



Our Ref : 4130/26; 4130/2 Part 67;
Contact : Roger Nethercote
Telephone: 4732 7713

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Mr Geoff Brown
ADI Residents Action Group
PO Box 4134
WERRINGTON NSW 2747

Dear Geoff,

ADI site, St Marys – Developer Agreements

I refer to your facsimile which raises concerns over the possible implications of Council signing any Development Agreement with Delfin Lend Lease for the ADI site.

A Development Agreement, which is now known as a Planning Agreement, under the new legislation, should not be confused with a Public Private Partnership (PPP). A PPP is an altogether different process where Government may elect to enter into a contract with a private organisation for the carrying out of works in return for that organization receiving a share of the revenue so generated, such as a tollway.

A Planning Agreement is a contractual agreement between the planning authority and the developer. On 8 July 2005, the Environmental Planning & Assessment Act, 1979 (EP&A Act), was amended to allow planning authorities to use planning agreements as a means to obtain contributions for a public purpose. The purpose of a Planning Agreement is to ensure that developers put in place infrastructure in a timely manner using a process which is more suitable or flexible than the traditional Section 94 process.

By no means does the signing of a Planning Agreement by a Council bind or fetter that Council in the carrying out of its statutory planning obligations under the EP&A Act. Indeed it is the obligation of the Council to ensure that it is not fettered in any way in the carrying out of its planning functions whilst at the same time ensuring that it is pursuing the orderly development of land and the timely and equitable provision of infrastructure to meet the needs of new residents in new release area developments.

When a Planning Agreement is prepared it will be thoroughly assessed by Council's legal advisers. If the Planning Agreement is considered to be satisfactory, it will be reported to Council for consideration and determination in open Council. It should be noted that a Planning Agreement must be publicly exhibited for 28 days before it is entered into and the public will have an opportunity to comment on any Agreement.

I trust that this clarifies your concerns regarding Planning Agreements and the implications for Councils in implementing these agreements.

Yours faithfully,

Roger Nethercote
Environmental Planning Manager