

Explanatory Note

This Explanatory Note has been prepared jointly by the parties and is not to be used to assist in construing the Draft Planning Agreement.

Draft Planning Agreement

Under s7.4 of the *Environmental Planning and Assessment Act 1979*

Parties

Lake Macquarie City Council ABN 81 065 027 868 of Lake Macquarie City Council Administration Building, 126-138 Main Road, Speers Point, NSW 2284 (**Council**)

Wye Nominees Pty Limited ABN 666 005 358 of Suite 7, 114 Majors Bay Road, Concord NSW 2137 (**Developer**)

TOPA Property Pty Ltd (Developer) of Suite 7, 114 Majors Bay Road, Concord NSW 2137

Description of the Land to which the Draft Planning Agreement Applies

The Draft Planning Agreement applies to:

Lot 437 in DP755242 as shown at item 5 of Schedule 2 of the Draft Planning Agreement;

Digary Road as shown at the diagram at item 4 of Schedule 2 of the Draft Planning Agreement; and

Crown Land shown as "C2(B)" in the diagram at item 4 of Schedule 2 of the Draft Planning Agreement.

Description of the Planning Proposed to which the Planning Agreement applies

TOPA Property have lodged a planning proposal to rezone part of 1377 Hue Hue Road, Wye and part of adjoining Digary Road, Wye from RU2 Rural Landscape and C2 Environmental Conservation to R2 Low Density Residential as shown at the diagram at item 3 of Schedule 2 of the Draft Planning Agreement.

Summary of Objectives, Nature and Effect of the Draft Planning Agreement

Objectives of Draft Planning Agreement

The objective of the Draft Planning Agreement is to secure conservation land as an ecological offset for the planning proposal and payment of an endowment fund to Council for the ongoing management of the conservation land in perpetuity.

Nature of Draft Planning Agreement

The Draft Planning Agreement is a planning agreement under s7.4 of the *Environmental Planning and Assessment Act 1979* (Act). The Draft Planning Agreement is a voluntary agreement under which Contributions (as detailed in clause 3 of the Draft Planning Agreement) are made by the Developer for various public purposes (as defined in s7.4(2) of the Act).

Effect of the Draft Planning Agreement

The Draft Planning Agreement:

- makes provision for the Developer to dedicate the conservation land to Council and pay an endowment contribution towards the ongoing management of the conservation land in perpetuity,
- does not exclude the application of ss7.11, 7.12 or 7.24
- is to be registered on Lot 437 in DP755242,
- imposes restrictions on the Developer transferring, assigning, or novating an interest of the Development Land and Conservation Land under the agreement,
- provides dispute resolution methods for a dispute under the agreement,
- provides that the agreement is governed by the law of New South Wales, and
- provides that the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) applies to the agreement.

Assessment of the Merits of the Draft Planning Agreement Including the Impact on the Public

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

The Planning Purposes Served by the Draft Planning Agreement

The Draft Planning Agreement:

- provides for the conservation or enhancement of the natural environment, and
- Provides funding of recurrent expenditure for the ongoing management of the Conservation Land in perpetuity.

How the Draft Planning Agreement Promotes the Public Interest

The draft Planning Agreement promotes the public interest by promoting the objects of the Act as set out in s1.3(a), (b) (c), (e), and (j) of the Act.

Whether the Draft Planning Agreement Conforms with the Authority's Capital Works Program

Council will need to consider the maintenance of the conservation land when determining the annual Capital Works Program at the time the land is to be dedicated to Council, utilising the monetary contributions paid to Council for this purpose.

Whether the Draft Planning Agreement specifies that certain requirements must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued

The Developer is required to dedicate the conservation land prior to the issue of the first subdivision certificate associated with the development of the land.