

Explanatory Note:

Canterbury Bankstown Council and Hailiang Property
Campsie Pty Ltd

Proposed Planning Agreement

Prepared in accordance with clause 205 of the
Environmental Planning and Assessment Regulation 2021

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1. Introduction

Clause 205(1) of the *Environmental Planning and Assessment Regulation 2021* (**the Regulation**) requires that an explanatory note must be prepared to accompany a planning agreement.

The explanatory note must address the requirements of clause 205(1)(a)-(b) of the Regulation. This explanatory note has been prepared to address these requirements.

Additionally, in preparing the explanatory note, the planning authority must consider any relevant practice note prepared by the Planning Secretary under clause 203(6). The relevant practice note is *Planning agreements: Practice note – February 2021* published by the former NSW Department of Planning, Industry and Environment (now the Department of Planning and Environment).

This practice note has been considered by the parties in the course of preparing this explanatory note.

2. Summary of objectives, nature and effect

2.1 Parties and offer

A draft planning agreement (**the agreement**) has been prepared. The proposed parties to the agreement are:

- the Canterbury Bankstown Council (**the Council**) on one hand; and
- Hailiang Property Campsie Pty Ltd (**the Developer**) on the other.

The agreement to which this explanatory note relates has been the subject of an offer by the Developer.

2.2 Land

The land to which the agreement applies is:

- Lot 3 DP 337683;
- Lot A DP 355656;
- Lot B DP 355656;
- Lot A DP 416123;
- Lot B DP 416123;
- Lot 13 DP 3995;
- Lot 15 DP 3995
- Lot A DP 391661; and
- Lot B DP 391661.

This Land is commonly known as 445 Canterbury Road, Campsie.

The agreement also applies to certain Council land on which works are to be carried out:

- the Perry Street public road reserve;
- the Stanley Street public road reserve;
- the Una Street public road reserve;
- the Unara Street public road reserve between the intersection of Beamish Street, and Stanley Street; and
- the Canterbury Road public road reserve between the intersection of Scahill Street, and Robertson Street.

2.3 Instrument change, the development and the development application(s)

The agreement relates to:

- an 'Instrument Change' sought by the Developer; and
- future development of the Land to which the agreement applies, made possible by the 'Instrument Change'.

The 'Instrument Change' means any change to environmental planning instruments applying to the Land as a result of the planning proposal. The planning proposal proposes the following changes to the environmental planning instrument applying to the Land:

- a building height for a hospital on the Land of up to RL 72.75;
- a floor space ratio for a hospital on the Land of up to 5.1:1.

2.4 Objectives

The objective of the agreement is to provide a mechanism by which contributions can be made to benefit the community.

2.5 Nature

The agreement will be a voluntary agreement under section 7.4 of the *Environmental Planning and Assessment Act 1979* (**the Act**).

An agreement of this kind may require a developer to dedicate land free of cost, pay a monetary contribution, or provide any other material public benefit to be used for or applied towards a public purpose.

In this particular case, the agreement provides that the developer will:

- dedicate to the Council an area of land with frontage to Canterbury Road, the approximate dimensions of which are to be:
 - 3.5 metres wide along the site frontage of Canterbury Road;
 - 86 metres in length; and
 - 300m² in area;

- register an easement for public access benefitting the Council of an area of land for a pedestrian through site link, the approximate dimensions of which are to be:
 - 6 metres wide along the eastern boundary of the Land;
 - 33 metres in length; and
 - 200m² in area;
- dedicate to the Council an area of land for laneway, the approximate dimensions of which are:
 - 9 metres wide;
 - 765m² in area;
- payment to the Council of a monetary contribution of \$30,000 for cycleways;
- payment to the Council of a monetary contribution of \$85,000 to assist the Council with provision of new and/or improved public open space;
- the provision of public art on the land at a value of not less than \$150,000 (plus GST) (although the Developer may, at its absolute discretion, spend more than this amount), unless any public art is required to be provided by the Developer under a Development Consent for the Development in which case the cost to provide public art under this Agreement is to be reduced by the cost incurred by the Developer in providing the public art under the Development Consent;
- the provision of a public pocket park within the Land by way of embellishment, an easement in gross to provide for passive recreation and a positive covenant to provide for ongoing maintenance and repair by the owner of the land from time to time;
- the construction of a new kerb ramp pair on Stanley Street, crossing Perry Street;
- the construction of four new zebra-type pedestrian crossings; and
- the construction of two bus stop shelters on Canterbury Road, with associated signage.

The agreement outlines these obligations are triggered by the 'Instrument Change' and are to be provided prior to the issuing of an occupation certificate for the development made possible by that change.

If the Developer considers that final version of the 'Instrument Change' adversely impacts on the feasibility of the Development when compared with what was intended to be achieved under the planning proposal, the Developer is to give to the Council a written request to reduce, vary or delete the development contributions.

This request only relates to a limited selection of contributions. In these limited circumstances, the Council may agree to reduce, vary or delete certain development contributions. If there is no agreement, an independent expert would be appointed to determine whether certain contributions should be reduced, varied or deleted.

2.6 Effect

In general terms, the making of the contributions are timed in a way that is practicable for the developer and supports the redevelopment of the Land.

The contributions are to be made prior to the issue of an occupation certificate for any part of the Land.

The agreement provides for the enforcement of the Agreement by a suitable means if there is a breach by the developer. The developer is required to provide bank guarantees for a general security and a defects liability security. The developer also agrees to the compulsory acquisition or easements of land for \$1 if the developer does not dedicate that land or register the easements by the time they are required to be dedicated or registered. The planning agreement is also to be registered on the title to the Land.

Where it is relevant to a development application, a consent authority must take into consideration a planning agreement — or any draft planning agreement — that a developer has entered into or offered to enter into (respectively).

However, a planning agreement cannot impose an obligation on a planning authority to actually grant a development consent. A merit assessment of the proposed development must still be carried out.

3. Assessment of the merits of the proposed agreement

3.1 Impact on the public or any relevant section of the public

The Agreement has a positive impact on the public and promotes the public interest. The development contributions will improve the safety and amenity of the public domain and improve vehicle and pedestrian connectivity in the area.

3.2 Promotion of the public interest and the objects of the Act

The agreement promotes the following objects of the Act:

- Section 1.3(a):
to promote the social and economic welfare of the community...by the proper management, development and conservation of the State's natural and other resources,
- Section 1.3(c):
to promote the orderly and economic use and development of land
- Section 1.3(g):
to promote good design and amenity of the built environment...

3.3 Whether the planning agreement conforms with the planning authority's capital works program, if any

The agreement does not conform with the Council's capital works program. This is because the contribution has arisen outside of the Council's capital works program.

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

The agreement requires the making of development contributions prior to the issue of an occupation certificate.

If a Developer has made a request to reduce, vary or delete the Development Contributions, no construction certificate, subdivision works certificate, occupation

certificate or subdivision certificate can be issued until the request is conclusively resolved (either by agreement, its withdrawal or by expert determination).

The agreement does not specify any other requirements that must be complied with before a construction certificate or subdivision certificate is issued.

4. Status of this explanatory note

This explanatory note has been agreed by parties proposing to enter into the agreement.

The parties have agreed that this explanatory note is not to be used to assist in construing the agreement.