

Explanatory Note:

**Minister for the Environment
and Heritage, Secretary of the
Department of Planning and
Environment and Kings Forest
Estates Pty Ltd**

Proposed Planning Agreement

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

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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 the Environment and Heritage and the Secretary of the Department of Planning and Environment (**together the Minister**) on one hand; and
- Kings Forest Estates Pty Ltd (**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:

- Lots 1 – 11 DP 1270901 (**the Kings Forest Site**); and
- the land within the existing Cudgen Nature Reserve where that reserve immediately adjoins the Kings Forest Site, but only for a distance of 80 metres from the boundary (**the Cudgen Nature Reserve 80 Metre Strip**);

The Kings Forest Site includes land to be, or that is, dedicated under the agreement, namely Lot 3 in DP 1270901 (**the Dedicated Land**).

2.3 The development

The agreement relates to development of the Kings Forest Site for urban purposes and in relation to the Dedicated Land, the development of that land for environment and/or conservation purposes.

The Kings Forest Site is subject to:

- concept plan approval 06_0318 granted by the Minister on 19 August 2010 as in force for the time being; and
- project plan approval 08_0194 given under the former Part 3A provisions of the Act as in force for the time being.

2.4 Objectives

The objective of the agreement is to provide a mechanism by which:

- land can be dedicated;
- works can be carried out;
- monetary contributions can be made; and
- the natural environment can be conserved or enhanced,

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 for land dedication, works and monetary contributions. The purpose of these development contributions is for the conservation or enhancement of the natural environment.

A summary of these contributions is set out below.

Land dedication

The purpose of the land dedication is to add to the Cudgen Nature Reserve.

The agreement provides for the developer to dedicate Lot 3 in DP 1270901. This land is required to be dedicated 15 years after the date of the agreement.

Works

The works can generally be described as:

- scribbly gum restoration work generally in accordance with the scribbly gum restoration plan;
- bushfire management work in the provision of a fire trail and sealed perimeter road to the specifications set out in the agreement;

- weed management, including the control of weeds and removal of mature pine trees and pine wildings according to the agreement;
- the replacement of an existing bridge with a new bridge or culvert; and
- revegetation works required to be taken under relevant environmental management plans.

These works are to be carried out prior to the dedication of the dedicated land.

Monetary contributions

The agreement provides that the developer is to pay a monetary contribution of \$24,000 (indexed according to the agreement) for the purpose of signage. This is to be paid prior to the dedication of the dedicated land.

Detail

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

In general terms, the requirement to make contributions is linked to the commencement of the agreement and the dedication of the dedicated land. This is timed in a way that is practicable for the developer and supports the conservation and enhancement of the natural environment.

For the dedication of the dedicated land, the contribution is required to be made 15 years after the date of the agreement.

For the works, the contribution is to be made prior to the dedication of the dedicated land. The agreement sets out detail on the specifications and manner of the works to be carried out

For the monetary contribution, the contribution is to be made prior to the dedication of the dedicated land.

The planning agreement is also intended to be entered into concurrently with a planning agreement negotiated between the Minister and Cobaki Estates Pty Limited (in relation to land known as the Cobaki) and publicly notified in parallel with this agreement (**the Cobaki 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 land is to be dedicated for the purpose of incorporation into the Cudgen Nature Reserve.
- The works will improve the quality of the land to be dedicated, in particular relation to scribbly gum restoration, bushfire management, weed management, bridge replacement and revegetation.
- The monetary contribution is for signage and is to be used for the public purpose of conservation or enhancement of the natural environment.
- The agreement provides an opportunity to facilitate:
 - the establishment and maintenance of land to be dedicated to the Minister;
 - 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:

- the dedication of suitable land to the Minister;
- the carrying out of works to improve the dedicated land, particularly in relation to restoration of scribbly gums, bushfire management, weed management, bridge replacement and revegetation; and
- collection of monetary contributions for signage

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 contribution opportunity arises outside of 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 land is required to be dedicated 15 years after date of the agreement, while the works are to be carried out and the monetary contribution is to be paid prior to the dedication of the dedicated land.

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.