

Explanatory Note

Planning Agreement

347 Calderwood Road, Calderwood NSW

1 Introduction

- (1) The purpose of this Explanatory Note is to provide a plain English summary to support the notification of a proposed Voluntary Planning Agreement (**Planning Agreement**) under s7.4 of the *Environmental Planning and Assessment Act 1979* (NSW) (**Act**).
- (2) This Explanatory Note has been prepared jointly between the parties as required by clause 205 of the *Environmental Planning and Assessment Regulation 2021* (NSW) (**Regulations**).
- (3) This Explanatory Note is not to be used to assist in construing the Planning Agreement.

2 Parties to the Planning Agreement

The parties to the Planning Agreement are:

- (1) Shellharbour City Council (ABN 78 392 627 134) (**Council**); and
- (2) Sekisui House Services (NSW) Pty Limited (ABN 42 119 550 220) (**Developer**).

3 Description of the Land to which the Planning Agreement applies

The Planning Agreement applies to the land comprising Lot 1 in Deposited Plan 608238 located at 347 Calderwood Road, Calderwood (**Land**).

4 Description of the Development to which the Planning Agreement applies

The Planning Agreement relates to the development on the Land described in the development consent granted in connection with development application no. DA 0290/2018. (**Development**).

5 Summary of Public Benefits, Objectives, Nature and Effect of the Planning Agreement

The Developer is required to provide the following **public benefits** in accordance with the Planning Agreement:

- (1) **Contribution Amounts**
 - (a) **Prior to the issue of any Subdivision Certificate** in respect of a Residential Plan, the Developer must pay a Contribution Amount based on the Anticipated

Dwelling Yield for the Residential Plan and calculated in accordance with the table below:

Number of CUDP Dwelling	Contribution per Dwelling
Where the relevant Dwelling is within the first 1,000 CUDP Dwellings (0 - 1,000 CUDP Dwellings)	\$3,925.16
Where the relevant Dwelling is between the 1,001 st CUDP Dwelling and the 2,000 th CUDP Dwelling (1,001 - 2,000 CUDP Dwellings)	\$4,399.50
Where the relevant Dwelling is between the 2,001 st CUDP Dwelling and the 3,000 th CUDP Dwelling (2,001 - 3000 CUDP Dwellings)	\$4,873.84
Where the relevant Dwelling is between the 3,001 st CUDP Dwelling and the 4000 th CUDP Dwelling (3,001 - 4000 CUDP Dwellings)	\$5,348.18
Where the relevant Dwelling is the 4,001 st CUDP Dwelling or greater	\$5,703.93

- (b) In this Explanatory Note:
- (i) the "**Anticipated Dwelling Yield**" for a Residential Plan is the anticipated number of Dwellings proposed to be constructed on Allotments within the Residential Plan as determined in accordance with clause 1.3 of Schedule 4 of the Planning Agreement;
 - (ii) a "**CUDP Dwelling**" is a room, or suite of rooms, occupied or used, or so constructed or adapted, as to be capable of being occupied or used, as a separate domicile to be erected within the Calderwood Urban Development Project (**CUDP**) and is not limited to a dwelling that is capable of being subject to a separate title and on-sold separately from other Allotments within the CUDP; and
 - (iii) a "**Residential Plan**" is a plan of subdivision with respect to the Developer's development of the Land which when registered would create one or more Allotments.

The Contribution Amounts are to be paid to Council for the purpose of the provision of the following public benefits:

- (a) Albion Park Library Upgrade.
- (b) Albion Park Bypass.
- (c) City Wide Community Infrastructure (including, but not limited to, Shellharbour City Performance Theatre, Council Administration Offices, City Library and Civic Auditorium).
- (d) City Wide Open Space and Recreation Infrastructure (including, but not limited to, Beach Foreshore and Shellharbour City Stadium).

(e) Administration of Planning Agreement.

(2) **Local Park L7**

(a) The Developer must embellish and dedicate to Council a minimum of 0.2 hectares of land within the R1 and/or C3 zoned areas of the Land.

(b) The Developer must:

(i) create the lot that will comprise Local Park L7 in a plan of subdivision that creates an Allotment that adjoins Local Park L7, or which is only separated from Local Park L7 by a public road (**LP7 Plan**);

(ii) dedicate the lot that will comprise Local Park L7 to Council upon the registration of the LP7 Plan; and

(iii) achieve Practical Completion of the embellishment work **no later than twelve (12) months and one day following the issue of the Subdivision Certificate for the LP7 Plan.**

(c) The embellishments and community facilities to be considered by the Developer include:

(i) retention of existing vegetation where appropriate;

(ii) integrated cycle/pedestrian pathways;

(iii) integrated fitness trail nodes and equipment;

(iv) identity, directional and/or interpretive signage;

(v) informal kick about space;

(vi) informal playground/play space with shade provision;

(vii) fencing, post and rail barrier and/or bollards;

(viii) lighting balances with the street network;

(ix) picnic shelter, tables, bins, seating;

(x) landscaping including turf or turf seeding, garden beds, tree planting; and

(xi) other associated works, services and embellishments.

