

# Explanatory Note to Planning Agreement for Landscape Screen associated with Planning Proposal PP029 Hitchcocks Lane, Berry

*Environmental Planning and Assessment Regulation 2000*

(Clause 25E)

## Draft Planning Agreement

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

## Parties

**Shoalhaven City Council** ABN 59 855 182 344 of 36 Bridge Rd, Nowra NSW 2541  
(Council)

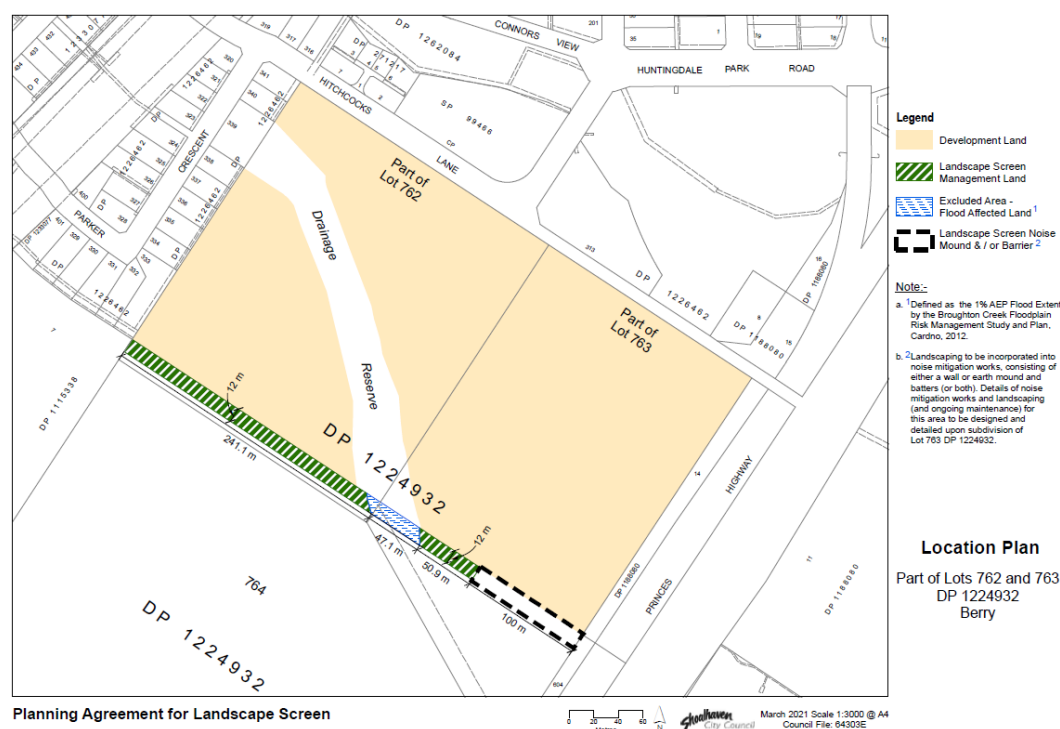
**Lot 762 Landowner** being the registered proprietor of Lot 762 DP1224932

**Lot 763 Landowner** being the registered proprietor of Lot 763 DP1224932

## Description of the Land to which the Draft Planning Agreement Applies

This Draft Planning Agreement applies to the land comprised in Lot 762 DP1224932 and Lot 763 DP1224932.

A plan showing the land to which this VPA applies is provided below:



## **Description of Proposed LEP Amendment and Development**

This Draft Planning Agreement applies to a planning proposal within the meaning of s3.33 of the Act with reference number PP029 submitted to the Council on 8 September 2017 for which gateway determination under 3.34 of the Act was determined on 3 April 2018 which seeks to rezone part of Lot 762 DP1224932 and Lot 763 DP1224932 from RU1 Primary Production to R2 Low Density Residential.

This Draft Planning Agreement also applies to development on the Land that is authorised by a Development Consent granted as a result of the amendment to the *Shoalhaven Local Environmental Plan 2014* in respect of the Planning Proposal.

## **Description of Development Contributions**

This draft Planning Agreement requires the Landowners to:

- establish landscaping on a 12m wide strip of the land adjacent to the southern boundary of the Planning Proposal Land shown as '*Landscape Screen Management Land*' on the plan set out above,
- construct a stock exclusion fence to protect the landscaping and complete it before commencing carrying out landscape establishment work,
- complete the landscape establishment before the issuing of the first subdivision certificate for the Planning Proposal Land,
- carry out landscaping management activities until a date that is not earlier than 3 years after the issuing of the first subdivision certificate for the Planning Proposal Land,
- register a positive covenant benefitting the Council for the Landowners' ongoing maintenance of the stock exclusion fence in perpetuity,
- register a restriction on use benefitting the Council prohibiting the Landowners' interference of any landscaping,
- register an easement in gross benefitting the Council for the Council's access to carry out ongoing management of the landscaping in perpetuity after the landscaping is handed over to the Council,
- until the landscaped area is accessible directly by public road, allow the Council to travel along an interim access route across the Landowners' land to access to the landscaped area,
- pay to the Council a monetary contribution to be applied towards the Council's ongoing management of the landscaping in perpetuity after the landscaping is handed over to the Council or such other public purpose located on the land if the Council reasonably considers that the public interest would be better served,
- ensure that the specified standard of landscaping is achieved before the landscaping is handed over to the Council.

