

Voluntary Planning Agreement

Explanatory Note- November 2009

Lot 11 DP 1139171 Stirling Street, Cecil Hills

Explanatory Note

1. Introduction

This Explanatory Note has been prepared in accordance with clause 25E of the *Environmental Planning & Assessment Regulation 2000* (NSW).

The purpose of this Explanatory Note is to provide a plain English summary to support the notification of a draft planning agreement (**Planning Agreement**) between the parties under s93F of the *Environmental Planning & Assessment Act 1979* (NSW) (**EPA Act**) for the rezoning of land at Cecil Hills.

1 Parties to the Planning Agreement

The parties to the Planning Agreement are:

- (1) Liverpool City Council (**Council**).
- (2) Landcom (**Landowner**).
- (3) Mirvac Homes (NSW) Pty Ltd (**Developer**)

2 Description of the Subject Land

The land to which the Planning Agreement relates is set out in the table below.

Folio Identifier	Location
Lot 1 DP 1139171	Lot 11 Stirling Street Cecil Hills

3 Description of Proposed Change to Environmental Planning Instrument

The proposed changes to the relevant environmental planning instrument are set out in the table below.

Existing Instrument	Planning	Liverpool Local Environmental Plan 2008
Proposal		Draft Liverpool Local Environmental Plan 2008 Amendment No. 1
Nature of Proposed Changes		Rezoning of land from RU1 Primary Production to R1 General Residential and RE1 Public Recreation.

Council must undertake the public exhibition of both the proposed amendments to the planning instrument (Liverpool LEP2008), the Planning Agreement and this Explanatory Note as part of a statutory process. If the Council receives any comments on the documents during the exhibition period then:

- (1) the proposed new planning instrument may be amended as a result of the comments; and
- (2) if Council officers support amendments as a result of the comments and the developer does not agree to the changes then the matter will be referred to the Council to decide whether to adopt the proposed zones for the site under the new planning instrument or not.

4 Summary of objects, nature and effect of the Planning Agreement

The objective of the Planning Agreement is to ensure the recoupment of costs of infrastructure and service needs, generated by the development. To this end, the offer made by the developer is largely based on the needs identified by;

- (1) **Liverpool Directions 2006-2016 (Corporate Plan)** – The rezoning of the land to for residential purposes will potential provide for housing on a variety of lot sizes on a land with access to infrastructure and services.
- (2) **Liverpool City Council Management Plan 2008-2009** - Liverpool's natural areas, in particular waterways such as Hinchinbrook Creek will be revegetated and maintained which will improve the environmental qualities of Cecil Hills. This is consistent with the direction of integrating sustainability principles in land use decisions.
- (3) **Social Plan 2006-2008** – The dedication of land along Hinchinbrook Creek to Council is consistent with the aim of improving physical access to open space and passive recreational opportunities. Further, the VPA includes the provision of open space embellishment in the form of pathways, BBQ facilities, playground equipment and seating.
- (4) **Liverpool Contributions Plan 2001 and draft Liverpool Contributions Plan 2009**
The VPA includes the requirements for monetary contributions for Community facilities, recreation facilities and administration f the Contributions plan. Further works to be carried out in light of the Liverpool Contribution Plans include the upgrading of detention Basin 3B, provision of shared bicycle/pedestrian paths, riparian planting and maintenance of riparian areas, open space embellishment, local drainage and transport management measures. As all the required infrastructure items are to be provided for under the VPA, the exclusion f the contributions pan for the development is warranted.
- (5) **NSW Floodplain Development Manual-** Land use planning limits and controls are an essential element in managing flood risk and the most effective way of ensuring future flood risk is managed appropriately. The developer is to carry out works to detention Basin 3B and within the Hinchinbrook Creek riparian corridor to minimise the risk of flood to land and property downstream.
- (6) **Greater Metropolitan Regional Environmental Plan No 2—Georges River Catchment (February 1999)** – Principle - The environment within the catchment is to be protected by ensuring that the proposed urban area is developed in accordance with the Metropolitan Strategy and that the requirements of the NSW Floodplain Development Manual; Consideration - the proposal will contribute to enhancing both the environmental amenity within the Catchment. Proposed drainage works will not impact on the functioning of Hinchinbrook Creek.

The agreement between the developer and the Council, the various facilities and their corresponding values, are described in Annexure A.

5 Assessment of the merits of the Planning Agreement

5.1 The planning purposes served by the Planning Agreement

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

- (1) the provision of (or the recoupment of the cost of providing) pedestrian path/cycleway, public recreation facilities, traffic and drainage infrastructure,
- (2) the conservation or enhancement of the natural environment.
- (3) The dedication of land as public open space.

The planning agreement provides for a reasonable means of achieving provision of those items, by coordinating the dedication of the works or land with the reasonable development of the land. The reasonable staging of the provision works and land will ensure that the viability of development is not unduly compromised and also that the remaining development capacity at any point would be sufficient to justify the outstanding items. The Council would have the ability to request the dedication of the land along Hinchinbrook Creek, as Council ownership and maintenance is seen to be in the public interest.

5.2 How the Planning Agreement promotes the public interest

In accordance with the objects of the EPA Act, the Planning Agreement promotes the public interest in the following manner:

- (1) The timing of the delivery of land and drainage infrastructure ensures the co-ordination of the orderly and economic use and development of the land within the site.
- (2) Public ownership (as opposed to multiple private land owners) of the Hinchinbrook Creek corridor will ensure the protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats. The planning agreement also makes provision for the removal of weeds and replanting of vegetation to restore and enhance the natural environment.
- (3) The planning agreement represents ecologically sustainable development, to the extent that urban development is contained to areas outside the core riparian zones along Hinchinbrook Creek area, flood liable areas and the Western Sydney Parklands.
- (4) The planning agreement will not preclude the public being provided with the opportunity for involvement and participation in development assessment. The public have been provided the opportunity to be involved with the draft LEP and are invited to make comment on this planning agreement, particularly with regard to the public interest.

