

Explanatory Note

Minister for Planning (ABN 38 755 709 681)
and
Hazcorp Developments Pty Ltd (ACN 153 042 981)
and
Taurus Development Company Pty Ltd trading as Emerald Hills
Estate (ACN 153 004 123)
and
D & AI Pty Ltd as Trustee for the D & AI Unit Trust (ACN 136 122
220)

Planning Agreement

Introduction

The purpose of this explanatory note is to provide a plain English summary to support the notification of the 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**).

All capitalised terms in this explanatory note have the same meaning as in the Planning Agreement.

Parties to the Planning Agreement

The parties to the Planning Agreement are Hazcorp Developments Pty Ltd and Taurus Development Company Pty Ltd trading as Emerald Hills Estate (collectively referred to as the **Developer**), D & AI Pty Ltd as Trustee for the D & AI Unit Trust (the **Landowner**), and the Minister for Planning (the **Minister**).

Description of the Subject Land

The Planning Agreement applies to:

- Lot 10 in DP 1173819;
- Lot 10 in DP 1161557; and
- Lot 1 in DP 301830.

(the **Land**).

The Land is located at 1150 Camden Valley Way, Leppington.

Description of the Proposed Development

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

- the rezoning of the Land from RU2 – Rural Landscape to primarily R2 – Low Density Residential, B1 – Neighbourhood Centre, E2 – Environmental Conservation and those parts of the Land comprising the Road Widening Land to SP2 – Infrastructure;
- the additional permitted use of part of Lot 10 in DP 1173819 for the development of exhibition homes; and
- the release of the Land for the development of approximately 1280 residential lots with associated retail, education, community and open space.

The Planning Proposal was the subject of a Gateway Determination on 7 July 2014. The Amending LEP (*Camden Local Environmental Plan 2010 (Amendments No. 36)*), published on 19 September 2014, gave effect to the Planning Proposal.

The Developer has lodged a Development Application for the Development of the Land in accordance with the Planning Proposal.

The *Camden Local Environmental Plan 2010* (the **LEP**) provides that consent for the Development 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 Secretary to provide the 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 Contribution by the Developer towards the provision of designated State public infrastructure in accordance with clause 6.1 of the LEP.

Monetary contribution by the Developer

The Planning Agreement provides that the Developer will make a monetary contribution of \$158,244 per hectare (as indexed under CPI in accordance with the Planning Agreement) of Net Developable Area for the purpose of the provision of designated State public infrastructure.

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 Subdivision Certificate application, Strata Certificate application or Construction Certificate application (**Relevant Application**) or, where a Relevant Application is not required for development, the Net Developable Area of the land the subject of that particular component of the Development (**Relevant Development**).

The instalments are payable:

- a) prior to the issue of the first certificate for a Relevant Application for each Stage of the Development; or

b) before the Relevant Development is commenced or an application for a Complying Development Certificate for the Relevant Development is made for each Stage of the Development, as set out in Schedule 4 to the Planning Agreement.

Alternate development contributions

The Developer must dedicate the Education Land and may elect to dedicate the Road Widening Land in full or partial discharge of the Developer's liability to provide all or part of a monetary Contribution Amount under the Planning Agreement. The Education Land Credit and Road Widening Land Credit (if any) given to the Developer for the dedication of the Education Land and Road Widening Land will be the market value of that land as determined under clause 5.2 of Schedule 4 (for the Road Widening Land) and clause 6.2 of Schedule 4 (for the Education Land) of the Planning Agreement.

If the Road Widening Land (where an election to dedicate is made) and/or Education Land are not dedicated by the Developer, the Minister may compulsorily acquire the Road Widening Land and/or Education Land (as appropriate) for the amount of \$1.00 each. If this occurs, the Developer will be entitled to a credit (determined in accordance with Schedule 4 of the Planning Agreement) for the market value of the land compulsorily acquired.

The Developer may also elect as to whether it will carry out specified Road Works in lieu of payment of all or part of a monetary Contribution Amount under the Planning Agreement. The Minister may, in the Minister's absolute discretion, agree to accept the carrying out of the Road Works in full or partial discharge of the Developer's obligation to provide a monetary Contribution Amount.

In the event that the Developer elects to carry out the Road Works, it must also dedicate the Road Widening Land, and if the value of the Road Works and Road Widening Land together with the value of the Education Land exceeds the amount of the monetary Contribution Amounts that would otherwise have been payable under the Planning Agreement, the Developer is entitled to a credit for that additional amount (**Excess Contributions Credit**).

The Developer or a Related Body Corporate may then use the Excess Contributions Credit to satisfy any obligation to make a development contribution relating to the provision of Designated State Public Infrastructure on any land in a Growth Centre owned by the entity seeking to use that Excess Contributions Credit.

Bank Guarantee

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 Bank Guarantee is provided to secure the monetary Contribution Amount for the relevant stage of the Development or for the value of the Road Widening Works (where the Developer elects to undertake those works) in accordance with the terms and procedures set out in Schedule 5 of the Planning Agreement.

The Minister may, at any time, specify that the Developer is to provide an additional Bank Guarantee to secure the Developer's obligations under the Planning Agreement.

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

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; 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 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 the 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; 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 accordance with clause 6.1 of the LEP.

The Developer's offer to contribute towards the provision of designated State infrastructure will have a positive public impact as the provision of funds, works-in-kind and/or land dedication by the Developer will contribute to the provision of

infrastructure and services to the local and regional community within the Emerald Hills urban release area.

Requirements relating to Construction, Occupation and Subdivision Certificates

The Planning Agreement requires each instalment of a monetary Contribution Amount to be paid prior to the issue of the relevant certificate in response to a Relevant Application and therefore contains a restriction on the issue of a Construction Certificate or Subdivision Certificate for each Stage of the Development, within the meaning of sections 109F(1)(a) or 109J(1)(c1) of the Act, respectively.

Alternatively, where no Construction Certificate, Subdivision Certificate or Strata Certificate is required to undertake work, the Planning Agreement requires each instalment of a monetary Contribution Amount to be paid prior to the commencement of the Relevant Development or prior to the issue of a Complying Development Certificate for the Relevant Development.

The Developer must transfer the Education Land to the Minister before the issue of a Subdivision Certificate for the creation of the 507th lot on the Land.

If the Developer elects to undertake the Road Works, it must commence the Road Works prior to the application for any Subdivision Certificate for the first lot on the Land and complete the Road Works in accordance with the Road Works Agreement before the issue of a Subdivision Certificate for the creation of the 268th lot on the Land.

If the Developer elects to or is required to transfer the Road Widening Land to the Minister, it must do so before the issue of the Subdivision Certificate for the creation of the 268th lot on the Land.