

Explanatory Note:

**Minister for the Environment
and Heritage, Secretary of the
Department of Planning and
Environment and Cobaki
Estates Pty Limited**

Proposed Planning Agreement

Prepared in accordance with clause 205 of the
Environmental Planning and Assessment Regulation 2021

24 June 2022



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1. Introduction

Clause 205(1) of the *Environmental Planning and Assessment Regulation 2021* (**the Regulation**) requires that an explanatory note must be prepared to accompany a planning agreement.

The explanatory note must address the requirements of clause 205(1)(a)-(b) of the Regulation. This explanatory note has been prepared to address these requirements.

Additionally, in preparing the explanatory note, the planning authority must consider any relevant practice note prepared by the Planning Secretary under clause 203(6). The relevant practice note is *Planning agreements: Practice note – February 2021* published by the former NSW Department of Planning, Industry and Environment (now the Department of Planning and Environment).

This practice note has been considered by the parties in the course of preparing this explanatory note.

2. Summary of objectives, nature and effect

2.1 Parties and offer

A draft planning agreement (**the agreement**) has been prepared. The proposed parties to the agreement are :

- the Minister for Environment and Heritage and the Secretary of the Department of Planning and Environment (together **the Minister**) on one hand; and
- Cobaki Estates Pty Limited (ACN 058 793 114) (**the developer**) on the other.

The agreement to which this explanatory note relates has been the subject of an offer by the developer.

2.2 Land

The land to which the agreement applies is:

- Lot 1 DP 570076;
- Lot 2 DP 566529;
- Lot 1 DP 562222;
- Lot 1 DP 570077;
- Lot 1 DP 823679;
- Lot 1 DP 1169394; and
- Lots 46, 54, 55, 199, 200, 201, 202, 205, 206, 209, 228 and 305 DP 755740.

This land is commonly known as the 'Cobaki Estate'.

2.3 The development

The agreement relates to development of the land to which the agreement applies for urban purposes.

The land is the subject of concept plan approval 06_0316 granted by the Minister for Planning on 19 August 2010.

2.4 Objectives

The objective of the agreement is to provide a mechanism by which monetary contributions can be made to benefit the community.

2.5 Nature

The agreement will be a voluntary agreement under section 7.4 of the *Environmental Planning and Assessment Act 1979 (the Act)*.

An agreement of this kind may require a developer to dedicate land free of cost, pay a monetary contribution, or provide any other material public benefit to be used for or applied towards a public purpose.

In this particular case, the agreement provides that the developer will make a monetary contribution of \$54,294.48, towards offsetting the loss of hollowing-bearing trees within the Scribbly Gum Reserve on the land. The public purpose of the development contribution is the conservation or enhancement of the natural environment.

The agreement also sets out detail designed to protect the legitimate interests of the Minister and the developer during the course of the process.

2.6 Effect

The monetary contribution is to be paid upon the commencement of the agreement and prior to the removal of any trees within the scribbly gum reserve on the land.

The planning agreement is also intended to be entered into concurrently with a planning agreement negotiated between the Minister and Kings Forest Estates Pty Ltd (in relation to land known as the Kings Forest) and publicly notified in parallel with this agreement (**the Kings Forest Planning Agreement**).

The agreement provides for the enforcement of the agreement by a suitable means if there is a breach by the developer.

Where it is relevant to a development application, a consent authority must take into consideration a planning agreement — or any draft planning agreement — that a developer has entered into or offered to enter into (respectively).

However, a planning agreement cannot impose an obligation on a planning authority to actually grant a development consent. A merit assessment of the proposed development must still be carried out.

3. Assessment of the merits of the proposed agreement

3.1 Impact on the public or any relevant section of the public

The agreement has a positive impact on the public and promotes the public interest. This is because of the following:

- The monetary contribution is made towards offsetting the loss of hollowing-bearing trees within the scribbly gum reserve on the land..
- The monetary contribution — together with other actions to plant and maintain scribbly gum species within the Kings Forest Site — are sufficient to offset the impact of the development on existing trees within the scribbly gum reserve on the land.
- The monetary contribution is made for the public purpose of conservation or enhancement of the natural environment.
- The agreement provides an opportunity to facilitate:
 - the offsetting of the loss of trees;
 - development of the land for urban purposes in an orderly and economic way; and
 - improvements to the conservation and enhancement of the natural environment.

3.2 Promotion of the public interest

The Agreement promotes the public interest, by providing for:

- a method of sufficiently offsetting the loss of trees in order to allow for the urban development of the land; and
- collection of monetary contributions for the public purpose of conservation and enhancement of the natural environment.

3.3 Whether the planning agreement conforms with the planning authority's capital works program, if any

The agreement does not conform with the planning authority's capital works program. This is because the monetary contribution is not relevant to the authority's capital works program.

3.4 Whether the agreement specifies that certain requirements of the agreement must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued

The agreement does not specify any requirements that must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued.

The monetary contribution is to be paid on the commencement of the agreement and prior to the removal of any trees within the scribbly gum reserve on the land. That is, the loss of the trees are to be offset through the payment of a \$54,294.48, monetary contribution before the trees are removed.

4. Status of this explanatory note

This explanatory note has been agreed by parties proposing to enter into the agreement.

The parties have agreed that this explanatory note is not to be used to assist in construing the agreement.