

EXPLANATORY NOTE

For the purpose of *Environmental Planning and Assessment Regulations 2021 (Section 205)* in respect of amendments to Voluntary Planning Agreements between:

Strathlone Estates Pty Ltd (Developer)

AND

Lithgow City Council

(Collectively referred to as the "Parties")

The parties have agreed to the proposed draft amendments.

Background – DA 66/05

A. On 23 February 2005, the Developer made a Development Application (DA66/05) to the Council for Development Consent to carry out the Development on the Land.

B. That Development Application was accompanied by an offer by the Developer to enter into an Agreement to make Development Contributions towards the Public Facilities if that Development consent was granted.

C. On 28 April 2006, Council granted Development Consent to DA66/05 for a 47-lot residential subdivision of the Land.

D. In or about September 2006, following a public exhibition period and Council resolution dated 18 September 2006, the Parties entered into the Planning Agreement on terms offered by the Developer and accepted by Council.

E. Pursuant to clause 203(5) of the Environmental Planning and Assessment Regulation 2021, the parties agree to amend the Planning Agreement entered in September 2006 by replacing it with the terms of this Amended Planning Agreement.

F. The parties agree that the Planning Agreement entered in September 2006 will be automatically revoked and cease to have effect upon the signing by both parties of this Amended Planning Agreement.

Background – DA 67/05

A. On 23 February 2005, the Developer made a Development Application (DA67/05) to the Council for Development Consent to carry out the Development on the Land.

B. That Development Application was accompanied by an offer by the Developer to enter into an Agreement to make Development Contributions towards the Public Facilities if that Development consent was granted.

C. In or about September 2006, following a public exhibition period and Council resolution dated 18 September 2006, the Parties entered into a Planning Agreement on terms offered by the Developer and accepted by Council.

D. On 9 August 2007, Council granted Development Consent DA67/05 for a 54-lot residential subdivision.

E. Pursuant to clause 203(5) of the Environmental Planning and Assessment Regulation 2021, the parties agree to amend the Planning Agreement entered in September 2006 by replacing it with the terms of this Amended Planning Agreement.

F. The parties agree that the Planning Agreement entered in September 2006 will be automatically revoked and cease to have effect upon both parties having signed this Amended Planning Agreement.

1. The proposed amendments to the VPAs

For transparency all draft amendments are shown in red in the exhibited documents.

Objective of the Amendments

The amendments seek to strengthen the clauses of the agreement relating to registration of the agreement on land title and reassignment of the obligations of the agreement if the land is sold or transferred.

The other terms of the VPA remain unchanged.

General changes

- Throughout the VPA's references to Sections of the *Environmental Planning and Assessment Act 1979 and its Regulations 2021* have been amended to reflect current sections/clauses and numbering.
- The land description to which the draft agreements relate has been amended to reflect current land description.
- Miscellaneous updates or additional information to improve the planning agreement information.

Intended Effect

To update and provide additional information.

Specific clause changes

Clause 8 – Registration of this Agreement

Clause 8 has been amended to require the agreement to run with the land in accordance with Section 7.6 of *Environmental Planning and Assessment Act 1979*.

A planning agreement that has been registered to run with the land (registered on title) is binding on, and is enforceable against, the owner of the land from time to time as if each owner for the time being had entered into the agreement.

Intended Effect

To ensure that the planning agreement will still have effect should stated “parties” of the agreement change.

Clause 12 – Notices

Clause 12 has been amended to remove references to Council officers and replace with the position of General Manager.

Intended Effect

To ensure currency of the planning agreement over time.

Clause 14 - Assignment and Dealings

Clause 12 has been amended to ensure that the developer does not sell the land to which the agreements relate unless satisfactory legal arrangements are in place to ensure that the developer's obligations under the agreement are to be met by any incoming purchaser.

Intended Effect

This amendment will provide interim security until such times as the registration of the agreement on land title is finalised.

2. The lands subject to the planning agreements are:

Lot 199 in DP1179748 located at Great Western Highway, South Bowenfels (being prior Lots 10 & 11 DP1074721, being Great Western Highway, South Bowenfels) being land subject to DA 66/05 and DA 67/05 as modified.

A plan of the subject lands is outlined in red below:



3. Merits of the draft amendments to the planning agreement

The draft amendments remove any ambiguity in relation to whom the agreement is binding on, and is enforceable against, into the future. This will ensure that the development contributions to be made under Clause 5 of the planning agreements remain recoverable in the event that the land changes ownership. The contributions are payable prior to the release of any subdivision certificates.

The proposed amendments are current best practice in relation to planning agreements.

4. Impacts on the public

The draft amendments to the planning agreements will ensure that should the land be subdivided in accordance with DA66/05 and DA67/05, the developer (at that time) will pay reasonable contributions towards the provision of community facilities and active open space to service the needs of that development.

Council will then spend those funds to deliver the required facilities and open space to service the area in accordance with the relevant adopted plans and capital works program.