

Explanatory Note

Minister for Planning (ABN 38 755 709 681)

and

Frank Nicholopoulos and Rose Nicholas

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 7.1 of Part 7 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**).

This explanatory note is not to be used to assist in construing the Planning Agreement.

Capitalised terms which are not defined in this explanatory note have the meanings given to them in the Planning Agreement, unless the context indicates otherwise.

Parties to the Planning Agreement

The parties to the Planning Agreement are:

Minister for Planning (ABN 38 755 709 681) (the **Minister**); and

Frank Nicholopoulos of 40 Doncaster Avenue, Claremont Meadows NSW 2747; and

Rose Nicholas of 40 Doncaster Avenue, Claremont Meadows NSW 2747

(together the **Developer**).

Description of the Subject Land

The Planning Agreement applies to Lot 1 in Deposited Plan 1071114 and Lot 55 in Deposited Plan 1170183 known as 1-23 and 55 Lenore Drive Erskine Park NSW 2759 (**Subject Land**).

Description of the Proposed Development

The Developer is seeking to consolidate the Subject Land, erect on the Subject Land an industrial complex containing approximately twenty (29) factory units, one (1) café, one (1) car park and associated facilities, and strata subdivide the Subject Land generally in accordance with Development Application DA18/0577, which has been lodged with Penrith City Council (**Proposed Development**). The Developer has made an offer to the Minister to enter into the Planning Agreement in connection with the Proposed Development.

Summary of Objectives, Nature and Effect of the Planning Agreement

The objective of the Planning Agreement is to facilitate the delivery of the Developer's contribution towards the provision of regional transport infrastructure and services referred to in clause 29 of the *State Environmental Planning Policy (Western Sydney Employment Area) 2009* (**SEPP**), and specifically to allow for the provision of monetary contributions to the Minister.

The Planning Agreement provides that the Developer will make a monetary contribution of \$193,636 per hectare of Net Developable Area (subject to indexation in accordance with the Planning Agreement) for the purpose of the provision of regional transport infrastructure and services within the meaning of clause 29 of the SEPP.

The monetary contribution will be payable prior to the earlier of the issue of a relevant Subdivision Certificate or issue of a relevant Construction Certificate in accordance with Schedule 4 to the Planning Agreement.

The Developer is required to provide a bank guarantee.

No relevant capital works program by the Minister is associated with the Planning Agreement.

Assessment of Merits of Planning Agreement

The Public Purpose of the Planning Agreement

In accordance with section 7.4 (2) of the Act, the Planning Agreement 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 both hold the view that the provisions of the Planning Agreement provide a reasonable means of achieving the public purposes set out above. This is because it will ensure that the Developer makes appropriate contributions towards the provision of amenities and services and infrastructure relating to the Subject Land.

How the Planning Agreement Promotes the Public Interest and Objects of the Act

The Planning Agreement promotes the public interest and objects of the Act by encouraging:

- the promotion of the orderly and economic use and development of land by facilitating the development of the Subject Land in accordance with the Planning Agreement;
- the promotion of good design and amenity of the build environment;
- the promotion of the sharing of responsibility for environmental planning and assessment between the different levels of government in the State; and
- the provision of increased opportunity for community participation in environmental planning and assessment.

The Developer's offer to contribute towards the provision of infrastructure and services will have a positive impact on the public who will ultimately use the infrastructure and services.

Requirements relating to Construction, Occupation and Subdivision Certificates

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

The Planning Agreement requires the Development Contribution to be paid prior to the issue of the relevant Subdivision Certificate or Construction Certificate, whichever occurs earlier and therefore contains a restriction on the issue of a Subdivision Certificate within the meaning of

section 6.15 of the Act and Construction Certificate within the meaning of section 6.8(1)(a) of the Act.