
Stockland Development Pty Limited

Campbelltown City Council

Planning Agreement

Section 93F of the Environmental Planning
and Assessment Act, 1979 (NSW)

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Agreement made at **Council** on **13 OCTOBER 2017**

Parties

Campbelltown City Council (ABN 31 459 914 087) of Civic Centre, Queen Street, Campbelltown, New South Wales (**Council**)

Stockland Development Pty Limited (ACN 000 064 835) of Level 25, 133 Castlereagh Street, Sydney, New South Wales (**Developer**)

Background

- A The Developer has submitted, and intends to submit further, Development Applications to the Council to facilitate the Development on the Land, being the proposed:
- a. creation of approximately 2,555 Dwellings (low and medium density);
 - b. associated roads, parks, community and stormwater facilities.
- B The Development forms part of the East Leppington Precinct under the *State Environmental Planning Policy (Sydney Region Growth Centres) 2006* which covers two Local Government Areas, being the Campbelltown Local Government Area and the Camden Local Government Area.
- C The Developer has entered into a Voluntary Planning Agreement with Camden Council to provide developer contributions for that part of the development of the East Leppington Precinct falling within the Camden Local Government Area.
- D The Developer has made an offer to enter into this Agreement, if Development Consent is granted for a Stage, to make the Development Contributions for that Stage for a Public Purpose in accordance with the provisions of this Agreement consisting of:
- a. Carrying out of road works, being the Heath Road extension;
 - b. Creation of pedestrian and vehicle crossings of the riparian area or the Sydney Catchment Authority canal;
 - c. Construction of shared pedestrian paths and cycleways;
 - d. Trunk stormwater drainage facilities;
 - e. Embellishment and dedication of the riparian corridor land, adjacent multi-purpose drainage and passive open space;
 - f. Dedication of 14.1 hectares of structured open space including sports facilities;

g. The payment of monetary contributions for the administration of this Agreement; and

h. Construction of a Community Centre.

E The Developer has agreed to provide the Development Contributions for each Stage.

Operative provisions

1 Definitions and interpretation

1.1 Definitions

In this Agreement the following definitions apply:

Act means the *Environmental Planning and Assessment Act 1979* (NSW).

Agreement means this voluntary planning agreement including any schedules and annexures.

Approved Deferred Works means those Works that Council approves, in its discretion, to defer to a subsequent Stage under **clause 6.7**.

Authority means, in respect of a particular context or circumstance, each Federal, State or Local Government, semi-Government, quasi-Government or other body or authority, statutory or otherwise, including but not limited to any court or tribunal, having jurisdiction and responsibility in respect of that context or circumstance.

Bank Guarantee means an irrevocable and unconditional undertaking without any expiry or end date in favour of the Council, issued by:

- (a) one of the following trading banks:
 - (i) Australia and New Zealand Banking Group Limited,
 - (ii) Commonwealth Bank of Australia,
 - (iii) Macquarie Bank Limited,
 - (iv) National Australia Bank Limited,
 - (v) St George Bank Limited,
 - (vi) Westpac Banking Corporation, or
- (b) any other financial institution approved by the Council in its absolute discretion.

Bond means a documentary performance bond which must be denominated in Australian dollars and be an unconditional undertaking with all the following requirements. It must:

- (a) be signed and issued by an Australian Prudential Regulation Authority ("APRA") regulated authorised deposit taking institution or an insurer authorised by APRA to conduct new or renewal insurance business in Australia;

- (b) have at all times an investment grade security rating from an industry recognised rating agency of at least:
 - (i) BBB+ (Standard & Poors and Fitch);
 - (ii) Baa1 (Moody's); or
 - (iii) bbb (Bests);
- (c) be issued on behalf of the Developer;
- (d) have no expiry or end date;
- (e) have the beneficiary as the Council;
- (f) state the relevant minimum required to be lodged to achieve the Security Amount; and
- (g) state the purpose of the deposit required in accordance with this Agreement.

Business Day means a day which is not a Saturday, Sunday or bank or public holiday in Sydney.

Capped Amount means the capped amount for providing the Community Centre as specified in **column 6 of schedule 2**.

