

Variation of Voluntary Planning Agreement

Explanatory Note

Lot 405 Cowpasture Road, Len Waters Estate

(Formerly Hoxton Park Airport, Lot 22 Cowpasture Road, Hoxton Park)

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 variation to an existing planning agreement between the parties under s93F of the *Environmental Planning & Assessment Act 1979* (NSW) (**EPA Act**) for the development of land at Len Waters Estate and Elizabeth Hills.

1 Parties to the Planning Agreement

The parties to the Planning Agreement are:

- (1) Liverpool City Council (**Council**).
- (2) Hoxton Park Airport Limited Freehold Pty Ltd (**HPAL**).
- (3) Mirvac Projects Pty Limited (**Mirvac**)

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 405 DP 1147551 Len Waters, Lot 101 DP 1130459, Lot 404 DP 1147551, Lot 103 DP 1130459, Lot 10 DP 1139171, Lot 2 DP 1062502 Elizabeth Hills	Lot 405 Cowpasture Road Len Waters Estate, Lot 10 & Lot 404 Cowpasture Road Elizabeth Hills, Woolway Park Cowpasture Road Elizabeth Hills

3 Description of Development Application

The proposed changes to the development application set out in the table below.

Development Application	MP 10_0009, MP_10 0010
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Council must undertake the public exhibition of the proposed variations to the executed Planning Agreement held between Council and HPAL. The Planning Agreement and this Explanatory Note are part of a statutory process. If the Council receives any comments on the documents after they are exhibited then:

- (1) the proposed new planning agreement 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 amendments are required to the terms of the development consent.

4 Summary of amendments to the Planning Agreement

The objective of the varied Planning Agreement is to ensure the recoupment of costs of infrastructure and service needs, generated by the development. The items to be delivered by the

developer (HPAL and Mirvac) have not been altered. However, the amendments relate to the timing of infrastructure delivery and to set out the responsibility of the delivery of infrastructure.

Under the current VPA, development of up to 25 hectares of industrial land could be carried out without triggering the need to complete Items 9a, 10a, 11a and 12a. The proposed distribution centres (Dick Smith and Big W) encompass more than 25 hectares; however the developer wishes to delay the construction of these items for up to 18 months after the occupation of these buildings. Further, Mirvac has entered a commercial agreement with HPAL to deliver the development and certain infrastructure items.

Infrastructure Item	Timing of Delivery under original Planning Agreement	Proposed timing of delivery under Amended Planning Agreement	Responsibility for Delivery
9a Stormwater Detention (including construction of Basin 6)	Prior to development of over 25 hectares of Industrially zoned land.	No later than the date that is 18 months after the occupation of the Big W distribution centre.	Mirvac
10a Stormwater Drainage	Prior to development of over 25 hectares of Industrially zoned land.	No later than the date that is 18 months after the occupation of the Big W distribution centre.	Mirvac
11a bridge over Hinchinbrook Creek	Prior to development of over 25 hectares of Industrially zoned land.	No later than the date that is 18 months after the occupation of the Big W distribution centre.	Mirvac
12a Signalised intersection at junction of proposed bridge and Cowpasture Road	Prior to development of over 25 hectares of Industrially zoned land.	No later than the date that is 18 months after the occupation of the Big W distribution centre.	Mirvac
12b Signalised intersection at junction	Prior to development of over 25 hectares of Industrially zoned land.	Prior to the issue of the later of the occupation Certificates for the Big W and Dick Smith distribution centres.	Mirvac

The Variation to the VPA will not alter the original offer of contributions towards facilities that otherwise would not normally have been provided under Council's development contributions plan. The original agreement between HPAL and the Council, the various facilities and their corresponding values, are being maintained as part of this variation and are described in the table below;

Development Contribution	Value
Dedication of embellished River Foreshore Land to Council	\$1,680,000
Program of works for soil remediation, weed control regeneration and revegetation of land within the	\$199,310

Hinchinbrook Creek Corridor and Northern Floodway	
Construction of bike/pedestrian path through public open space, and within proposed road reserves	\$400,000
Construction of a bridge overpass linking future urban land to Cowpasture Road	Approx. \$6,300,000 (Exact amount is to be determined by completion of quantity surveyor report against a detailed design.)
TOTAL VALUE	\$8,579,310

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 will continue to promote the following public purpose:

- (1) the provision of (or the recoupment of the cost of providing) public amenities or public services,
- (2) the provision of (or the recoupment of the cost of providing) transport or other infrastructure relating to land,
- (3) the conservation or enhancement of the natural environment.

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.

