

Explanatory Note

Draft Planning Agreement for proposed Traffic Works at Hillsborough Road

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 to prepare an explanatory note about the voluntary planning agreement.

This explanatory note relates to the draft Voluntary Planning Agreement (hereafter referred to as "Planning Agreement") proposed to be entered into by BB Retail Capital Pty Limited ("BB Retail") and the Lake Macquarie City Council ('the Council').

A planning agreement results from an offer by a developer to the Lake Macquarie City Council to dedicate land, make monetary contributions, or provide 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

Council received a development application for a bulky goods (Homemakers) centre at Hillsborough Road, Warners Bay. The development application proposes an alternate traffic scheme to that provided for in the current Lake Macquarie Section 94 Contributions Plan – Hillsborough Road No.6, 2004 (Contributions Plan).

The Contributions Plan is to be amended to reflect the proposed traffic scheme and a draft Contributions Plan is currently on exhibition from 15 October 2007 until 12 November 2007.

The development application is accompanied by an offer by the Developer (BB Retail) to enter into a Voluntary Planning Agreement with Lake Macquarie City Council to provide traffic works in accordance with the draft Contributions Plan.

Objectives of the Proposed Planning Agreement

The objectives of the draft Planning Agreement is to:

1. undertake traffic works along Hillsborough Road, Warners Bay which are consistent with the proposed draft Contributions Plan, and
2. provide an appropriate contribution to the total traffic works in that road, which are required to meet the traffic needs of the proposed development and other development in the precinct.

Nature of the Proposed Planning Agreement

The Planning Agreement is between BB Retail and Lake Macquarie City Council, and provides for BB Retail to undertake the installation of traffic signals and associated road works in accordance with the draft Contributions Plan.

Effect of the Proposed Planning Agreement

If the Council:

- a. Adopts the draft Contributions Plan,
- b. Grants Development Consent to the Development, and
- c. Imposes in that consent a condition under Section 94 of the Environmental Planning and Assessment Act 1979 in accordance with the draft Contributions Plan so adopted, requiring BB Retail to pay a monetary contribution:
 - i. As set out in the Schedule of Works and Calculation of Contributions to that draft Contributions Plan in Tables 6 and 7 therein, and
 - ii. Management Contributions calculated in accordance with section 6.4 of that draft Contributions Plan,

then in lieu of payment of the cash contributions the developer will be required to construct a signalised intersection on Hillsborough Road, Warners Bay.

Assessment of the Merits of this Planning Agreement

The Hillsborough Road Precinct, in which this development is proposed, is already an important destination for bulky goods retail and entertainment purposes. There is some opportunity for new development or re-development within the Hillsborough Road Precinct.

The development or redevelopment of an area for residential, commercial or industrial purposes creates a need for public amenities and public services. The public amenities and public services will vary according to the type and scale of development.

The precinct already experiences traffic congestion, particularly traffic entering Hillsborough Road from the service roads at peak times, and this will be exacerbated by additional traffic generated by new development.

The Draft Lake Macquarie Section 94 Contributions Plan No.6 – 2007 Hillsborough Road is currently on exhibition, and provides for traffic upgrades to meet the traffic needs of the existing development, as well as, future development along Hillsborough Road.

The works provided in this Planning Agreement will have a positive impact to the public, as the works will relieve traffic congestion which:

1. currently exists, and
2. is anticipated from this development, and
3. could occur from future development.

How this draft Planning Agreement promotes the Public Interest

The Planning Agreement will mitigate against adverse financial impacts to Council if the construction costs of the proposed intersection exceed cost estimates.

Traffic works will be completed in a timely manner benefiting existing and future users.

How this draft Planning Agreement promotes the Objects of the Environmental Planning and Assessment Act 1979

The objects of this 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 (i), (ii), and (v).

The Planning Agreement aims to achieve a balanced outcome between the development of land for commercial purposes and the provision of appropriate traffic infrastructure to accommodate the development.

How this 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 councillors, 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 Planning Agreement promotes Council's Charter under Section 8 of the *Local Government Act 1993* as it facilitates the provision of efficient traffic management that will be necessary for the proposed development.

The Planning Purpose and an assessment of whether the draft Planning Agreement provides for a reasonable means of achieving the purpose

The planning purpose is the provision of traffic works to provide adequate and sufficient access in connection with the development, and to a certain extent, other future developments.

The Planning Agreement provides a reasonable means of achieving that planning purpose as it makes provision for the developer to undertake works which are at least equal to, or greater than, those contributions attributable to the development as calculated in accordance with the Draft Contributions Plan.

Assessment of whether the draft Planning Agreement conforms with Council's Capital Works Program

The works as contained in the Planning Agreement are consistent with the Draft Contributions Plan.

These explanatory notes are not to be used to assist in construing the Planning Agreement, nor as a complete description of the draft planning agreement.