

Explanatory Note
Minister for Planning and Infrastructure and
Hanson Construction Materials Pty Ltd
Draft Planning Agreement

Introduction

The purpose of this explanatory note is to provide a plain English summary to support the notification of the draft planning agreement (the **Planning Agreement**) prepared under Subdivision 2 of Division 6 of Part 4 of the *Environmental Planning and Assessment Act* 1979 (the **Act**).

This explanatory note has been prepared jointly by the parties as required by clause 25E of the *Environmental Planning and Assessment Regulation* 2000 (the **Regulation**).

Parties to the Planning Agreement

The parties to the Planning Agreement are Hanson Construction Materials Pty Ltd (**the Developer**) and the Minister for Planning and Infrastructure (**the Minister**).

Description of the Subject Land

The Planning Agreement applies to:

- Lot 5 in DP 1145808

Description of the Proposed Development

On 3 June 2010 Concept Plan Approval 06_0225 and Project Approval 06_0225 were approved by the Minister on the Land. Project Approval 06_0225 included conditions 13 and 14 that required the Developer to enter into a planning agreement by 3 June 2011 with the Minister in the terms offered and set out in Appendix 3 of Project Approval 06_0225.

The Developer is seeking to modify the Concept Plan Approval 06_0225 and Project Approval 06_0225 (**Proposed Modified Development**) and has made an offer to the Minister to enter into the Planning Agreement in connection with the Proposed Modified Development.

State Environmental Planning Policy (Western Sydney Employment Area) 2009 (**SEPP WSEA**) applies to the Land and provides in clause 29 that consent may not be granted to certain development of the Land unless the Director-General has certified in writing to the consent authority that satisfactory arrangements have been made to contribute to the provision of regional transport infrastructure and services (including the Erskine Park Link Road Network).

If the application for the Proposed Modified Development is approved, the amount of the monetary contribution that is required to be provided by the Developer would

increase from that required by Project Approval 06_0225 as initially approved. The Developer has offered to enter into this Deed to make a monetary contribution towards the provision of regional transport infrastructure as required under clause 29 of SEPP WSEA and in the terms required by Project Approval 06_0225 (as modified). The increased contribution is as stated in Schedule 4 of the deed.

Summary of Objectives, Nature and Effect of the Planning Agreement

The Planning Agreement provides that the Developer will make a total monetary contribution of \$4,204,710 for the purposes of the provision of designated State public infrastructure within the meaning of clause 29 of SEPP WSEA.

The amount of the monetary contribution will be paid in instalments calculated on the basis of an estimate of the net developable area for each development application. The instalments are payable progressively in thirteen stages as follows and as set out in Schedule 4 to the Planning Agreement:

- Stages 1-6, prior to the issue of the first Occupation Certificate for any building/s on any part of the Land in the respective stage; and
- Stages 7-13, prior to the issue of the first Occupation Certificate for any building/s on any part of the Land in the respective stage or prior to the commencement of operations on or any use of any part of the Land in the respective stage, whichever is the earlier date.

The obligation to pay the contribution will be secured by Bank Guarantees.

The Developer is required to provide Bank Guarantees and register the Planning Agreement on the title to the Land in accordance with section 93H of the Act.

The objective of the Planning Agreement is to facilitate the delivery of the Developer's contributions towards the provision of infrastructure, facilities and services referred to in clause 29 of SEPP WSEA.

No relevant capital works program by the Minister is associated with this agreement.

Assessment of Merits of Planning Agreement

The Planning Purpose of the Planning Agreement

In accordance with section 93F(2) of the Act, the Planning Agreement has the following public purpose:

- the provision of (or the recoupment of the cost of providing) public amenities or public services.

The Minister and the Developer have assessed the Planning Agreement and both hold the view that the provisions of the Planning Agreement provide a reasonable means of achieving the public purpose set out above. This is because it will ensure that the Developer makes appropriate contributions towards the provision of infrastructure, facilities and services referred to in clause 29 of SEPP WSEA.

How the Planning Agreement Promotes the Public Interest

The Planning Agreement promotes the public interest by ensuring that an appropriate contribution is made towards the provision of infrastructure, facilities and services to satisfy needs that arise from development of the Land.

How the Planning Agreement Promotes the Objects of the Act

The Planning Agreement promotes the objects of the Act by encouraging:

- the promotion and co-ordination of the orderly and economic use and development of land

The Planning Agreement promotes the objects of the Act set out above by requiring the Developer to make a contribution towards the provision of infrastructure, facilities and services referred to in clause 29 of SEPP WSEA.

The Developer's offer to contribute towards the provision of State infrastructure will have a positive public impact as funds from the Developer will be available towards the provision of infrastructure, facilities and services referred to in clause 29 of SEPP WSEA.

Requirements relating to Construction, Occupation and Subdivision Certificates

The Planning Agreement does not specify requirements that must be complied with prior to the issue of a subdivision certificate or an occupation certificate.

The Planning Agreement requires each instalment of the monetary contribution to be paid for:

- Stages 1-6, prior to the issue of the first Occupation Certificate for any building/s on any part of the Land in the respective stage; and for
- Stages 7-13, prior to the issue of the first Occupation Certificate for any building/s on any part of the Land in the respective stage or prior to the commencement of operations on or any use of any part of the Land in the respective stage, whichever is the earlier date,

and therefore contains restrictions on the issue of an occupation certificate within the meaning of section 109H(2) of the Act.