5.2 How the Planning Agreement promotes the public interest

In accordance with the objects of the EPA Act, the amended Planning Agreement will continue to promote the public interest in the following manner:

- (1) Public ownership (as opposed to multiple private land owners) will ensure the proper management, development and conservation of the Hinchinbrook Creek corridor and the district drainage channel as an artificial resource for the purpose of promoting the social and economic welfare of the community and a better environment.
- (2) The use of the open space along Hinchinbrook Creek for public recreation, considering its natural constraints. The timing of the delivery of land an infrastructure ensures the co-ordination of the orderly and economic use and development of the land within the site.
- (3) The dedication of the open space along Hinchinbrook Creek constitutes the provision of land for public purposes, being recreation, transport and drainage.
- (4) The provision of a stormwater detention basin for flood mitigation as part of the Cabramatta Creek Floodplain Study and Plan.
- (5) The planning agreement makes provision for the co-ordination of community facilities being provided within the site. The planning agreement provides that section 94 contribution levies would also be charged for City wide community services and facilities, which include community facilities such as libraries, museum, arts centre and community centre.
- (6) Public ownership (as opposed to private land owners) of the open space along Hinchinbrook Creek will ensure the protection of the environment, including the protection and conservation of flora and fauna, including threatened species,

populations and ecological communities. The planning agreement also makes provision for the removal of weeds, regenerating existing vegetation and replanting of vegetation to restore and enhance the natural environment.

- (7) The planning agreement represents ecologically sustainable development, to the extent that urban development is contained to areas outside the Hinchinbrook Creek riparian area and flood liable areas; but these areas would be readily accessible to residential housing and provide recreation opportunities for residents and local employees.
- (8) The planning agreement intends to include all the items in which the developer is required to dedicate land free of cost, pay a monetary contribution, or provide any other material public benefit, or any combination of them, to be used for or applied towards a public purpose.
- (9) 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 amended planning agreement will continue to promote 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 foreshore land will permit Council to exercise community leadership in the management of riparian land.
- (2) The provision of shared bicycle/pedestrian paths under the planning agreement would allow Council to exercise its function to provide transport in a manner that is consistent with ecological sustainable development as well as being popular in European and Asian communities, consistent with the principles of multiculturalism.
- (3) The provision of public recreation space along the Hinchinbrook Creek foreshore to provide for the passive recreation needs of children and families.
- (4) Taking public ownership of the Hinchinbrook Creek foreshore with a management plan in place will permit Council to the opportunity to properly, develop, protect, restore, enhance and conserve the environment of the area for which it will then be responsible, in a manner that is consistent with and promotes the principles of ecologically sustainable development.
- (5) The planning agreement provides that land along Hinchinbrook Creek 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.
- (6) Taking public ownership of the land adjacent to Hinchinbrook Creek 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.
- (7) The exhibition of the planning agreement facilitates the involvement of members of the public and future users of the facilities, while council staff were involved in the development of the agreement.
- (8) The planning agreement provides recreational and transport facilities for local purposes without the need to raise funds by the imposition of rates, charges or fees. Provision is made under the agreement for the further raising of funds by the fair imposition of development contribution charges for City wide and District facilities which would serve the population.
- (9) The planning agreement provides for the construction and dedication of a stormwater detention basin required to protect urban development from flood inundation.

- (10) Taking public ownership of land used for drainage infrastructure 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.
- (11) The planning agreement provides for the construction of roadway linking proposed and existing urban land to a classified road.
- (12) 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 its activities.
- (13) 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 amended agreement will continue to provide 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) At the issuance of Development Consent for development of the land zoned IN1 General Industrial and IN2 Light Industrial Council is seeking the delivery of public infrastructure in accordance with that set out in the contributions plan and additional infrastructure to serve the public benefit. Other items will be delivered at a set threshold, that is, within 18 months after occupation of development. The agreement will continue to allow for the provision of appropriate facilities which provide for an improved river foreshore, critical drainage and transport infrastructure and opportunities for recreation which will have long term benefits for residents and the general community.

5.5 Value of Developer Contributions

The value of the proposed monetary and works in kind contributions have not been altered from the initial Planning Agreement (apart from the influence of the Consumer Price Index). The proposed Variation seeks to alter the timing of some of the infrastructure and adds a third party to the Agreement, being Mirvac Projects Pty limited.

The applicant has renegotiated the timing of the delivery of infrastructure items 9-12 with Council on the basis that it assist with the delivery of the project. Council accepts the timing on the basis that it provides certainty as to when the infrastructure items are to be delivery. The items in question will also be subject to further detailed design and development approvals in which Council will have an influence during the approval process.