

Explanatory Note

PROPOSED VOLUNTARY PLANNING AGREEMENT - AMENDED

CHARLESTOWN SQUARE DEVELOPMENT APPLICATION DA/231/2007

LAKE MACQUARIE CITY COUNCIL

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 the **General Property Trust** ('GPT') and the **Lake Macquarie City Council** ('the Council').

A Planning Agreement results from an offer by a developer to a planning authority to dedicate land, make monetary contributions, or provide any other material public benefit to be used for or applied toward a public purpose. In this instance, the Planning Agreement request has been made to Council by General Property Trust in relation to a development application (DA/231/2007) applying to:

Lot 1000 DP 773666, Lots 1 & 2 DP 727770, Lots 3 & 4 DP 248597, Lot 1 DP 47292 Public Reserve, and Lots 2 & 3 DP 1090261.

30 Pearson Street; 1, 3, and 3b Frederick Street; Frederick Street (itself); 2 Canberra Street; Ferris Oval, 128a Pacific Highway; and Charlestown Bowling Club, 74 Patricia Avenue, Charlestown NSW ('subject site').

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

Background

The developer has offered to enter into a Planning Agreement with Council in conjunction with a Development Application for the redevelopment and expansion of Charlestown Square. The developer proposes to provide a range of public benefits whilst seeking an exclusion from the Section 94 levies that would otherwise apply to the proposed development. The range of measures to be provided under the Planning Agreement is described below.

Objectives of the Planning Agreement

The objective of the Planning Agreement is to provide a comprehensive range of benefits to the community which are more extensive and broader in scope than those that could be levied as Section 94 development contributions. The benefits are described in full in the proposed Planning Agreement.

Nature of the Planning Agreement

The Planning Agreement is between General Property Trust and Lake Macquarie City Council. The Planning Agreement provides for the developer to provide a range of community benefits on the basis that a Section 94 contribution will not be levied on the subject development.

Effect of the Planning Agreement

The Planning Agreement operates such that once the first Construction Certificate is issued for works related to the subject development, the developer will provide the benefits described in the Planning Agreement.

Summary of Benefits to be provided

The benefits include:

1. 3200m² public park on the northern part of the existing Charlestown Bowling Club land and its transfer to Council.
2. Payment of \$500,000 to the Council's Charlestown Open Space Endowment Fund.
3. A new 46 place child care centre to be located in Kahibah Road, Highfields.
4. An additional playing field, amenities building, car parking and other facilities at St John Oval, Charlestown.
5. New roads, to be known as New Frederick St and New Carl Street.
6. Substantial works at Charlestown Oval, being a new amenities building and landscaping.
7. A new Community Room within Charlestown Square in the vicinity of the proposed South Piazza, and its lease by Council.
8. A new Youth Facility within Charlestown Square in the vicinity of the proposed South Piazza, and its lease by Council.
9. Landscape design of the Charlestown Oval Precinct and the provision of \$500,000 towards those works (in addition to the sum in item 2, above).
10. Construct a North and South Piazza in conjunction with Charlestown Square and transfer the North Piazza to Council.
11. All costs associated with the re-opening of Ridley Street and Pearson Street to North and South bound public and private vehicles. Costs would include removal of the existing mall and reconstruction of the Street (road surface, footpath, kerb, guttering and drainage, lighting, street furniture) including provision for bus set down areas and a new taxi stand area, to Council's satisfaction.
12. Provision of new bus shelters in the following locations:
 - Pearson Street: two covered shelters or equivalent on the western side of Pearson Street.
 - Frederick Street: four covered bus shelters.

The type and scope of each to meet Council's draft Charlestown Streetscape Master Plan as a minimum.
13. \$50,000 towards Public Art (in addition to Public Art to be located in the Southern and Northern Piazza).
14. \$80,000 towards public domain improvements in Charlestown.
15. \$10,000 towards the conservation / preservation of the Pickering Collection of Charlestown.
16. Charlestown Square car park being managed as a publicly accessible car park on terms mutually agreed by GPT and Council over time.
17. A bus layover for eight buses in Carl Street.

18. A bus driver amenity building, to Newcastle Buses and Ferries' satisfaction, in Carl Street or other mutually agreed location.
19. A shower, change and locker facility for cyclists within the shopping centre.
20. Space within the Customer Service Desk for use by Newcastle Buses and Ferries and other public transport operators to display timetables including the installation of a touch screen or similar medium to detail timetable information.
21. To the western alignment of Pearson Street from Ridley Street to Frederick Street, GPT will provide streetscape improvements in accordance with EDAW's design drawings approved by Council; and consistent with Council's draft Charlestown Streetscape Master Plan.
22. Remediation of Winding Creek: a length of 50 metres for regeneration of the health of the creek through bank enhancement and erosion control.
23. Required road and pedestrian network changes arising from the proposed redevelopment of Charlestown Square.
24. GPT will provide a \$55,000 monetary contribution towards the equipment required to operate the additional 11 spaces of the proposed Child Care Centre.

Assessment of the Merits of this Planning Agreement in relation to the Public Interest

The Section 94 Contributions Plan No.4 Commercial Centres (1998) requires the provision of a monetary contribution towards the provision of centralised car parking in Charlestown, as well as a contribution towards to Pedestrian Access and Vehicular Access Facilities and Section 94 Administration.

The developer has proposed that a wide range of public benefits be provided under a Planning Agreement, which would exclude Council's Section 94 Plan No.4 from being applied in relation to the Development Application for the redevelopment of Charlestown Square.

The Planning Agreement requires the developer to provide a centralised publicly accessible car park. This car park would be owned and operated by the developer but would operate under conditions mutually agreed between Council and the developer.