Community Centre means the multi-purpose community centre identified in Item 76 of **schedule 2** to be made available for public use including:

- (a) with a building area of up to 600m²; and
- (b) a site area of up to 2,500m² to allow for parking, setbacks and landscaping.

Community Centre Land means that part of the Land upon which the Community Centre is to be constructed as determined in accordance with **clause 7.1**.

Construction Certificate has the same meaning as in section 109C of the Act but excludes a Construction Certificate for any early or preliminary works.

Contribution Area means each of those areas identified as C through to P in **column 2 of schedule 2** and as identified on the Contribution Area Plan.

Contribution Area Plan means that plan attached at **annexure B**.

Contribution Location Plan means the plan at **annexure A** which shows the general location of the Development Contributions.

Contribution Value means the estimated value for an item of Work as identified in **column 6 of schedule 2**.

DCP means the Schedule One – East Leppington Precinct in the *Campbelltown Growth Centre Precincts Development Control Plan 2012*.

Defects Liability Period means the period of 12 months which commences on the date of Practical Completion of each of the Works.

Defects Security means the Security for rectification of defects required under **clause 6.3(a)**.

Deferred Works has the meaning in **clause 6.7(a)**.

Development means the staged development of approximately 2,555 Urban Lots (medium and low density) on the Land and associated roads, shared pedestrian and cycleways, utilities, open space, recreation facilities and trunk stormwater management network.

Development Application means a development application made by the Developer under the Act for a Stage or part of a Stage.

Development Consent means the determination by approval of a Development Application, as modified from time to time.

Development Contribution means those development contributions identified in **schedule 2** and which are to be provided by the Developer in accordance with this Agreement and as generally shown on the Contribution Location Plan.

Explanatory Note means the Explanatory Note attached at **schedule 4**.

GST Law has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition or administration of the GST.

IDP means the East Leppington Precinct – Infrastructure Delivery Plan including the relevant concepts as prepared by AECOM dated 18 January 2013.

Land means the land contained in part Lots 1 and 2 in DP1185269, part Lot 5 DP1193006, part Lot 7 in DP1200698, Lot 9 DP1207461, Lots 18 and 19 in DP1215704, Lots 32, 33 and 34 in DP1439 (comprising Auto Consol 13532-141), Lot 11 DP135468, Lots 130 and 131 in DP135465 and Lot 108 in DP133315 (part of which has already been subdivided as at the date of this Agreement, and some of which will be subdivided) and which is located in the East Leppington Precinct but excluding:

- (a) Lot 12 DP1209044 which was sold to a third party for retail purposes; and
- (b) Lot 150 in DP1211497, which was sold to another party for retirement living purposes.

Law means any statute, regulation, proclamation, policies and rulings enforceable by statute, ordinance, by-law, local law, code or listing rule.

Lot means a lot in a registered deposited plan that forms part of the Land.

LPI means the Land and Property Information of New South Wales or any other Authority replacing it.

Monetary Contributions means the payment of the monies referred to in Item 77 of **schedule 2**.

Net Developable Area means the area of the ground (measured in hectares or fractions thereof) in Urban Lots for which Subdivision Certificates have been issued under the relevant Development Consent.

Party means a party to this Agreement, including their successors and assigns.

Permitted Encumbrances means easements in favour of utility service providers or required by any Authority or as otherwise agreed in writing by the Council.

Phase 1 ESA means a Phase 1 Environmental Site Assessment which provides a desktop assessment of the Stage Transfer Lands.

Phase 2 ESA means a Phase 2 Environmental Site Assessment which provides a detailed assessment of the relevant Stage Transfer Lands and includes testing to appraise the contamination status of soils.

Plan of Subdivision means a registered plan of subdivision within the meaning of the section 195 of the *Conveyancing Act 1919* (NSW).

Playing Fields means the playing fields referred to in Item 74 of **schedule 2**.

Practical Completion means the point of time at which the Works, the Community Centre or the Playing Fields (as the case may be) are fit for use and occupation, and are capable of being used and occupied for their intended purpose as set out in a Development Consent.

Public Purpose means any purpose that benefits the public or a section of the public, specified in section 93F(2) of the Act.

Regulation means the *Environmental Planning and Assessment Regulation 2000* (NSW).

Replacement Security means the return by Council of Security held by Council under this Agreement in exchange for a new Security Amount pursuant to the provisions of **clause 13**.

