

Vincent De Luca OAM

Community First

Media Release

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De Luca proposes purchasing land of Environmental Significance

In the wake of the Land and Environment Court decision to approve a development in the environmentally significant land area of Bantry Bay adjacent to Garigal National Park and other proposals for land at Lizzard Rock and in the Narrabeen Lagoon Catchment, Community First Candidate for Mayor and Councillor for "A" Ward, Vincent De Luca has announced he will seek to amend the Warringah Council section 94 developer contribution plan to purchase land deemed to be of environmental significance and for section 93 developer agreements to also be used to purchase land and increase services and amenities in Warringah.

Under the amended Environmental Planning and Assessment Act, Mr De Luca proposes Council could enter into agreements whereby developers as part of their required monetary contribution to Council for their own developments, contribute funds to buy land of environmental significance and bequeath it to Warringah Council so it is always protected.

A provision of section 93 states that money can be spent on "the conservation or enhancement of the natural environment".

"Warringah has some of the most precious land in Australia and we must protect it for future generations" Mr De Luca said at a Public meeting at Belrose last night.

"We continue to see this land put under threat by proposed development that is unsustainable. No measures have been introduced by Warringah Council to date to properly address this major concern".

"Under section 94 of the Environmental Planning & Assessment Act developers must pay a huge amount of funds into Council's coffers, however, these funds have not been earmarked to purchase environmentally significant land".

"You only have to look at how Dick Persson wasted millions of dollars buying a beachfront home at Narrabeen as they had to spend funds and there was no other way to spend them. If the Plan had been properly written those funds could have gone towards buying some of the precious land in need of protection in the Narrabeen Lagoon Catchment or even gone towards the Narrabeen Lagoon rehabilitation works".

Section 93 of the legislation also allows Councils to enter into developer agreements. So even if a development is in Dee Why, if the developer agrees, it could be spent on purchasing land or providing amenities and services in Belrose as an example.

“If I am elected I will immediately move to consult the community on amending the section 94 Plan so as to facilitate the purchase of land of environment significance, spend money on creating more childcare facilities and placements as well as help our surf clubs and volunteer organisations which are the back bone of our society as well as explore the use of section 93 agreements to also funds such initiatives”. I will vigorously pursue this option to ensure that the community’s interests are put first” Mr De Luca concluded.

Environmental Planning and Assessment Act 1979 No 203

93F Planning agreements

- (1) A planning agreement is a voluntary agreement or other arrangement under this Division between a planning authority (or 2 or more planning authorities) and a person (the *developer*):
 - (a) who has sought a change to an environmental planning instrument, or
 - (b) who has made, or proposes to make, a development application, or
 - (c) who has entered into an agreement with, or is otherwise associated with, a person to whom paragraph (a) or (b) applies,

under which the developer is required to dedicate land free of cost, pay a monetary contribution, or provide any other material public benefit, or any combination of them, to be used for or applied towards a public purpose.
- (2) A public purpose includes (without limitation) any of the following:
 - (a) the provision of (or the recoupment of the cost of providing) public amenities or public services,
 - (b) the provision of (or the recoupment of the cost of providing) affordable housing,
 - (c) the provision of (or the recoupment of the cost of providing) transport or other infrastructure relating to land,
 - (d) the funding of recurrent expenditure relating to the provision of public amenities or public services, affordable housing or transport or other infrastructure,
 - (e) the monitoring of the planning impacts of development,
 - (f) the conservation or enhancement of the natural environment.
- (3) A planning agreement must provide for the following:
 - (a) a description of the land to which the agreement applies,
 - (b) a description of:
 - (i) the change to the environmental planning instrument to which the agreement applies, or
 - (ii) the development to which the agreement applies,
 - (c) the nature and extent of the provision to be made by the developer under the agreement, the time or times by which the provision is to be made and the manner by which the provision is to be made,
 - (d) in the case of development, whether the agreement excludes (wholly or in part) or does not exclude the application of section 94, 94A or 94EF to the development,

- (e) if the agreement does not exclude the application of section 94 to the development, whether benefits under the agreement are or are not to be taken into consideration in determining a development contribution under section 94,
- (f) a mechanism for the resolution of disputes under the agreement,
- (g) the enforcement of the agreement by a suitable means, such as the provision of a bond or guarantee, in the event of a breach of the agreement by the developer.

