

## **Explanatory Note**

### **Draft Black Hill Planning Agreement for Conservation Outcomes**

#### **Introduction**

This explanatory note has been prepared in accordance with clause 25E of the *Environmental Planning and Assessment Regulation 2000*.

The purpose of this explanatory note is to provide a plain language summary to support the notification of a draft planning agreement between the parties, under section 93F of the *Environmental Planning and Assessment Act 1979*.

#### **Parties**

Cessnock City Council

ABN 60 919 148 928 (*the Council*)

The Trustees of the Roman Catholic Church for the Diocese of Maitland- Newcastle

ABN 62 089 182 027 (*the Landowner*)

#### **Description of Subject Land**

Lot 1131 DP 1057179, John Renshaw Drive, Black Hill

#### **Description of the Development to which the Planning Agreement relates**

The rezoning and future development of land fronting John Renshaw Drive and Black Hill Road at Black Hill. The land is proposed to be rezoned from rural to partly light industrial, partly environmental living and partly environmental conservation. A map of the proposed zoning change is attached.

#### **Summary of objectives, nature and effect of the Draft Planning Agreement**

##### Objective of the Draft Planning Agreement

The objective of the Planning Agreement is to require the conservation of the natural environment, which is a public purpose associated with the carrying out of development.

### Effect of the Draft Planning Agreement: a development contribution for the conservation outcome

Before granting consent to the first development application for the site, the parties must negotiate and agree on an overall plan of conservation measures for the whole subject site. The conservation measures may then be implemented in stages associated with the industrial development.

General principles for the negotiation and agreement of the conservation measures are outlined in clause 2 of Schedule 3. These include

- (a) that the conservation measures are to be fair and reasonable;
- (b) that the conservation measures may include one or more of the measures in the *Threatened Species Conservation Act 1995*, and/ or any other measure agreed by the parties,
- (c) that if more than one measure is reasonable and suitable, it is the Landowner's discretion to decide which measure shall be made;
- (d) that conservation measures that are close to the site are to be given first consideration;
- (e) that land that is not developed may be utilised as an on-site conservation measure;
- (f) that the development could generate a requirement for up to 6,367 biobanking credits, and that the development contribution should not exceed the biobanking credits;
- (g) that it is assumed that no vegetation clearing will be required in the E2 or E4 zoned land, however should any clearing be required, appropriate conservation measures will be negotiated.

In relation to principle (d), and in response to the Black Hill community's comments raised in public submissions, the Landowner agrees to investigate and consider conservation measures, in the following order of preference:

1. in the vicinity of the site,
2. in Cessnock local government area,
3. in locations with the same or similar ecological characteristics as the area affected by the development.

### Nature of the Draft Planning Agreement

The Planning Agreement also makes provision for

- (a) the application of s94 and s94A to the Development (clause 4);
- (b) the registration of the agreement on the title of the land (clause 6.2);
- (c) the provision of security to the Council to meet the Landowner's obligations under the agreement (clause 7.1);
- (d) the enforcement of the agreement by either party (clause 7.2);
- (e) dispute resolution (clause 8)
- (f) notification to the Council of the sale of the land by the Landowner (clause 10);
- (g) the release and indemnity of the Council in relation to the Landowner's obligation to provide the conservation outcome (clause 11)
- (h) responsibility for costs involved in negotiating, preparing, executing, advertising, stamping, registering and enforcing the agreement (clause 12)
- (i) other general provisions relating to the operation of the agreement (clause 14)
- (j) each party to act in good faith to comply with the agreement (clause 14.11).

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

### The Planning Purposes Serviced by the Draft Planning Agreement and whether it provides for a reasonable means of achieving that purpose

The proposed agreement provides a mechanism to ensure that a reasonable and suitable conservation outcome is provided if the site is developed. The agreement is a reasonable means for achieving that purpose as it provides for security and certainty before any development proceeds.

### How the Draft Planning Agreement promotes the public interest and one or more of the objects of the Environmental Planning and Assessment Act 1979

The proposed agreement provides for one of the public purposes outlined in section 93F(2) of the *Environmental Planning and Assessment Act 1979*, being the conservation of the natural environment.

The proposed agreement also promotes several objects of the *Environmental Planning and Assessment Act 1979*, including

- To encourage 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 (s5(a)(i));
- To encourage the promotion and co-ordination of the orderly and economic use and development of land (s5(a)(ii));
- To encourage 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 (s5(a)(vi)).

### How the Draft Planning Agreement promotes one or more elements of the Council's charter

The draft planning agreement promotes the following element of the Council's charter under section 8(1) of the *Local Government Act 1993*:

- To properly manage, develop, protect, restore, enhance and conserve the environment for the area for which it is responsible, in a manner that is consistent with and promotes the principles of ecologically sustainable development.

