

**Explanatory Note**  
**Exhibition of draft Voluntary Planning Agreement**  
**Lot 5 DP 233358**  
**14 Popplewell Road, Fern Bay**

*Environmental Planning & Assessment Regulation 2021 (clause 205)*

**Planning Agreement**

The purpose of this Explanatory Note is to provide a plain English summary to support the notification of a draft Voluntary Planning Agreement (**Planning Agreement**) under Section 7.4 of the *Environmental Planning and Assessment Act 1979 (Act)*.

The Planning Agreement is offered in connection with a planning proposal seeking to rezone part of the Land under the *Port Stephens Local Environmental Plan 2013 (LEP)* from C2 Environmental Conservation to R3 Medium Density Residential and associated amendments.

This Explanatory Note has been prepared jointly between the parties as required by Section 205 of the *Environmental Planning and Assessment Regulation 2021 (Regulation)*.

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

**Parties**

The parties to the Planning Agreement are Port Stephens Council (**Council**) (ABN 16 744 377 876) and Defence Housing Australia (**Developer**) (ABN 72 968 504 934).

**Description of subject land**

The land to which the Planning Agreement applies is Lot 5 DP 233358 known 14 Popplewell Road, Fern Bay (**Land**).

**Description of the Proposed Amendment to the LEP**

The Planning Agreement relates to a proposed amendment to the LEP that will rezone part of the Land under the *Port Stephens Local Environmental Plan 2013* from C2 Environmental Conservation to R3 Medium Density Residential, provide maximum building heights of 9 metres and 15 metres, and minimum lot sizes of 200m<sup>2</sup> and 500m<sup>2</sup>, and will categorise the Land as an Urban Release Area. The Planning Proposal is identified as Council reference 58-2017-10-1 and Department reference PP\_2019\_PORTS\_002\_00.

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

The Planning Agreement will require works to mitigate sand dune transgression and impacts on future development. The Planning Proposal is based on a report titled "*Stockton Rifle Range Dune Transgression and Management Plan*", dated July 2021 prepared by BMT Commercial Australia Pty Ltd.

The Planning Agreement will require the following:

- (a) The preparation and approval of an "Implementation Plan", which will assess in more detail the potential impacts of dune transgression and will set out the management actions required to slow or halt the movement of the dune, whilst managing the dune area in an environmentally sound manner consistent with C2 Environmental Conservation zoning. The management will be separated into Stage 1 and Stage 2 Management Actions.

- (b) The Implementation Plan is required to meet the specifications in Schedule 2 of the Planning Agreement, will be prepared by suitably qualified persons, and will be reviewed by independent technical experts engaged by Council, prior to being approved by Council.
- (c) The Developer to carry out all of the Stage 1 Management Actions before:
  - (i) the land on which the management actions will occur (**Dunal Area**) becomes property of a community association or other common property (under an approved subdivision); or
  - (ii) the Developer transfers any part of the Land for residential purposes.

This means that the Developer will be required to complete the Stage 1 Management Actions to the satisfaction of Council before any residential subdivision is completed and sold.
- (d) The owner of the Dunal Area (which may be the Developer or a Community Association if the Dunal Area becomes common property) to carry out the Stage 2 Management Actions in the manner and at the times specified in the Implementation Plan.

The Planning Agreement, at Schedule 2, sets out what is required to be addressed in the Implementation Plan.

#### *Security and Enforcement*

The Developer will be required to provide a defects liability bond for the Stage 1 Management Actions in the amount of \$100,000 or 20% of the cost of the Stage 1 works for a period of 12 months. This will ensure any defects in the Stage 1 Management are fixed to the satisfaction of Council.

To ensure that the obligations to undertake the Stage 2 Management Actions are met and future landholders are aware that if those management actions fail, some parts of the Land may be subject to dune transgression, the Planning Agreement will require:

- (a) a public positive covenant to be imposed on the land comprising the Dunal Area benefitting the Council as a prescribed authority. This requires the owner of the Dunal Area to deliver the Stage 2 Management Works in accordance with the approved Implementation Plan and is enforceable by Council; and
- (b) a restrictive covenant to be imposed on any residential lots comprising "Dune Affected Land", being land on the eastern edge of the proposed residential development and west of the Dunal Area likely to be affected by dune transgression (as determined by the Implementation Plan) in the event that the Stage 2 Management Actions are not carried out.