(3A) A planning agreement cannot exclude the application of section 94 or 94A in respect of development unless the consent authority for the development or the Minister is a party to the agreement.

(4) A provision of a planning agreement in respect of development is not invalid by reason only that there is no connection between the development and the object of expenditure of any money required to be paid by the provision.

Note. See section 93E (1), which requires money paid under a planning agreement to be applied for the purpose for which it was paid within a reasonable time.

(5) If a planning agreement excludes the application of section 94 or 94A to particular development, a consent authority cannot impose a condition of development consent in respect of that development under either of those sections (except in respect of the application of any part of those sections that is not excluded by the agreement).

(5A) A planning authority, other than the Minister, is not to enter into a planning agreement excluding the application of section 94EF without the approval of:

- (a) the Minister, or
- (b) a development corporation designated by the Minister to give approvals under this subsection.

(6) If a planning agreement excludes benefits under a planning agreement from being taken into consideration under section 94 in its application to development, section 94 (6) does not apply to any such benefit.

(7) Any Minister, public authority or other person approved by the Minister is entitled to be an additional party to a planning agreement and to receive a benefit under the agreement on behalf of the State.

(8) A council is not precluded from entering into a joint planning agreement with another council or other planning authority merely because it applies to any land not within, or any purposes not related to, the area of the council.

(9) A planning agreement cannot impose an obligation on a planning authority:

- (a) to grant development consent, or
- (b) to exercise any function under this Act in relation to a change to an environmental planning instrument.

(10) A planning agreement is void to the extent, if any, to which it requires or allows anything to be done that, when done, would breach this section or any other provision of this Act, or would breach the provisions of an environmental planning instrument or a development consent applying to the relevant land.

- (11) A reference in this section to a change to an environmental planning instrument includes a reference to the making or revocation of an environmental planning instrument.

Environmental Planning and Assessment Act 1979 No 203

94 Contribution towards provision or improvement of amenities or services

- (1) If a consent authority is satisfied that development for which development consent is sought will or is likely to require the provision of or increase the demand for public amenities and public services within the area, the consent authority may grant the development consent subject to a condition requiring:
- (a) the dedication of land free of cost, or
 - (b) the payment of a monetary contribution,
- or both.
- (2) A condition referred to in subsection (1) may be imposed only to require a reasonable dedication or contribution for the provision, extension or augmentation of the public amenities and public services concerned.
- (3) If:
- (a) a consent authority has, at any time, whether before or after the date of commencement of this Part, provided public amenities or public services within the area in preparation for or to facilitate the carrying out of development in the area, and
 - (b) development for which development consent is sought will, if carried out, benefit from the provision of those public amenities or public services,
- the consent authority may grant the development consent subject to a condition requiring the payment of a monetary contribution towards recoupment of the cost of providing the public amenities or public services (being the cost as indexed in accordance with the regulations).
- (4) A condition referred to in subsection (3) may be imposed only to require a reasonable contribution towards recoupment of the cost concerned.
- (5) The consent authority may accept:
- (a) the dedication of land in part or full satisfaction of a condition imposed in accordance with subsection (3), or
 - (b) the provision of a material public benefit (other than the dedication of land or the payment of a monetary contribution) in part or full satisfaction of a condition imposed in accordance with subsection (1) or (3).
- (6) If a consent authority proposes to impose a condition in accordance with subsection (1) or (3) in respect of development, the consent authority must take into consideration any land, money or other material public benefit that the applicant has elsewhere dedicated or provided free of cost within the area (or any adjoining area) or previously paid to the consent authority, other than:
- (a) a benefit provided as a condition of the grant of development consent under this Act, or

(b) a benefit excluded from consideration under section 93F (6).

(7) If:

(a) a condition imposed under subsection (1) or (3) in relation to development has been complied with, and

(b) a public authority would, but for this subsection, be entitled under any other Act to require, in relation to or in connection with that development, a dedication of land or payment of money in respect of the provision of public amenities or public services or both,

then, despite that other Act, compliance with the condition referred to in paragraph (a) is taken to have satisfied the requirement referred to in paragraph (b) to the extent of the value (determined, if the regulations so provide, in accordance with the regulations) of the land dedicated or the amount of money paid in compliance with the condition.