

Explanatory Note - Environmental Planning and Assessment Regulation 2000 (Clause 25E)

1. Introduction

Clause 25E of the *Environmental Planning and Assessment Regulation 2000* (NSW) (the **Regulation**) requires a planning authority proposing to enter into a voluntary planning agreement under Section 93F of the *Environmental Planning and Assessment Act 1979* (NSW) (the **Act**) to prepare an Explanatory Note about the Planning Agreement.

This Explanatory Note relates to the Planning Agreement proposed to be entered into by the parties described below in respect of land located at Orange Grove Road at Warwick Farm.

This Explanatory Note has been prepared jointly by the parties as required by clause 25E of the Regulation.

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

2. Parties

The parties to the Planning Agreement are:

- (a) Liverpool City Council (**Council**); and
- (b) Gazcorp Pty Ltd (ABN 41 001 696 073) (the **Developer**).

3. Background

The Planning Agreement relates to Lots 101 DP 1043160 and Lot 23 DP 1190437 (**Land**).

The registered proprietors of the Land are:

- Lot 101 DP1043160 - The Grove Investments Pty Ltd ATF The Grove Liverpool Unit Trust, ABN 57 620 787 715; and
- Lot 23 DP1190437 - Fashion Spree Investments Pty Ltd ATF Fashion Spree Unit Trust, ABN 55 620 787 326.

The registered proprietors of the Land are wholly owned entities of the Developer.

Initial Planning Proposal

In March 2015, the Developer lodged the initial Planning Proposal with respect to the Land with Council.

On 16 December 2015, Council resolved to:

- (a) support the Planning Proposal to permit shops as an additional permitted use within the Liverpool Local Environmental Plan 2008 (**LEP**) up to a maximum GFA of 21,000 square metres on the Land.
- (b) forward the Planning Proposal to the Department of Planning and Environment seeking Gateway pursuant to section 56 of the Act.

On 18 November 2016, the Department of Planning and Environment determined that the Planning Proposal should proceed, subject to the conditions in the Gateway Determination.

An updated Planning Proposal was lodged with Council in February 2017 to in accordance with the Gateway Determination (**Updated Planning Proposal**).

At its Ordinary Meeting on 16 December 2015, Council resolved to forward the Updated Planning Proposal to the Department of Industry and Environment (**DIPE**) for a Gateway Determination and public exhibition. The Updated Planning Proposal proceeded to public exhibition, and a post-exhibition report was presented to Council on 28 February 2018. Amendment 61 to the LEP was gazetted on 2 August 2019. On 8 February 2017, the Developer offered to enter into a Planning Agreement with Council to ensure an appropriate contribution is made towards public infrastructure if the Updated Planning Proposal is approved and the LEP is amended accordingly. This offer was further clarified in a letter from JBA on behalf of the Developer to Council dated 22 June 2017.

The Planning Agreement between Council and the Developer was prepared executed in relation to Amendment 61 to the LEP. It anticipated that any development subsequently carried out after that amendment was likely to increase the demand for the provision of public facilities. Accordingly, the Developer offered to make development contributions by way of a monetary contribution and to undertake substantial road upgrade works to ensure that the Warwick Farm area benefits from the increased demand and is not burdened by it.

Further Planning Proposal

On 7 September 2020, Council received a request to prepare a planning proposal on behalf of the Developer for the Land. An updated planning proposal request with supporting documentation was submitted to Council on 5 November 2020 following a request for additional information.

Following receipt of the updated planning proposal request, on 20 May 2021 Council lodged a planning proposal with DIPE which sought to amend the LEP to:

- a. include business premises as an additional permitted use under Schedule 1, Clause 24 as it applies to the 'Homemaker Centre' site at 10 Orange Grove Road, Warwick Farm (Lot 101 DP 1043160); and
- b. increase the current cap on retail premises under Schedule 1, Clause 21 from 19,000sqm to 21,000sqm and change the legal description so that the subject clause would apply to the 'Fashion Spree' site at 5 Viscount Place, Warwick Farm (Lot 23 DP 1190437),

(Further Planning Proposal)

On 1 July 2021, a Gateway Determination was issued in relation to the Further Planning Proposal.

