



Explanatory Note

To

Amended Voluntary Planning Agreement

Between

Shoalhaven City Council and Fabcot Pty Ltd

September 2010

File No. 39361E

1. Introduction

This Explanatory Note has been prepared in accordance with clause 25E of the *Environmental Planning & Assessment Regulation 2000* (NSW).

The purpose of this Explanatory Note is to provide a plain English summary of the Amended Voluntary Planning Agreement (**Amended Planning Agreement**) between Shoalhaven City Council and Siblow Pty Ltd in respect of a development comprising a supermarket, specialty shops and associated car parking at Culburra Beach (**Development**). Since the date of entry into the Existing Planning Agreement, the site the subject of the Development has been sold to Fabcot Pty Ltd (**Developer**).

The Amended Planning Agreement, made under s93F of the *Environmental Planning & Assessment Act 1979* (NSW) (**EPA Act**), is for the construction of a public car park:

- partly on road reserve within Weston Street;
- partly on Council owned land, being Lot 1 DP 1094219, Lot 1482 DP 12278 and Lot 1484 DP 12278, Weston Street, Culburra Beach; and
- partly on land owned by the Developer, being Lot 1483 DP 12278, Weston Street, Culburra Beach, and the dedication of that land to Council.

The Council and the Developer propose to amend the Existing Planning Agreement as set out in the Amended Planning Agreement. The amendments to the Development do not change the overall proposed retail use of the site, nor do they materially change the associated parking arrangements. Accordingly, the objectives and the merits of the Amended Planning Agreement remain unchanged. The public car park will provide for 82 off-street parking spaces and 34 angled spaces along Weston Street, including 4 motorcycle spaces.

2. Background

Prior to considering entering into the Amended Planning Agreement, Council must undertake the public exhibition of this Explanatory Note as part of a statutory process. If Council receives any comments on the Amended Planning Agreement or related section 96 modification application after they are exhibited, then:

- a) the Amended Planning Agreement may be further amended as a result of the comments; and
- b) if Council officers support amendments as a result of the comments and the Developer does not agree to the changes then the matter will be referred to an Ordinary meeting of Council to determine whether Council will enter into the Amended Planning Agreement.

3. Parties to the Amended Planning Agreement

The parties to the Amended Planning Agreement are:

- (1) Shoalhaven City Council (**Council**).
- (2) Fabcot Pty Ltd (**Developer**).

4. Description of the subject Land

The subject land to which the Amended Planning Agreement relates is

Council Land

Lot 1 DP 1094219

Lot 1482 DP 12278

Lot 1484 DP 12278

Weston Street, Redbank Lane and

Canal St East – Road Reserves

Developer Land

Lot 1477 DP 12278

Lot 1478 DP 12278

Lot 1479 DP 12278

Lot 1480 DP 12278

Lot 1483 DP 12278

A location plan of the subject land is shown as Appendix A.

5. Description of the subject Development Application

The Development Application to which the Existing Planning Agreement relates is DA09/1144 (consent issued 3 February 2010). The section 96 modification application to which the Amended Planning Agreement relates is DS10/1335.

This modification application seeks consent for an increase in the floor space area of the proposed supermarket, a reduction in the number of retail shops from six to one and an increase in the number of public off-street parking spaces from 75 to 82.

6. Summary of objects, nature and effect of the Amended Planning Agreement

The objective of the Amended Planning Agreement is to ensure the following outcomes:

- a) Council owned land, together with land owned by the Developer, will be developed by the Developer to provide a public car park with 116 spaces, being 82 off-street parking spaces and 34 angled parking spaces along Weston Street, including 4 motorcycle spaces.
- b) The public car park spaces constructed as a part of the Amended Planning Agreement will be dedicated to Council and remain as a public asset.

The effect of the Amended Planning Agreement is that Council will receive contributions (by way of works in kind and dedication of land) towards public car parking. Consequently, Council will not require monetary development contributions for car parking in accordance with Council's Section 94 Contributions Plan".

