

# Draft Deed of Variation to Planning Agreement

## Minister for Planning and Lend Lease (Communities) Australia Limited

### Explanatory Note

The purpose of this explanatory note is to provide a plain English summary to support the notification of the proposed deed of variation (**Variation Deed**) to the planning agreement prepared under section 93F of the *Environmental Planning and Assessment Act 1979* (**Act**) between the Minister for Planning and Delfin Lend Lease Limited dated 3 March 2011 (**Planning Agreement**) .

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

#### Parties to the Variation Deed

The parties to the Variation Deed are Lend Lease (Communities) Australia Limited (ABN 88 000 966 085), formerly known as Delfin Lend Lease Limited, (the **Developer**) and the Minister for Planning (**Minister**).

The Developer entered into the Planning Agreement in connection with:

- a change to the *State Environmental Planning Policy (Major Development) 2005* (the **Major Development SEPP**) to list the Calderwood site as a State Significant Site in Schedule 3 of the Major Development SEPP and to rezone that land; and
- a Concept Plan approval under Part 3A of the Act for the development of the site.

#### Description of the Subject Land

The Planning Agreement and Variation Deed apply to those parts of the land the details for which are set out in Part 1 of Schedule 3 of the Planning Agreement (the **Land**).

The Land is located approximately 20km south-west of Wollongong and 10km west of Shellharbour Centre. The Land is approximately 700 hectares in area and is bounded by Illawarra Highway to the south and Marshall Mount Road to the north.

#### Description of the Development

The Development, as described in the Concept Plan, involves:

- the subdivision of the Land to accommodate approximately 4,800 dwellings, 3 school sites and 50 hectares of land for a mix of uses including employment, retail and commercial uses;
- the provision of open space, internal roads, associated infrastructure and community facilities; and
- the provision of land for riparian corridors and conservation.

A copy of the Concept Plan Approval can be found at <http://majorprojects.planning.nsw.gov.au/>.

#### Summary of Objectives, Nature and Effect of the Variation Deed

The Variation Deed provides for:

- 1 the land dedicated by the Developer for the provision of a high school to include provision for a special needs unit;
- 2 removal of the reference to a special needs unit being provided in connection with a public primary school;

- 3 a 1 hectare reduction to the amount of land required to be dedicated to the Minister (or the Minister for Education and Training) for the provision of schools to reflect changes to the NSW Government's planning and design requirements for schools;
- 4 a corresponding reduction to the offset to which the Developer is entitled against its obligation to pay contributions to the Minister for the purpose of transport.

It is considered that the reduction to the amount of land required to be dedicated for the provision of schools will not affect the provision of education services to the area.

#### **Assessment of Merits of the Planning Agreement as amended by the Variation Deed**

The Planning Agreement as amended by the Variation Deed satisfies the objective of making provision for infrastructure to meet certain demands created by the Development and to ensure that existing communities do not bear those costs.

#### **The Planning Purpose of the Planning Agreement as amended by the Variation Deed**

In accordance with section 93F(2) of the Act, the Planning Agreement as amended has the following public purposes:

- 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 Variation Deed and hold the view that the provisions of the Planning Agreement as amended provide a reasonable means of achieving the public purposes set out above. This is because the land required to be dedicated by the Developer will assist the Government in providing infrastructure needed to accommodate future housing and growth in the region as anticipated in the Illawarra Regional Strategy.

#### **How the Planning Agreement as amended by the Variation Deed Promotes the Public Interest**

The Planning Agreement as amended by the Variation Deed promotes the public interest by committing the Developer to make contributions towards State infrastructure.

#### **How the Planning Agreement as amended by the Variation Deed Promotes the Objects of the Act**

The Planning Agreement as amended promotes the following objects of the Act:

- 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 as amended promotes the objects of the Act set out above by requiring the Developer to make contributions for the purpose of providing State infrastructure.

This purpose represents an important public benefit, and the Developer's offer to contribute towards this purpose will provide an important positive impact on the public who use the infrastructure and services to which these purposes relate.

#### **How the Planning Agreement as amended by the Variation Deed Conforms with the Minister's Capital Works Program**

The Minister has no relevant capital works program.

#### **Requirements of the Planning Agreement as amended by the Variation Deed that must be complied with before a construction certificate, occupation or subdivision certificate is issued**

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

The Planning Agreement as amended requires:

- the payment of a Transport Contribution prior to the issue of each subdivision certificate; and
- determination of the location of the proposed school sites and their transfer prior to the issue of certain subdivision certificates.

The Planning Agreement as amended therefore contains a restriction on the issue of a subdivision certificate within the meaning of section 109J(1)(c1) of the Act.

**Interpretation of the Planning Agreement and Variation Deed**

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

Capitalised terms used in this Explanatory Note have the meaning given to them in the Planning Agreement.