If the Further Planning Proposal is approved and the LEP is amended as anticipated, the Developer has offered to make development contributions by way of a monetary contribution to continue ensuring that the Warwick Farm area benefits from the increased demand and is not burdened by it.

On 13 April 2021, the Developer offered to amend the Planning Agreement if the amendments sought to the LEP in accordance with the Further Planning Proposal are made.

This explanatory memorandum sets out the terms of the Planning Agreement as it will operate following the proposed amendment.

4. Land and Development to which the Planning Agreement will apply

The Planning Agreement applies to the Land, being part of Lot 101 DP 1043160 and part of Lot 23 DP1190437.



Figure 1

The Planning Agreement will apply to:

- (a) The development of the identified part of Lot 101 DP 1043160 for the purposes of Shops and Business Premises having an aggregate of 21,000 square metres (**Development**); and
- (b) the development of the identified part of Lot 23 DP 1190437 for the purposes of additional Retail Premises up to 2000 square metres GFA (beyond the 19,000 square metres of GFA permissible prior to the Further Planning Proposal) (**Further Development**).

5. Summary of Objectives, Nature and Effect of the Planning Agreement

Objective

The objective of the Planning Agreement is for the Developer to deliver the following Development Contributions:

- (c) monetary contributions:
 - (i) in relation to development for Shops and Business Premises on part of Lot 101 DP 1043160, equal to the greater of 3% of the capital investment value of the development or \$100 x 21,000 (**Monetary Contribution for the Development**); and

- (ii) in relation to development for Retail Premises on the part of Lot 101 DP 1043160 and the part of Lot 23 in DP1190437, equal to the greater of 3% of the capital investment value of that part of the development or \$100 x 2,000 (**Monetary Contribution for the Further Development**).
- (d) a monetary contribution to Council to reimburse Council for the acquisition of land north of the intersection of Homepride Avenue and Lawrence Hargrave Road (**Homepride Avenue Land**), which is to be acquired for a public purpose (**Homepride Monetary Contribution**).
- (e) roadworks comprising:
 - (i) rehabilitation of the road surface and construction of a pedestrian access on the Homepride Avenue Land;
 - (ii) construction of a slip lane on the north approach to the signalised intersection of Orange Grove Road and Viscount Place, including the dedication to RMS at no cost any land required to accommodate the provision of this slip lane;
 - (iii) an extension of the dual right turn lanes on the south approach to the signalised intersection of Orange Grove Road and Viscount Place to 120 (adjacent median) and 180 metres (adjacent through lane); and
 - (iv) extension of the existing right turn storage bay on the east approach to Homepride Avenue within the constraints of the existing Hume Highway corridor,(collectively referred to as the **Access Upgrades**).

Under the Planning Agreement, the Developer agrees to pay Monetary Contribution for the Development and the Monetary Contribution for the Further Development to Council, in accordance with Clause 6 of the Planning Agreement, prior to the release of an Occupation Certificate for the relevant part of the development.

Under the Planning Agreement, the Developer agrees to pay Homepride Monetary Contribution as follows:

- (a) If Council acquires the Homepride Avenue Land by private treaty, then the Developer must pay Homepride Monetary Contribution on the later of:
 - (i) completion of that acquisition by Council; and
 - (ii) five (5) business days after Council provides written notice to the Developer of the amount required to be paid.
- (b) If Council acquires the Homepride Avenue Land by Compulsory Acquisition, then the Developer must pay Homepride Monetary Contribution on the later of:
 - (i) the date on which Council is required to make payment of compensation on account of that acquisition; and
 - (ii) five (5) business days after Council provides written notice to the Developer of the amount required to be paid.

Homepride Monetary Contribution will not be required to be made by the Developer if the Homepride Avenue Land is dedicated to Council as a public road (by the Developer or otherwise) without any obligation on Council to make any payments contained within the definition of *Homepride Avenue Land Payment* contained in Schedule 3 of the Planning Agreement.

The Developer agrees to provide Council with a bank guarantee as security for payment of all monetary contributions in accordance with clause 7.3 and clause 11.2 of the Planning Agreement.

