

# **Explanatory Note – Draft Planning Agreement under the *Environmental Planning and Assessment Act 1979***

*between*

**PENRITH CITY COUNCIL (ABN 43 794 422 563) and**

**THE TRUST COMPANY (AUSTRALIA) LIMITED (ACN 000 000 993) ACF HABEN  
RETAIL NUMBER 2 TRUST**

*33-43 Phillip Street, St Marys NSW 2760*

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## **Introduction**

The purpose of this explanatory note is to provide a plain English summary to support the notification of the draft planning agreement (the **Planning Agreement**) prepared under Subdivision 2 of Division 7.1 of Part 7 of the *Environmental Planning and Assessment Act 1979* (the **Act**).

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

Note: this explanatory note is not to be used to construe the Planning Agreement.

## **Parties to the Planning Agreement**

The parties to the Planning Agreement are Penrith City Council (ABN 43 794 422 563) (**Council**) and The Trust Company (Australia) Limited (ACN 000 000 993) ACF Haben Retail Number 2 Trust (**Developer**).

## **Description of the Subject Land**

The Planning Agreement applies to 33-43 Phillip Street, St Marys, NSW, otherwise known as Lot 7 of Deposited Plan 734738 (**Land**).

## **Description of the Development**

The Developer has sought an amendment to the *Penrith Local Environmental Plan 2010* (numbered PP\_2018\_PENRI\_004\_00) including the rezoning of the Land (**LEP Amendment**) and then proposes the redevelopment of the Station Plaza Shopping Centre to allow mixed use development including apartments, upgraded shops, and commercial premises on the Land (**Development**).

The Developer has made an offer to the Council to enter into the Planning Agreement in connection with the LEP Amendment and the Development and to provide and secure development contributions.

### **Summary of Objectives, Nature and Effect of the Planning Agreement**

The Developer proposes the redevelopment of the Station Plaza Shopping Centre to allow mixed use development including apartments, upgraded shops, and commercial premises on the Land and to dedicate part of the Land to the Council for the purposes of a public plaza (**Offset Lot**).

The Planning Agreement deals with the timing and nature of the dedication of the Offset Lot in addition to outlining maintenance requirements of the Offset Lot once dedicated.

In addition, the Developer agrees to:

- Design and carry out works associated with traffic signals at the Blair Avenue, Phillip Street and Entrance intersection (**Traffic Signal Works**);
- Design and carry out works associated with capacity improvements at Chapel Street and Glossop Street intersection to accommodate the creation of an additional right hand turn lane (**Capacity Improvement Works**);
- Design and carry out works associated with the embellishment of the Public Plaza to be dedicated to Council on the Offset Lot (**Public Plaza Embellishment Works**);
- Pay a monetary contribution towards the upgrade of open space facilities at Bennett Park (**Monetary Contribution**); and
- Provide affordable housing arising from the Development.

In particular, the Planning Agreement provides that the Developer will:

- dedicate the Offset Lot to Council on the date of registration of a Plan of Subdivision for the relevant stage of Development of the Land;
- maintain the Public Plaza on the Offset Lot in accordance with a Management Plan and for a period of 5 years (**Maintenance Period**) and in accordance with the minimum maintenance obligations outlined in the Planning Agreement; and
- pay the Monetary Contribution to Council in the amount of \$655,000 plus indexation;
- carry out and pay for the Traffic Signal Works and Capacity Improvement Works;
- carry out and pay for the Public Plaza Embellishment Works to the value of \$2,000,000;
- provide for Affordable Housing arising from the Development equivalent to 3% of the uplift in residential floor space ratio arising from the LEP Amendment (**Affordable Housing**).

(the **Development Contributions**).

The Developer is required to provide security (**Security**) in the form of a bank guarantee in the amount of \$655,000 and is required to register the Planning Agreement on the title of the Land in accordance with section 7.6 of the Act.

The objective of the Planning Agreement is to secure the Developer's delivery of the Development Contributions.

No relevant capital works program by the Council is associated with this agreement.

## **Assessment of Merits of Planning Agreement**

### **The Planning Purpose of the Planning Agreement**

In accordance with section 7.4(2) of the Act, the Planning Agreement is for the public purpose of the provision of (or the recoument of the cost of providing) public amenities or public services.

The Council and the Developer have assessed the Planning Agreement and both hold the view that the provisions of the Planning Agreement provide a reasonable means of achieving the public purpose set out above. This is because it will ensure that the Developer makes the development contributions in the event that the Development is carried out.

### **How the Planning Agreement Promotes the Public Interest**

The Planning Agreement promotes the public interest by ensuring that an appropriate contribution is made towards the provision of conservation land and enhancing the natural environment.

### **How the Planning Agreement Promotes the Objects of the Act**

The Planning Agreement promotes the objects of the Act by:

- section 1.3(a) – promoting “the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State’s natural and other resources” by ensuring the Land is protected for conservation purposes;
- section 1.3(b) – facilitating “ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment” by ensuring environmental, economic and social considerations are taken into account by the Developer agreeing to contribute the Offset Lot or its alternatives;
- section 1.3(c) – promoting “the orderly and economic use and development of land” through enabling the Developer to offset any development;
- section 1.3(d) – promoting “the delivery and maintenance of affordable housing”; and
- section 1.3(g) – promoting “good design and amenity of the built environment”.

### **How the Planning Agreement Promotes the Council's Charter**

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 coordination 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; and
- 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 community facilities through residential population;
- provides a facility, for community use; and
- informs the local community and State Government about its activities and decisions in relation to the Planning Agreement and LEP Amendment.

### **How the Planning Agreement is for a Planning Purpose**

The Planning Agreement is for the purpose of securing the reservation of land in the public estate for the use and enjoyment of the public, the provision of public road facilities, the upgrade of public facilities and the provision of affordable housing.

The Planning Agreement provides a reasonable means of achieving that planning purpose as it makes provision for the transfer of the land to Council upon the subdivision of the Land to create the Offset Lot and the subsequent registration of the relevant Subdivision Plan with Land Registry Services NSW, free of cost to the Council. It also provides for the payment of monetary contributions towards public facilities, and also provides for the upgrade of public roads and provides for affordable housing for the community.

### **Requirements relating to Construction, Occupation and Subdivision Certificates**

The Planning Agreement specifies that:

- prior to the issue of the first Occupation Certificate for any residential lot in the Development, the Developer must provide the Security to the Council; and

- as part of the works of the first Construction Certificate for the Development Application, the Traffic Signal Works and the Capacity Improvement Works are to be carried out, or as otherwise specified in the development consent for the Development;
- per the timing in the relevant development consent for the Development, the Public Plaza Embellishment Works are to be completed;
- upon to the registration of the relevant subdivision plan, subdividing the Land to create the Offset Lot, the Offset Lot is to be dedicated to Council;
- that the Maintenance Period will commence on the date that the Occupation Certificate is issued for the Public Plaza that is constructed on the Offset Land; and
- prior to the issue of the relevant Occupation Certificate for the residential lots, the Affordable Housing is to be provided to Council.

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