5.3 How the Planning Agreement promotes the elements of Council's charter

The planning agreement promotes a number of elements of the council's charter under section 8 of the *Local Government Act 1993*, as follows:

- (1) Public ownership (as opposed to multiple private land owners) of the Hinchinbrook Creek corridor will permit Council to exercise community leadership in the management of riparian/foreshore land.
- (2) The provision of public recreation space along the Hinchinbrook Creek corridor to provide for the passive recreation needs of children and families.
- (3) Taking public ownership of the Hinchinbrook Creek corridor with a legally binding planning agreement for the embellishment and revegetation of the corridor will permit Council to properly manage, develop, protect, restore, enhance and conserve the environment of the area for which it will be responsible, in a manner that is consistent with and promotes the principles of ecologically sustainable development.
- (4) The planning agreement provides that Hinchinbrook Creek corridor land is dedicated and embellished by the Developer, substantially free of weeds and free of contamination that would pose a risk to human health or the environment, having regard for the long term and cumulative effects of Council's decision to take ownership of the land.
- (5) Taking public ownership of the Hinchinbrook Creek corridor under the agreement is consistent with Council's responsibility as the custodian and trustee of public assets which it must then effectively account for and manage.
- (6) The exhibition of the planning agreement facilitates the involvement of members of the public and future users of the facilities, while council staff was involved in the development of the agreement.
- (7) Provision is made under the agreement for further works to detention Basin 3B which has benefits to the functioning of the local and district drainage systems provided to minimise the incident of property and human loss in the event of flooding.
- (8) This explanatory note is prepared for the purposes of keeping the local community and the State government (and through it, the wider community) informed about Council activities.

- (9) The planning agreement makes it clear that Council has a statutory role as consent authority for development and that the agreement is not intended to unlawfully influence the exercise of its regulatory functions, ensuring that it would act consistently and without bias, particularly where an activity of the council is affected.

5.4 Relationship with Council's capital works program

- (1) The agreement provides for the completion of works by the developer and the dedication of land to Council. As such conforms with, or rather has no immediate implication for the Council's capital works program. Should the developer default on the delivery of the works by the required completion date and the Council is required to call on the Bank Guarantee, the Council would then be responsible for the completion of that work, although the timing would be at its discretion.

- (2) It is acknowledged that opportunities for the provision of community infrastructure arise with such urban infill projects. The planning agreement allows for the provision of a revegetated riparian area (similar to the agreements already held in place with landowners along the same creek system) and the provision of district drainage facilities and linking the local cycleways. This will have long term benefits for the general community.

Annexure A – Value of the Developer Contribution in the form of Works Pursuant to the Voluntary Planning Agreement

VALUE OF THE DEVELOPER CONTRIBUTION IN THE FORM OF WORKS PURSUANT TO THE VOLUNTARY PLANNING AGREEMENT	
Item	Amount
Pedestrian/cycleway- 2.5 m shared path along open space, through proposed subdivision to proposed and existing pathways and to the pathways within western Sydney Parklands.	\$1,189,062
Construction of a 3.0m pedestrian/cycleway bridge across Hinchinbrook Creek	\$264,000
Works to river foreshore land - Completion of works described in the Vegetation Management Plan including weed control, bush regeneration, re-vegetation and maintenance of weed re-growth	\$1,033,923
Passive recreation elements including seats and boardwalks within open space	\$348,232
Street trees along proposed thoroughfares	\$108,400
Public recreation facilities within Public Recreation land i.e. playground equipment and BBQ facilities	\$388,160
Road access over Hinchinbrook creek, roundabout at Feodore Drive and Stirling Street	\$825,000
Construction of Basin 3B to the north western boundary shared with the Western Sydney Parklands	\$1,725,255
Local Drainage facilities as required to service the proposed development	\$434,238
Water quality wetlands/biofilters and pollutants traps associated with the proposed development	\$2,993,100
Total	\$10,334,115

VALUE OF THE DEVELOPER CONTRIBUTION IN THE FORM OF PUBLIC RECREATION LAND TO BE DEDICATED TO COUNCIL PURSUANT TO THE VOLUNTARY PLANNING AGREEMENT		
Dedication of RE1 Public Recreation Land to Council		
Area m ²	Estimated value per m ²	Sub-total
53,100m ² (below flood planning level)	\$30	\$1,593,000
51,700m ² (above flood planning level)	\$135	\$6,979,500
Total		\$8,572,500

VALUE OF THE DEVELOPER MONETARY CONTRIBUTION LISTED IN THE VOLUNTARY PLANNING AGREEMENT AS DETERMINED FROM THE DRAFT LIVERPOOL CONTRIBUTIONS PLAN 2009	Amount
Contribution towards Community facilities (city wide, district and local facilities)	\$1,236,375
Contribution towards public recreation facilities (city wide, district and local facilities)	\$1,432,305
Contribution towards the administration relevant to the draft Liverpool Contributions Plan 2009	\$80,325
Total	\$2,749,005

TOTAL VALUE OF DEVELOPER CONTRIBUTION	
Value of works as per Voluntary Planning Agreement	\$10,334,115
Value of the land dedicated to Council as per Voluntary Planning Agreement	\$8,572,500
Value of monetary contributions	\$2,749,005
Total	<u>\$21,655,620</u>