

Explanatory Note

Minister for Planning and Mirvac Capital Pty Limited (ACN 096 525 405) and Mirvac Commercial Sub SPV Pty Limited (ACN 125 706 130)

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 Mirvac Capital Pty Limited (ACN 096 525 405) and Mirvac Commercial Sub SPV Pty Limited (ACN 125 706 130) (together referred to as the **Developer**) and the Minister for Planning (the **Minister**).

Description of the Subject Land

The Planning Agreement applies to:

- Lot 1 DP1040948 (the **Subject Land**).

The Subject Land is located at 60 Wallgrove Road, Eastern Creek, New South Wales, 2766.

Description of the Proposed Development

On 29 June 2010, the Minister granted approval under the former section 75O of the Act to a concept plan for the Subject Land to develop the land for the establishment of the Minchinbury Employment Park, being a park of warehouses, distribution centres, light industry, office premises, high technology uses, freight logistic facilities, and associated infrastructure (**Concept Plan Approval**). The Concept Plan Approval provides that the developer is to enter into a Planning Agreement under Division 6, Part 4 of the Act.

Pursuant to the Concept Plan Approval, the Developer is now seeking development consent for the demolition of the existing structures, bulk earthworks and the construction and operation of five warehouses and distribution related facilities (and associated infrastructure) on the Subject Land in accordance with Development Application SSD 6962 (**Proposed Development**). It is intended that the Proposed Development will be constructed in five stages as set out in the Stage of Development Plan annexed to the Planning Agreement.

The Developer has also lodged a modification application in relation to the Concept Plan Approval to ensure consistency with Development Application SSD 6962.

The Proposed Development is State Significant Development under the *State Environmental Planning Policy (State and Regional Development) 2011*. Accordingly, the Minister is the consent authority for the Proposed Development.

Clause 29 of the *State Environmental Planning Policy (Western Sydney Employment Area) 2009 (WSEA SEPP)* provides that the consent authority must not grant consent to the Proposed Development unless the Secretary has certified in writing that satisfactory arrangements have been made to contribute to the provision of regional transport infrastructure and services.

The Developer has made an offer to the Minister to enter into the Planning Agreement in connection with the Proposed Development to enable the Secretary to provide the certification required under the WSEA SEPP and to satisfy the requirements of the Concept Plan Approval.

Summary of Objectives, Nature and Effect of the Planning Agreement

The Planning Agreement provides that the Developer will make a monetary contribution of \$182,898 per hectare of net developable area (subject to indexation in accordance with the Planning Agreement) for the purposes of the provision of regional transport infrastructure and services.

The monetary contribution will be paid in instalments calculated on the basis of the net developable area for each stage of the Proposed Development as identified on the Stage of Development Plan. As set out in Schedule 4 to the Planning Agreement, the instalments are payable prior to the earlier of:

- the issue of an occupation certificate for the building located in each stage; or
- the occupation or use of such building.

The Developer is required to provide Bank Guarantees or Insurance Bonds to secure the contribution required for each stage of the Proposed Development and register the Planning Agreement on the title to the Subject 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 regional transport infrastructure and services referred to in clause 29 of the WSEA SEPP and as required under the Concept Plan Approval.

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.

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 the parties have assessed the Developer will make an appropriate level of contribution towards the provision of regional transport infrastructure and services making a positive impact in achieving the above public purpose.

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 regional transport infrastructure and services to satisfy needs that arise from the Proposed Development of the Subject 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 regional transport infrastructure and services referred to in clause 29 of the WSEA SEPP and as required under the Concept Plan Approval.

The Developer's offer to contribute towards the provision of regional transport infrastructure and services will have a positive public impact as funds from the Developer will be available towards the provision of that infrastructure and services.

Requirements relating to Construction, Occupation and Subdivision Certificates

The Planning Agreement requires each instalment of the monetary contribution to be paid prior to the issue of the relevant occupation certificate and therefore contains a restriction on the issue of a occupation certificate within the meaning of section 109H(2) of the Act.

In addition, the Planning Agreement requires the Developer to provide a Bank Guarantee or Insurance Bond for each stage of the development (other than Stage 1 which is paid on execution of the Planning Agreement) prior to the issue of the construction certificate for that stage and therefore contains a restriction on the issue of a construction certificate within the meaning of clause 146A of the Regulation.

The Planning Agreement does not specify requirements that must be complied with prior to the issue of a subdivision certificate.