

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

EXPLANATORY NOTE BELLBIRD HEIGHTS

1. Introduction

This Explanatory Note provides a plain English summary to support the exhibition of a proposed draft planning agreement (the **Planning Agreement**) prepared under section 93F of the *Environmental Planning and Assessment Act 1979* (the **Act**).

This Explanatory Note relates to the Planning Agreement proposed to be entered into by the parties described below in respect of land at Bellbird Heights, in the Local Government Area of Cessnock.

2. Parties to the Planning Agreement

The parties to the Planning Agreement are Cessnock City Council (the **Council**) and Winton Partners Bellbird Pty Limited ACN 156 002 185 (the **Landowner**). This explanatory note has been prepared jointly by the parties.

3. Description of Subject Land

The Planning Agreement applies to land at Bellbird Heights owned by the Landowner being Lot 1 DP1164334 (the **Land**).

The Land is shown on the plan attached as 'Annexure A' to the Planning Agreement.

4. Description of the Development / change to environmental planning instrument

The Land is currently zoned RU2 Rural Landscape under the *Cessnock Local Environmental Plan 2011* (the **LEP**). The Landowner proposes to develop part of the Land for residential and other ancillary development (such as local roads and services) and to protect areas of high conversation value on the Land (the **Proposed Development**).

In order to facilitate the Proposed Development, the Landowner has sought an amendment to the LEP to rezone part of the Land to R2 Low Density Residential and part of the Land to E2 Environmental Conservation.

Subject to the proposed LEP amendment being made, the Landowner intends to lodge with the Council a development application(s) for the Proposed Development.

As part of the Proposed Development, the Landowner will subdivide the area of the Land proposed to be rezoned to E2 Environmental Conservation (the **Environmental Land**) from the balance of the Land (the **Environmental Land Subdivision**).

In effecting the Environmental Land Subdivision, the Landowner will register a positive covenant for a Vegetation Management Plan, approved by Council, to apply in perpetuity to the Environmental Land.

5. Summary of Objectives, Nature and Effect of the Planning Agreement

As part of the proposal to amend the land use zoning to reflect the environmental constraints and development opportunities for the Land, the Landowner has offered to enter into the Planning Agreement with the Council.

The objectives of the Planning Agreement are to ensure that the Proposed Development occurs in a way that is consistent with the principles of ecologically sustainable development, Lower Hunter Regional Strategy, Lower Hunter Conservation Plan, and studies and investigations undertaken as part of the preparation of the Planning Proposal to amend the Cessnock Local Environmental Plan 2011 in respect of the Land.

To achieve these objectives, the Planning Agreement commits the Landowner to provide the following contributions to offset the potential biodiversity impacts of the rezoning and proposed residential development:

- (a) the on-going protection and management for conservation purposes of approximately 62.8 hectares of Environmental Land through the registration of a positive covenant on title providing for the implementation of a Vegetation Management Plan in perpetuity (the **Environmental Land Contribution**).

The Planning Agreement contains other provisions relating to the process of implementing the above contribution.

The Planning Agreement, and the requirements in it for the Landowner to provide the Environmental Land Contribution, does not prevent Council from levying contributions under s94 of the *Environmental Planning and Assessment Act 1979* (NSW) (the **Act**), for services and infrastructure. To the extent that biodiversity impacts associated with the Proposed Development are required to be offset or mitigated, the Environmental Land Contribution is to be taken into account under s.94(6) of the Act.

6. Restriction on issue of construction, occupation or subdivision certificate

There is a restriction on the issue of a construction certificate for the residential component of the Proposed Development if the Environmental Land Contribution has not been made.

7. Assessment of the Merits of the Planning Agreement

7.1 How the Planning Agreement promotes the objects of the Act

The Environmental Land Contribution required by the Planning Agreement is consistent with and promote the objects in section 5 of the Act. In particular:

- (a) the requirements in relation to the Environmental Land promote:
 - (i) Section 5(a)(i) -"proper management, development and conservation of natural and artificial resources, including...cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment";
 - (ii) Section 5(a)(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
 - (iii) Section 5(a)(vii) -"ecologically sustainable development".

7.2 How the Planning Agreement promotes the Council's Charter under the Local Government Act

The proposed Agreement promotes the following elements of the Council's charter under clause 8 of the *Local Government Act 1993*:

- (a) To exercise community leadership;

(b) 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; and

(c) To engage in long-term strategic planning on behalf of the local community.

7.3 The planning purposes served by the Planning Agreement

The planning purposes that are served by the Planning Agreement are, amongst other things, the:

(a) Protection, restoration and management in perpetuity of land of high ecological and wildlife corridor value, by ensuring management of the Environmental Land through the registration on title of a positive covenant for a Vegetation Management Plan; and

(b) Siting of urban development to minimise impacts on the natural environment.

The Parties consider that the Planning Agreement provides an effective means of achieving these planning purposes in relation to the Land.

7.4 How the Planning Agreement promotes the public interest

The Planning Agreement promotes the public interest by committing the Landowner to make the Environmental Land Contribution that is intended to maintain the ecological integrity of the natural environment. The Environmental Land Contribution will provide a benefit to the community from the protection and management of the natural environment.

8. Interpretation of Planning Agreement

This Explanatory Note is not to be used to assist in construing the Planning Agreement.

9. Further information

Copies of the Planning Agreement are available on the Cessnock City council website, and at the offices of Cessnock City Council, Vincent Street, Cessnock.