Nature

The Planning Agreement excludes the application of section 7.11 and section 7.12 of the Act to the Development and the Further Development and no further development contributions will be levied on that development under those sections of the Act, including in the circumstances where a section 7.11, or 7.12, plan is adopted by Council at a future time.

The Planning Agreement does not exclude the application of section 7.24 of the Act to the Development or the Further Development.

The Planning Agreement does not apply to, and therefore does not require contributions in relation to, the fitout of shops, business premises or retail premises on the Land or any redevelopment of the bulky goods premises or other uses currently permissible in the B5 zoned areas of the Land. The B5 zoned areas of the Land will be subject to any applicable plan prepared pursuant to Section 7.11 or 7.12 of the Act.

Effect

Council will use the Monetary Contribution for the Development and the Monetary Contribution for the Further Development to contribute to the upgrade of roads in the Warwick Farm area. The Homepride Monetary Contribution is to compensate Council for any costs incurred by Council in relation to the acquisition of the Homepride Avenue Land, at such a time when the acquisition takes place. The Developer will undertake the Access Upgrades at no cost to Council, by the times specified in Schedule 5 of the Planning Agreement.

These contributions will result in not only greater public amenity in the general Liverpool area, but will allow for safer access for vehicles and pedestrians on the roads around the Land, assisting many members of the public, including people who live in the area, people visiting the proposed development, or people who travel through the area to other destinations. This is particularly the case along Homepride Avenue where a large section of the road does not currently contain a pedestrian path and is therefore unsafe for pedestrians. The purchase of the Homepride Avenue Land and the subsequent Access Upgrades will also ensure that the public has unfettered access to Dwyer Oval to the east of the Land.

An important object of the Act is to encourage the promotion and co-ordination of the orderly and economic use and development of land. This Planning Agreement, the Monetary Contributions it allows for and the Access Upgrades which will be carried out promote this object by ensuring that:

- (a) the retail opportunities provided by the development are accessible by the people who will require access, which will not only include the customers but also the business owners;
- (b) access to the development is safe and efficient to all visitors;
- (c) access around the development is safe and efficient to all vehicles and pedestrians; and
- (d) the existing character the suburb will not be negatively impacted by the increased road and foot traffic around the development.

6. Assessment of the Merits of the Planning Agreement

The Planning Purposes Served by the Draft Planning Agreement

In accordance with section 7.4(2) of the Environmental Planning and Assessment Act 1979, the Planning Agreement facilitates the following public purposes:

- (a) the provision of (or the recoupment of the cost of providing) public amenities or public services;

- (b) the provision of (or the recoupment of the cost of providing) transport or other infrastructure relating to land;
- (c) the funding of recurrent expenditure relating to the provision of public amenities or public services, affordable housing or transport or other infrastructure; and
- (d) the monitoring of the planning impacts of development.

The Planning Agreement is in line with acceptability test in clause 5.2 of Councils Planning Agreement Policy 2019 in that it:

- (a) allows for the proper planning purposes of upgrading a public road and associated footpath;
- (b) provides for public benefits in relation to the development, in that the Homepride Avenue Land on which the Access Upgrades will be carried out are adjacent to the development;
- (c) produces outcomes that meet the general values and expectations of the public and protect the overall public interest in ensuring that public thoroughfare safety is improved and is not negatively impacted by the development, and that the public are able to safely access the development and Dwyer Oval;
- (d) provides for a reasonable means of achieving and securing the benefits proposed in that:
 - (i) Monetary Contribution for the Development and the Monetary Contribution for the Further Development can be used by Council as it sees fit to improve public infrastructure in the Liverpool area;
 - (ii) Homepride Monetary Contribution ensures that Gazcorp will compensate Council for the monies paid to purchase land necessary for the provision of a public road; and
 - (iii) The Access Upgrades will ensure that the Homepride Avenue is upgraded in such a way that public will have safe and easy access to and around the Land; and
- (e) protects the public against unreasonable, adverse environmental or amenity impacts by ensuring public thoroughfare is not negatively impacted by the development, and that the public is able to access the development safely.

