

Explanatory Note

Minister for Planning and Public Spaces (ABN 20 770 707 468)

and

Walker Corporation Pty Ltd (ACN 001 176 263)

and

Walker Group Holdings Pty Ltd (ACN 001 215 069)

and

Country Garden Wilton East Pty Ltd (ACN 617 612 334)

Draft Deed of Variation – Wilton Junction Planning Agreement

Introduction

The purpose of this explanatory note is to provide a plain English summary to support the notification of the draft Deed of Variation to the Wilton Junction Planning Agreement (the **Draft Variation Deed**) prepared under Subdivision 2 of Division 7.1 of Part 7 of the *Environmental Planning and Assessment Act 1979* (the **Act**).

The Wilton Junction Planning Agreement was entered into by the Minister for Planning, Walker Corporation Pty Ltd and Walker Group Holdings Pty Ltd on 10 April 2018. Country Garden Wilton East Pty Ltd subsequently purchased part of the land to which the Planning Agreement applies and is now also party to the Planning Agreement.

This explanatory note has been prepared having regard to the Planning Agreements Practice Note and its contents have been agreed by the Parties.

Parties to the Draft Variation Deed

The parties to the Draft Variation Deed are the Minister for Planning and Public Spaces (ABN 20 770 707 468) (the **Minister**) and:

- Walker Corporation Pty Ltd (ACN 001 176 263)
- Walker Group Holdings Pty Ltd (ACN 001 215 069)
- Country Garden Wilton East Pty Ltd (ACN 617 612 334) (together, the **Developer**).

Description of the Subject Land

The Draft Variation Deed applies to the same land to which the Planning Agreement applies (as listed in Schedule 3 to the Planning Agreement) being land located at Janderra Lane, Picton Road, Almond Street and Argyle Street, Wilton (**Subject Land**).

Description of the Proposed Development

The Planning Agreement relates to the rezoning of the Subject Land and the proposed future urban development of the Subject Land permissible following the rezoning. In that

respect, the Subject Land was rezoned on 13 April 2018 by virtue of *State Environmental Planning Policy (Sydney Region Growth Centres) Amendment (South East Wilton Precinct) 2018*.

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

The objective of the Planning Agreement is to facilitate the delivery of contributions by the Developer towards the provision of infrastructure, facilities and services which will be required in connection with the urban development of the Subject Land.

A draft deed of variation to the Planning Agreement was previously notified, between 15/11/2021 - 13/12/2021 (**2021 Variation Deed**). This Draft Variation Deed incorporates amendments in that previously notified draft deed of variation, but also makes additional amendments.

Under the Planning Agreement, the Developer is required (amongst other things) to carry out roadworks at the intersection of Picton Road and Pembroke Parade (**Intersection Upgrade**).

Amendments carried over from 2021 Variation Deed

In relation to the Intersection Upgrade, the Developer has finalised a design with Transport for NSW and the work required to upgrade the intersection has significantly increased beyond that required under the Planning Agreement to include the widening and upgrade of Picton Road to meet forecast demand at 2040. Based on costings undertaken on the finalised design, the estimated cost of the Intersection Upgrade has significantly increased and the works will take longer to complete.

Accordingly, as under the 2021 Variation Deed, an objective of the Draft Variation Deed is to amend the Planning Agreement to:

- Replace the concept plan for the Intersection Upgrade contained in Schedule 5 of the Planning Agreement to reflect the increased scope of works (the new concept plan is contained in Appendix 1 to the Draft Variation Deed);
- Identify the land required to be dedicated for the Intersection Upgrade (this is shown on the Road Dedication Plan, which is Appendix 2 to the Draft Variation Deed);
- Alter the timing for the delivery of the Intersection Upgrade to before the issue of the Subdivision Certificate which will create the 301st Residential Final Lot; and
- Recognise the increased value of the Intersection Upgrade works to reflect the wider scope of works.

The Developer is also required under the Planning Agreement to deliver the roadworks required for the Picton Road and Almond Street grade separation. The Draft Variation Deed also amends the Planning Agreement to include a requirement for the Developer to dedicate 4,300 square metres of land in connection with those roadworks. This land is also shown on the Road Dedication Plan, which is Appendix 2 to the Draft Variation.

New amendments to the Planning Agreement

Since the Planning Agreement was entered into in 2018, there have been significant legislative and other changes:

- Biodiversity certification has been conferred on land within Greater Sydney, including land in Wilton, in connection with the Cumberland Plain Conservation Plan, by order under the *Biodiversity Conservation Act 2016* published in the Government Gazette on 17 August 2022. Land to which the Planning Agreement applies has the benefit of biodiversity certification.
- The *Environmental Planning and Assessment Act 1979* has been amended by the *Environmental Planning and Assessment Amendment (Housing and Productivity Contributions) Act 2023* so as to replace the special infrastructure contributions framework with a new scheme for housing and productivity contributions for funding regional infrastructure.

In light of the changes, the Developer has offered to contribute to the costs of the approved conservation measures required to be implemented under the order conferring biodiversity certification by making an additional monetary contribution, calculated on the basis of \$5,000 per Final Lot (as at 1 July 2022), where a Final Lot is wholly or partly biodiversity certified land. The additional monetary contribution will be payable before the issue of each subdivision certificate for a plan of subdivision that creates Final Lots.

Further, the parties have agreed that the provisions in the Planning Agreement relating to the relationship between the contributions under the agreement and special infrastructure contributions (if the Minister determined a special infrastructure contribution for Wilton) should be removed. These provisions are now redundant, given the repeal of the special infrastructure contributions framework. The parties have agreed to exclude the application of the new housing and productivity contributions scheme, but, as a consequence, the Draft Variation Deed limits the development to which the Planning Agreement applies and makes other consequential amendments.

No relevant capital works program by the Minister is associated with the Draft Variation Deed or the Planning Agreement.

Assessment of Merits of the Planning Agreement as varied by the Draft Variation Deed

The Public Purpose of the Planning Agreement as varied by the Draft Variation Deed

In accordance with section 7.4(2) of the Act, the Planning Agreement as varied by the Draft Variation Deed has the following public purpose:

- the provision of (or the recoupment of the cost of providing) public amenities or public services;
- the provision of (or the recoupment of the cost of providing) transport or other infrastructure relating to land, including the provision of conservation measures associated with the Cumberland Plain Conservation Plan.

The Minister and the Developer have assessed the Planning Agreement and both are of the view that the provisions of the Planning Agreement as varied by the Draft Variation Deed provide a reasonable means of achieving the public purpose set out above. This is because it will ensure that the Developer makes an appropriate contribution towards the provision of road infrastructure needed to accommodate future housing and growth up to forecast 2040 demand and towards the costs associated with implementing the Cumberland Plain Conservation Plan.

How the Planning Agreement as varied by the Draft Variation Deed Promotes the Public Interest

The Planning Agreement as varied by the Draft Variation Deed 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.

The Developer's offer to contribute towards the provision of infrastructure will have a positive impact on the public who will ultimately use it or benefit from it.

Requirements relating to Construction, Occupation and Subdivision Certificates

The Planning Agreement as varied by the Draft Variation Deed 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 varied by the Draft Variation Deed requires contributions to be made before the issue of subdivision certificates and therefore contains a restriction on the issue of a subdivision certificate within the meaning of section 6.15(1)(d) of the Act.