

FREQUENTLY ASKED QUESTIONS – DRAFT PLANNING AGREEMENT #15



Landscape Screen Hitchcocks Lane Berry Draft Planning Agreement (#15)

Frequently Asked Questions

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What is a Planning Agreement?

A planning agreement is a voluntary agreement between a planning authority and a developer, under which the developer agrees to:

- dedicate land free of cost; or
- pay a monetary contribution; or
- provide any other material benefit; or
- provide any combination of the above, to be used for or applied towards a public purpose.

Planning agreements are a planning tool used to negotiate flexible outcomes for a variety of public purposes. Planning agreements are used widely in the planning system as a tool for delivering innovative or complex infrastructure and public benefit outcomes in connection with planning proposals and/or development applications. Planning agreements are negotiated between planning authorities and developers in the context of applications for changes to environmental planning instruments (planning proposals) or for consent to carry out development (development applications).

What is proposed as part of draft Planning Agreement VPA15?

Draft Planning Agreement VPA15 relates to the establishment and maintenance of a landscape screen to help mitigate visual impacts of development. The landscape screen will be planted adjacent to the southern boundary of land to be rezoned as part of Planning Proposal PP029 - Hitchcocks Lane Berry (refer to Location Plan). The landscape screen is intended to minimise visual impacts associated with future development enabled by PP029, and to assist with the scenic amenity of the area.

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Why is a Planning Agreement proposed?

PP029 enables rezoning of land for housing development (south of Hitchcocks Lane in Berry). As part of the rezoning process, a [Visual Impact Assessment](#) (VIA) was prepared by Peter Andrews and Associates in May 2019 with a key recommendation to reduce visual impacts by planting of landscaping to screen views of new housing.

Council resolved on 7 April 2020 (MIN20.257) to secure the landowners/developers' agreement to provide the screen, with subsequent resolutions to progress the agreement on 1 September 2020 (MIN20.619) and 11 May 2021 (MIN21.242).

Planning agreements provide a flexible framework under which planning authorities can share responsibility for the provision of infrastructure in new release areas or in major urban renewal projects. They permit tailored governance arrangements and the provision of infrastructure in an efficient, co-operative and coordinated way. The draft planning agreement is the result of negotiations between the landowners (the proponents of PP029) and Council throughout 2020 and 2021. The draft agreement provides Council with a commitment from the landowners/developers to provide the landscape screen before housing development occurs on the site and provides the developers with certainty that Council will take over ongoing future maintenance of the landscape screen (subject to meeting conditions set out in the agreement).

What are the objectives of draft Planning Agreement VPA15?

The overall aim of the landscape screen is to obscure the proposed development from view when travelling northwards along the Princes Highway to Berry. Specific objectives include:

- To mitigate visual impacts associated with future development by screening views of future development from the Princes Highway.
- To protect the landscape and scenic quality of the area and preserve the natural and rural views.
- Enhance privacy and local amenity for future residents of the subdivision by obscuring views of the highway and associated light pollution.
- To provide a natural screen using soft landscaping features to complement the surrounding landscape and leafy character of Berry and create a subtle and attractive entry statement into Berry.
- To provide cost-effective landscape screening of development over the long-term (e.g. rationalising future maintenance requirements and costs).

These objectives illustrate the the agreement is in the public interest and will deliver tangible community benefits. The screen will consist of native species and is also expected to provide biodiversity benefits.

What will the landscape screen look like?

The landscape screen will be within a 12 m wide strip of land adjacent to the southern boundary of development land (rezoned as part of PP029) planted densely with native trees, shrubs, and groundcovers. The 12 m wide strip of land will consist of 8 metres of planted area and a 2 m wide grassed area either side for maintenance. The screen will extend approximately 300 m along the southern boundary of the development land. At maturity, the area is intended to present as a strip of bushland, largely obscuring views of development beyond. A public perimeter road will be provided to the north of the landscape screen as part of future subdivisions. A stock exclusion fence will be located along the southern boundary of the landscape screen area to protect the plants from any livestock impacts associated with neighbouring rural land uses. This fence will be the responsibility of the rural landowner to maintain.

The Visual Impact Assessment (PAA, May 2019) recommended landscape screening to extend along the southern and eastern boundaries of the development land. This draft planning agreement relates to landscaping next to the southern boundary of development land where no noise barrier(s) will be required. A noise barrier (incorporating landscaping) will be required as part of future subdivision along the eastern boundary and south-eastern corner of the site. Design of the noise barrier(s) will depend on future proposed subdivision details, therefore landscaping and maintenance requirements for the noise barrier area will be worked out at subdivision development application stage.

More information on the landscape screen specifications can be found on the Location Plan and Landscaping Plan included in VPA15.

What species will be used in the Landscape Screen?

The proposed species list is provided on the Landscaping Plan by Peter Phillips Landscape Architecture dated May 2021.

The large trees species proposed are:

- *Eucalyptus robusta* – Swamp Mahogany
- *Casuarina glauca* – Swamp Oak
- *Lophostemon confertus* – Brushbox
- *Melaleuca linarifolia* – Snow-in-Summer
- *Melaleuca stypheloides* - Prickly leafed Paperbark

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The smaller tree species proposed are:

- *Acacia binervata* – Two Veined Hickory
- *Acacia maidenii* – Maidens Wattle
- *Acmena smithii* – Lilly Pilly
- *Backhousia myrtifolia* – Grey Myrtle
- *Elaeocarpus reticulatus* – Blueberry Ash
- *Tristania laurina* – Water Gum

Please refer to the Landscaping Plan for a list of proposed shrubs, grasses and groundcovers. One tree is proposed to be planted every 10 m², 1 shrub every 4 m², and 1 groundcover every 1 m², resulting in over 4000 trees and plants.

