

Explanatory Note

Deed of Variation to the Planning Agreement for the Kolodong Estate

Environmental Planning & Assessment Act 1979, section 7.4
Environmental Planning & Assessment Regulation 2021, clause 203

1. Introduction

The purpose of this Explanatory Note is to provide a plain English summary to support the exhibition of the Deed of Variation to the existing planning agreement (**Deed of Variation**) between the parties prepared under section 7.4 of the *Environmental Planning and Assessment Act 1979* (the **Act**).

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

2. Parties

The parties to the existing Planning Agreement and Deed of Variation are MidCoast Council ("**Council**") and the owners of the land Hazcorp Property Group Pty Ltd ("**Landowner**") and the developer of the land, Euca Valley Pty Limited ("**Developer**"). This explanatory note has been prepared jointly by the parties.

3. Description of the Subject Land

The Deed of Variation applies to the "Land" under the existing Planning Agreement owned by the Landowners and currently described as:

Lot 101 DP 1266464 known as 443 Kolodong Road, Tree NSW 2430

Lot 61 DP 1252146, known as 327 Kolodong Road, Taree NSW 2430 (the **Land**).

4. Description of the Development

The Landowner proposes to develop part of the Land for residential purposes (the **Development**).

In order to facilitate the Development, a former Landowner sought an amendment to the *Greater Taree Local Environmental Plan 2010* (the **Amendment**). The proposal was accepted by Mid Coast Council changing the planning controls and zoning applying to part of the Land (and other adjoining land) from RU1 (Primary Production) to R1 (General Residential) and E2 (Environmental Conservation).

The current Landowner has lodged a Development Application DA2021/1593 to develop a residential subdivision.

Traffic studies carried out in association with the preparation of the Land rezoning and the development application DA2021/1593 identified that the Development will contribute to the need to upgrade the intersection of Kolodong Road with Wingham Road (the **Intersection Works**). More specifically, the contribution to intersection load during peak hours is roughly 50:50 between the traffic from existing uses and the traffic generated by the Development of the Land.

5. Summary of Objectives, Nature and Effect of the Planning Agreement Objectives

The Deed of Variation amends the Planning Agreement so to provide an obligation on the Developer to construct the Intersection Works if the Council notifies the Developer that it will not complete the Intersection Works; and for the Developer to be proportionally reimbursed for its costs associated with the construction of the Intersection Works from the Council, in accordance with the Planning Agreement (as amended by the Deed of Variation). The Deed of Variation also seeks to make consequential changes resulting from this new obligation as well as include concept plans and the bill of quantities relating to the Intersection Work to the schedules of the Planning Agreement (as amended by the Deed of Variation).

The **intent** of the Deed of Variation is to ensure that public benefits in the form of the Intersection Works are provided by the Developer either through the provision of monetary contributions or the carrying out of the Intersection Works.

The **nature** of the Deed of Variation is a contractual relationship between the Council, the Developer and the Landowner for the provision of Development Contributions to support the development of the Land.

The **effect** of the Deed of Variation is that the Developer will provide the Development Contributions in the manner provided for by the Planning agreement (as amended by the Deed of Variation).

The Deed of Variation does not exclude the application of sections 7.11, 7.12 and 7.24 of the Act. However if the Landowner carries out the Intersection Works or contributes to the Council in accordance with the agreement if Council completes the intersection works, the Landowner is not liable to pay development contributions for road upgrades that would otherwise be imposed.

Assessment of the merits of the Deed of Variation

The merits of the Deed of Variation are the same as those set out in the existing Planning Agreement.

In accordance with section 7.4(2) of the Act, the Deed of Variation promotes the following public purpose:

- (1) the provision of (or the recoupment of the costs of providing) public amenities and public services.
- (2) the provision of (or the recoupment of the costs of providing) transport or other infrastructure relating to land.

The timing of the payment of Monetary Contributions allows the Landowner or Council to proportionally recoup the costs of carrying out the Intersection Works as the Land is developed.

The Deed of Variation promotes the public interest because it promotes the social and economic welfare of the community and sustainable development and is consistent with and promotes the objects in section 1.3 of the Act. In particular:

- 1.3 (c) to promote the orderly and economic use and development of land,
- 1.3 (g) to promote good design and amenity of the built environment.

The Deed of Variation will not preclude the public being involved with the opportunity for involvement and participation in development assessment. The public have been provided the opportunity to be involved with the development assessment and are invited to make comment on the Deed of Variation, particularly with regard to the public interest.

How the Deed of Variation promotes the objects of the Local Government Act 1993

The Deed of Variation is consistent with and promote the objects in section 7 of the *Local Government Act 1993*. In particular:

- 7 (e) to provide for a system of local government that is accountable to the community and that is sustainable, flexible and effective.

How the Deed of Variation promotes the elements of the Councils' charter (now the principles for local government)

The Planning Agreement promotes the principles for local government under Chapter 3 of the *Local Government Act 1993*. In particular:

- 8A (b) Councils should carry out functions in a way that provides the best possible value for residents and ratepayers.

- 8A (f) Councils should manage lands and other assets so that current and future local community needs can be met in an affordable way.

- 8A (g) Councils should work with others to secure appropriate services for local community needs.

- 8B (b) Councils should invest in responsible and sustainable infrastructure for the benefit of the local community.

- 8C (a) Councils should identify and prioritise key local community needs and aspirations and consider regional priorities.

Whether the Deed of Variation conforms with the Councils' capital works program

The Councils' capital works program provides for the maintenance and upgrade of roads, including the Intersection Works if undertaken prior to the Development occurring.

Further information

The Deed of Variation to the Planning Agreement is available on the Council's website.