

# Explanatory Note

## Deed Amending the “Planning Agreement (North Cooranbong)”

### Introduction

Clause 25E of the *Environmental Planning and Assessment Regulation 2000* requires a planning authority (Lake Macquarie City Council) proposing to enter into a planning agreement under Section 7.4 of the *Environmental Planning and Assessment Act 1979* to prepare an explanatory note about the planning agreement.

The existing planning agreement between Johnson Property Group Pty Ltd (**Developer**) and Lake Macquarie City Council (**Council**) comprises:

- “Planning Agreement (North Cooranbong)” dated 1 June 2015 (referred to as the 2015 Agreement), and
- Deed Amending the “Planning Agreement (North Cooranbong)” dated 19 December 2017 (referred to as the 2017 Agreement).

This explanatory note is about the proposal to amend both the 2015 Agreement and the 2017 Agreement by entering into the proposed Deed Amending the “Planning Agreement (North Cooranbong)” which is referred to in this Explanatory Note as the Deed Amending.

The 2015 Agreement and the 2017 Agreement require the Developer to make contributions which include land dedication, works and cash contributions for open space, recreation and community facilities; provision of road works; and the dedication, rehabilitation and maintenance of environmental conservation lands at certain times in connection with the development of land at North Cooranbong.

The contributions to be provided under the Deed Amending are in lieu of Section 7.11 contributions that would otherwise be payable for the development of land controlled by the Developer, as well as some other smaller landowners. The Deed Amending does not change that situation, with the exception of certain situations where the Developer has not entered into an agreement with an owner of Non-Developer Controlled Land (as defined in the Deed Amending) to contribute to the delivery of infrastructure when that land is developed.

This explanatory note has been prepared jointly between the parties. This explanatory note is a summary only of the Deed Amending, is not to be relied upon as a complete description of the Deed Amending, and is not to be used as an aid in construing the Deed Amending.

### Background

A concept plan under the former Part 3A of the Environmental Planning and Assessment Act, 1979 has been approved by the Department of Planning for development (primarily by subdivision) for up to 2,500 low and medium density residential lots, commercial lands, public recreation/open space lands, environmental conservation lands, and associated

infrastructure (“**the Development**”). The Developer also sought to rezone land to facilitate the development proposed in the concept plan. The Developer originally entered into a planning agreement on 26 November 2008 (**2008 Agreement**) with the Council in connection with the proposed rezoning. That planning agreement applies to land controlled by the Developer as well as other smaller landholdings that benefitted from the rezoning. The Council did not require those other developers who control the smaller landholdings to be parties to the planning agreement.

The 2008 Agreement has been amended by the “Planning Agreement (North Cooranbong) dated 16 December 2013, which has been amended by:

- “Planning Agreement (North Cooranbong)” dated 1 June 2015 (referred to as the 2015 Agreement), and
- Deed Amending the “Planning Agreement (North Cooranbong)” dated 19 December 2017 (referred to as the 2017 Agreement).

The Deed Amending will come into effect immediately on execution by the Developer and the Council.

### **Objectives, Nature and Effect of the Amending Deed**

The Deed Amending will amend the 2015 Agreement (as amended by the 2017 Agreement) by replacing all the terms in that agreement with the terms in the Deed Amending.

It is proposed to amend the existing planning agreement in terms of the following key aspects:

- Removal of the upgrade works at the intersection of Alton Road and Freemans Drive, given that Council will receive a grant for the design and construction of the Alton Road / Central Road / Freemans Drive intersection upgrade. Council will be responsible for the delivery of the intersection upgrade works. The Developer is required to dedicate all land controlled by the Developer, other than existing public roads, that will be required to enable Council to complete the intersection upgrade works and is required to deliver any design work it has carried out to date to Council;
- Inclusion of a new obligation to pay Council \$3,542,545.00 prior to the issue of a subdivision certificate for the 750<sup>th</sup> lot in the development, to be used towards additional infrastructure that benefits the Cooranbong community;
- Changes to timing triggers for the delivery of some works to assist with commercial delivery and align with community needs;
- Revised facility specifications for recreation and community facilities to meet current community expectations and Council’s standard of construction;
- Introduces additional infrastructure delivery obligations on the developer for the shared pathway and road extension of Patrick Drive, connecting to the Wainman Drive and McCullough Street roundabout, as well as some additional formalised riparian (shared pathway) crossings.
- A change in route of the shared pedestrian and cycle paths from Cooranbong to Morisset; and
- Amendments to various general clauses that affect the operation and complexity of the agreement.

Plans, building specifications, and delivery timing of facilities are detailed in the Deed Amending.

### **Assessment of the merits of the Amending Deed including the impact on the public**

The continuation of the residential subdivision within the Development will increase the supply of land for housing which will attract families to the Lake Macquarie region, and will have positive economic impacts for the local economy in terms of jobs and spending, particularly in a post COVID recovery period.

The facilities anticipated under the Deed Amending are considered adequate for the development of up to 2500 lots. These facilities include a range of open space and recreation facilities, community facilities, road works and the rehabilitation and maintenance of environmental corridors, including the payment to Council of an endowment fund of \$1.37m for the future maintenance of the environmental corridors.

The Deed Amending details the facilities, and the timing of facilities, in line with development to ensure a socially sustainable development. The Deed Amending clearly outlines the obligations of both parties in the provision of facilities.

The drafting in the Deed Amending has been simplified from that used in the 2015 Agreement and the 2017 Agreement, and in some sections adds clarification, which will assist in the ongoing implementation of the Deed.

The proposed terms have benefits to both the Developer and the community.

### **Assessment of whether the Amending Deed conforms to Council's Capital Works Program**

At the completion of the five-year maintenance period, Council will need to consider the maintenance of all public facilities to be vested to Council when determining the annual Capital Works Program.

### **Satisfaction of requirements before the issue of a construction certificate, occupation certificate or subdivision certificate**

The 2015 Agreement and the 2017 Agreement require the Developer to make contributions in accordance with the timing specified in those Agreements prior to the issue of subdivision certificates for defined stages in the Development. The Deed Amending adjusts timing of contributions but ensures the Developer must make contributions at times relative to the Development. The Deed Amending provides for restrictions on the issue of subdivision certificates and other actions by Council where contributions are not delivered at the required time.