

## Draft Planning Agreement

### Minister for Planning and E.J Cooper & Son Pty Limited (ACN 000 269 750)

#### Explanatory Note

##### Introduction

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

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

Words appearing with initial capital letters in this note have the meanings given to them in this note or (if not defined in this note) in the Planning Agreement.

##### Parties to the Planning Agreement

The parties to the Planning Agreement are E.J Cooper & Son Pty Limited (referred to as the **Developer**) and the Minister for Planning (**Minister**).

##### Purpose of the Planning Agreement

The purpose of the Planning Agreement is to provide for the making of the Development Contributions by the Developer to the Minister for the provision of infrastructure for public purposes in connection with the development of the Land in accordance with the Planning Agreement.

The Developer has offered to enter into the Planning Agreement with the Minister to provide for and secure the Development Contributions.

##### Description of the Subject Land

The Planning Agreement applies to the following land:

- Lot 1, 2 and 3 in DP 11126;
- Lot 1 DP 207750;
- Lot 1 DP 564211;
- Lot 9 and 10 in DP 593517;
- Lot 15, 16, 17, 18, 21, 22, 23, 25, 26, 27, 29, 30, 31, 40, 41, 43, 44, 45, 46 and 47 in DP 255616;
- Lot 2 and 4 in DP 253552;
- Lot 4A and 4B in DP 135304; and

- Lot 5 DP 658286,  
(together, **Land**).

The Developer:

- is the registered proprietor of the Land or has the rights necessary to become the registered proprietor of the Land; and
- has the rights necessary to develop the Land for the Proposed Development, and intends to develop the Land.

The Land is part of land known as Box Hill North. There is other land within Box Hill North (approximately 9 lots) to which the Planning Agreement does not apply and for which the Planning Agreement does not provide development contributions. The Land is generally bound by Maguires Road to the north, Boundary Road to the west, Janpieter Road to the east and Old Pitt Town Road to the south, and is within the Hills Shire Council (**Council**) local government area.

The Planning Agreement is not required to be registered on the Land.

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

The Developer has sought an amendment to the Hills Local Environmental Plan 2012 (**LEP**) to rezone the Land so that the Developer may later apply for the approval of development generally for the purposes of:

- a) subdivision of the Land into relevant parcels;
- b) the erection of approximately 4,100 dwellings;
- c) the establishment of a town centre;
- d) the construction of new roads and infrastructure;
- e) a primary school site on the Education Land;
- f) sporting fields and parks;
- g) environmental conservation; and
- h) ancillary and associated development and uses,

and including all demolition works, site preparation and establishment works, subdivisions, and construction works required, as well as the relevant land uses (**Proposed Development**).

Pursuant to the Planning Proposal lodged by the Developer with the Council, the Developer has sought:

- the rezoning of the Land from RU6 - Transition to primarily R1 - General Residential, R2 – Low Density Residential, R3 – Medium Density Residential, R4 – High Density Residential, B2 – Local Centre, E4 – Environmental Living and RE1 – Public Recreation; and
- generally, the release of the Land for the development of a mix of residential, commercial, environmental, town centre and recreational uses (**Planning Proposal**).

The Planning Proposal was the subject of a Gateway Determination on 26 November 2013 in which approval was granted for the progression of a proposed

amendment to the LEP. The Planning Proposal was exhibited by the Hills Shire Council from 11 February 2014 to 14 March 2014.

The Planning Proposal also provides that the LEP should be amended so that consent for any development on the Land must not be granted unless the Secretary has issued a Satisfactory Arrangements Certificate to the relevant Consent Authority.

The Developer has offered to enter into the Planning Agreement to enable the Planning Proposal to progress, and if an amendment is made to the LEP, to form the basis for the Secretary to provide a Satisfactory Arrangements Certificate.

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

The objective of the Planning Agreement is to facilitate the delivery of the Development Contributions by the Developer towards the provision of designated State public infrastructure.

