

Explanatory Note

This Explanatory Note has been prepared jointly by the parties and is not to be used to assist in construing the Draft Planning Agreement.

Draft Planning Agreement

Under s7.4 of the *Environmental Planning and Assessment Act 1979*

Parties

Lake Macquarie City Council ABN 81 065 027 868 of Lake Macquarie City Council Administration Building, 126-138 Main Road, Speers Point, NSW 2284 (**Council**)

Twin Rivers Developments Pty Limited ABN 79 065 087 292 of 90 Scott Street, Newcastle NSW 2300 (**Developer**)

Gregory Maurice Cahill of 90 Scott Street, Newcastle NSW 2300

Brenton Jon Cahill of 90 Scott Street, Newcastle NSW 2300

Description of the Land to which the Draft Planning Agreement Applies

The Draft Planning Agreement applies to:

Lot 431 in DP1278821 identified as 80 Minmi Road, Edgeworth (Development Land) as shown in Annexure A of the Draft Planning Agreement;

Lot 137 in DP1273014 identified as 3 Transfield Avenue, Edgeworth (Development Land) as shown in Annexure A of the Draft Planning Agreement; and

Lot 2 in DP1297923 identified as 5 Caravel Street, Teralba (Conservation Land) as shown in Annexure B of the Draft Planning Agreement.

Description of Proposed Development

The proposed development is the subdivision of the land and associated infrastructure.

Summary of Objectives, Nature and Effect of the Draft Planning Agreement

Objectives of Draft Planning Agreement

The objective of the Draft Planning Agreement is to secure conservation land as an ecological offset for the Development and payment of an endowment fund to Council for the ongoing management of the Conservation Land in perpetuity.

Nature of Draft Planning Agreement

The Draft Planning Agreement is a planning agreement under s7.4 of the *Environmental Planning and Assessment Act 1979 (Act)*. The Draft Planning Agreement is a voluntary agreement under which Contributions (as detailed in clause 3 of the Draft Planning Agreement) are made by the Developer for various public purposes (as defined in s7.4(2) of the Act).

Effect of the Draft Planning Agreement

The Draft Planning Agreement:

- relates to the carrying out of the development by the Developer,
- imposes obligations on the Developer to make Contributions,
- does not exclude the application of ss7.11, 7.12 or 7.24,
- makes provision for the Developer to:
 - dedicate the Conservation Land before the earlier of:
 - the clearing of any vegetation on the Development Land,
 - the issue of the first subdivision works certificate issued in relation to the development, or
 - 2 years from the issue of any development consent in relation to the development,
 - make progressive monetary contributions at nominated lot thresholds towards the ongoing management of the Conservation Land in perpetuity,
- is to be registered on the Development Land and Conservation Land,
- imposes restrictions on the Developer transferring, assigning, or novating an interest of the Development Land and Conservation Land under the agreement,
- provides dispute resolution methods for a dispute under the agreement,
- provides that the agreement is governed by the law of New South Wales, and
- provides that the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* applies to the agreement.

Assessment of the Merits of the Draft Planning Agreement Including the Impact on the Public

How the Planning Agreement Promotes the Objects of the Act and the public interest

The Planning Purposes Served by the Draft Planning Agreement

The Draft Planning Agreement:

- provides for the conservation or enhancement of the natural environment, and
- Provides funding of recurrent expenditure for the ongoing management of the Conservation Land in perpetuity.

How the Draft Planning Agreement Promotes the Public Interest

The draft Planning Agreement promotes the public interest by promoting the objects of the Act as set out in s1.3(a), (b) (c), (e), and (j) of the Act.

Whether the Draft Planning Agreement Conforms with the Authority's Capital Works Program

Council will need to consider the maintenance of the Conservation Land when determining the annual Capital Works Program at the time the land is to be dedicated to Council, utilising the monetary contributions paid to Council for this purpose.

Whether the Draft Planning Agreement specifies that certain requirements must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued

The Developer is required to make the following monetary contributions:

One third of \$761,000 before the earlier of the issue of a subdivision certificate for the 40th lot in the development or 12 months from the dedication of the Conservation Land to Council,

One third of \$761,000 before the earlier of the issue of a subdivision certificate for the 80th lot in the development or 2 years from the dedication of the Conservation Land to Council, and

One third of \$761,000 before the earlier of the issue of a subdivision certificate for the 120th lot in the development or 3 years from the dedication of the Conservation Land to Council