

## Explanatory Note

### **Draft Planning Agreement Land at Lot 1, Governor Macquarie Drive, Warwick Farm**

#### **Introduction**

The purpose of this explanatory note is to provide a summary of the exhibited planning agreement between Hydrox Nominees Pty Limited (“**Landowner**”) and Liverpool City Council (“**Council**”) (the “**Planning Agreement**”) prepared under Subdivision 2 of Division 6 of Part 4 of the Environmental Planning and Assessment Act 1979 (“**the Act**”).

The explanatory note has been prepared jointly by the parties in accordance with clause 25E of the *Environmental Planning and Assessment Regulation 2000*.

#### **Parties to the Draft Planning Agreement**

The parties to the Planning Agreement are the Landowner and Council.

The Landowner has made an offer to enter into the Planning Agreement with Council in connection with the Section 96 Modification of DA-1321/2011 which affects land at Warwick Farm.

#### **Description of Subject Land**

The Planning Agreement applies to the land contained within the Certificate of Title Folio Identifiers:

Lot Description	Address	Zone
Lot 1 DP 1162276	Lot 1, Governor Macquarie Drive, Warwick Farm	B5 Business Development

#### **Description of the Development Application**

The Sydney West Joint Regional Planning Panel granted development consent for the development of a home improvement store on the subject land at its meeting on 14 February 2013 (DA-1321/2011). This approval included works to fill certain areas of the subject site in conjunction with flood compensatory storage works on part of the adjacent Australian Turf Club site. The basis for flood compensatory storage works imposed by the consent arise from Council’s flood impact policy which applies to all properties affected by flooding under 1% Annual Exceedance Probability (AEP) events.

Subsequent to the approval of DA-1321/2011, the Landowner lodged a Section 96 Application in July 2013 to delete or amend some conditions within the original conditions of consent. This included a request to delete the requirement to provide flood compensatory storage works or provide appropriate mitigation strategies to address that concern.

On 25 February 2014, the Section 96 application was considered by Council. Council deferred the application and delegated the matter to the Chief Executive Officer.

#### **Summary of Objectives, Nature and Effect of the Draft Planning Agreement**

The Planning Agreement is proposed to be entered into in connection with the section 96 modification application for DA-1321/2011 (“**Section 96 Application**”).

The Section 96 Application seeks to delete or amend some conditions within the original conditions of consent for DA-1321/2011, relevantly including a request to delete the requirement to provide flood compensatory storage works.

The Planning Agreement includes a provision whereby the Landowner will make a contribution of \$550,000 to the Georges River Flood Mitigation Reserve (**Monetary Contribution**), to ensure that flood compensatory storage works may be undertaken in the future by Council when required. The Monetary Contribution must be provided by the Landowner to Council prior to the issue of any construction certificate for the whole, or any part of, the development the subject of DA-1321/2011.

Delivery of this public benefit by the Landowner will be secured by way of a bank guarantee on, or within 5 days of, the day on which the Landowner and Council enter into the Planning Agreement.

### **Assessment of the Merits of the Draft Planning Agreement**

In accordance with Section 93F (2) of the Act, the Planning Agreement promotes the following public purposes:

- (a) the provision of public amenities or public services;
- (c) the provision of (or the recoupment of the cost of providing) transport or other infrastructure relating to land; and
- (f) the conservation or enhancement of the natural environment.

The Planning Agreement provides funding for Council to mitigate the cumulative flood effects of development in the area.

The Planning Agreement provides for a reasonable means of achieving a material public benefit to all land owners within the George River Flood Study, which will allow Council to construct flood mitigation measures within the Georges River Catchment.

### **How the Planning Agreement promotes the Public Interest and one or more of the objects of the Act**

The Planning Agreement promotes the following objects of the Act through the provision of funding to Council to effect future flood mitigation works when required:

- to encourage the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment (section 5(a)(i));
- to encourage the promotion and co-ordination of the orderly and economic use and development of land (section 5(a)(ii)); and
- to encourage ecologically sustainable development (section 5(a)(vii)).

The Planning Agreement promotes the public interest by:

- ensuring that funds are available that may be utilised to effect flood mitigation measures within the Georges River Catchment, to provide material public benefits to landowners within the Georges River Catchment.

### **How the Planning Agreement promotes the elements of Council's charter**

The Planning Agreement promotes the following elements of Council's charter under Section 8 of the *Local Government Act 1993*, as follows:

- to provide directly or on behalf of other levels of government, after due consultation, adequate, equitable and appropriate services and facilities for

the community and to ensure that those services and facilities are managed efficiently and effectively;

- to properly manage, develop, protect, restore, enhance and conserve the environment of the area for which it is responsible, in a manner that is consistent with and promotes the principles of ecologically sustainable development;
- to have regard to the long term and cumulative effects of its decisions; and
- to engage in long-term strategic planning on behalf of the local community.

### **Planning purposes served by the Planning Agreement**

The Planning Agreement enables Council to utilise funds provided by the Landowner to mitigate cumulative flooding effects in the future. This ensures that Council is able to undertake the orderly planning and development of land and the Planning Agreement provides a reasonable means of achieving this purpose.

### **Whether the Planning Agreement conforms with Council's Works Program**

Council plans to undertake a Georges River flood study in the 2014-15 program year and budget provision has been made. The study will undertake a comprehensive assessment of the full impact of the cumulative filling of potential developments within the floodplain. The study will also assess and identify regional flood mitigation options to negate the cumulative impact of similar developments on the Georges River floodplain, which may require significant flood mitigation works as well as any cumulative impacts of filling that have already occurred in the catchment.

### **Whether the agreement specifies certain requirements of the agreement must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued**

The Planning Agreement requires that the Monetary Contribution must be provided by the Landowner to Council prior to the issue of any construction certificate for the whole, or any part of, the development the subject of DA-1321/2011.

A bank guarantee to secure the provision of the Monetary Contribution must be provided on, or within 5 days of, the day on which the Landowner and Council enter into the Planning Agreement.

### **Interpretation of the Planning Agreement**

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