#### *Monetary contribution by the Developer*

The Planning Agreement provides that the Developer will make a total Monetary Contribution of \$16,730,000 (which is to be indexed to CPI in accordance with the Planning Agreement) in relation to the Land, for the purpose of the provision of designated State public infrastructure.

The Proposed Development has been divided into nine Stages under the Planning Agreement. The Planning Agreement requires the Monetary Contribution to be paid in instalments calculated in accordance with the indicative area of each Stage.

An instalment is payable at each Stage of the Proposed Development.

#### *Other Development Contributions*

The Developer must also deliver the Education Land Contribution to the Minister.

If the Developer does not dedicate the Education Land by the Education Land Dedication Date, the Minister may (without limiting any of the Minister's other rights under the Planning Agreement) elect to compulsorily acquire the Education Land. If the Education Land is owned by the Developer, the Developer consents to the acquisition of the land for the amount of \$1.00.

The Developer has agreed to indemnify and keep indemnified the Minister in respect of all liabilities or acquisition costs incurred in connection with any acquisition of the Education Land.

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

## *Security*

Upon execution of the Planning Agreement, the Developer is required to provide a Bank Guarantee with a total face value equivalent to the sum of:

- the Monetary Contribution; and
- 120% of the Education Land Value as determined by the valuation process set out in Schedule 5.

The Bank Guarantee is provided to secure the provision of the Monetary Contribution and the transfer of the Education Land in accordance with the Planning Agreement.

The Developer must not sell, transfer, assign or dispose of the whole or any part of the Land or its interests in the Land unless the proposed transferee signs a deed in favour of the Minister agreeing to comply with the obligations of the Developer under the Planning Agreement which relate to the land proposed to be transferred.

### **Assessment of Merits of the 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; 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 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 in the area.

#### 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 and those who inhabit it in the future.

#### 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; and

- the provision of land for public purposes.

The Planning Agreement promotes the objects of the Act set out above by requiring the Developer to make a contribution towards the provision of designated State public infrastructure in the Box Hill North area.

The Developer's offer to contribute towards the provision of designated State public infrastructure will have a positive public impact as the provision of funds and land dedication by the Developer will contribute to the provision of infrastructure and services to the local and regional community within the Box Hill North area.

#### Requirements relating to Construction Certificates and Subdivision Certificates

The Planning Agreement requires the Monetary Contribution to be paid in instalments based on the indicative area of each Stage.

The instalments are payable for each Stage of the Proposed Development:

- a) before any Subdivision Certificate is issued for that Stage or any other Stage for which an instalment has yet to be paid in full; or
- b) if a Subdivision Certificate is not required, then before any of the following events occur:
  - A. any application for a Complying Development Certificate is made for that Stage or for any other Stage for which an instalment has yet to be paid in full, and
  - B. any Construction Certificate is issued for that Stage or for any other Stage for which an instalment has yet to be paid in full; and
  - C. that Stage (or any other Stage for which a Monetary Contribution part has yet to be paid in full) is commenced; and
  - D. any Occupation Certificate is issued for that Stage (or any other Stage for which a Monetary Contribution part has yet to be paid in full).

The Developer must transfer the Education Land to the Minister by the Education Land Dedication Date, which in general terms means before the issue of a Subdivision Certificate for the creation of the 2,000<sup>th</sup> Residential Lot on the Land or before the issue of a Plan of Subdivision containing the Nominated School Site, or any part of the Nominated School Site, whichever is the earlier.

The Planning Agreement therefore contains restrictions on the issue of certain Subdivision Certificates, Construction Certificates and Occupation Certificates for the Proposed Development, within the meaning of sections 109J(1)(c1), 109F(1)(a) or 109H(2) of the Act, respectively.

#### **Interpretation of Planning Agreement**

This Explanatory Note is not to be used to assist in construing the Planning Agreement.