7. Assessment of the merits of the Amended Planning Agreement

7.1 The planning purposes served by the Amended Planning Agreement

In accordance with Section 93F(2) of the EPA Act, the Amended Planning Agreement promotes the following public purposes:

- a) *the provision of (or the recoupment of the cost of providing) public amenities or public services.* In the Amended Planning Agreement the public amenities or public services will be a car park.
- c) *the provision of (or the recoupment of the cost of providing) transport or other infrastructure relating to land.* In the Amended Planning Agreement the transport or other infrastructure relating to land will be a car park.

The Amended Planning Agreement provides for a reasonable means of achieving provision of these purposes by coordinating the dedication and development of the subject land.

7.2 How the Amended Planning Agreement promotes the Objects of the Act

The Amended Planning Agreement promotes the following objectives of clause 5(a) of the EPA Act:

- (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,*
 - (iv) *the provision of land for public purposes,*
 - (v) *the provision and co-ordination of community services and facilities,*
- c) *to provide increased opportunity for public involvement and participation in environmental planning and assessment.*

7.3 How the Amended Planning Agreement promotes the public interest

In accordance with the objects of the EPA Act, the Amended Planning Agreement promotes the public interest in the following manner:

- a) Public ownership of the car park asset will ensure the coordinated management and development of the land for public use.
- b) The Amended Planning Agreement will not preclude the public being provided with the opportunity for involvement and participation in development assessment. The public have been provided the opportunity to make comment on the Amended Planning Agreement, particularly with regard to the public interest.

7.4 How the Amended Planning Agreement promotes the objects of the Local Government Act 1993

The Amended Planning Agreement promotes the purposes of the *Local Government Act 1993* by:

- a) encouraging the effective participation of the local community in the affairs of Council;
- b) allows Council to provide facilities appropriate to the current and future needs of the local community and the wider public.

- c) fulfils Council's role in the management, improvement and development of resources in the Shoalhaven Local Government Area.

7.5 How the Amended Planning Agreement promotes the elements of Council's charter

The Amended Planning Agreement promotes a number of elements of the Council's charter under Section 8 of the *Local Government Act 1993*, as follows:

- *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.* The Amended Planning Agreement provides land dedication and embellishment for use associated with provision of a local transport facility.
- *to have regard to the long term and cumulative effects of its decisions.* The Explanatory Note provides for the exhibition of the Amended Planning Agreement to facilitate the involvement of members of the public and future users of the proposed local transport facility, while council staff are assessing the Amended Planning Agreement.
- *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.* The Amended Planning Agreement provides transport facilities for local purposes without the need to raise funds by the imposition of rates, charges or fees for construction. The facility will remain in public ownership.
- *to keep the local community and the State government (and through it, the wider community) informed about its activities.* This Explanatory Note is prepared for the purposes of keeping 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.*
The Amended Planning Agreement makes it clear that Council has a statutory role as consent authority for development and that the Agreement is not intended to unlawfully influence the exercise of its regulatory functions, ensuring that it would act consistently and without bias, particularly where an activity of Council is affected.

7.6 The relationship between the Amended Planning Agreement and Council's capital works program

The Amended Planning Agreement provides for the completion of construction of a public car park on Council land by the Developer and the dedication of land to Council. As such the Amended Planning Agreement conforms with, or rather has no immediate implication for the Council's capital works program.

Should the Developer default on the delivery of the works by the required completion date, Council is required to call on the Bank Guarantee. Council would then be responsible for the completion of that work, although the timing would be at its discretion.

7.7 Potential impact to the public from the Amended Planning Agreement

The Amended Planning Agreement allows for the continued use of the subject land that has been traditionally used for public car parking and the formalisation of car park facilities on Weston Street. Given that the use of the land is not changing, no potential impact to the public from the Amended Planning Agreement is anticipated.

7.8 Development Concept relating to the Amended Planning Agreement

It is acknowledged that opportunities for an urban renewal project such as offered at this site are rare, and that care should be taken to maximise the long term benefits from such projects.

The Amended Planning Agreement allows for the provision of appropriate facilities which provide a local transport facility which will have long term benefits for residents and the general public.

7.9 Other significant matters related to the Amended Planning Agreement

No other significant matters related to the Amended Planning Agreement are anticipated.

Appendix A - Location plan of the subject land

