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COUNTER SERVICES



Explanatory Note

To

Draft Voluntary Planning Agreement

Between

**Shoalhaven City Council and Hanson South
Coast Pty Ltd**

March 2011

File No. 42484E

EXPLANATORY NOTE
Draft Voluntary Planning Agreement
Section 93F of the Environmental Planning & Assessment Act 1979
Clause 25E of Environmental Planning & Assessment Regulations 2000

1. Parties

- 1.1 **The Council of the City Shoalhaven** ABN 59 855 182 344 of 36 Bridge Road, Nowra NSW 2541 (Council); and
- 1.2 **Hanson South Coast Pty Ltd** ACN 001 079 385 of PO Box 73, Jannali NSW 2226 (Hanson).

2. Description of Land to which the proposed Planning Agreement applies

- 2.1 Lot 300 DP 792411 Ross Avenue, Narrawallee (Ross Avenue Land), as described in Item 2 of Schedule 1 to the Agreement. The land is shown in red on the map attached as Attachment A to the Agreement.
- 2.2 Lot 29 DP 874275 Seascope Close, Narrawallee (Seascope Close Land), as described in Item 4 of Schedule 1 to the Agreement. The land is shown in yellow on the map attached as Attachment A to the Agreement.
- 2.3 Hanson is the owner of the Ross Avenue Land and the Seascope Close Land.

3. Description of Proposal

History

- 3.1 On 18 July 1995 Council resolved to prepare draft local environmental plan number LP225 to rezone the Seascope Close Land to part Residential 2(a1) and part Environment Protection 7(d) (Special Scenic) under the *Shoalhaven Local Environmental Plan 1985 (LEP)*.
- 3.2 The plan was prepared on the basis that Hanson had agreed to surrender the Development Consent described in Item 5 of Schedule 1 to the Agreement.
- 3.3 On 20 April 2002 Council resolved to prepare draft local environmental plan number LP338 to rezone the Ross Avenue Land to Environment Protection 7(a) Ecology. The draft plan aims to protect Garrads Lagoon under the LEP.

- 3.4 Council also resolved to enter into a deed with Hanson to ensure that Hanson surrendered the Development Consent and dedicated the land to Council. The land is shown in blue on the map attached as Attachment A to the Agreement.
- 3.4 On 26 September 2008 Council and Hanson entered into a deed. The deed identified that:
- (a) Hanson intends to lodge a Part 3A major project application under the Act for the residential subdivision of the Seascope Close Land;
 - (b) There is a public benefit if the land was transferred to Council for public use;
 - (c) Hanson will hold on trust the land for Council until the Minister made an amending local environmental plan in substantially the same form as the draft local environmental plan LP225 and the relevant consent authority approves the subdivision application under the Act;
 - (d) Hanson will then transfer the land to Council.
- 3.5 Since entering into the deed, there have been substantial changes to the Act in respect to process for amending local environmental plans.
- 3.6 Council and Hanson have agreed that the deed should be updated and executed as a voluntary planning agreement in accordance with the Act.

Current Proposal

- 3.7 Council will prepare a Planning Proposal under the Act to rezone the Seascope Close Land from Environment Protection 7(d2) (Special Scenic) to Residential 2(a1) under the LEP.
- 3.8 Hanson will submit a residential subdivision application for the Seascope Close Land. If the rezoning proposed in the Planning Proposal is approved and the subdivision application is approved, then Hanson is to transfer the land to Council and surrender the Development Consent.

4. Summary of Objectives, Nature & Effect of Draft Planning Agreement

4.1 Objectives of proposed Planning Agreement

- 4.1.1 The objectives of the Planning Agreement are to:

- (a) dedicate the land to Council to retain in public ownership;
- (b) provide for the surrender of the Development Consent and therefore achieve protection of Garrads Lagoon; and
- (c) rezone the Seascape Land to allow for some residential development while still protecting landscape values and the habitat of threatened species.

4.2 Nature and effect of proposed Planning Agreement

- 4.2.1 The proposed Planning Agreement requires Council to prepare a Planning Proposal in accordance with section 56 of the Act to rezone the Seascape Close Land from Environment Protection 7(d2) (Special Scenic) to Residential 2(a1) under the LEP. The Planning Proposal is described in Schedule 2 to the Agreement.
- 4.2.2 The proposed Planning Agreement requires Hanson to prepare a residential subdivision application under the Act for the residential subdivision of the Seascape Close Land. The subdivision application will be submitted to the appropriate consent authority at the same time as Council submits the Planning Proposal to the Minister.
- 4.2.3 Under the proposed Planning Agreement, if the Minister makes a local environment plan in substantially the same form as the Planning Proposal then Hanson is required to register a restriction as to user over the Seascape Close Land prohibiting subdivision until the land is transferred to Council.
- 4.2.4 Immediately upon entering into the proposed Planning Agreement Hanson will be required to hold the land on trust for Council subject to the Agreement.
- 4.2.5 Under the proposed Planning Agreement, Hanson will be required to lodge a subdivision application to subdivide the land from the Ross Avenue Land.
- 4.2.6 Under the proposed Planning Agreement, if the Minister makes a local environmental plan in substantially the same form as the Planning Proposal and the relevant consent authority grants consent to the residential subdivision application made with respect to the Seascape Close Land then Hanson will be required to transfer the land to Council and immediately surrender the Development Consent.
- 4.2.7 Under the proposed Planning Agreement, if the Minister makes a local environmental plan permitting residential development of the Seascape Close Land but the relevant consent authority does not concurrently grant development consent for the residential subdivision of the Seascape Close Land, then the obligations upon Hanson to transfer

the Land to Council will remain until a residential subdivision is approved in respect to the Seascope Close Land.

5. Assessment of the Merits of the Draft Planning Agreement

5.1 The Planning Purposes

The proposed Planning Agreement promotes the conservation and enhancement of Garrads Lagoon. This is achieved by way of surrender of the Development Consent and the transfer of The Land to Council.

5.2 Promotion of Objects of the Act

The proposed Planning Agreement promotes the following objectives of the Act by:

- (a) encouraging the proper management, development and conservation of natural resources for the purpose of promoting the social and economic welfare of the community and a better environment;
- (b) encouraging the provision of land for public purposes;
- (c) encouraging 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
- (d) providing for the increased opportunity for public involvement and participation in environmental planning and assessment.

5.3 Promotion of the Public Interest

The proposed Planning Agreement promotes the public interest by providing for the transfer of land to Council. The land contains Garrads Lagoon which is considered to be of high environmental significance and value to the area.

5.4 Promotion of the Council's Charter

The proposed Planning Agreement promotes the elements of the Council's Charter by allowing Council to:

- properly manage, develop, protect, restore, enhance and conserve Garrads Lagoon by having the land transferred to Council and the Development Consent surrendered;
- engage in long-term strategic planning on behalf of the local community by providing for the transfer of land to Council to

ensure it is properly managed, developed, protected, restored, enhanced and conserved for the local community; and

- keep the local community and the State government (and through it, the wider community) informed about its activities. This Explanatory Note has been prepared to assist the community and State government in understanding the proposed Planning Agreement.

5.5 Conformance with Capital Works Program

The proposed Planning Agreement does not involve any capital works and therefore conformance with the Capital Works Program is not necessary.

5.6 Impact on the Public

The proposed Planning Agreement allows for the preservation and conservation of Garrads Lagoon which is considered to be environmentally significant land.

Signed on behalf of the Developer:

A. J. Hanson
DIRECTOR

Signed on behalf of the Council:

G. Clark

Dated:

10.3.11.