

## **Explanatory Note**

### **Planning Agreement: Menangle Park (Stages 1, 2A and 2B)**

#### **1. Introduction**

The purpose of this Explanatory Note is to provide a plain English summary to support the notification of the proposed planning agreement (**Planning Agreement**) under section 7.4 of the *Environmental Planning and Assessment Act 1979* (NSW) (**EP&A Act**).

This Explanatory Note has been prepared jointly by the parties as required by clause 25E of the *Environmental Planning and Assessment Regulation 2000* (NSW) (**EP&A Regulation**).

Words appearing with initial capital letters in this Explanatory Note have the meanings given to them in this Explanatory Note or (if not defined in this Explanatory Note) in the Planning Agreement.

This Explanatory Note is not to be used to assist in construing the Planning Agreement.

#### **2. Parties**

The parties to the Planning Agreement are:

1. Campbelltown City Council (ABN 31 459 914 087) (**Council**); and
2. Dahua Group Sydney Project 2 Pty Ltd (ACN 606 391 235) and Dahua Group Sydney Project 3 Pty Ltd (ACN 606 391 922) (**Developer**).

#### **3. Land**

The Planning Agreement applies to the following land, being within Council's local government area (**Land**):

- Lot 1 in DP 598067;
- Lot 1002 DP 1234642;
- Lot 1 in DP 1091474;
- Lot 31 in DP 1101983;
- Lot 32 in DP 1101983;
- Lot 1001 in DP 1219028;
- Lot 641 in DP 600334; and
- Lot 2 in DP 554242.

#### **4. Description of proposed development**

The subdivision and other development of the Land by the Developer:

- so as to create Final Lots, for residential purposes;

- so as to construct the first single Dwelling on any Final Lot created by the Developer; and
- for associated purposes including subdivision, community and commercial facilities, parks, open space and infrastructure,

generally as contemplated by the Stage 1 Development Application 3885/2017/DA-SW, the Stage 2A Development Application 292/2018/DA-SW, the Stage 2B Development Application 681/2018/DA-SW, the Hilltop Park Development Application (2393/2018/DA-CW) and any Development Consent for those Development Applications (**Development**).

## 5. Objectives of the Planning Agreement

The objectives of the Planning Agreement are as follows:

- to provide development contributions towards local infrastructure required in order to facilitate the development of land within the Menangle Park Urban Release Area, including the Land; and
- to ensure that local infrastructure is delivered in a timely and efficient manner.

## 6. Nature and effect of the planning agreement

### 6.1 Nature

The Planning Agreement constitutes a planning agreement under section 7.4 of the EP&A Act.

The Planning Agreement will be registered on the title to the Land.

Development Contributions to be provided by the Developer under the Planning Agreement comprise:

- A. construction of a local park of approximately 5,000 square metres adjacent to the southern entry road;
- B. dedication of the land comprising the local park referred to at A above;
- C. construction of a local park of approximately 6,870 square metres adjacent to the southern entry road;
- D. dedication of the land comprising the local park referred to at C above;
- E. construction of a linear park of approximately 3,834 square metres and shared cycle and pathway adjacent to Menangle Road and the Hume Motorway;
- F. dedication of the land comprising the linear park and shared cycleway and pathway referred to at E above;
- G. construction of bioretention facilities on approximately 3,956 square metres of land;
- H. dedication of the land referred to at G above;
- I. dedication of approximately 4,900 square metres of land in the vicinity of the land referred to at G above;
- J. Dedication of approximately 4,829 square metres of land in the vicinity of the land referred to at F above;

- K. construction of a roundabout at the intersection of Menangle and Cummins Road;  
and
- L. payment of a monetary contribution of \$18,851.21 per Final Lot up to a maximum of \$7,710,145 for 409 Final Lots.

A considerable portion of the Development Contributions are provided in excess of what is necessary to enable the Development of the Land. The Planning Agreement provides for an Excess Contributions Credit for certain surplus Development Contributions, but only if the Campbelltown Local Environmental Plan 2015 is amended generally or substantially as proposed by the Menangle Park Planning Proposal. In essence, the provision of an Excess Contributions Credit is intended to avoid duplicate contributions being made by the Developer towards surplus local infrastructure which has already been delivered by the Developer under this Planning Agreement.

## **6.2 Effect**

The Planning Agreement:

- wholly excludes the application of section 7.11 and section 7.12 of the Act to the Development. Subsequent development that increases yield from a single lot or single dwelling may be subject to the application of s7.11 and s7.12 of the EP&A Act;
- does not exclude the application of section 7.24 of the Act to the Development;
- requires dedication of the Land and carrying out of Works;
- is required to be registered on the title to the Land for the purposes of section 7.6 of the Act;
- imposes restrictions on the Developer transferring the Land or part of the Land or assigning an interest under the Planning Agreement;
- provides dispute resolution methods for a dispute which arises under the Planning Agreement, including expert determination and mediation;
- provides that the Planning Agreement is governed by the law of New South Wales;  
and
- provides that the A New Tax System (Goods and Services Tax) Act 1999 (Cth) applies to the Planning Agreement.

## **7. Merits of the Planning Agreement**

### **7.1 Promotion of the public interest (and impact on the public)**

The public benefits to be secured by the Planning Agreement will flow from the achievement of the Planning Agreement's objectives (refer to part 5 of the Explanatory Note).

Significant efficiencies will be achieved through the Planning Agreement by allowing the Developer:

- greater involvement in the timing and scope of the infrastructure items that affect, and are required by, the Development; and

- the ability to coordinate the concurrent roll-out of residential lots and local infrastructure in the most efficient way.

