b>	<b>Council Officer Response</b>	<b>Responsibility</b>
February - March 2024	Landowner/ Developer (Baptistcare NSW & ACT)	Baptistcare have worked with Council's Legal team to prepare the draft Deed of Variation. A draft Explanatory Note will be prepared as agreed by both parties prior to public exhibition.	The draft Deed of Variation is agreed by both parties	Group Manager Infrastructure Planning and Design

### Councillor Consultation

16. The following Councillor consultation will be undertaken in relation to this report.

<b>Date</b>	<b>Councillor</b>	<b>Councillor Comment</b>	<b>Council Officer Response</b>	<b>Responsibility</b>
15 April 2024	All Councillors invited	Report finalised prior to briefing session	Report finalised prior to briefing session	Group Manager Infrastructure Planning and Design

## **LEGAL IMPLICATIONS FOR COUNCIL**

17. As the Planning Agreement is a legal document, any variation to the agreement must be formally made through a Deed of Variation prepared and reviewed by both Council's and the other party's solicitors. This has occurred.
18. The Deed of Variation will then be required to be registered on the land title of the relevant property once executed by Council and the Developer.

## **FINANCIAL IMPLICATIONS FOR COUNCIL**

19. If Council resolves to approve this report in accordance with the recommendation, there are no unbudgeted financial implications for Council's budget.
20. The costs associated with legal drafting, public exhibition and future registration to title of the draft Deed of Variation will be borne by the applicant in accordance with the relevant clauses of the Planning Agreement.

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**Team Leader Infrastructure Planning**

Anthony Newland  
**Group Manager Infrastructure Planning & Design**

Jennifer Concato  
**Executive Director City Planning and Design**

John Angilley  
**Executive Director Finance & Information**

Gail Connolly  
**Chief Executive Officer**

## **ATTACHMENTS:**

- 1 Draft Deed of Variation for Public Exhibition Purposes 15 Pages

## **REFERENCE MATERIAL**