The Section 94 Plan provides for contributions towards a centralised car park. Centralised public car parking spaces benefits the commercial centre as it increases the general availability of car parking spaces through the shared use of car parking spaces, in contrast to those in exclusive private or restricted use.

In this case, the developer will provide a centralised publicly accessible car parking facility in conjunction with the shopping centre. The operations of this car park will be by the mutual agreement of Council and the General Property Trust. Thus, whilst the car park will be under private ownership, its nature and operation will be subject to Council's agreement. Furthermore, this arrangement will provide a substantial amount of publicly accessible car parking (i.e. not limited to shopping centre patrons) well in advance of its likely provision by Council, which would be reliant on the receipt of sufficient Section 94 contributions from other developments over time. Accordingly, it is believed that this facility satisfies the objectives of the Section 94 Plan No.4 in relation to car parking, to a high degree.

The requirement of the Section 94 Plan for the provision of pedestrian and vehicular access facilities is directed towards improving traffic management, improving facilities for pedestrians and towards associated public domain amenity improvements. The Planning Agreement excludes the levying of contributions for Section 94 administration and for pedestrian access and vehicular access facilities. In return, the Planning Agreement provides a number of improvements to vehicular management and pedestrian access, particularly in relation to the removal of the Pearson Street Mall. Additionally some \$70,000

is being provided for general public domain improvements, which will enable Council to more rapidly progress such works proposed by the draft Charlestown Master Plan and the draft Charlestown Streetscape Master Plan. This will enable Council to improve the urban amenity of the wider Charlestown Town Centre.

The developer also proposes to make a number of specific improvements to the public domain as well as to contribute to improved public transport infrastructure. These improvements are consistent with intent of Council's draft Charlestown Streetscape Master Plan and draft Charlestown Master Plan. The value of these improvements is greater than the value of Section 94 contributions forgone. The aim of these improvements is to accommodate and integrate the expansion of Charlestown Square into an improved urban fabric of the emerging subregional centre.

There are also provisions to provide new or upgraded recreation and community facilities, which replace and upgrade those affected by the expansion of Charlestown Square, such as the redevelopment of Charlestown Oval and the upgrading of St John Oval.

The Planning Agreement itself does not propose the relocation of community or recreational facilities. These matters are the outcome of other decision making processes. However, the Planning Agreement achieves a net community benefit from any relocation of facilities by requiring their replacement with new and upgraded facilities, such as the new Community and Youth Facilities.

The Planning Agreement assists the implementation of a number of Council's decisions in relation to the Charlestown Town Centre. The Section 94 Plan provisions, which would otherwise apply, are considerably narrower in scope and in extent of public benefit.

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

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, and
 - (ii) the promotion and co-ordination of the orderly and economic use and development of land, and
 - (iii) the protection, provision and co-ordination of communication and utility services, and
 - (iv) the provision of land for public purposes, and
 - (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), (iv), (v), (vi) above.

These Objects are promoted through the consistency of the Planning Agreement with the intent of the Charlestown Area Plan, the draft Charlestown Master Plan and the draft Charlestown Streetscape Master Plan, as well as the Lower Hunter Urban Strategy [Object (a)(i)]. The Agreement reflects the holistic nature of these documents and assists the orderly and economic use and development of land by taking an integrated approach to the management, embellishment, and allocation of land within the Charlestown Town Centre [Object (a)(ii)]. It contains a range of measures directed towards the provision of land for public purposes such as new and upgraded recreational land [Object (a)(iv)], and promoting the social and economic welfare of the community such as the Community and Youth Facility [Object (a)(v)] as well as environmental improvements to Winding Creek [Object (a)(vi)]. In particular, it progresses the objective of Charlestown as an intensive subregional urban centre, and assists the implementation of a number of Council's decisions in relation to the Charlestown Town Centre.

In relation to (b) a number of matters with the Planning Agreement have evolved through intergovernmental discussion and negotiation, particularly in relation to transport infrastructure and the transport interchange.

In relation to (c) the Charlestown Area Plan, the draft Charlestown Master Plan, Development Application (DA/231/2007) and this draft Planning Agreement either have been, or are, undergoing public exhibition and consultation. A number of other related matters, such as the rezoning of land, have been the subject of public exhibitions and open decision making.

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

The draft planning agreement promotes the following points of Council's charter under Section 8 of the *Local Government Act 1993*:

- 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 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, 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.

The Planning Agreement promotes the Local Government charter by providing lasting significant benefits to the community resulting from the expansion of Charlestown Square. It has been developed in the context of Council's strategic and area planning frameworks and provides financial and works in kind assistance to Council which will extend its funding and resource base. It aims to address the social, economic and environmental impacts of the development as well as to achieve positive outcomes for the community as a result of the development.

Planning Purpose

The Planning Agreement exists in the context of a Development Application for the expansion of Charlestown Square. The expansion of Charlestown Square will reinforce Charlestown's role as a subregional centre under the Lower Hunter Regional Strategy. The Planning Agreement also progresses a number of planning strategies contained within the draft Charlestown Master Plan and Area Plan. It provides greater resources to achieve these strategies than would be achieved through a reliance on Section 94 contributions, and permits a number of strategies to be progressed more rapidly than would otherwise be the case.

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

The Planning agreement is consistent with the Council's long term Capital Works Program and supplements the scope and resourcing of that Program.

Impact of the draft Planning Agreement on the public or any section of the public

The impact of the actual Planning Agreement on the public will be positive and more beneficial than if Section 94 contributions plan levies applied to the development. The environmental planning impact of most of the works listed in the proposed Planning Agreement will be considered in the assessment of DA/231/2007, and the balance will be considered in other forthcoming development applications or statutory requirements.

Note: This Explanatory Note is a summary only and is not to be relied as a complete description of the Voluntary Planning Agreement or as a legal document.