Residential Accommodation has the same meaning as residential accommodation under the Standard Instrument.

Road Works Contribution means the construction of the collector road and the roundabout (Heath Road extension) as set out at **schedule 2**.

Security Amount means, for any Approved Deferred Works the following amounts:

- (a) 100 percent of the Contribution Value of the Approved Deferred Works, other than the Community Centre, that are left to be completed; and
- (b) the Capped Amount for the Community Centre,

or any lesser amount agreed by Council under **clause 6.7**;

Security means a Bank Guarantee or a Bond, indexed annually in accordance with the annual movements in the Consumer Price Index (All Groups Sydney) published by the Australian Bureau of Statistics on and from the date of this Agreement.

Service Lot means a Lot that is created for one or more of the following purposes:

- (a) to be dedicated or otherwise transferred to an Authority (including to the Council);
- (b) for any public utility undertaking within the meaning of the Standard Instrument;
- (c) to be association property within the meaning of the *Community Land Development Act 1989 (NSW)*;
- (d) for open space, recreation, environmental conservation, drainage or riparian land management; or
- (e) a road,

but does not include a Super Lot.

Specified Work means the following Works:

- (a) The Open Space & Recreation referred to in item 48 of **schedule 2**.
- (b) The Open Space & Recreation referred to in item 49 of **schedule 2**.
- (c) The Open Space & Recreation referred to in item 50 of **schedule 2**.
- (d) The Community Centre referred to in item 76 of **schedule 2**.

Stage means each stage forming part of the Development, as identified in a Development Application lodged by the Developer for a Stage including any other part of the Development which is related to the delivery of any Contributions for that Stage.

Standard Instrument means *Standard Instrument (Local Environmental Plans) Order 2006* as at the date of this Agreement.

Subdivision has the same meaning as in section 4B of the Act.

Subdivision Certificate has the same meaning as in section 109C of the Act.

Super Lot means a Lot which, following the registration of a Plan of Subdivision, is intended for further Subdivision (including strata and community title subdivision) for Residential Accommodation but does not include a Service Lot.

Transfer Dealings means any agreement or arrangement:

- (a) transferring or selling any part of the Land for which the Developer is the registered proprietor to an unrelated Party; or
- (b) assigning, novating or otherwise dealing with any right, obligation or interest under this Agreement.

Transfer Lands means that part of the Land upon which the Works are to be carried out and then dedicated to the Council or (its nominee) under this Agreement as specified in **schedule 2**.

Urban Lot means a Lot that forms part of the Land to be created by the registration of a:

- (a) Plan of Subdivision and is intended to be developed for Residential Accommodation; or
- (b) Strata plan and has been or is being developed for Residential Accommodation,

but excluding any Service Lots and Super Lots.

Water Cycle Strategy means the report titled *Water Cycle Strategy Report* prepared by Cardno dated 8 June 2012 for the East Leppington Precinct.

Works means each of the works including the embellishment works to be carried out by the Developer prior to the transfer of the relevant part of the Transfer Lands upon which the works have been carried out as specified in **schedule 2** and includes the Road Works Contribution.

1.2 Interpretation

In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:

- (a) Headings are inserted for convenience only and do not affect the interpretation of this Agreement.
- (b) If the day on which any act, matter or thing is to be done under this Agreement is not a Business Day, the act, matter or thing must be done on the next Business Day.
- (c) A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- (d) A reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment, replacement or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- (e) A reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- (f) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
- (g) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- (h) Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- (i) A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.

- (j) References to the word 'include' or 'including' are to be construed without limitation.
- (k) A reference to this Agreement includes the agreement recorded in this Agreement.
- (l) A reference to a Party to this Agreement includes a reference to the servants, agents and contractors of the Party, and the Party's successors and assigns.
- (m) Any schedules, annexures and attachments form part of this Agreement.

2 Planning Agreement under the Act

The Parties agree that this Agreement is a planning agreement governed by Subdivision 2 of Division 6 of Part 4 of the Act.

3 Application of this Agreement

This Agreement applies to the:

- (a) Land; and
- (b) Development.

4 Operation of this Agreement

This Agreement operates on and from the date that the Agreement is entered into as required by Clause 25C(1) of the Regulation.

