

Explanatory Note to Planning Agreement
between Muswellbrook Shire Council and Patarm Pty Ltd

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

1. Background

Patarm Pty Ltd (ACN 115 080 629) (Developer) has made an offer to Muswellbrook Shire Council (Planning Authority) to enter into a Planning Agreement in connection with two separate development applications.

2. Description of Subject Land

The Planning Agreement relates to land identified as Lot 101 DP 793194 known as Lot 101 Thompson Street, Muswellbrook (the Land).

3. Description of Development Applications

On 10 March 2008, Council granted deferred commencement consent to Development Application No. 462/2007 for a supermarket, specialty shops and a two (2) lot commercial subdivision on the Land (the Development Consent).

Prior to the application being determined by Council, the Developer made an offer by letter dated 27 February 2008 to enter into a Planning Agreement to make a development contribution towards upgrading the intersection of Thompson Street and the New England Highway for the safe ingress and egress of vehicles associated with the proposed development and surrounding area by the installation of traffic lights

The Development Consent was granted subject to two deferred commencement conditions. Condition No. 1 requires the proponent to enter into a Planning Agreement with Council in accordance with:

- (a) Division 6 of Part 4 of the *Environmental Planning and Assessment Act 1979 (EP&A Act)*; and

(b) The terms of the proponent's offer to Council dated 27 February 2008.

Condition No. 2 relates to the submission of stormwater engineering details.

The Development Consent does not operate until the above conditions have been satisfied and Council has issued written notice to this effect.

On 9 March 2009, Council resolved to modify the Development Consent under Section 96 of the EP&A Act in the following manner:

- Extension of timeframe to comply with Deferred Commencement conditions to 10 March 2010;
- Reconfigured building to align with northern and eastern boundaries;
- Reduced supermarket floor area from 2500m² Gross Floor Area (GFA) to 2040m² GFA;
- Reduced specialty retail (7 x retail outlets) from 540m² GFA to 355m² GFA;
- Reduced total built upon area from 3154m² to 2400m²;
- Increased car parking from 127 spaces and two disabled parking spaces to 140 parking spaces including three (3) disabled spaces;
- Reconfigured car parking area, landscaped areas and loading dock;
- Reconfigured entry courtyard/plaza area and colonnade;
- Realigned exit driveway;
- Slight repositioning of the two pylon signs;
- Realigned public amenities; and
- New signs approach; two smaller flush wall signs and one additional flush wall sign.

A separate Development Application No. 325/2008 for a bulky goods retail outlet proposed at the southern end of the site was approved by Council on 9 March 2009.

The development consent was granted to DA No. 325/2008 subject to two deferred commencement conditions. Condition No. 1 requires the proponent to enter into a Planning Agreement with Council in accordance with

(c) Division 6 of Part 4 of the Environmental Planning and Assessment Act 1979; and

(d) The terms of the proponent's offer to Council dated 24 February 2009.

Condition No. 2 relates to the submission of stormwater engineering details.

The consent does not operate until the above conditions have been satisfied and Council has issued written notice to this effect.

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

The objective of the Planning Agreement is to facilitate the payment of monetary contributions by Council towards the cost of the intersection upgrade works.

The Planning Agreement requires the Developer to upgrade the intersection of Thompson Street and the New England Highway by the installation of traffic lights to RTA standards. Council will pay 50% of the costs incurred by the Developer, including any project management fees payable to an independent project manager engaged by the Developer, in carrying out the works up to a maximum amount of \$300,000 (excluding GST).

5. Key Features of the Voluntary Planning Agreement

The key features of the Planning Agreement are set out below with an explanation as necessary:

- (a) The Planning Agreement requires the upgrading of the intersection of Thompson Street and New England Highway to be completed within 12 months after the date on which a contract is entered into between the Developer and Contractor to carry out the works;
- (b) The Council will pay 50% of the costs incurred by the Developer, including any project management fees, in carrying out the works up to a maximum of \$300,000 (excluding GST);
- (c) The Planning Agreement contains provisions relating to dispute resolution, should disputes arise between the relevant parties; and
- (d) The Planning Agreement will be registered on the title to the Land.

6. Merits of the Planning Agreement and impact on the public

The Planning Purposes Served by the Draft Planning Agreement

The Planning Agreement provides the upgrading of the intersection of Thompson Street and the New England Highway through the installation of traffic signals and completion of associated road works. The intersection improvements will benefit both the subject development and the local area by improving the efficiency and safety of the intersection which is currently operating at a poor level of service (Level of Service F).

How the Draft Planning Agreement Promotes the Objects of the EP&A Act

The Planning Agreement is consistent with the objects of the EP&A Act as it promotes the orderly and economic use and development of land.

How the Draft Planning Agreement Promotes the Public Interest

The Planning Agreement is in the public interest as it will facilitate the upgrading of public infrastructure (ie the intersection of Thompson Street and New England Highway) to the benefit of the local community. The proposed upgrade will improve public safety and the operational efficiency of the intersection.

For Planning Authorities:

(a) Councils – How the Planning Agreement Promotes the Elements of the Council's Charter

The contributions payable under the Planning Agreement will be used to fund the development and upgrading of a community asset in accordance with Council's obligations under the charter. The agreement considers the long term needs of the local community and promotes the effective management of the assets for which Council is responsible.

(b) All Planning Authorities – Whether the Draft Planning Agreement Conforms with the Authority's Capital Works Program

Council's contribution payable under the Planning Agreement is allocated in Council's approved Capital Works Budget.

The Impact of the Draft Planning Agreement on the Public or Any Section of the Public

The Planning Agreement will not have an adverse impact on the public or any section of the public.