
Explanatory Note

Deed of Variation to Original Planning Agreement

1 Introduction

The purpose of this Explanatory Note is to provide a plain English summary to support the notification of the Deed of Variation to the '*Planning Agreement – Trustees of the Sisters of Saint Joseph*' (**Original Planning Agreement**) under s7.4 of the *Environmental Planning and Assessment Act 1979* (NSW).

This Explanatory Note has been prepared jointly between the parties as required by clause 25E of the *Environmental Planning and Assessment Regulation 2000*.

This Explanatory Note is not to be used to assist in construing the Deed of Variation.

2 Parties to the Deed of Variation

(1) The parties to the Original Planning Agreement are:

- (a) The Hills Shire Council (ABN 25 034 494 656) (**Council**); and
- (b) Trustees of the Sisters of Saint Joseph (ABN 33 293 441 659) (**Outgoing Developer**).

(2) The parties to the Deed of Variation are:

- (a) Council;
- (b) the Outgoing Developer; and
- (c) Aqualand Baulkham Hills Development Pty Ltd (ACN 619 300 873) as trustee for the Aqualand Baulkham Hills Development Trust (ABN 62 641 991 437) (**Developer**).

3 Description of the Land to which the Deed of Variation applies

The amended Planning Agreement will apply to the same land as the original Planning Agreement, however that land is now described as Lots 214, 215 and 216 in Deposited Plan 1239622 (**Land**).

4 Description of the Development to which the Deed of Variation applies

The development to which the Deed of Variation applies is the same as described in the defined term 'Development' in the 'Summary Sheet' of the Original Planning Agreement.

5 Summary of Development Contributions, Objectives, Nature and Effect of the Deed of Variation

The Deed of Variation amends the terms of the Original Planning Agreement as follows:

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- (1) Changes to the Summary Sheet to reflect the new Developer under the Planning Agreement and to update the description of the Land.
 - (2) The Monetary Contribution must now be paid prior to the issue of the Subdivision Certificate for the Development rather than on a pro rata basis.
 - (3) The Developer must now pay a Second Monetary Contribution (not included in the Original Planning Agreement) of \$382,000.00 on the earlier of:
 - (a) thirty (30) days following the issue of a Construction Certificate for the Works; and
 - (b) the Hand-Over Date (being the date that is eighteen (18) months from the date of the approval of the modification application to Development Application DA 6/2012/JP for consent to amend the approved Stormwater Management Strategy as it relates to the Dedication Land, or any other date agreed between the parties).
 - (4) The Second Monetary Contribution is required for the purpose of offsite bioretention facilities.
 - (5) The Development is no longer permitted to be undertaken in a number of stages.
 - (6) If the Hand-Over of the Works does not occur by the Hand-Over Date for the Works then the Works must be Handed-Over before the issue of the first Subdivision Certificate that would otherwise be required to be issued after the Completion Date. If this occurs, the Developer must also pay the Second Monetary Contribution before the issue of the relevant Subdivision Certificate.
 - (7) The Council grants the Developer a non-exclusive personal licence to enable the Developer to access and use the Dedication Land for the purposes of carrying out the Works given that the Dedication Land has previously been dedicated to Council.
 - (8) The Contribution Value of the Works is \$400,000, excluding the on-site stormwater detention tank and access road.
 - (9) The Developer must provide Security to Council in the amount of \$600,000.00, which is equivalent to the cost to complete the Works, plus a contingency of fifty percent (50%) as at the date of the Deed of Variation.
 - (10) Inclusion of updated plans at 'Schedule 1 – Land' and 'Schedule 2 – Dedication Land'.
 - (11) The description of Works at Schedule 3 has been amended to describe the Works as the embellishment of the Dedication Land for the purpose of a local park with the listed inclusions at Schedule 3 to be undertaken by the Developer in accordance with the Council's landscape design specifications and generally in accordance with the plan set out in Schedule 3.

The **objective** of the Deed of Variation is to provide benefits for the wider community and facilitate the delivery of the Monetary Contributions, Works and Dedication Land to support the increased demands for facilities arising from the Development.

The **nature** of the Deed of Variation is a contractual relationship between the Council and the Developer for providing the Monetary Contributions, Works and Dedication Land.

The **effect** of the Deed of Variation is that the Developer will provide the Monetary Contributions, Works and Dedication Land in the manner provided for by the Deed of Variation.

6 Whether the Planning Agreement specifies that certain requirements must be complied with before issuing of a construction certificate, occupation certificate or subdivision certificate

The following requirements must be complied with before the issuing of a construction certificate, occupation certificate or subdivision certificate:

Monetary Contribution (being \$300,000) must be paid prior to the issue of the subdivision certificate for the Development.

7 Assessment of the Merits of the Deed of Variation and Impact on the Public

The planning purposes served by the Deed of Variation:

- (1) are the same as those set out in the Original Planning Agreement; and
- (2) are to provide certainty for the Developer and the Council as to the amount to be paid by way of Monetary Contribution towards the offsite bioretention facilities.

8 Identification of how the Deed of Variation promotes the public interest

The Deed of Variation supports the public interest in the same manner set out in the Original Planning Agreement.

9 Identification of how the proposed Planning Agreement promotes elements of the Council's charter under the Local Government Act 1993

The Planning Agreement promotes the Council's charter under section 8 of the *Local Government Act 1993* as follows:

- (1) This Explanatory Note is prepared for the purposes of keeping the community informed about its activities and to ensure that its decision-making is transparent.
- (2) To manage land and other assets so that current and local community needs can be met in an affordable way.
- (3) To plan strategically, using the integrated planning and reporting framework, for the provision of effective and efficient services and regulation to meet the diverse needs of the local community.
- (4) Providing strong and effective representation, leadership, planning and decision-making.
- (5) To act fairly, ethically and without bias in the interests of the local community.
- (6) To recognise diverse local community needs and interests.
- (7) To have regard to the long term and cumulative effects of its decisions on future generations.

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- (8) To engage in long-term strategic planning on behalf of the local community.

10 Identification of the planning purpose served by the proposed Planning Agreement and whether the proposed Planning Agreement provides for a reasonable means of achieving that purpose

- (1) The Planning Agreement satisfies the objective of promoting the sustainable management of built and cultural heritage to ensure that existing communities do not bear those costs.
- (2) The Planning Agreement provides a reasonable means of achieving and securing outcomes by identifying the Contributions and timing for completion of the Contributions.

11 Identification of whether the agreement conforms with Council's capital works program

The Planning Agreement conforms with Council's capital works program.
