

Explanatory Note

Amended Voluntary Planning Agreement for land exchange, provision of car parking spaces and bus shelters at Swansea

Introduction

Clause 25E of the Environmental Planning and Assessment Regulation 2000 requires a planning authority (Lake Macquarie City Council) proposing to enter into a voluntary planning agreement under section 93F of the Environmental Planning and Assessment Act 1979 ("the EP&A Act") to prepare an explanatory note about the voluntary planning agreement.

This explanatory note relates to the proposal to amend the existing Voluntary Planning Agreement (hereafter referred to as "the existing Planning Agreement") entered into by Fabcot Pty Limited ("the Developer") and the Lake Macquarie City Council ("the Council") in respect of a development application for land at Swansea. The existing Planning Agreement makes provision for car parking and two bus shelters by the Developer to the Council in lieu of levying some of the section 94 contributions by the Council under the EP&A Act for the Development referred to in the Background below. The Council and the Developer propose to amend the existing Planning Agreement as set out in the Amended Planning Agreement. The proposed amendments do not materially change the Development or the aforesaid provision for car parking and two bus shelters, and accordingly the objectives and the merits of the Amended Planning Agreement remain unchanged.

A planning agreement results from an offer by a developer to a consent authority to make contributions to that authority (here, a council) by dedicating land, making monetary contributions, constructing facilities and / or providing any other material public benefit, to be used for or applied toward a public purpose.

This explanatory note has been prepared jointly between the parties as required by clause 25E of the Environmental Planning and Assessment Regulation 2000.

Background

On the 25 July 2007, a development application was lodged with the Council seeking development consent to carry out the development of the land ("the Development Application").

The Development Application sought approval for, amongst other things, removal of trees; removal of an existing car park area; the closure of part of an existing lane; lot consolidation; demolition of four existing buildings; the construction of a supermarket, speciality shops and associated car park, bike stand and signage ("the Development").

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In relation to the Development Application an offer was made by the Developer to enter into a Planning Agreement with the Lake Macquarie City Council.

The existing Planning Agreement was publicly exhibited and the Council subsequently granted conditional consent to the Development Application on 23 December 2008.

The existing Planning Agreement was entered into by the Council and the Developer on 7 January 2009.

A section 96 application in respect of the Development Application was subsequently determined by the Council on 9 February 2009. Pursuant to condition 51 of the Development Consent, a floodgate mechanism is required to be installed to flood proof shop tenancies and a flood plain risk management plan is to be provided which demonstrates a process for installation, preparedness, fail safe management/activation of the floodgate system.

Pursuant to conditions 60, 61 and 64, the Developer is also required to arrange for the creation of easements in favour of Council to drain water prior to, or at the time of, registration of the final plan of subdivision. In addition, under condition 64 the Developer is obligated to ensure that the requirements of Energy Australia for easements and sites for electricity purposes are created and indicated on the final plan of subdivision and associated section 88B *Conveyancing Act 1919* instrument.

Since the section 96 application was determined, a title deed has also been issued for the "Unnamed Lane" (comprising part of the lane leading off Josephson Street, Swansea) referred to in the Planning Agreement.

As a consequence, the Council and the Developer propose to amend the existing Planning Agreement to reflect these requirements and changes which are set out in the Amended Planning Agreement.

The changes and requirements outlined above do not materially change the Development and accordingly the objectives and the merits of the Amended Planning Agreement (outlined below and as previously exhibited) remain unchanged.

Objectives, nature and effect of the Amended Planning Agreement

The objective of the Amended Planning Agreement is to provide local infrastructure to meet the needs of the customers of the Development.

