

Explanatory Note: El Caballo Blanco and Gledswood Planning Agreement

Camden Council

SH Camden Valley Pty Limited (As Trustee for the SH
Camden Valley Unit Trust)

SH Camden Lakeside Pty Ltd (As Trustee for the SH
Camden Lakeside Unit Trust)

Prepared in accordance with clause 25E of the
Environmental Planning and Assessment Regulation 2000

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1. Summary of objectives, nature and effect

Clause 25E(1) of the *Environmental Planning and Assessment Regulation 2000* (**the Regulation**) requires that an explanatory note must be prepared to accompany a planning agreement. The explanatory note must address the requirements of clause 25E(1)(a)-(b) and clause 25E(2)(a)-(g) of the Regulation.

This explanatory note has been prepared to address these requirements.

A draft planning agreement (**the Agreement**) has been prepared. The proposed parties to the Agreement are Camden Council (**the Council**) on one hand, and SH Camden Valley Pty Limited (As Trustee for the SH Camden Valley Unit Trust) and SH Camden Lakeside Pty Ltd (As Trustee for the SH Camden Lakeside Unit Trust) (**the Developer**) on the other.

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

The Agreement relates to:

- (a) an 'Instrument Change' sought by the Developer, being the *Camden Local Environmental Plan 2010 (Amendment No 3)* published on 22 March 2013; and
- (b) various development applications that have been made (and will be made) relying on that Instrument Change.

Generally speaking the subject development is for development of:

- certain land on Camden Valley Way for urban purposes, involving subdivision to accommodate up to 400 dwellings, associated non residential development and infrastructure; and
- Golf Holes.

The land to which the agreement applies is known as Lot 1201 DP 1187381, Lot 1203 DP 1187381, Lot 1 DP 1233370, Lot 2 DP 1233370 and part of Lot 1202 DP1187381.

1.2 Objectives

The objective of the Agreement is to provide a mechanism by which:

- (a) works can be carried out;
- (b) land can be dedicated;
- (c) monetary contributions can be made;
- (d) the natural environment can be conserved or enhanced; and
- (e) the provision of a public amenity,

to benefit the community.

1.3 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 for works, land dedication, monetary contributions and measures for the conservation or preservation of the natural environment.

A summary of these contributions is set out below.

Works

The works can be generally described as:

- (a) A park (or recreation area if the owner of the land has elected to retain land in private ownership) of 1.15 ha.
- (b) A two lane vehicular crossing (max 30m span or culverts) over Rileys Creek.
- (c) A cycleway/pedestrian pathway.
- (d) Maintenance of certain dedicated land.

Land dedication

The land to be dedicated can be generally described as:

- (a) Dedication of 1.15 ha of land for a park (if the owner has not elected to retain the land in private ownership).
- (b) Dedication of relevant land associated with Rileys Creek crossing (approx 20m x 100m).
- (c) A two lane vehicular crossing (max 30m span or culverts) over Rileys Creek.
- (d) Dedication of certain land identified as 'Riparian Corridor - Bushland Greenspace'.

Monetary contributions

Monetary contributions totalling \$7,568 per 'Contribution Lot' (as defined in the Agreement). This amount is to be indexed over time.

Conservation or preservation of the natural environment

The Agreement requires the implementation of measures in relation to:

- (a) vegetation establishment and management;
- (b) water cycle management.

Provision of a public amenity

The Agreement requires the provision of golf holes.

1.4 Effect

The delivery of the above contributions is timed to coincide with key benchmarks in the development of the land. This aligns the creation of new infrastructure, conservation

measures and the golf holes to the creation of demand for those facilities in a way that is practicable for the Developer.

The Agreement provides the enforcement of the Agreement by a suitable means if there is a breach by the Developer.

The requirement to make contributions is generally linked to the issue of subdivision certificates.

Generally, if the required contributions are not made, a subdivision certificate cannot be lawfully issued unless the Council has agreed to defer the time and a security is provided in lieu.

There are additional provisions requiring the provision of security and allowing for the compulsory acquisition of land that has not been dedicated in breach of the Agreement.

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

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.

2. Assessment of the merits of the proposed agreement

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

The Agreement has a positive impact on the public, and in particular, the residents of the local community. This is because the Agreement provides an opportunity to facilitate:

- (a) improvements to important elements of the public domain;
- (b) improvements to transport links;
- (c) active living through a new cycleway;
- (d) an increase in the quality and quantity of local open space enjoyed by the community;
- (e) better recreational facilities to serve the community;
- (f) the conservation or preservation of the natural environment by vegetation and conservation measures and water quality measures.

The Agreement, therefore, will help avoid a future financial impost for the Council and ratepayers.

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

The Agreement promotes the following objects of the Act:

- (a) Section 1.3(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...

- (b) Section 1.3(c)
to promote the orderly and economic use and development of land...
- (c) Section 1.3(e)
to protect the environment...
- (d) Section 1.3(g)
to promote good design and amenity of the built environment...

The Agreement promotes the above objects of the Act, and the public interest, by providing contributions set out in section 1.3 above.

2.3 The purposes of the *Local Government Act 1993*

The Council is the planning authority that would be a party to the Agreement. The Council is a public authority constituted under the *Local Government Act 1993*

The Agreement promotes the following purposes of this Act:

- (a) Section 7(e):
to provide for a system of local government that is accountable to the community and that is sustainable, flexible and effective ...

The Agreement promotes the above purposes of the Act in the same way that is set out in section 2.2 above.

2.4 The principles for local government

Chapter 3 of the *Local Government Act 1993* sets out principles for local government

The Agreement promotes the following elements of the principles:

- (a) Section 8A(b):
Councils should carry out functions in a way that provides the best possible value for residents and ratepayers.
- (b) Section 8A(f):
Councils should manage lands and other assets so that current and future local community needs can be met in an affordable way.
- (c) Section 8A(g):
Councils should work with others to secure appropriate services for local community needs.
- (d) Section 8B(b):
Councils should invest in responsible and sustainable infrastructure for the benefit of the local community.

The Agreement promotes the above principles in the same way that is set out in section 2.2 above.

2.5 The planning purpose

The planning purpose of the Agreement is to provide an opportunity to facilitate improvements and additions to the public domain, improve transport links, promote active living, improve recreational facilities available to the community and make provision for the conservation or enhancement of the environment.

The Agreement provides a reasonable means of achieving that purpose because there are limits on what the Developer can be required to do as a condition of a development consent. By entering into the Agreement, the Council is able to secure benefits for the community that may not otherwise be available. The Agreement achieves these benefits for the community without the need for public funds to be expended.

2.6 The Council's capital works program

The Contribution proposed under the Agreement does not conform with the Council's capital works program. This opportunity has arisen outside of the program. Nonetheless, the Agreement will not have an adverse effect on this capital works program.

2.7 Construction certificate, occupation certificate or subdivision certificate

The Agreement does not specify any requirements that must be complied with before an occupation certificate is issued.

The Agreement does specify that certain requirements must be complied with before certain construction and subdivision certificates are issued. These requirements are set out in the Agreement. The requirements are generally the provision of security and the carrying out of works, the payment of monetary contributions and/or the dedication of land.

3. Preparation of this explanatory note

This explanatory note has been prepared jointly by the parties proposing to enter into the Agreement.