

Explanatory Note

Minister administering the *Environmental Planning and Assessment Act 1979* (ABN 20 770 707 468)

and

**Minister administering the *National Parks and Wildlife Act 1974*
(ABN 27 578 976 844)**

and

**Wallalong Land Developments Pty Limited (ACN 158 521 567) as
trustee for Catherine Hill Bay Honey Unit Trust (ABN 96 937 703
587)**

and

Lake Maintenance (NSW) Pty Limited (ACN 088 782 718)

Variation to Planning Agreement

Introduction

The purpose of this explanatory note is to provide a plain English summary to support the notification of the Deed of Variation to Planning Agreement for Middle Camp, Catherine Hill Bay (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 dated 22 March 2012, which was previously amended by the Deed of Amendment to Planning Agreement dated 16 April 2020 (**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, are the Minister administering the *Environmental Planning and Assessment Act 1979* (ABN 20 770 707 468) (the **Planning Minister**), the Minister administering the *National Parks and Wildlife Act 1974* (ABN 27 578 976 844) (**Environment Minister**) and the following **Developer** entities:

- Wallalong Land Developments Pty Limited (ACN 158 521 567) as trustee for Catherine Hill Bay Honey Unit Trust (ABN 96 937 703 587); and
- Lake Maintenance (NSW) Pty Limited (ACN 088 782 718).

On 22 March 2012, Coal & Allied Operations Pty Ltd (ACN 000 023 656) and Catherine Hill Bay Land Pty Ltd (ACN 129 266 459), (together, **Former Landowner**) entered into the Planning Agreement with the Planning Minister and the Environment Minister.

On 28 July 2017, the Planning Agreement was novated from the Former Landowner to the Developer pursuant to a Deed of Novation dated 28 July 2017.

On 16 April 2020 the Planning Agreement was amended pursuant to the Deed of Amendment to Planning Agreement dated 16 April 2020.

On and from the commencement of the Deed of Variation, the Planning Agreement is amended to remove the Environment Minister as a party to the Planning Agreement, following the transfer of the Environmental Offset Land to the Environment Minister (see below).

Description of the Subject Land

The titles for the land the subject of the Planning Agreement have been subdivided and consolidated.

The Planning Agreement required the transfer of certain land to the Environment Minister or the Environment Minister's nominee for the purposes of an environmental offset land contribution. The following lots, which formed part of the Planning Agreement land, have been transferred to the Environment Minister:

- Lot 6 in Deposited Plan 1180181
- Lot 7 in Deposited Plan 1180181
- Lot 8 in Deposited Plan 1180181
- Lot 9 in Deposited Plan 1180181
- Lot 10 in Deposited Plan 1180181

(together, **Environmental Offset Land**).

The Planning Agreement as amended by the Deed of Variation does not apply to the Environmental Offset Land.

In 2014, Lot 5 in Deposited Plan 1180181 (**Lot 5**) was sold to a private landowner. On 16 July 2018, the Planning Minister released the Planning Agreement in respect of Lot 5.

The Planning Agreement as amended by the Deed of Variation applies to the following land, being:

- Lot 1 in Deposited Plan 1180181
- Lot 2 in Deposited Plan 1180181
- Lot 3 in Deposited Plan 1180181
- Lot 4 in Deposited Plan 1180181

(the **Subject Land**).

Description of the Proposed Development

On 12 July 2012, the Planning Assessment Commission granted concept plan approval for Middle Camp (Catherine Hill Bay) 10_0089 for a 222 lot residential subdivision with conceptual lot layout, density and urban design, with a developable area of 28.2 hectares contained within Hamlet A – sawmill Camp (59 dwellings within 7.32 hectares of land) and

Hamlet B – Colliery Hamlet (163 dwellings within 20.88 hectares of land); and dedication of 525.87 hectares of environmentally significant conservation lands (the **Concept Plan Approval**).

On 6 December 2022, Lake Macquarie City Council approved DA/2238/2017 for the 'subdivision of Lots 1 and 2 of DP 1180181 into 209 Lots Suitable for Low Density Residential Development, Two Super Lots, One Drainage Reserve, Two Public Reserves and Heritage Walkway Construction' (**DA 2238**)

The Concept Plan Approval and DA 2238 both constitute 'Approvals' required for the development on the Subject Land contemplated by the Planning Agreement.