The Amended Planning Agreement proposed between the Developer and Lake Macquarie City Council, provides for the Developer to:

1. Exchange lands between the Developer and Council to facilitate the provision and upgrading of car parking spaces on the consolidated Lot 1 which will be owned by the Council;
2. Construct car parking spaces including kerb and guttering; paving; landscaping; lighting; and car park stormwater works; and

3. Construct two bus shelters.

As a result of development consent for the Development being given by Council, then:

1. The Developer's Exchange Land identified in Annexure 1 of the Amended Planning Agreement will be transferred to Council in exchange for Council's Exchange Land also identified in Annexure 1 of the Amended Planning Agreement. The net effect of this exchange provides for the transfer of 1,330m² of land to Council. Upon the completion of the exchange, the Council will grant an easement for access and car parking to the Developer in accordance with clause 12 of the Amended Planning Agreement;
2. The Developer will:
 - a. Construct, line mark and maintain at-grade car parking spaces on the consolidated Lot 1 which will be owned by the Council; and
 - b. Construct two bus shelters.

Assessment of the merits of the Amended Planning Agreement

The Swansea Urban Centre will be provided with modern car parking spaces (at-grade) associated with the Woolworths' Development, but such facilities are also open to the public.

Additional works will also be carried out and are specified in Schedule 1 of the Amended Planning Agreement, and include the

1. Land exchange, the net effect of this exchange provides for the transfer of 1,330m² of land to Council;
2. Construction of car parking spaces including kerb and guttering; paving; landscaping; lighting; and car park stormwater works; and
3. Construction of two bus shelters.

The lands held by Council will be consolidated into 1 allotment which in part will be available for Council future development.

How the Amended Planning Agreement promotes the public interest and one or more objects of the *Environmental Planning and Assessment Act 1979* (NSW)

The objects of the Act are:

- (a) 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,

- (ii) the promotion and co-ordination of the orderly and economic use and development of land,
 - (iii) the protection, provision and co-ordination of communication and utility services,
 - (iv) the provision of land for public purposes,
 - (v) the provision and co-ordination of community services and facilities, 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, and
 - (vii) ecologically sustainable development, and
 - (viii) the provision and maintenance of affordable housing, and
- (b) to promote the sharing of the responsibility for environmental planning between the different levels of government in the State, and
 - (c) to provide increased opportunity for public involvement and participation in environmental planning and assessment.

In relation to (a), the Planning Agreement particularly promotes the Objects (ii), (iv), and (v).

How this Amended Planning Agreement promotes the Elements of the Council's Charter under Section 8 of the *Local Government Act 1993*

Under Section 8 of the *Local Government Act 1993*, a council has the following charter:

- to provide directly or on behalf of other levels of government, after due consultation, adequate, equitable and appropriate services and facilities for the community and to ensure that those services and facilities are managed efficiently and effectively
- to exercise community leadership
- to exercise its functions in a manner that is consistent with and actively promotes the principles of multiculturalism
- to promote and to provide and plan for the needs of children
- to properly manage, develop, protect, restore, enhance and conserve the environment of the area for which it is responsible, in a manner that is consistent with and promotes the principles of ecologically sustainable development
- to have regard to the long term and cumulative effects of its decisions
- to bear in mind that it is the custodian and trustee of public assets and to effectively account for and manage the assets for which it is responsible
- to facilitate the involvement of councilors, members of the public, users of facilities and services and council staff in the development, improvement and co-ordination of local government
- to raise funds for local purposes by the fair imposition of rates, charges and fees, by income earned from investments and, when appropriate, by borrowings and grants

- to keep the local community and the State government (and through it, the wider community) informed about its activities
- to ensure that, in the exercise of its regulatory functions, it acts consistently and without bias, particularly where an activity of the council is affected
- to be a responsible employer.

The Amended Planning Agreement promotes Council's charter under section 8 of the *Local Government Act 1993* as it provides district public services and amenities to meet the needs of the proposed new Development.

The planning purposes served by the Amended Planning Agreement and an assessment of whether the agreement provides for a reasonable means of achieving that purpose

The planning purposes served by the Amended Planning Agreement include creating and/or upgrading local infrastructure to meet the demands of the Development.

The Amended Planning Agreement provides reasonable means of achieving this purpose by requiring the Developer to provide the following contributions:

- the transfer of land to Council for purposes of a car parking area for the Development;
- the provision of public facilities and amenities by the construction of car parking spaces; and
- the provision of public transport infrastructure through the construction of two bus shelters.

Fabcot Pty Limited

Council of the City of Lake Macquarie