

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

**Explanatory Note**

**Draft Planning Agreement**

Under section 7.4 of the *Environmental Planning and Assessment Act 1979* (NSW)

**1 Parties**

The Minister for Planning ABN 38 755 709 681 of Level 15, 52 Martin Place,  
Sydney NSW 2000

**(Minister)**

and

**Roads and Maritime Services** ABN 76 236 371 088, a NSW Government  
agency and corporation incorporated under the *Transport Administration Act*  
1988 (NSW) of 20-44 Ennis Road, Milsons Point NSW 2061

**(RMS)**

and

Kingshill Development No 1 Pty Ltd ACN 158 129 652 of Suite 605, 321 Pitt  
Street, Sydney NSW 2000

Kingshill Development No 2 Pty Ltd ACN 158 127 041 of Suite 605, 321 Pitt  
Street, Sydney NSW 2000

(together, the **Developer**)

**2 Description of subject land**

Lot 41 in Deposited Plan 1037411 and Lot 4821 in Deposited Plan 852073 at  
Kings Hill, New South Wales (**Land**).

**3 Description of proposed development**

The development of the Land for predominantly residential purposes and, at  
the date of this deed, includes the subdivision of the Land into Urban Lots to  
enable the erection of a maximum of 2,300 Dwellings on the Land  
(**Development**).

## **4 Summary of objectives, nature and effect of the draft planning agreement**

### **4.1 Objectives of Planning Agreement**

The objective of the Planning Agreement is to facilitate the provision of Development Contributions by the Developer towards Designated State Public Infrastructure within the Kings Hill Urban Release Area.

Specifically, the Developer has offered to enter into the Planning Agreement to provide Development Contributions to:

- (a) facilitate the development of the Kings Hill Urban Release Area; and
- (b) enable the Secretary to provide the certification required under the LEP for the Development.

Development Contributions to be provided by the Developer under the Planning Agreement include:

- (a) payment of Contribution Amounts to be paid progressively at the rate(s) determined in accordance with this deed (subject to CPI indexation), payable prior to each time a Subdivision Certificate is issued;
- (b) transfer of the Education Land for the purpose of a School;
- (c) transfer of the Road Works Land for road purposes, specifically to enable the construction of an interchange providing access from the Pacific Highway to the Kings Hill Urban Release Area; and
- (d) transfer of the Drainage Channel Land for the purpose of a drainage channel.

### **4.2 Nature of Planning Agreement**

The Planning Agreement constitutes a planning agreement under section 7.4 of the Act. The Planning Agreement will be registered on the title to the Land.

## **5 Assessment of the merits of the draft planning agreement**

### **5.1 The planning purposes served by the Planning Agreement**

The Planning Agreement:

- (a) promotes the orderly and economic use and development of the Land to which the Planning Agreement applies;
- (b) promotes good design and amenity of the built environment by facilitating the development of the Land in accordance with the Planning Agreement;
- (c) promotes the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State; and

- (d) promotes increased opportunity for the public in environmental planning and assessment.

## **5.2 How the Planning Agreement promotes the public interest**

The Planning Agreement will promote the public interest by promoting the objects of the Act as set out in sections 1.3(c), (g), (i) and (j) of the Act.

## **5.3 For Planning Authorities:**

### ***Development Corporations – How the Planning Agreement promotes its statutory responsibilities***

*Not Applicable*

### ***Other Public Authorities – How the Planning Agreement promotes the objects (if any) of the Act under which it is constituted***

*Not Applicable*

### ***Councils – How the Planning Agreement promotes the elements of the Council's Charter***

*Not Applicable*

### ***All Planning Authorities – Whether the Planning Agreement conforms with the Authority's Capital Works Program***

*Not applicable*

## **5.4 Certain requirements of the Planning Agreement to be complied with before issue of Planning Approval or issue of a Complying Development Certificate, Construction Certificate or Subdivision Certificate**

In relation to the subdivision of any part of the Land which would result in the Initial Development Cap being exceeded, the Developer must not apply for:

- (a) any Construction Certificate for residential building works on any proposed residential lot on the Land, until the date that is 9 months prior to the scheduled date of practical completion for the Road Works as notified by RMS, subject to provision by the Developer of a Construction Management Plan that is satisfactory to RMS, in its absolute discretion, having regard to the Road Works, the Drainage Channel Works and any other works being carried out by RMS or the Relevant Authority in the vicinity of the Development; and
- (b) any Subdivision Certificate, until RMS has provided written notification to the Developer confirming the opening of the Interchange to traffic.

The Developer will be required to:

- (a) pay Contribution Amounts progressively at the rate(s) determined in accordance with this deed (subject to CPI indexation), payable prior to each time a Subdivision Certificate for Development Units is issued;

- (b) transfer the Education Land prior to the issue of a Subdivision Certificate for the creation of the 900<sup>th</sup> Dwelling in the Kings Hill Urban Release Area;
- (c) transfer the Road Works Land within 3 months of receipt of a notice identifying the precise location and area of the land required; and
- (d) transfer the Drainage Channel Land within 3 months of receipt of a notice identifying the precise location and area of the land required.

The provision of the Development Contributions is secured through:

- (a) the requirement for a Bank Guarantee in respect of RMS and the Minister's enforcement costs;
- (b) registration of the Planning Agreement on title including the ability for the Minister and RMS to register a caveat on title to the Land until the Planning Agreement is registered on the title to the Land;
- (c) the ability for the Education Land, the Road Works Land and the Drainage Channel Land to be compulsorily acquired in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991 (NSW)* if that land is not dedicated or transferred in accordance with the Planning Agreement; and
- (d) restrictions on the issue of Subdivision Certificates.