The restrictive covenant will be a private covenant benefiting the owner of the Dunal Area and will prevent residential occupation of the lots on Dune Affected Land, if the dune mitigation works are not carried out and the transgression progresses to a point that will cause a safety risk to occupants of that land.

#### *Restrictions on transfer and disposal*

Before the Developer transfers the Dunal Area to another owner, or the Dunal Area becomes common property, the new owner must take on all of the obligations under the Planning Agreement.

To ensure any potential new owner of the Dunal Area has the capacity to carry out the works, an Investment Fund must be established for the purposes of carrying out the Stage 2 Dune Management Actions in accordance with the Implementation Plan.

The Implementation Plan will set out the likely costs of those actions and a report will be prepared by a suitably qualified person as to the amount required for the Investment Fund that must be reviewed and approved by Council

The Developer will be required to make an initial deposit into the Investment Fund that is sufficient to fund the Stage 2 Dune Management Actions for at least the first 10 years after the first subdivision is approved or from when the Dunal Area is transferred, whichever is the greater amount.

The Developer (and any Transferee/new owner) must show to Council that the Investment Fund will be able to pay for the Stage 2 Management Actions over that 50-year period through investments and any applicable property levies. This includes appropriate mechanisms to ensure the funds will be used only for the Stage 2 Dune Management Actions and associated actions under the Planning Agreement.

#### *Other*

The draft Planning Agreement further provides:

- (a) Sections 7.11, 7.12 and 7.24 of the *Environmental Planning and Assessment Act 1979* are not excluded from applying to the future development of the land. Monetary contributions payable under any of those provisions will be payable for the future development.
- (b) The Planning Agreement will be registered on title to the Land and will remain registered on the title to the Dunal Area. The Planning Agreement will be able to be removed from residential lots, provided that the obligations required under the agreement at the time are met (including any part of the dune management works and registration of covenants).
- (c) The Planning Agreement must not be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law or as limiting or fettering in any way the exercise of any statutory discretion or duty.

#### **Assessment of the Merits of the Planning Agreement**

The Planning Agreement will enable the orderly and economic development of the Land in a manner that will be consistent with the future needs of the local area. The proposed Planning Agreement promotes the following objects of the Act:

- (a) To promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources (1.3(a) EP&A Act).
- (b) To facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment (1.3(b) EP&A Act).
- (c) To promote the orderly and economic use and development of land (s1.3(c) EP&A Act).

The Planning Agreement supports a current planning proposal which will enable future residential development to a portion of the site and is consistent with relevant strategic plans and provides a range of public benefits including:

- The Planning Agreement is being prepared in connection with a strategic planning proposal, which is a priority project.
- Future development of the site is directly linked to the delivery of state and local infrastructure through the upgrade to Nelson Bay Road and Vardon Street.
- The site is identified as 'urban release area' to enable the State government to collect State infrastructure contributions for future development.
- The planning proposal will facilitate future housing (subject to development consent) and increase opportunities for housing diversity.
- The planning proposal results in improved environmental outcomes as it retains the C2 Environmental Conservation zoning over the parts of the site identified as having high value.
- Future development will open the site to the public through the provision of green spaces, roads and footpaths.
- It has strategic merit by giving effect to key goals set by the Hunter Regional Plan 2036, Greater Newcastle Metropolitan Plan 2036, Port Stephens Local Planning Strategy & Port Stephens Local Housing Strategy.
- The site is identified for residential rezoning in the Fern Bay and North Stockton Strategy.

The dune management works required under the Planning Agreement will mitigate dune transgression and establish monitoring and sustainable actions to manage the dune transgression impacts on the Land to enable future development. The proposed works will therefore have a positive impact facilitating future housing and increased opportunities for housing diversity, which meets the strategic needs of the local area and broader Port Stephens LGA.