The expected efficiencies, together with anticipated public benefits of the Planning Agreement, are described below:

- The Planning Agreement relieves Council of the obligation of delivering part of the public open space and other infrastructure required for the Menangle Park Release Area (which is more ably delivered by the Developer).

There are various provisions in the Planning Agreement relating to the implementation of the Planning Agreement which protect and uphold the public interest. These include the following:

- provisions requiring the Developer to rectify defects in works provided under the Planning Agreement;
- various provisions relating to security including:
  - (i) a requirement to provide Bank Guarantees for 110% of the Contribution Value for an item of Works, prior to the issue of certain Construction Certificates;
  - (ii) registration of the Planning Agreement on the title of the Land; and
  - (iii) compulsory acquisition of land by Council for \$1.00 in the event the land is not dedicated at the time required under the Planning Agreement.

## 7.2 Promotion of the Council’s Charter

A Planning Agreement is to promote elements of the Council’s charter, which is established under section 8 of the *Local Government Act 1993 (LG Act)*.

It is considered that the Planning Agreement would further a number of elements of the charter, as shown below:

Element of the Council’s charter (section 8 of the LG Act)	How does the Planning Agreement promote the element?
to provide directly or on behalf of other levels of government, after due consultation, adequate, equitable and appropriate services and facilities for the community and to ensure that those services and facilities are managed efficiently and effectively	<p>This element is embedded in the purposes and objectives of the Planning Agreement. That is:</p> <ul style="list-style-type: none"> <li>• the an opportunity will be given for community input prior to consideration of the Planning Agreement by the Council;</li> <li>• the services and facilities to be provided under the Planning Agreement will benefit land within the Menangle Park Urban Release Area; and</li> <li>• the Planning Agreement includes arrangements for the handover of completed facilities, adequate security and a defects liability period.</li> </ul>
to exercise community leadership	<p>The Planning Agreement:</p> <ul style="list-style-type: none"> <li>• secures the means of providing local infrastructure to meet the needs of a major development in one of Campbelltown’s key release areas; and</li> </ul>

<p>to promote and to provide and plan for the needs of children</p>	<ul style="list-style-type: none"> <li>• taps into and applies the expertise offered by land developers towards providing substantial public benefits for the future community within the Menangle Park Urban Release Area.</li> </ul> <p>The Planning Agreement provides for the delivery of various facilities focused on the needs of the community.</p>
<p>to properly manage, develop, protect, restore, enhance and conserve the environment of the area for which it is responsible, in a manner that is consistent with and promotes the principles of ecologically sustainable development</p>	<p>Public open space land is proposed to become public assets under the Planning Agreement.</p> <p>Response to ESD principles:</p> <ul style="list-style-type: none"> <li>• The precautionary principle, inter-generational equity and conservation of biological diversity and ecological integrity: The Planning Agreement supports natural areas being retained, protected and integrated into the development scheme.</li> <li>• Improved valuation, pricing and incentive mechanisms: The Planning Agreement: <ul style="list-style-type: none"> <li>• provides for the timely provision of public open space by the Developer; and</li> <li>• allows the most efficient means of delivering that public open space (i.e. by the Developer).</li> </ul> </li> </ul>
<p>to have regard to the long term and cumulative effects of its decisions</p>	<p>The Planning Agreement sets out a framework for the efficient delivery and sustainable ongoing management of a substantial amount of public infrastructure on the Land.</p> <p>The Planning Agreement would relieve Council of the project risk associated with the provision of local infrastructure on the Land.</p>
<p>to bear in mind that it is the custodian and trustee of public assets and to effectively plan for, account for and manage the assets for which it is responsible</p>	<p>The Planning Agreement includes provisions placing defects liability obligations on the Developer for a 12 month period after Works are completed.</p> <p>The Planning Agreement also includes appropriate asset handover provisions.</p>
<p>to engage in long-term strategic planning on behalf of the local community</p>	<p>The Planning Agreement assures the long-term provision and management of public assets and infrastructure.</p>
<p>to exercise its functions in a manner that is consistent with and promotes social justice principles of equity, access, participation and rights</p>	<p>The Planning Agreement creates spaces and places for public interaction and provides facilities for the delivery of public services to the local community.</p>

### 7.3 Planning purposes and the objects of the EPA&A Act

The planning purposes served by the Planning Agreement can best be addressed by reference to the objects of the EPA&A Act.

It is considered that the Planning Agreement is consistent generally with the objectives of the EP&A Act and would further the following specific objectives:

Objective of the EP&A Act (section 1.3)	How does the Planning Agreement promote the objective?
(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources; and	The Planning Agreement provides a basis for the comprehensive management of the delivery of the local public open space and other infrastructure requirements within the Menangle Park Urban Release Area.
(b) to promote the orderly and economic use and development of land	Orderly development of land is encouraged by the Planning Agreement through the delivery of local public open space at or around the same time as the surrounding development which requires it.

### 7.4 Does the Planning Agreement conform with the planning authority's capital works program (if any).

The Council's capital works program does not apply to the Planning Agreement.

### 7.5 Does the Planning Agreement specify that certain requirements of the agreement must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued

Yes. The Planning Agreement requires that:

- specified Developer Contributions must be delivered prior to the issue of subdivision certificates for specified quantities of Final Lots, as identified in schedule 3 to the Planning Agreement.
- Security must be provided for specified items of Work prior to the issue of specified Construction Certificates, as identified in clause 16 of the Planning Agreement.