(d) The embellishment work must be designed in accordance with a Landscape Design Statement approved by Council.

(e) Further, the Developer must maintain the park for three (3) years following Practical Completion of the embellishment work.

(f) The location of the park must be generally in accordance with the plan set out in Schedule 1 to this Explanatory Note.

(3) **District Park D2**

- (a) The Developer must embellish and dedicate to Council a minimum of 1 hectare of land within the R1 and/or C3 zoned areas of the Land.
- (b) **The required timing for dedication of the park** is summarised in the table below:

Scenario	Required timing for dedication	Notes
A Subdivision Certificate is issued to the Developer for a plan that, when registered, would create the Allotment on which the 2,000th CUDP Dwelling is proposed to be constructed.	Twelve (12) months and one day following the issue of the Subdivision Certificate	Nil
A Subdivision Certificate is issued to the Developer for a plan that, when registered, would create the Allotment on which the 3,750th CUDP Dwelling is proposed to be constructed.	Twelve (12) months and one day following the issue of the Subdivision Certificate	Nil
Council notifies the Developer that a Subdivision Certificate has been issued to another person for a plan that, when registered, would create the Allotment on which the 2,000th CUDP Dwelling is proposed to be constructed (2,000th Dwelling Notification). At the time that the Developer receives the 2,000th Dwelling Notification, the Developer has received a Construction Certificate in respect of its development, and this was received before the Third Party Developer received a Construction Certificate.	Twelve (12) months and one day following the date that the Developer receives the 2,000th Dwelling Notification	The " Third Party Developer " is a person (other than the Developer and Lendlease Communities (Australia) Limited (ABN 88 000 966 085)) that owns land in the CUDP on which a district park is to be located.

Scenario	Required timing for dedication	Notes
<p>Council gives the Developer a 2,000th Dwelling Notification.</p> <p>At the time that the Developer receives the 2,000th Dwelling Notification the Developer has not received a Construction Certificate and a Construction Certificate has not been received by the Third Party Developer.</p> <p>However, the Developer subsequently receives a Construction Certificate and this is received before the Third Party Developer receives one.</p>	<p>The later of:</p> <ol style="list-style-type: none"> 1. twelve (12) months and one day following the date the Developer receives the 2,000th Dwelling Notification; and 2. twelve (12) months and one day following the date that a Subdivision Certificate issues to the Developer for the development to which the Construction Certificate relates. 	<p>The "Third Party Developer" is a person (other than the Developer and Lendlease Communities (Australia) Limited (ABN 88 000 966 085)) that owns land in the CUDP on which a district park is to be located.</p>
<p>Council gives the Developer a 2,000th Dwelling Notification.</p> <p>At the time that the Developer receives the 2,000th Dwelling Notification, the Developer has not received a Construction Certificate and a Construction Certificate has not been received by the Third Party Developer.</p> <p>However, the Developer subsequently receives a Construction Certificate after the Third Party Developer receives one.</p>	<p>The later of:</p> <ol style="list-style-type: none"> 1. twelve (12) months and one day following the date that the Developer receives the 3,750th Dwelling Notification; and 2. twelve (12) months and one day following the date that a Subdivision Certificate issues to the Developer for 	<p>The "Third Party Developer" is a person (other than the Developer and Lendlease Communities (Australia) Limited (ABN 88 000 966 085)) that owns land in the CUDP on which a district park is to be located.</p> <p>Also, "3,750th Dwelling Notification" means a notification to the</p>

Scenario	Required timing for dedication	Notes
	the development to which the relevant Construction Certificate relates.	Developer by Council that a Subdivision Certificate has been issued to another person for a plan that, when registered, would create the Allotment on which the 3,750th CUDP Dwelling is proposed to be constructed.

- (c) The Developer must achieve Practical Completion of the embellishment work no later than the date on which District Park D2 is dedicated to Council.
- (d) The embellishments and community facilities to be considered by the Developer include:
 - (i) dedicated car parking for parklands (approximately 10 spaces);
 - (ii) irrigation;
 - (iii) retention of existing vegetation where appropriate;
 - (iv) integrated cycle/pedestrian pathways with Australian Standard lighting;
 - (v) identity, directional and/or interpretive signage;
 - (vi) public artworks;
 - (vii) informal kickabout space;
 - (viii) fitness nodes and equipment;
 - (ix) formal playground/playspace with shade provision through trees and/or structures;
 - (x) fencing/bollards and/or post and rail;
 - (xi) picnic shelters with lighting;
 - (xii) barbecues, tables, bins, seating;
 - (xiii) landscaping including turf or turf seeding, garden beds;

- (xiv) feature tree planting; and
- (xv) other associated works, services and embellishments.
- (e) The embellishment work must be designed in accordance with a Landscape Design Statement approved by Council.
- (f) Further, the Developer must maintain the park for three (3) years following Practical Completion of the embellishment work.
- (g) The location of the park must be generally in accordance with the plan set out in Schedule 1 to this Explanatory Note.

The **objectives** of the Planning Agreement are:

- (1) to provide material public benefits in the form of monetary contributions to be applied towards public infrastructure; and
- (2) to provide material public benefits in the form of public infrastructure (being Local Park L7 and District Park D2).

The **nature** of the Planning Agreement is a contractual relationship between the Council and the Developer for providing public benefits.

The **effect** of the Planning Agreement is that the Developer will provide the public benefits in the manner provided for by the Planning Agreement (as applicable).

6 Assessment of the Merits of the Planning Agreement and Impact on the Public

The Planning Agreement promotes:

- (1) the public interest; and
- (2) the objects of the Act.

The Planning Agreement will provide:

- (1) material public benefits in the form of monetary contributions to be applied towards public infrastructure; and
- (2) material public benefits in the form of public infrastructure (being Local Park L7 and District Park D2),

which promotes the public purpose of providing public amenities and services (in accordance with s7.4(2) of the Act) to meet the infrastructure demands of development.

7 Identification of how the Planning Agreement promotes the public interest

The Planning Agreement supports the public interest in the following ways:

- (1) By providing for and facilitating the improvement of public infrastructure to be utilised by the broader community.
- (2) By promoting the social and economic welfare of the community and a better environment.
- (3) By providing increased opportunity for community participation in environmental planning and assessment.
- (4) To promote the orderly and economic use and development of land.

8 How the Planning Agreement promotes the Guiding Principles for Councils

The Planning Agreement promotes a number of the Guiding Principles for Councils under section 8A of the *Local Government Act 1993* (NSW), as follows:

- (1) To plan strategically, using the integrated planning and reporting framework, for the provision of effective and efficient services and regulation to meet the diverse needs of the local community.
- (2) To manage land and other assets so that current and local community needs can be met in an affordable way.
- (3) To act fairly, ethically and without bias in the interests of the local community.
- (4) To recognise diverse local community needs and interests.
- (5) To have regard to the long term and cumulative effects of its decisions on future generations.
- (6) Transparent decision-making and active engagement with local communities, through the use of the integrated planning and reporting framework and other measures.
- (7) Providing strong and effective representation, leadership, planning and decision-making.
- (8) Applying the integrated planning and reporting framework in carrying out functions so as to achieve desired outcomes and continuous improvements.
- (9) Working with others to secure appropriate services for local community needs

9 Identification of whether the Planning Agreement conforms with the Council's capital works program

The Planning Agreement conforms with Council's capital works program, however in that regard the Developer will be required to provide the relevant works it is obligated to deliver as works at its own expense in accordance with the Planning Agreement.

10 Requirements relating to Security and Construction, Occupation and Subdivision Certificates

The Planning Agreement requires each Contribution Amount under section 5(1) above to be paid prior to the issue of a Subdivision Certificate for the relevant Residential Plan and therefore contains a restriction on the issue of a subdivision certificate within the meaning of section 6.15(1)(d) of the Act.

If the Developer and Council agree that there is an Allotment within a Residential Plan which the Developer does not intend to transfer to an end user and with respect to which it is unlikely that a Construction Certificate for Dwellings will be issued within two years following the issue of the Subdivision Certificate (**Deferred Allotment**):

- (1) any such Deferred Allotment is not included in the calculation of the Contribution Amounts that are payable prior to the issue of a Subdivision Certificate in respect of the Residential Plan; and
- (2) the Developer will be required to pay a Contribution Amount being an amount calculated in accordance with section 5(1) above for all Dwellings permitted to be constructed on the Deferred Allotment in accordance with any Construction Certificate lodged with respect to that Deferred Allotment.

The Developer must pay any Contribution Amount referred to in paragraph (2) above prior to the issue of the relevant Construction Certificate referred to in that paragraph.

The Developer will deliver to Council a bank guarantee prior to the issue of a Subdivision Certificate for the creation of the final allotment in the Development in an amount determined by Council acting reasonably (which will not be more than 50% of the Contribution Amount required to be paid for the final stage of the Development) to ensure all Contribution Amounts (including for Deferred Allotments) under the Planning Agreement are paid by the Developer.

Further, the Planning Agreement requires that the Planning Agreement be registered on title to the Land prior to the issue of a Construction Certificate or Subdivision Works Certificate with respect to the development.

