

Explanatory Note
Minister administering the *Environmental Planning and Assessment Act 1979* (ABN 20 770 707 468)
and
UPG 71 Pty Limited (ACN 625 490 726)
Deed of Variation to 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 planning agreement (the **Deed of Variation**) prepared under Subdivision 2 of Division 7.1 of Part 7 of the *Environmental Planning and Assessment Act 1979* (the **Act**). The Deed of Variation amends the planning agreement entered into on 2 July 2013 under the former section 94 (now section 7.4) of the Act (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 Planning Agreement as amended by the Deed of Variation

The parties to the Planning Agreement as amended by the Deed of Variation are the Minister administering the *Environmental Planning and Assessment Act 1979* (ABN 20 770 707 468) (the **Minister**) and UPG 71 Pty Limited (ACN 625 490 726) (the **Developer**).

Description of the Subject Land

There has been no change to the land to which the Planning Agreement applies. The Planning Agreement applies to Lots 1-5 in Deposited Plan 1180679 known as 75, 79, 85, 95 and 101 Gradwells Road, Dora Creek NSW 2264 (**Subject Land**).

Description of the Proposed Development

The proposed development was defined in the Planning Agreement as meaning the subdivision and construction of approximately 234 residential dwellings to be constructed in approximately 16 stages over a 15-20 year period.

On 10 December 2013, Lake Macquarie City Council granted development consent to DA/55/2012 in respect of development at Lots 1, 2 and 3 in Deposited Plan 1180679 (**Original Consent**). The Original Consent has been modified a number of times.

The Original Consent, as modified, proposes a 350-lot residential subdivision of the Subject Land, in 3 stages (345 residential lots, 4 drainage reserves, 1 public reserve).

Summary of Objectives, Nature and Effect of the Planning Agreement as amended by the Deed of Variation

The Deed of Variation amends the Planning Agreement to:

- replace the monetary contribution that is payable under the Planning Agreement with a contribution in the amount of \$3,260,000 to satisfy condition 37 of the Modified Consent;
- reduce the amount of security required from \$77,000 to \$20,000; and
- make minor administrative updates to the terms of the Planning Agreement.

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

The Public Purpose of the Planning Agreement as amended by the Deed of Variation

In accordance with former section 93F(2) of the Act (now section 7.4(2) of the Act), the Planning Agreement has the following public purpose:

- the provision of (or the recoupment of the cost of providing) transport or other infrastructure relating to the land.

The Minister and the Developer have assessed the Deed of Variation and both hold the view that the Deed of Variation does not change the means of achieving the public purpose of the Planning Agreement. This is because the Planning Agreement as amended by the Deed of Variation will continue to ensure that the Developer makes an appropriate contribution towards the provision of transport or other infrastructure relating to the land.

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

The Planning Agreement as amended by the Deed of Variation promotes the public interest by ensuring that the Developer provides an appropriate contribution is made towards the provision of (or the recoupment of the cost of providing) transport or other infrastructure to satisfy needs that arise from development of the Subject Land.

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

Requirements relating to Construction, Occupation and Subdivision Certificates

The Planning Agreement as amended by the Deed of Variation requires the payment of the monetary contribution prior to the issue of the subdivision certificate for the 101st lot created for residential purposes on the Subject Land. Therefore, the Planning Agreement as amended by the Deed of Variation contains a restriction on the issue of a subdivision certificate within the meaning of section 6.15(1)(d) of the Act.

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