

Explanatory Note

Minister for Planning (ABN 20 770 707 468)

and

Huntlee Pty Limited (ACN 143 744 745) (in its capacity as bare trustee of the Relevant Partnership)

Draft Fifth Deed of Variation to Planning Agreement

Introduction

The purpose of this explanatory note is to provide a plain English summary to support the notification of the Fifth Deed of Variation to the Planning Agreement between the Minister and the Developer (the **Variation Deed**) prepared under Subdivision 2 of Division 7.1 of Part 7 of the *Environmental Planning and Assessment Act 1979* (the **Act**).

This explanatory note has been prepared having regard to the Planning Agreements Practice Note and its contents have been agreed by the parties as required by clause 205 of the *Environmental Planning and Assessment Regulation 2021* (the **Regulation**).

This explanatory note is not to be used to assist in construing the Variation Deed.

Capitalised terms that are not defined in this explanatory note have the meanings given to them in the Planning Agreement as varied by the Variation Deed, unless the context indicates otherwise.

Parties to the Variation Deed

The parties to the Variation Deed are:

- **Minister for Planning** (ABN 20 770 707 468) (the **Minister**); and
- **Huntlee Pty Limited** (ACN 143 744 745) (in its capacity as bare trustee of the Relevant Partnership) (the **Developer**).

Description of the Land

The Variation Deed applies to the same land to which the Planning Agreement, as amended by the Fourth Deed of Variation to the Planning Agreement dated 21 June 2021, relates (**Land**).

Description of the Project Approval and MOD 17

On 24 April 2013, the Planning Assessment Commission, as delegate of the Minister, approved the Stage 1 Project Approval Application (**Project Approval**). The Project Approval permitted, subject to conditions, the subdivision of the Land for 1,473 residential allotments, 14 super lots and 1 allotment for a primary school and associated infrastructure including landscaping, bulk earthworks, public open space, recreation areas, roads, drainage and utility services.

On 4 September 2013, the Developer entered into the Planning Agreement with the Minister, for the provision of contributions towards designated State infrastructure, as provided by condition E6 of the Project Approval.

Under the Planning Agreement, the Developer is to make Development Contributions, which comprise:

- the carrying out of the Road Improvement Works;
- payment of Regional Road Contributions based on the Net Developable Hectare of the development; and
- the transfer or dedication of the Education Contribution Land.

Various modifications to the Project Approval have been approved to date.

On 6 October 2021, approval was granted to MOD 17 to the Project Approval which, among other modifications, modified Condition E7(a) of the Project Approval to vary the timing of the following elements of the Road Improvement Works to be delivered by the Developer under the Project Approval:

- the intersection upgrade at Wine Country Drive and Hunter Expressway Link Road (A-1) to prior to the earlier of 1,500 Dwellings for which a Subdivision Certificate has been issued or 1 December 2023;
- the signalisation of the intersection of Wine Country Drive and Village Access 1 (A-5) to prior to 1,350 Dwellings for which a Subdivision Certificate has been issued; and
- an interim intersection at the intersection of Hunter Expressway Link Road and Village 1 North Access (A-6) to prior to the issue of the Subdivision Certificate for more than 1,500 Dwellings in Village 1.

Any modification of Condition E7 of the Project Approval to the timing for delivery of an element of the Road Improvement Works necessitates an amendment to the table at Annexure F to the Planning Agreement.

The Minister and Developer have agreed to amend the Planning Agreement to require the Developer to achieve Practical Completion of each element of the Road Improvement Works within the time required by the Project Approval, as modified from time to time, but no later than prior to the issue of the subdivision certificate for the final Dwelling to be developed under the Project Approval.

Summary of Objectives, Nature and Effect of the Variation Deed

The objective of the Planning Agreement as varied by the Variation Deed is to facilitate the delivery of the Developer's various contributions towards the provision of designated State infrastructure.

The Planning Agreement as varied by the Variation Deed provides that the Developer will make the following Development Contributions:

- Payment of the Regional Road Contribution, at a rate of \$105,340 per Net Developable Hectare (subject to indexation in accordance with the Planning Agreement) for the purpose of regional transport infrastructure and services;
- Undertaking the Road Improvement Works in accordance with the Road Works Agreements; and
- Transfer or dedication of the Education Contribution Land for the intended use as a primary school.

The objective of the Variation Deed is to amend the Planning Agreement to reflect MOD 17 and the agreement between the parties relating to the timing of the delivery of the Road Improvement Works. The Variation Deed has the effect of linking the timing for the delivery of the Road Improvement Works to the timing required by the Project Approval, as modified from time to time.

Assessment of Merits of Planning Agreement as varied by the Variation Deed

The Public Purpose of the Planning Agreement as varied by the Variation Deed

In accordance with section 7.4(2) of the Act, the Planning Agreement as varied by the Variation Deed has the following public purposes:

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

The Minister and the Developer have assessed the Planning Agreement, and both hold the view that the provisions of the Planning Agreement as varied by the Variation Deed provide a reasonable means of achieving the public purposes set out above. This is because the Development Contributions will assist the Government in providing infrastructure needed to accommodate future housing and growth in the region as anticipated by the Lower Hunter Regional Strategy, and the Hunter Regional Plan 2036.

How the Planning Agreement as varied by the Variation Deed Promotes the Public Interest and Objects of the Act

The Planning Agreement as varied by the Variation Deed promotes the public interest and the following objects of the Act:

- the proper management and development of towns and villages for the purpose of promoting the social and economic welfare of the community;
- the promotion of the orderly and economic use and development of land; and
- the promotion of good design and amenity of the built environment.

The Planning Agreement, as varied by the Variation Deed, promotes the objects of the Act set out above by requiring the Developer to make a contribution towards the provision of infrastructure at the appropriate time. The Developer's offer to contribute towards the provision of infrastructure will have a positive impact on the public who will ultimately use the roads, intersections.

Requirements relating to Construction, Occupation and Subdivision Certificates

The Planning Agreement as varied by the Variation Deed does not specify requirements that must be complied with prior to the issue of a construction certificate or an occupation certificate.

The Planning Agreement as varied by the Variation Deed requires Development Contributions to be delivered prior to the issue of the relevant subdivision certificate and therefore contains a restriction on the issue of a subdivision certificate within the meaning of section 6.15 of the Act.