How the Draft Planning Agreement Promotes the Public Interest

The public interest is promoted by the provision to Council of funds which it will apply toward the upgrade of local and regional roads in the Warwick Farm area and the purchase of the Homepride Avenue Land on which the Developer will carry out part of the Access Upgrades.

The development will operate to provide increased retail opportunities for businesses and consumers in the Warwick Farm area, which is a matter of public interest and provides a significant public benefit.

This increased road and foot traffic as a result of the development would be better serviced by the Access Upgrade, which will:

- (a) ensure that access to the development is quick, safe and easy for vehicles and pedestrians;
- (b) ensure traffic travelling past the site is not negatively impacted by the increase in visitors to the area, and that travelling past the development is quick, safe and easy for vehicles and pedestrians; and
- (c) encourage business within the development due to ease of access.

The Monetary Contributions proposed to be made and Access Upgrade works proposed to be conducted by the Developer are intended to positively affect the economic and social wellbeing and provide a public benefit to the suburb of Warwick Farm and the wider Liverpool area.

Both residents and visitors will benefit from the Monetary Contributions and Access Upgrades under this Planning Agreement, ensuring that the Warwick Farm and greater Liverpool area is an active, vibrant community.

How the Draft Planning Agreement Promotes the Objects of the Environmental Planning and Assessment Act, 1979 (EP&A Act)

The provision of the Monetary Contributions and the Access Upgrade works required under the Planning Agreement will promote the objects of the Act, in particular:

- (a) (5) (a) (i) “the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment”; and
- (b) (5) (a) (ii) “the promotion and co-ordination of the orderly and economic use and development of land”.

How the Planning Agreement promotes elements of the Council’s charter under section 8 of the Local Government Act, 1993

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

- (a) 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 and to ensure that its decision-making is transparent.
- (b) To manage lands and other assets so that current and future local community needs can be met in an affordable way which provides the best possible value for residents and ratepayers.
- (c) To act fairly, ethically and without bias in the interests of the local community
- (d) 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.
- (e) To recognise diverse local community needs and interests.
- (f) To have regard to the long term and cumulative effects of its decisions on future generations.
- (g) 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.
- (h) To engage in long-term strategic planning on behalf of the local community.
- (i) To promote the public interest by committing the Developer to make contribution towards local infrastructure.

Conformity with the Council’s Capital Works Program for 2017- 2022

The Planning Agreement is not inconsistent with the Council’s Capital Works Program, contained in the Delivery Program 2017 – 2022 & Operational Plan 2021 – 2022.

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

An Occupation Certificate for the development on the part of Lot 101 DP 1043160 as shown coloured green on Key Sites Map 10 of the LEP (**Development Land**) may not be issued unless and until the following has occurred:

- (a) If Homepride Monetary Contribution is required to be paid, Homepride Monetary Contribution has been made; and
- (b) Monetary Contribution for the Development has been paid.

An Occupation Certificate for the development on the part of Lot 101 DP 1043160 and the part of Lot 23 in DP1190437 as shown coloured light purple on Key Sites Map 10 of the LEP (**Further Development Land**) may not be issued unless and until the Monetary Contribution for the Further Development has been paid.

In addition, prior to the issue of an Occupation Certificate for the development on the Development Land, the Developer must complete part of the Access Upgrades being the:

- (a) construction of a slip lane on the north approach to the signalised intersection of Orange Grove Road and Viscount Place and an extension of the dual right turn lanes on the south approach; and
- (b) extension of the existing right turn storage bay on the east approach to Homepride Avenue within the constraints of the existing Hume Highway corridor.

Prior to the issue of a Construction Certificate for the Development on the Development Land, the Developer must provide to Council two (2) bank guarantees as follows:

- (a) For an amount equal to Monetary Contribution for the Development; and
- (b) For an amount equal to the sum of the Contribution Values specified for the Access Upgrades in Schedule 5 of the Planning Agreement.

A bank guarantee for the Monetary Contribution for the Further Development is required prior to the issue of a Construction Certificate for that development.

THIS EXPLANATORY NOTE IS NOT TO BE USED TO ASSIST IN CONSTRUING THE PLANNING AGREEMENT