

Explanatory Note

Minister for Planning

and

AV Jennings Properties Limited (ACN 004 601 503) and
Orlit Proprietary Limited (ACN 007 535 435)

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 **New 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 New Planning Agreement

The parties to the New Planning Agreement are AV Jennings Properties Limited (ACN 004 601 503) and Orlit Proprietary Limited (ACN 007 535 435) (together referred to as the **Developer**) and the Minister for Planning (the **Minister**).

Description of the Subject Land

The New Planning Agreement applies to:

- Lot 43 in Deposited Plan 7091;
- Lot 47 in Deposited Plan 7091;
- Lot 4 in Deposited Plan 208596;
- Lot 84 in Deposited Plan 1196717;
- Lot 85 in Deposited Plan 1196717; and
- Lot 86 in Deposited Plan 1196717;

(collectively referred to as the **Subject Land**).

The Subject Land is located at the north-western corner of Louisiana Road and the Pacific Highway, Hamlyn Terrace.

Description of the Proposed Development

The Developer is looking to undertake the staged subdivision of the Subject Land into at least 248 residential allotments (the **Proposed Development**).

In this regard, on 28 August 2015, the Developer obtained Development Consent from Wyong Shire Council (the **Council**) to subdivide part of the Subject Land into 155 allotments (being Development Application DA1175/2014).

The Developer has also made further Development Applications in respect of the further subdivision of the Subject Land, including:

- Development Application DA1101/2015 which seeks approval to create approximately 71 allotments on part of the land; and
- Development Application DA395/2015 which seeks approval to create approximately a further 54 allotments on part of the land.

The Developer has made an offer to the Minister to enter into the New Planning Agreement in connection with the Proposed Development.

It is noted that Development Applications DA1101/2015 and DA395/2015 also seek consent for the creation of residential allotments on land that is not subject to the New Planning Agreement. The Developer may be required to provide further contributions towards the provision of designated State public infrastructure (in addition to any contribution required under the New Planning Agreement) in connection with those lots. Such contribution would be documented through a separate planning agreement.

Earlier Planning Agreement

It is noted that an existing planning agreement already applies to the Proposed Development and Subject Land. In that regard, the Developer entered into a planning agreement on 16 June 2008 with the Minister (the **Earlier Planning Agreement**) to provide contributions in connection with:

- the Proposed Development; and
- the subdivision of adjoining land into 83 allotments for which Development Consent was obtained from the Council on 6 January 2011 (being Development Application DA745/2008).

A copy of the Earlier Planning Agreement can be found at <http://vparegister.planning.nsw.gov.au/>

The Developer has requested a reduction in the quantum of contributions required under the Earlier Planning Agreement and to vary the arrangements for the timing of payment of those contributions. This is proposed to reflect changes to State government policy which have occurred since the execution of the Earlier Planning Agreement.

Accordingly, the Developer has made an offer to the Minister to enter into the New Planning Agreement in connection with the Proposed Development to replace the Earlier Planning Agreement.

In relation to the Earlier Planning Agreement, it is noted that:

- The Minister for Disability Services was also a party to the Earlier Planning Agreement. However, the Earlier Planning Agreement no longer applies to the Minister for Disability Services having discharged its obligations under that planning agreement. The Minister for Disability Services has therefore confirmed that he is not required to be a party to the New Planning Agreement.
- Contributions have already been paid in relation to the 83 allotments approved under the Development Consent granted for Development Application DA745/2008. Accordingly, the New Planning Agreement will not apply to those allotments.

A plan showing the land to which the Earlier Planning Agreement applied and the land to which it is proposed the New Planning Agreement will apply is attached to this Explanatory Note.

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

The New Planning Agreement terminates the Earlier Planning Agreement and instead provides that the Developer will make a monetary contribution of \$2,739.90 per residential allotment (subject to indexation in accordance with the New Planning Agreement) for the purposes of the provision of designated State public infrastructure within the meaning of clause 6.1 of the *Wyong Local Environmental Plan 2013*.

This contribution will apply in relation to the allotments approved under Development Application DA1175/2014 and any further subdivision of the Subject Land (such as that proposed in Development Applications DA1101/2015 and DA395/2015 in so far as they relate to the Subject Land, if approved).

The Developer is however only required to provide the contribution in relation to the first 248 allotments created on the Subject Land following the commencement of the New Planning Agreement.

The monetary contribution for each residential allotment will be payable prior to the issue of the subdivision certificate creating the relevant allotment. The requirement for the timing of the payment is set out in Schedule 4 to the New Planning Agreement.

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

The objective of the New 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 *Wyong Local Environmental Plan 2013*.

No relevant capital works program by the Minister is associated with the New Planning Agreement.

Assessment of Merits of New Planning Agreement

The Planning Purpose of the New Planning Agreement

In accordance with section 93F(2) of the Act, the New 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 New Planning Agreement and both hold the view that the provisions of the New 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 *Wyong Local Environmental Plan 2013*.

How the New Planning Agreement Promotes the Public Interest

The New 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 Subject Land.

How the New Planning Agreement Promotes the Objects of the Act

The New 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 New 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 *Wyang Local Environmental Plan 2013*.

The Developer's offer to contribute towards the provision of designated State public 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 *Wyang Local Environmental Plan 2013*.

Requirements relating to Construction, Occupation and Subdivision Certificates

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

The New Planning Agreement requires payment of the monetary contribution for each residential allotment (up to and including the 248th allotment) 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.

For the creation of the 249th residential allotment and beyond, no further contribution amount will be payable under the New Planning Agreement.