

# Environmental Planning and Assessment Regulation 2000

(Clause 25E)

## EXPLANATORY NOTE

### DRAFT PLANNING AGREEMENT – BLACK HILL

#### 1. Introduction

The purpose of this Explanatory Note is to provide a plain English summary to support the exhibition of a proposed draft planning agreement (the **Planning Agreement**) prepared under section 93F of the *Environmental Planning and Assessment Act 1979* (the **Act**).

The Planning Agreement was previously the subject of public notification under section 93G of the Act. The Planning Agreement has been amended to include provisions for further security in the form of bank guarantees. There are no changes from the previously notified Planning Agreement to the level or nature of the contributions sought to be provided.

#### 2. Parties

The parties to the Planning Agreement are the Minister for Planning and Infrastructure, the Minister administering the *National Parks and Wildlife Act 1974* (the **Ministers**) and Black Hill Land Pty Ltd and Coal & Allied Operations Pty Ltd (the **Developer**). This explanatory note has been prepared jointly by the parties.

#### 3. Description of Subject Land

The Planning Agreement applies to land at Black Hill owned by the Developer and held under the following title:

(a) Folio 30/870411; and

the land identified as the Environmental Offset Land identified on the Environmental Subdivision Plan in Schedule 3 of the Planning Agreement,

(the **Land**)

The Land is shown as the green and blue shaded areas on the plan contained in Schedule 3 to the Planning Agreement.

#### 4. Description of the Development

The Developer proposes to develop part of the Land for urban purposes, and transfer part of the Land to the Minister administering the *National Parks and Wildlife Act 1974* as "Environmental Offset Land" (the **Development**).

In order to facilitate the Development, the Developer has sought an amendment to the environmental planning instruments applying to the Land and has applied for a Concept Plan Approval.

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

The Developer has offered to enter into the Planning Agreement with the Ministers.

The objectives of the Planning Agreement are to ensure that the Development occurs in a way that is consistent with the Lower Hunter Regional Conservation Plan (released by the Department of Environment and Climate Change on 11 March 2009 (and revised

December 2009)) and the Lower Hunter Regional Strategy (released by the Department of Planning on 17 October 2006). The Strategies aim to:

- (a) increase public ownership of certain land in the Lower Hunter region for dedication as a conservation reserve; and
- (b) enhance the development potential of certain other land in the Lower Hunter region.

To achieve these objectives, the Planning Agreement requires the Developer to undertake certain activities and provide funds for certain purposes during the course of the Development (the **Contributions**). The Contributions required are:

- (a) the transfer of approximately 545 ha of Environmental Offset Land to the Crown for conservation purposes; and
- (b) various specified land remediation and reserve establishment works (as identified in clause 5 of Schedule 4 of the Planning Agreement).

By requiring these Contributions, the Planning Agreement will help ensure that the Development occurs in an appropriate way and protects the natural environment.

The Planning Agreement, and the requirements in it for the Developer to provide these Contributions, does not exclude the application of sections 94, 94A and 94EF of the Act.

The Planning Agreement does not specify that certain requirements of the agreement must be complied with before a construction, occupation or subdivision certificate is issued.

The obligations of the Developer are secured by registration of the Planning Agreement as well as by the provision of Bank Guarantees.

## **6. Assessment of the Merits of the Planning Agreement**

### **6.1 How the Planning Agreement promotes the objects of the Act**

The Contributions required by the Planning Agreement are consistent with and promote the objects in section 5 of the Act. In particular the requirement to transfer Environmental Offset Land and to undertake various specified land remediation and reserve establishment works promote:

- (i) Section 5(a)(i) - "proper management, development and conservation of natural and artificial resources, including...cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment";
- (ii) Section 5(a)(iv) - "the provision of land for public purposes";
- (iii) Section 5(a)(vi) - "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
- (iv) Section 5(a)(vii) - "ecologically sustainable development"

### **6.2 The planning purpose served by the Planning Agreement**

The planning purposes served by the Planning Agreement include the enhancement of the natural environment. The Parties consider that the Planning Agreement provides an effective means of achieving this planning purpose in relation to the Land.

**6.3 How the Planning Agreement promotes the public interest**

The Planning Agreement promotes the public interest by requiring the Developer to make Contributions that are intended to positively affect ecological wellbeing of the natural environment.

**7. Further information**

Copies of the Concept Plan Approval application and the Planning Agreement are available on the Department of Planning website.