### Whether the Draft Planning Agreement conforms to Council's capital works program

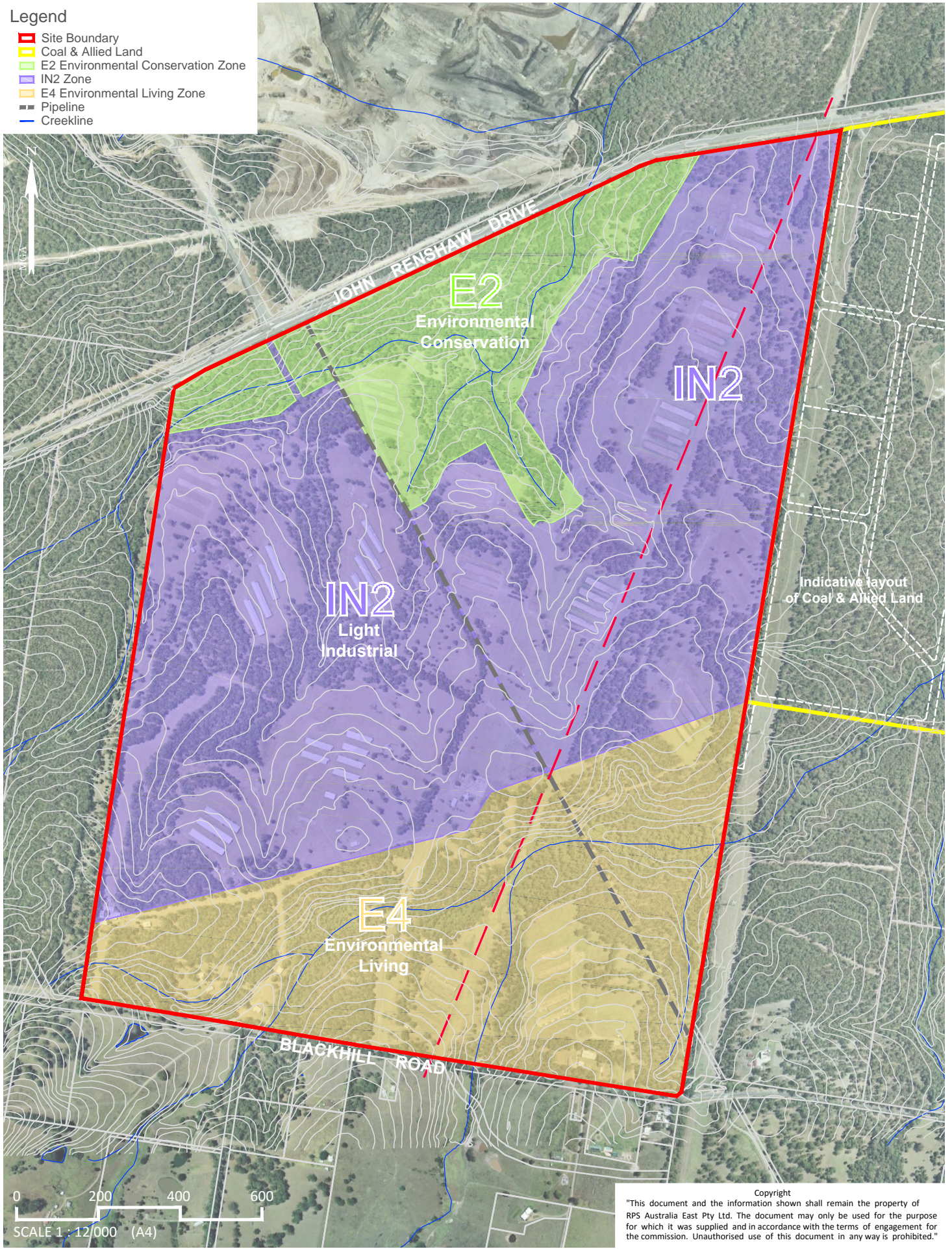
This matter is not relevant, as no capital works are proposed as part of the draft planning agreement.

State whether the Draft Planning Agreement specifies that certain requirements of the agreement must be complied with before development certificates are issued

Before granting consent to the first development application for the site, the parties must negotiate and agree on an overall plan of conservation measures for the whole subject site. This negotiation and agreement precedes any construction certificate, occupation certificate or subdivision certificate issue.

**Legend**

- ▬ Site Boundary
- ▬ Coal & Allied Land
- ▬ E2 Environmental Conservation Zone
- ▬ IN2 Zone
- ▬ E4 Environmental Living Zone
- ▬ Pipeline
- ▬ Creekline



TITLE: ZONING - PROPOSED ZONE BOUNDARY CHANGES

LOCATION: BLACKHILL

DATUM: AHD

DATE: 10 SEPTEMBER 2015

CAD REF:

PROJECTION: MGA ZONE 56 (GDA 94)

PURPOSE:

VERSION: REVISED ZONING

CLIENT:  
JOB REF: PR124120

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