

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Explanatory Note

1. Introduction

Clause 25E of the Environmental Planning and Assessment Regulation 2000 requires a planning authority proposing to enter into a voluntary planning agreement under Section 93F of the *Environmental Planning and Assessment Act 1979* to prepare an explanatory note regarding the planning agreement.

This explanatory note relates to the draft planning agreement proposed to be entered into by the parties described below in respect to land at Fern Bay, in the Port Stephens Local Government Area.

The draft planning agreement has been developed as a result of the Fern Bay Seaside Village project (see 'Description of Project Application' below). The Environmental Assessment for the project has been placed on public exhibition by the Department of Planning concurrently with the draft planning agreement.

2. Parties

Director-General, Department of Environment and Climate Change
(**Director-General**);

Aspen Group Limited (**Developer**);

Winten Fern Bay No 2. Pty Ltd (the **Land Owner**).

3. Description of Subject Land:

The land to which the draft planning agreement applies is located at Fern Bay, in the Local Government Area of Port Stephens, described as Part Lot 3, Lot 4 and Lot 5 DP 270466, Seaside Boulevard, Fern Bay (the Project Application area).

The draft Planning Agreement refers to works to be undertaken and contributions made towards the Worimi Regional Park. The Worimi Regional Park is part of the Worimi Conservation Lands (WCL), established under the Aboriginal ownership and lease back provisions of the *National Parks and Wildlife Act 1974* (NPW Act 1974). The WCL are managed by a Board of Management with support from DECC in accordance with the Worimi Conservation Lands Lease Agreement and the NPW Act 1974. Land

title to the WCL is held by the Worimi Local Aboriginal Land Council for and on behalf of the registered Aboriginal owners.

4. **Description of Project Application**

The Developer is seeking project approval for a 683 lot residential subdivision at Fern Bay, including 4 integrated housing lots with a potential lot yield of 84 lots. The estate will be constructed over fifteen stages (development consent for the first three stages comprising 182 lots has already been granted) and ultimately comprise approximately 945 residential lots, recreational and community facilities, services, roads, cycleway and pathways as well as open space areas comprising a cultural heritage reserve, asset protection zones, managed reserves and bushland open space.

5. **Summary of Objectives, Nature and Effects of the Draft Planning Agreement**

The **objectives** of the draft Planning Agreement are to ensure the following outcomes:

- ensure the implementation of the Vegetation Management Plan (VMP) prepared by ERM for the Worimi Regional Park land for a period of 20 years following project approval; and
- provide for in kind public purpose works within the Worimi Regional Park.

The **nature** of the draft Planning Agreement is such that when the project approval is granted, the Developer will be obliged to deliver the in-kind public purpose works and pay certain amounts towards the implementation of the VMP for the Worimi Regional Park as detailed in Schedule 2 of the draft Planning Agreement.

The **effect** of the draft Planning Agreement will be the implementation of the VMP through the completion of public purpose works within the Worimi Regional Park in accordance with the specified timeframes and specifications, and the payment by the Developer to the Director-General of VMP costs, as defined in Schedule 2 of the draft Planning Agreement.

The **key features** of the draft Planning Agreement are:

- Public Purpose Works, including track closure and rehabilitation, waste removal, weed removal and rehabilitation, in accordance with the VMP and specifications detailed in Schedule 2 of the draft Planning Agreement; and

- Monetary contributions to the value of \$1,623,050.00 in accordance with the timeframes and conditions detailed in Schedule 2 of the draft Planning Agreement to meet DECC costs of implementing the VMP over the 20 year period.

The Planning Agreement operates from the date of the Project Approval and contributions under the agreement must be undertaken in accordance with the timeframes specified in Schedule 2 for the draft Planning Agreement.

6. Assessment of the Merits of the Draft Planning Agreement

6.1 The Planning Purposes served by the Draft Planning Agreement

The planning purpose of the draft Planning Agreement is to offset the loss of vegetation from the proposed development of the Fern Bay Seaside Village and ensure the protection and management of the comparable habitat within the Worimi Regional Park through the implementation of the VMP.

The VMP outlines measures to improve the condition of wet heath and overall management of the Worimi Regional Park by removing identified waste and weed occurrences and regenerating a number of illegal tracks. It also provides the detail for the formalisation of a four-wheel drive access to the sand dunes at Stockton Beach. Through weed management, waste removal, fencing and closure of illegal tracks, and managing access, the adverse impacts on the habitat value of the areas of wet heath and dry sclerophyll forest in the Worimi Regional Park will be reduced.

6.2 How the draft Planning Agreement Promotes the Objects of the *Environmental Planning and Assessment Act 1979*

The draft Planning Agreement promotes Clause 5(a) (i) and (vi) of the *Environmental Planning and Assessment Act 1979* which aim 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, and*
- (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.*

6.3 How the draft Planning Agreement Promotes the Objects of the *National Parks and Wildlife Act 1974*

The draft Planning Agreement promotes Clause 2A 1(c) and (d) of the *National Parks and Wildlife Act 1974* by contributing to:

(c) *fostering public appreciation, understanding and enjoyment of nature and cultural heritage and their conservation;*

and by

(d) *providing for the management of land reserved under this Act in accordance with the management principles applicable for each type of reservation.*

6.4 How the Draft Planning Agreement Promotes the Public Interest

The planning purpose served by this draft Planning Agreement is the provision by the Developer of public purpose works and monetary contributions to implement the VMP for land in the Worimi Regional Park. This will contribute to the management and enhancement of environmental values and access within the Worimi Regional Park.

The implementation of the draft Planning Agreement is in the public interest as it contributes to the management of the Worimi Regional Park by implementing the VMP to improve habitat and environmental values, and contributing to improved access management.

The making of the draft Planning Agreement is consistent with the principle that it is the public interest for the Developer to alleviate / offset the impacts caused by the carrying out of the development.

6.5 Whether the Draft Planning Agreement conforms with the Authority's Capital Works program (if any)

The works to be implemented as identified in Schedules 2 and 3 of the draft Planning Agreement have been prepared in consultation with the DECC, and the Worimi Conservation Lands Board of Management.