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

### **Objectives, Nature and Effect of Draft Planning Agreement**

The Draft Planning Agreement is a planning agreement under s7.4 of the *Environmental Planning and Assessment Act 1979*. The Draft Planning Agreement is a voluntary agreement under which Development Contributions (as defined in clause 1.1 of the Draft Planning

Agreement) are made by the Landowners for various public purposes (as defined in s7.4(3) of the Act)

The objective of the Draft Planning Agreement is to require the carrying out of establishment and management of landscaping works, construction and maintenance of a stock exclusion fence, registration of various positive covenants and easement benefitting the Council in respect of the landscaping and fencing, and payment to Council of monetary contributions for the Council's ongoing management of the landscaped area. The Development Contributions are provided in conjunction with the development of the Planning Proposal Land the subject of the planning proposal PP029.

The Draft Planning Agreement:

- relates to the LEP Amendment and the carrying out of the Development (as defined in clause 1.1 of the Draft Planning Agreement) on the Planning Proposal Land by the Landowners,
- does not exclude the application of s7.11, s7.12 or s7.24 of the Act to the Development,
- makes provision for the establishment and management of landscaping works and stock exclusion fence,
- makes provision for the registration of a public positive covenant on the title benefitting Council in respect of the ongoing management of the stock exclusion fence,
- makes provision for the registration of an easement on the title benefitting the Council in respect of Council's access to and management of the landscaping after it is handed over to the Council,
- makes provision to allow the Council to travel along an interim access route across the Landowners' land to access to the landscaped area until the landscaped area is accessible directly by public road,
- makes provision for the registration of restriction on use benefitting the Council prohibiting the Landowners' interference of any landscaping,
- makes provision for the payment of monetary contributions to the Council to be put towards the Council's management of the landscaping after it is handed over to the Council, or such other public purpose located on the land if the Council reasonably considers that the public interest would be better served,
- makes provision for the handover of the landscaping to the Council,
- is to be registered on the title to the Land,
- imposes restrictions on the Parties transferring the Land or any part of it or assigning, or novating an interest under the agreement,
- provides two dispute resolution methods for a dispute under the agreement, being expert determination and mediation,
- 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**

### **How the Draft Planning Agreement Promotes the Public Interest**

The landscaping screen required to be provided by the Landowners under this Deed will obscure the proposed development of the Planning Proposal Land from view when travelling northwards along the Princes Highway to Berry, consistent with the recommendations of the

Visual Impact Assessment for the Hitchcocks Lane Planning Proposal, prepared by Peter Andrews & Associates (May 2019).

Specific objectives include:

- to mitigate visual impacts associated with future development by screening views of future development from the Princes Highway,
- to protect the landscape and scenic quality of the area and preserve the natural and rural views,
- enhance privacy and local amenity for future residents of the subdivision(s) by obscuring views of the highway and associated light pollution,
- to provide a natural screen using soft landscaping features to complement the surrounding landscape and leafy character of Berry and create a subtle and attractive entry statement into Berry, and
- to provide cost-effective landscape screening of development over the long-term (e.g. rationalising future maintenance requirements and costs).

The Draft Planning Agreement will also require the payment of monetary contributions by the Landowners to the Council to fund the ongoing management of the landscaping by the Council after it is handed over to the Council.

The Draft Planning Agreement contains provisions requiring the registration of certain positive covenants, easements and restrictions on use to ensure that the Landowners' obligation to maintain a stock exclusion fence remains in perpetuity and Council can access the landscaped area to carry out ongoing management of that area after handover to the Council.

The Draft Planning Agreement:

- promotes good design and amenity of the built environment,
- provides increased opportunity for public involvement and participation in environmental planning and assessment of the Development.

The Draft Planning Agreement promotes the public interest by promoting the objects of the Act as set out in s1.3(g) and (j) of the Act.

The Draft Planning Agreement promotes the guiding principles for local government as set out in s8A of the *Local Government Act 1993* by:

- providing a means for the lands to be managed so that current and future local community needs, in the form of public amenity, can be met, and
- providing a means for Council to work with the Landowners to secure the public amenity of establishment and management of landscaping,
- providing a means that allows the wider community to make submissions to the Council in relation to this Agreement.

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

The Draft Planning Agreement is not inconsistent with the Council's Capital Works Program.

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

Yes. The Landscape Establishment Obligation and the construction of the Stock Exclusion Fence is to be completed before the issuing of the first Subdivision Certificate for the Development.