

Explanatory Note

Draft Planning Agreement for land at The Lakes Way, Boomerang Beach

Introduction

Clause 25E of the *Environmental Planning and Assessment Regulation 2000* requires a planning authority (Mid-Coast Council) proposing to enter into a planning agreement under Section 93F of the *Environmental Planning and Assessment Act 1979* to prepare an explanatory note about the planning agreement.

A planning agreement results from an offer by a Landowner to a consent authority to dedicate land, make monetary contributions, construct facilities and / or provide any other material public benefit, to be used for or applied toward a public purpose associated with a development proposal.

This explanatory note relates to the draft Planning Agreement (hereafter referred to as "Planning Deed") proposed to be entered into by INA Operations Pty Ltd ("the Landowner") and Mid-Coast Council ("the Council") in respect of land at Lot 427 DP 861736, Lot 83 DP 753168 and Lot 1 DP 653396, known as 3801 The Lakes Way, BOOMERANG BEACH NSW 2428 ("the Land").

The Planning Deed makes provision for the Landowner to dedicate a parcel of land with an approximate area of 60 hectares to Council and pay a monetary contribution towards the cost of restoring and maintaining that land.

This explanatory note has been prepared jointly between the parties as required by clause 25E of the *Environmental Planning and Assessment Regulation 2000*.

Background

The Landowner is registered titleholder of the Land.

The Landowner has sought an amendment to the *Great Lakes Local Environmental Plan 2014 (GLLEP2014)* to, among other things, rezone part of the Land adjoining the existing Palms Oasis Caravan Park, with an approximate area of 2 hectares, to the RE2 Private Recreation Zone.

Subject to the proposed amendment to the GLLEP2014 being made, the Landowner intends to lodge with the Council a Development Application seeking consent to develop (**Proposed Development**) the land rezoned by the amendment of the GLLEP2014.

The Landowner is required by the Planning Deed to subdivide the Land so as to create:

- a. An approximately 2 hectare lot adjoining the existing caravan park (the **Development Lot**);
- b. An approximately 1.5 hectare lot to accommodate the existing dwelling (the **Dwelling Lot**); and
- c. An approximately 60 hectare lot (the **Biodiversity Lot**).

In order to offset losses in biodiversity likely to be occasioned by the amendment of the GLLEP2014 and any Development Consent granted in respect of the Proposed Development, the Purchaser has offered to enter into the Planning Deed to make development contributions to transfer the Biodiversity Lot to Council and pay a monetary contribution to the Council towards the costs of restoring and maintaining the Biodiversity Lot.

Objectives of the Planning Deed

The objective of the Planning Deed is to secure a transfer of the Biodiversity Lot and the payment of a monetary contribution to Council for the restoration and maintenance of that land.

Nature of the Planning Deed

The Planning Deed is a planning agreement under s93F of the *Environmental Planning and Assessment Act 1979* (Act). The Planning Deed is a voluntary agreement under which Development Contributions (as defined in clause 1.1 of the Draft Planning Deed) are made by the Landowner for various public purposes (as defined in s93F(2) of the Act).

Effect of the Planning Deed

The Planning Deed:

- imposes obligations on the Landowner to subdivide the Land and then transfer the approximately 60 hectare Biodiversity Lot to the Council and make monetary Development Contributions in the amount of \$129,425.
- Provides that if the Land is not sold to the Landowner, the Landowner is bound by the obligations under the Agreement.
- Does not exclude the application of s94 and s94A of the Act to the Proposed Development, except that credit will be given for s94 contributions equivalent to one residential lot, and does not exclude the application of s94EF of the Act.
- is to be registered on the title to the Land.
- imposes restrictions on the Landowner selling or otherwise dealing with the Land.
- provides for dispute resolution, as agreed between the parties, or in failing to agree, mediation.

- enables the Council to lodge a caveat on the Land (restricting any dealing in the Land until the Biodiversity Lot is transferred), requires the Landowner to provide a Bank Guarantee in the amount of \$150,000 and enables the Council to compulsorily acquire the Biodiversity Lot for \$1.00 in the event that the Landowner fails to transfer the Biodiversity Lot as required.

Assessment of the Merits of the Planning Deed in relation to the Public Interest

The Planning Deed promotes the conservation and enhancement of the natural environment through the dedication of an ecologically significant parcel of land to the Council.

The Planning Deed also requires the payment of a monetary contribution for the restoration, management and protection of ecological communities and systems on the land, which forms part of a significant vegetation corridor within the Pacific Palms locality.

The Planning Purposes Served by the Planning Deed

The Planning Deed promotes the conservation or enhancement of the natural environment.

The Planning Deed is a reasonable means for achieving that planning purpose, as it provides for the transfer of high conservation land to Council ownership and payment of a monetary development contribution to be expended on achieving that planning purpose.

How the Draft Planning Deed Promotes the Public Interest

The Planning Deed promotes the public interest by promoting the objects of the Act as set out in s5(a) of the Act that is, to encourage:

- (i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,
- (iv) the provision of land for public purposes,
- (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
- (vii) ecologically sustainable development.

How this Planning Deed promotes the Elements of the Council's Charter under Section 8 of the *Local Government Act 1993*

The Planning Deed promotes Council's charter under section 8 of the *Local Government Act 1993* as it enables Council:

- to properly manage, develop, protect, restore, enhance and conserve the environment of the area for which it is responsible, in a manner that is consistent with and promotes the principles of ecologically sustainable development;
- to have regard to the long term and cumulative effects of its decisions;
- to engage in long-term strategic planning on behalf of the local community;
- to bear in mind that it is the custodian and trustee of public assets and to effectively plan for, account for and manage the assets for which it is responsible.

Assessment of whether the Planning Deed conforms to Council's Capital Works Program

The Planning Deed is not inconsistent with the Council's Capital Work Program, which does not apply to the Land.

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

The Planning Deed specifies that the following requirements must be complied with before a subdivision certificate is issued:

- a. the Planning Deed must be registered on the title of the Land;
- b. the Landowner must have paid the monetary development contribution;
- c. the Council must be in receipt of a Bank Guarantee in the amount of \$150,000.

Interpretation

Note: this explanatory note is a summary only of the amended Planning Agreement, is not to be relied upon as a complete description of the amended Planning Agreement, and is not to be used as an aid in construing the amended Planning Agreement.

Further Information

Copies of the Planning Deed are available on the Mid-Coast Council website, and at the offices of Mid- Coast Council, Breese Parade, Forster.

Mid-Coast Council

INA Operations Pty Ltd