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

As part of the Development Contributions under the Planning Agreement, the Developer is required to provide the following:

... upgrade the intersection at Flowers Drive and Pacific Highway, Middle Camp. The intersection is to be designed and constructed to restrict Flowers Drive traffic movements to left in / left out only. Physical barriers are to be designed and constructed to implement a right turn ban from Cams Wharf Road into the Pacific Highway. A U-Turn facility is to be provided on the Pacific Highway or at Nords Wharf Road to accommodate northbound vehicles exiting Flowers Drive (**Road Contribution**)

The Developer is required to complete the Road Contribution on or prior to the issue of the first subdivision certificate that creates the first Urban Lot within the area the subject of the Concept Plan Approval and to the RTA's satisfaction.

Urban Lot is defined in the Planning Agreement to mean:

... a lot located on the Land, created by the registration at the DFS of a Plan of Subdivision, which lot is intended to be developed, subject to Project Approval or Development Consent, by construction of residential premises including any lot that is capable of being further subdivided to create such a lot,

The Developer has proposed, and the Planning Minister and Environment Minister have agreed, to amend the Planning Agreement in accordance with the terms of the Deed of Variation, including among other things to:

- vary the nature of the Road Contribution to:
 - (a) provision of a monetary contribution to Transport for NSW, totalling \$1,000,000 toward the upgrade of the intersection at Flowers Drive and Pacific Highway (**Flowers Drive Monetary Contribution**); and
 - (b) provision of a U-Turn facility at Nords Wharf Road to accommodate northbound vehicles exiting Flowers Drive (**Nords Wharf Road Works**)
- include provision for indexation of the Flowers Drive Monetary Contribution
- include provision for the conditions to commencement, timing and completion of the Nords Wharf Road Works

- amend the Schedule of Land to exclude Lot 5 and the Environmental Offset Land
- make minor administrative updates to the terms of the Planning Agreement.

The Planning Agreement, as amended by the Deed of Variation, in relation to the Road Contribution, provides that the Developer will make the following Development Contribution by the time provided:

Development Contribution	Timing
<p>ITEM 1. ROAD CONTRIBUTION</p> <p>The Developer is to:</p> <p>(a) provide a monetary contribution to Transport for NSW, totalling \$1,000,000 (subject to indexation) toward the upgrade of the intersection at Flowers Drive and Pacific Highway (Flowers Drive Monetary Contribution); and</p> <p>(b) provide a U-Turn facility at Nords Wharf Road to accommodate northbound vehicles exiting Flowers Drive in accordance with condition 1.36 of the Concept Plan Approval (Nords Wharf Road Works).</p>	<p>On or prior to the issue of the first subdivision certificate that creates the first Urban Lot within the area the subject of the Concept Plan Approval and to the satisfaction of Transport for NSW.</p>

The proposed amendments to the Planning Agreement do not necessitate any change to the security provided by the Developer to secure the performance of the obligations of the Developer under the Planning Agreement. The Planning Agreement, as amended by the Deed of Amendment to Planning Agreement dated 16 April 2020, requires the following security, in the form of bank guarantees:

Security Amount	Secured Obligation
\$21,754.89	The obligation to make the Infrastructure Contribution and Emergency Services Contribution
\$739,423.50	The obligation to make the Road Contribution

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 section 7.4(2) of the Act, the Planning Agreement as amended by the Deed, 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 Planning Minister, Environment Minister and the Developer have assessed the Deed of Variation and all 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 regional transport infrastructure in the Lower Hunter.

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 towards the provision of (or the recoupment of the cost of providing) regional transport infrastructure and services to satisfy needs that arise from development of the Subject Land.

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

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 a construction certificate or a occupation certificate.

The Planning Agreement as amended by the Deed of Variation requires the Roads Contribution, which includes the Nords Wharf Road Works, to be completed prior to the issue of the first subdivision certificate that creates the first Urban Lot within the area the subject of the Concept Plan Approval, and therefore contains a restriction on the issue of a subdivision certificate within the meaning of section 6.15(1)(d) of the Act.