5 Development Contributions to be made under this Agreement

- (a) Subject to this Agreement, the Developer is to make a Development Contribution for each Stage comprising:
 - (i) the carrying out and delivery of the Works;
 - (ii) the dedication of the Transfer Lands for the relevant Stage; and
 - (iii) the payment of Monetary Contributions for the administration of the Agreement.
- (b) The location of the Works and Transfer Lands are generally identified on the Contributions Area Plan.

6 Carrying out and Delivery of Works and the payment of Monetary Contributions

6.1 Commencement of Works

The Developer must obtain all necessary approvals, consents, certifications and authorisations required to carry out the Works.

6.2 Delivery of Works

- (a) The Developer must carry out each of the Works in accordance with the timing specified in **schedule 2**.
- (b) When the Developer is of the reasonable opinion that Practical Completion has been reached, the Developer must notify the Council in writing within 30 Business Days, specifying the date on which, in its opinion, Practical Completion has been reached.
- (c) Within 15 Business Days of the date upon which the Developer has nominated as the date upon which Practical Completion has been reached, the Council must carry out an inspection of the relevant Works.
- (d) The Council must, within 15 Business Days of carrying out its inspection of the Works provide notice to the Developer specifying that either:
 - (i) it is of the opinion that Practical Completion has been reached for the relevant Works; or
 - (ii) it is of the opinion that Practical Completion has not been reached, in which case it must set out all the matters that the Council reasonably considers must be completed in order for Practical Completion to be reached.
- (e) The Developer:
 - (i) must undertake the works specified by the Council under **clause 6.2(d)(ii)**, as soon as practicable and once complete, the provisions of **clauses 6.2(a) – (d)** will apply; or
 - (ii) if it does not agree with the matters set out in the Council's notice under **clause 6.2(d)(ii)**, must notify the Council that a dispute has arisen under **clause 12.1** of this Agreement.

6.3 Defects Liability Period

- (a) Within 20 Business Days after Practical Completion of any Works, the Developer must provide Security (**Defects Security**) to Council to be held for the Defects Liability Period in an amount equal to 5 percent of the Contribution Value (excluding GST) of the relevant Works, except where the Developer has, in compliance with a condition of the Development Consent provided Security for defects rectification for the relevant Works, in which case no further Defects Security is required to be provided for those relevant Works.
- (b) If the Council notifies the Developer of a defect in any part of the Works identified in **schedule 2** within the Defects Liability Period, the Developer

must remedy that defect within the period required by Council, which must be a reasonable period, having regard to the nature of the defect.

- (c) If the Developer does not rectify any defect in the Works identified in **schedule 2** as duly notified under **clause 6.3(a)**, then **clause 13.4** applies.
- (d) The provisions of **clause 13** apply to the release of the Defects Security.

6.4 Design and specification of Specified Works

- (a) Before commencing construction of a Specified Work, the Developer must submit to Council for its approval, the detailed design and specification for the Specified Work.
- (b) The design and specification for the Specified Work must be prepared by the Developer having specific regard to:
 - (i) the core elements for that Specified Work set out in **column 5** of **schedule 2**; and
 - (ii) in the case of the Community Centre referred to in item 76 of **schedule 2**, the capped Contribution Value such that the agreed design must have an estimated value to construct of no more than the capped amount referred to in **column 6** for item 76 of **schedule 2**.
- (c) If, within thirty (30) days of the date of submission referred to in paragraph (a):
 - (i) Council notifies the Developer in writing of its approval of the design and specification, the Developer is to carry out and complete the Specified Work in accordance with that design and specification;
 - (ii) Council fails to notify the Developer in writing that it approves or does not approve of the design and specification, Council is taken to have approved the design and specification of the Specified Work and the Developer may carry out and complete the Specified Work in accordance with that design and specification; or
 - (iii) Council notifies the Developer in writing that it does not approve of the design and specification, the Developer may:
 - (A) elect to amend the design and specification and submit to Council the amended design and specification in which case the approval process set out in this clause 6.4 applies to that amendment; or
 - (B) if the Developer does not agree with the modifications requested by Council, refer the matter for dispute resolution under clause 12.
- (d) For the purposes of clause 6.4(c)(iii), except with the agreement of the Developer, Council cannot require the Developer to: