

Draft Explanatory Note [for discussion]

Voluntary Planning Agreement (proposed by Eureka 1 Project 10 Pty Ltd and Eureka 1 Project 4 Pty Ltd)

Environmental Planning & Assessment Regulation 2000 (clause 25E)

Planning Agreement

The purpose of this Explanatory Note is to provide a plain English Summary to support the notification of a draft voluntary Planning Agreement (“**the Planning Agreement**”) under Section 93F of the *Environment Planning and Assessment Act 1979* (“**the Act**”), for the transfer of land and the provision of public amenities and services in relation to a planning proposal for land at Boundary Road, Medowie comprising Lots 93, 94, 95 & 96 DP 753194 (the “**Planning Proposal**”).

This Explanatory Note has been prepared jointly between the parties as required by clause 25E of the *Environment Planning and Assessment Regulation 2000* (“**the Regulations**”).

This Explanatory Note is not to be used to assist in construing the Planning Agreement and nothing in this Explanatory note fetters the discretion of any public authority in the assessment of the Planning Proposal.

Parties

Eureka 1 Project 10 Pty Ltd and Eureka 1 Project 4 Pty Ltd (together “**the Developer**”) has made an offer to Port Stephens Council (“**the Council**”) to enter into a voluntary Planning Agreement, in connection with a Planning Proposal to enable the zoning of a part of the land at Boundary Road, Medowie for large lot residential purposes with the remainder of the Site to be zoned for environmental management purposes.

Description of subject land

The land to which the Planning Agreement applies is described as follows:

Lots 93, 94, 95 & 96 DP 753194, known as Boundary Road, Medowie (the “**Land**”).

The Land has an area of approximately 127 hectares. It is located to the north of the Medowie township, and is bordered to the north, east and west by Medowie State Forest and to the south by large lot residential development. To the north of the Land Medowie State

Forest adjoins parts of Medowie State Conservation Area. The north eastern corner of the Land is vegetated with dry sclerophyll open forest. A portion of the Land forming a riparian corridor running diagonally across the centre of the Land from the north west to the south east is Swamp Sclerophyll Forest on Coastal Floodplains endangered ecological community (“**EEC**”). The vegetation in the southern parts of Lots 93 and 94 has been heavily modified and currently consists of grazed paddocks with little or no native shrub or ground layer in this area. Part of the south western corner of Lot 95 is also cleared.

The whole of the Land is presently zoned Rural Small Holdings 1 (c1) under the provisions of the Port Stephens Local Environmental Plan 2000.

Description of the proposed change to an environmental planning instrument to which the Planning Agreement applies

Planning Proposal [insert details] has been prepared to amend Port Stephens Local Environmental Plan 2000 to rezone part of the Land as Large Lot Residential with a minimum lot size of 1,000 m² and the remainder as Environmental Management.

Summary of Objectives, Nature and Effect of the Planning Agreement

The Planning Agreement represents an offer by the Developer to transfer to the Department of Climate Change and Water (“**DECCW**”) all that portion (approximately 58 hectares) of the Land at its north-eastern corner marked green on the attached plan, including the **EEC**, for inclusion in the DECCW estate system for environmental management (“**Environmental Management Land**”) and to prepare a site specific [development control plan/concept plan] for the remainder of the Land in the south western corner (“**Development Land**”) to maximise retention of vegetation and ecological outcomes and minimise ecological impact of development on the Development Land.

The Planning Agreement envisages (in summary) the following terms and obligations:

- A Transfer of the Environmental Management Land at the cost of the Developer to the DECCW for inclusion in the DECCW estate system for environmental management.
- B Prior to the transfer of the Environmental Management Land the removal by the Developer of all internal fencing and rubbish on the Environmental Management Land, and otherwise in accordance with DECCW’s reasonable requirements.
- C The registration in the NSW Land and Property Information Division (“**LPI**”) of the transfer of the Environmental Management Land shall take place 3 months after the gazettal of the local environmental plan

the subject of the Planning Proposal or the issue of a subdivision certificate for the Development Land, whichever will occur first.

D The Developer will not lodge any development application for the Development Land until the registration of the transfer of the Environmental Management Land.

F the Planning Proposal shall include the following matters:

1. Survey which identifies and accurately marks koala feed trees, hollow-bearing trees and significant ecological features and trees;
2. draft koala plan of management in accordance with the Port Stephens Council Comprehensive Koala Plan of Management (the “CKPoM”);
3. landscape and vegetation management plan which incorporates:

- a. proposed street planting;
- b. controlled planting in accordance with identified species native to the area;
- c. retention of identified species of native vegetation;
- d. actions for regulation of the disturbance and removal of koala feed trees, hollow-bearing trees and significant ecological features and trees;
- e. connectivity of retained vegetation within the Development Land (via direct linkages to the north-east), as well as to existing vegetation outside of the Development Land;
- f. retention of hollow-bearing trees – to reduce potential impact on hollow-dependent species. Hollow-bearing trees to be prioritised when retaining vegetation in lots, as well as any other areas of retained vegetation; and
- g. ***[Mallesons comment: to be modified to reflect comments of Sally Whitelaw at meeting]*** retention of vegetated buffers to identified ecologically significant features by the provision of defined building envelopes in the lots adjoining the southern boundary of the EEC (to ensure that retention of maximum amounts of vegetation adjacent to

the EEC can be achieved, without limiting building potential within the lot. This retained vegetation will provide a buffer to the EEC, minimising edge effects such as weed invasion, damage due to human access and rubbish dumping. This buffer to also provide buffering to the identified preferred koala habitat mapped within the EEC).

4. stormwater management plan which incorporates:
 - a. performance criteria for stormwater management mitigation actions to achieve a 'no net increase in pre development stormwater flows' from the Development Land; and
 - b. performance criteria for maintenance of stormwater quality.
5. infrastructure plan which incorporates provision of essential services including power, water, sewer, electricity, cycleways and roads.
6. a concept plan which incorporates:
 - a. high quality urban design principles;
 - b. ecologically sensitive lot layout/yield – to focus smaller holdings in previously disturbed areas (such as the central parts of the Development Land), while providing larger lots (therefore greater ability to retain native vegetation) within the north-western and south-eastern parts of the Development Land;
 - c. defined building location zones for lots adjoining or containing retained vegetation – (these will allow construction within a suitable proportion of the lot, while providing confidence in the retention of maximum amounts of vegetation within the remainder of the lot. Such retained vegetation will allow for increased retention of fauna habitat, with the focus on retention of hollow-bearing trees as a priority. This retained vegetation within the lots adjoining other vegetated areas will also provide a buffer, providing protection from urban-

Draft

based edge effects and human impacts.);
and

d. restrictions on fencing to allow fauna to migrate across the Land.

7. preparation of restrictive and/or public positive covenants in favour of Council to be lodged with any plan of subdivision dealing with regulation of relevant matters in the Concept Plan.
8. at the request of DECCW, construction of flood mitigation works in the Environmental Management Land to a maximum value of \$XXX.

Assessment of the Merits of the Planning Agreement

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

The objects of the Act in Section 5 of the Act encourage the proper management development and conservation of natural and artificial resources including agricultural lands, cities, towns and villages for the purposes of promoting the social and economic welfare of the community and a better environment.

The development application promotes and co-ordinates the orderly and economic use and development of the Land and in accordance with the objects of the Act, the Planning Agreement provides for:

- (1) the provision of land for public purposes;
- (2) the protection of the environment; and
- (3) ecologically sustainable development.

The draft planning agreement promotes the public interest by providing for:

- the provision of land for environmental management at no monetary cost to Council or the DECCW; and
- ensure that development on land is appropriately managed to minimise planning impacts.

The Planning Purposes Served by the Planning Agreement

The Planning Agreement provides for contribution by the Developer of land for the following planning purposes:

- the conservation and enhancement of the natural environment; and
- the provision of public amenities and services.

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

The Planning Agreement reasonably promotes the following two elements of the Council's Charter under s8(1) of the *Local Government Act 1993*:

- 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.

This element of the Council's Charter is promoted through the recoupment of costs for public amenities and services.

- 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.

This element of the Council's Charter is promoted by the preservation and enhancement of remnant bushland

Whether the Planning Agreement Conforms with the Council's Capital Works Program

The Planning Agreement does not conform with Council's Capital Works Program as no funds have been specifically allocated for works involving environmental management of land on or near this site in the current Capital Works Program.
