

# **Explanatory Note**

## **Minister for Planning and SIMHIL Living 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 SIMHIL Living Pty Ltd (the **Developer**) and the Minister for Planning (the **Minister**).

#### **Description of the Subject Land**

The Planning Agreement applies to:

- Lot 4 of DP1196652

#### **Description of the Proposed Development**

The Developer is seeking to create approximately 57 residential community title lots and the erection of dwellings on such lots to be developed generally in accordance with DA/423/2014 lodged by the Developer's consultant SNL Building Constructions Pty Ltd (**Proposed Development**). The Developer 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 (as indexed under CPI in accordance with the Planning Agreement) for the purposes of the provision of designated State public infrastructure within the meaning of clause 62 of the *Lake Macquarie Local Environmental Plan* 2004 (**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 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 62 of the LEP.

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

The Land is now affected by the *Lake Macquarie Local Environmental Plan 2014 (LEP 2014)* which was published on 12 September 2014 and came into force on 10 October 2014. Clause 1.8A of this plan provides that a development application that was made before the commencement of the plan that has not been finally determined before that commencement must be determined as if the plan had not commenced. Therefore, the development the subject of the development application, to which the planning agreement applies, must be determined under the provisions of the *Lake Macquarie Local Environmental Plan 2004 (LEP 2004)*. The planning agreement references LEP 2004, not LEP 2014, for this reason.

## **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 62 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 62 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 62 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.