

## Explanatory Note

### Minister for Planning and Hunter Land Holdings Pty Limited, Avery's Rise Investor Pty Ltd and Lindsay James George Elliott

### 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 Hunter Land Holdings Pty Limited, Avery's Rise Investor Pty Ltd and Lindsay James George Elliott (the **Developer**) and the Minister for Planning (the **Minister**).

#### Description of the Subject Land

The Planning Agreement applies to:

- Lot 12 in DP 755231
- Lot 13 in DP 755231
- Lot 20 in DP 11823
- Lot 8 in DP 10443

#### Description of the Proposed Development

The Developer is seeking to subdivide the Subject Land into approximately 510 residential lots which includes the Stage 1 subdivision of part of the Subject Land into approximately 106 residential lots, 3 residue super lots and 1 conservation lot as proposed under DA 008/2013/649/1 (**Proposed Development**) and has made an offer to the Minister to enter into the Planning Agreement in connection with the Proposed Development.

#### Summary of Objectives, Nature and Effect of the Planning Agreement

The Planning Agreement provides that the Developer will make a monetary contribution of \$72,440 per hectare of net developable area for the purposes of the provision of designated State public infrastructure within the meaning of clause 6.1 of the Cessnock Local Environmental Plan 2011 (**LEP**).

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 prior to the issue of each relevant subdivision certificate as set out in Schedule 4 to the Planning Agreement.

The Developer may elect to provide works in kind (Road Works) in lieu of providing a monetary contribution. If before the creation of the 106<sup>th</sup> lot on the Subject Land the Developer has executed a Road Works Agreement with the Roads Maritime Services, agreed on an Estimated Cost of the Road Works with the Minister and completed the Road Works, the Developer may notify the Minister of the Actual Cost of the Road Works. The Minister will then notify the Developer of the amount of a credit against which the Developer's liability to pay the development contribution as a monetary contribution may be reduced. The credit will be equivalent to the Actual Cost of the Road Works agreed by the Minister, or, if the Actual Cost exceeds the Estimated Cost, the credit will be equivalent to the Estimated Cost of the Road Works.

The Developer is required to provide a Bank Guarantee 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 6.1 of the LEP.

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 6.1 of the LEP.

#### **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 6.1 of the LEP.

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 6.1 of the LEP.

### **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 construction certificate or an occupation certificate.

The Planning Agreement requires each instalment of the monetary contribution to be paid 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 109J(1)(c1) of the Act.

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