

Explanatory Note

Draft Planning Agreement

Under s93F of the Environmental Planning and Assessment Act 1979 (EPA Act)

1. Introduction

This Explanatory Note has been prepared in accordance with clause 25E of the *Environmental Planning & Assessment Regulation 2000* (NSW).

The purpose of this Explanatory Note is to provide a plain English summary to support the notification of a draft planning agreement (**Planning Agreement**) between the parties under s93F of the *Environmental Planning & Assessment Act 1979* (NSW) (**EPA Act**).

2. Parties

The parties to the Planning Agreement are:

- (a) Shoalhaven city council (**Council**); and
- (b) Albury Holdings SA ABN 66 132 878 132 (**Developer**).

3. Description of the Subject Land

- (a) The land the subject of the Planning Agreement is Lot 2 in Deposited Plan 1077521 (**Land**), Comerong Island Road in Numbaa;
- (b) The Land is subject to Development Consent 84/2166 (**Existing Development Consent**) granted by the Council.

4. Description of Proposed Development Application

The Developer is proposing to apply for modification of the Existing Development Consent and project approval that will:

- (a) allow the removal of all excess material from the Land by way of road transportation along Comerong Island Road, Numbaa (**Road**);
- (b) remove obligations of the Developer to:
 - (1) obtain a dilapidation report; and

(2) provide a bank guarantee,

in respect of the Road and the works to be conducted in respect of the Road under Condition 26 d) of the Existing Development Consent (as inserted by DS12/1325 and modified by DS14/1168); and

(c) will not remove the existing requirement to pay s94 contributions related to the approved development and provide sufficient security for payment of those contributions under the Planning Agreement.

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

The Planning Agreement requires the Developer to pay a monetary contribution of \$1.00 for every tonne of excess material removed from the Land by road transportation along the Road (**Monetary Contribution**).

The Road is a rural road servicing the farming and other communities of Numbaa. It is used on a daily basis by heavy vehicles carting farming supplies and products to and from the existing farming operations in the area and along the Road.

Including school buses, on average, seven (7) heavy vehicle movements take place along the Road on a daily basis; and an estimated 600 cattle crossings per day are made over the section of the Road that is the subject of this Planning Agreement. Extensive research proves the detrimental effects of animal manure (ammonia) on bituminous road surfaces and the detrimental effects of heavy vehicles upon road surfaces.

Council has not been able to implement a major maintenance program for the Road due to other more pressing road infrastructure needs within the Shoalhaven Local Government Area.

The provision of the Monetary Contribution will allow Council to implement a program of ongoing maintenance of the Road; and will also enable Council to better manage the matching of the timing of the contributions with the required maintenance programme.

6. Assessment of the Merits of the Planning Agreement

The Planning Purposes Served by the Planning Agreement

The Planning Agreement will provide contributions towards the maintenance and development of public road infrastructure. This infrastructure is required to adequately serve the subject development and the existing agricultural and residential activities in the area.

How the Planning Agreement Promotes the Objects of the Environmental Planning and Assessment Act 1979

By providing for the maintenance and development of public road infrastructure that will serve the current and future needs of residents in the local area, the Planning Agreement promotes the following objects under s5 of the EPA Act:

- (a) To encourage 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.
- (b) To encourage the promotion and co-ordination of the orderly and economic use and development of land.
- (c) To encourage the provision of land for public purposes.

How the Planning Agreement Promotes the Public Interest

The Planning Agreement promotes the public interest by requiring the contribution of financial resources towards the maintenance and development of public roads necessary for the development of the Land.

How the Planning Agreement Promotes the Objects of the Local Government Act 1993 (NSW) (LG Act)

By requiring contribution towards the maintenance and development of public road infrastructure that will serve the needs of current and future residents, the Planning Agreement would give Council the ability to provide facilities appropriate to the current and future needs of the local community and the wider public. In this way, the Planning Agreement promotes the objects set out in s7 of the LG Act.

How the Planning Agreement Promotes the Elements of the Council's Charter

The Planning Agreement promotes a number of elements of Council's Charter under section 8 of the LG Act as follows:

- (a) 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.
- (b) The exhibition of the Planning Agreement facilitates the involvement of members of the public, while council staff were involved in the development of the Planning Agreement.
- (c) This explanatory note is prepared for the purposes of keeping the local community and the State government (and through it, the wider community) informed about its activities.
- (d) The Planning Agreement makes it clear that Council has a statutory role as consent authority for development and that the Planning Agreement is not intended to unlawfully

influence the exercise of its regulatory functions, ensuring that Council will act consistently and without bias, particularly where an activity of the Council is affected.

Whether the Planning Agreement Conforms with the Authority's Capital works Program

The maintenance and development of the Road has not been anticipated under Council's current s94 Contributions Plan. Council considers that the arrangement under the Planning Agreement represents a reduction in Council's capital works liability for the Road and will have a positive effect of Council's capital works forward planning.

Under the s94 Contributions arrangements in place at the time of the development applications determination in 1989, the Road was to be repaired and maintained after the completion of the approved development. Under the Planning Agreement, a programme of ongoing maintenance and development is able to be implemented during the course of use of the Road where this use is related to the activities that will occur throughout the process of development of the approved project. This will allow for the acceleration of the maintenance and development of the Road as well as for the effect of further repairs after the approved development has been completed at an unspecified time in the future.

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

The Planning Agreement will have a positive effect on the wider public because:

- (a) Contributions towards maintenance and development of public road infrastructure will be provided; and
- (b) Council's capital works liability for the Road will be reduced, allowing Council funds to be allocated to other public facilities and services.