When will the landscape screen be provided?

The landscape screen subject to VPA15 will need to be established before a subdivision certificate is issued for the first subdivision of the land. This means no housing development will occur before the screen is planted.

Importantly, trees will not be planted as large mature specimens. Less mature trees establish quicker and grow faster, with lower failure rates, and tend to be stronger and healthier over the long-term. Using smaller plants will also reduce costs (including costs of replacing failed plants). The screening effect will not be immediate and will increase over time as the plants grow.

What is proposed for the flood-affected area and for the noise barrier area?

The screen is bisected by an area of flood-affected land which drains water from the development area (via a proposed drainage reserve) to the south-east. The area affected by the 1% AEP flood extent will not be planted as part of this agreement, to ensure flows of water and flood behaviour will not be affected by vegetation. As part of the subdivision of the land, tree planting within or adjacent to the drainage reserve, along with street trees, will help to soften views of development visible through this area.

A noise barrier in the form of landscaped earth mound and/or an acoustic wall, will be required around south eastern part of the residential zoned land on Lot 763 (the eastern-most lot within the development area) to mitigate road noise impacts on future residents of the highway. The noise barrier will augment the existing noise barrier along the Highway and extend up to 100 m adjacent to the southern boundary of the residential zoned land.

The details of the barrier(s) including plantings, will not be known until subdivision stage for Lot 763. Development controls relating to the noise barrier's eventual appearance are contained within the Shoalhaven

Development Control Plan Chapter N3 Berry: West of the Princes Highway.

Who will maintain the landscape screen?

The draft Planning Agreement provides for the following:

- The developers will establish the landscape screen at their cost with the first subdivision of the land;
- The developers will maintain the landscape screen for at least 3 years (at their cost) in accordance with the maintenance schedule;
- Council will take over the long-term maintenance of the landscaping after 3 years provided conditions set out in the Planning Agreement are met. These conditions include (but are not limited to):
 - satisfactory state of plants and landscaped area;
 - suitable legal arrangements for access to the screen; and
 - provision of a lump sum payment (monetary contribution) which will cover Council's costs to maintain the screen for 15 years after handover of maintenance responsibilities.

How were the maintenance costs calculated?

The landscaping has been designed to be low-maintenance, especially once established. Required maintenance activities are set out within the attached Landscape Maintenance Plan.

The developer will be required to pay a monetary contribution to Council to cover the maintenance cost calculated for a period of 15 years, plus an allowance for plant replacement (estimated at 30% of the establishment cost). The estimated costs have been indexed using a fixed rate of 3% each year for the 15 year period. The monetary contribution has been calculated to reflect the net present value of the maintenance costs, recognising Council will invest the contribution in a trust which will earn interest over time. Further details regarding the monetary calculations can be downloaded from the exhibition webpage.

How has bushfire risk been accounted for?

The subject land is not currently mapped as bushfire prone; however, the NSW Rural Fire Service have indicated land to the south is intended to be mapped as a grassfire hazard in the future. The NSW RFS were consulted as part of PP029 to rezone the development land. The RFS did not raise any initial concerns relating to the landscape screen and related planning controls.

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The NSW RFS document titled 'Planning for Bushfire Protection 2019' (PFBP 2019) contains guidance relating to 'remnant bushland or narrow vegetation corridors, recognising these have less opportunity to support fully developed bush fires because of their limited size. Section A1.11 of PFBP 2019 provides *'Remnant vegetation is a parcel of vegetation with a size of less than 1 Ha or a shape that provides a potential fire run that could threaten buildings not exceeding 50m. These remnants are considered a low hazard and APZ setbacks and building construction standards for these may be the same as for rainforests'*.

The subdivision of development land will also be required to provide a perimeter road and managed Asset Protection Zones separating the screen from development and providing space for firefighting activities. Therefore, the landscape screen is not considered to result in unacceptable bushfire risk to future development.

What policies and procedures govern planning agreements?

Part 7 Division 7.1 Subdivision 2 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) provides the legislative framework for planning agreements.

Part 4 Division 1A of the *Environmental Planning and Assessment Regulation 2000* (the EP&A Regulation) has further requirements relating to the form and subject matter of planning agreements, making, amending and revocation of planning agreements, giving public notice and other procedural arrangements relating to planning agreements.

The EP&A Regulation requires Council to consider any relevant practice note issued by the NSW State Government. The NSW Department of Planning, Industry and Environment (DPIE) recently updated Planning Agreement guidance, in a [Practice Note for Planning Agreements, February 2021](#).

In addition, Shoalhaven City Council has an adopted [Planning Agreements Policy](#) (recently updated in January 2021). This draft Planning Agreement conforms to the state and council policy guidance.

What are the next steps?

Submissions received on the draft agreement will be considered. If amendments are required in response to issues raised within submissions these will be explored. Minor amendments to the agreement may be made before the final agreement is reported to Council (subject to continued agreement between the parties). Any material/significant changes that are proposed will require re-notification of the agreement. Should Council

support the final agreement, it can be signed and publicly notified. The provisions of the agreement will then come into effect.

Have Your Say

Written comments are invited and should be addressed to:

- The Chief Executive Officer, Shoalhaven City Council, PO Box 42, Nowra 2541 or
- emailed to council@shoalhaven.nsw.gov.au

before 5pm on **Friday 2 July 2021** quoting Council's reference **64303E**.

Submissions can also be made on the Documents on Exhibition webpage:

<https://www.shoalhaven.nsw.gov.au/Council/Access-to-Information/Documents-on-Exhibition>

Council staff are available via phone or email to answer your enquiries. Please contact Rebecca Jardim, Strategic Planner, on 4229 3426 or via email: Rebecca.Jardim@shoalhaven.nsw.gov.au for more information.