

Explanatory Note

Draft Voluntary Planning Agreement for conservation land at 270 Fishery Point Road, Bonnells Bay

Introduction

Clause 25E of the *Environmental Planning and Assessment Regulation 2000* requires a planning authority (Lake Macquarie City Council) proposing to enter into a voluntary planning agreement under Section 93F of the *Environmental Planning and Assessment Act 1979* to prepare an explanatory note about the voluntary planning agreement.

This explanatory note relates to the draft Voluntary Planning Agreement (hereafter referred to as "Planning Agreement") proposed to be entered into by Stannic Securities Pty Limited ("the Developer") and the Lake Macquarie City Council ("the Council") in respect of land at 270 Fishery Point Road, Bonnells Bay ("the land").

A planning agreement results from an offer by a developer to a consent authority to dedicate land, make monetary contributions, or provide any other material public benefit, to be used for or applied toward a public purpose, when relevantly, an amendment to a local environmental plan is proposed to facilitate development.

This explanatory note has been prepared jointly between the parties as required by clause 25E of the *Environmental Planning and Assessment Regulation 2000*.

Background

In March 2005, Lake Macquarie City Council approved the preparation of a draft amendment to the Lake Macquarie Local Environmental Plan 2004 (draft LMLEP amendment) applying to the land.

The draft LEP amendment aims to rezone the land from Zone 7(1) Conservation (Primary) Zone and Zone 7(2) Conservation (Secondary) Zone to Zone 2(1) Residential Zone, Zone 7(1) Conservation (Primary) Zone and Zone 7(2) Conservation (Secondary) Zone to allow the land to be used for residential and conservation purposes.

The draft LEP amendment was exhibited from 12 June 2007 until 10 July 2007. The draft LEP amendment is accompanied by an offer from the Developer to enter into a Voluntary Planning Agreement with Lake Macquarie City Council to dedicate part of the land for conservation purposes ("the conservation land").

Objectives of the Planning Agreement

The objective of the Planning Agreement is to:

- 1) dedicate the conservation land at no cost to Council, and,

2) provide management and rehabilitation of vegetation for that conservation land.

Nature of the Planning Agreement

The Planning Agreement is between the Developer and Lake Macquarie City Council, and provides for Stannic Securities Pty Limited to dedicate the conservation land to Council at no cost. The Developer will also prepare a Management Plan for the conservation land, to provide for the rehabilitation and maintenance of the land over a three-year period by the Developer at its cost.

Effect of the Planning Agreement

If the draft LEP amendment applying to the subject site is gazetted by the Minister for Planning, the Developer will be required to dedicate conservation land to Council within 2 years of the gazettal.

Assessment of the Merits of this Planning Agreement in relation to the Public Interest

The draft LEP amendment and Planning Agreement will provide:

- 1) residential zoned land in proximity to Bonnells Bay Neighbourhood Centre to assist in meeting population targets established in the Lower Hunter Regional Strategy;
- 2) the conservation land to protect the environmentally sensitive parts of the land;
- 3) provide for the dedication of the conservation land to Council without cost; and
- 4) provide management and rehabilitation of the conservation land for a three-year period.

The Planning Agreement aims to achieve a balanced outcome between the desires for additional land for residential development and preserving the key environmental attributes of the site.

How this Planning Agreement promotes the Public Interest

The Planning Agreement aims to achieve a balanced outcome between the desires for residential development and the protection of key environmental attributes of the land.

The dedication of the conservation land to Council without cost will provide a valuable natural asset that will be of significant benefit to the community into the future and assist maintaining the amenity for local residents. Transfer of that land to Council for conservation purposes contributes to the balance between development and conservation on the Morisset peninsula.

How this Planning Agreement promotes the Objects of the *Environmental Planning and Assessment Act 1979*

The objects of the Act are:

- (a) to encourage:
 - (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,

- (ii) the promotion and co-ordination of the orderly and economic use and development of land,
 - (iii) the protection, provision and co-ordination of communication and utility services,
 - (iv) the provision of land for public purposes,
 - (v) the provision and co-ordination of community services and facilities, and
 - (vi) the protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats, and
 - (vii) ecologically sustainable development, and
 - (viii) the provision and maintenance of affordable housing, and
- (b) to promote the sharing of the responsibility for environmental planning between the different levels of government in the State, and
- (c) to provide increased opportunity for public involvement and participation in environmental planning and assessment.

In relation to (a) the Planning Agreement particularly promotes the Objects (i), (ii), and (vi).

The Planning Agreement aims to achieve a balanced outcome between the development of the land for residential purposes and the provision of the conservation land to preserve the key environmental attributes of the land. Public ownership of the conservation land ensures public accessibility.

In relation to (b) the Planning Agreement and draft LEP have evolved through intergovernmental discussion and negotiation, particularly in relation to conservation outcomes on the subject site.

How this Planning Agreement promotes the Elements of the Council's Charter under Section 8 of the *Local Government Act 1993*

Under Section 8 of the *Local Government Act 1993*, a council has the following charter:

- 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
- to exercise community leadership
- to exercise its functions in a manner that is consistent with and actively promotes the principles of multiculturalism
- to promote and to provide and plan for the needs of children
- to properly manage, develop, protect, restore, enhance and conserve the environment of the area for which it is responsible, in a manner that is consistent with and promotes the principles of ecologically sustainable development
- to have regard to the long term and cumulative effects of its decisions

- to bear in mind that it is the custodian and trustee of public assets and to effectively account for and manage the assets for which it is responsible
- to facilitate the involvement of councillors, members of the public, users of facilities and services and council staff in the development, improvement and co-ordination of local government
- to raise funds for local purposes by the fair imposition of rates, charges and fees, by income earned from investments and, when appropriate, by borrowings and grants
- to keep the local community and the State government (and through it, the wider community) informed about its activities
- to ensure that, in the exercise of its regulatory functions, it acts consistently and without bias, particularly where an activity of the council is affected
- to be a responsible employer.

The Planning Agreement promotes Council's charter under section 8 of the *Local Government Act 1993* as it:

- 1) preserves the key environmental attributes of the subject site, and
- 2) provides a facility, namely conservation land, for community use.

The Planning Purpose and an assessment of whether the draft Planning Agreement provides for a reasonable means of achieving the purpose

The planning purpose is the reservation of land in public ownership for the protection and conservation of the natural environment

The Planning Agreement is a reasonable means for achieving that planning purpose as it provides for the dedication of land for conservation purposes to Council upon the gazettal of the amendment to the LMLEP 2004 free of cost to the Council.

The Council and the Developer have accepted this as a reasonable means.

Assessment of whether the Planning Agreement conforms to Council's Capital Works Program

At the completion of the three-year maintenance period, Council will need to consider the maintenance of the conservation land when determining the annual Capital Works Program.

Note: this explanatory note is a summary only of the Planning Agreement, is not to be relied upon as a complete description of the Planning Agreement, and is not to be used as an aid in construing the Planning Agreement.