

## **Explanatory Note – Draft Planning Agreement**

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).

### **Parties**

Penrith City Council (ABN 43 794 422 563) (Council); and

Microsoft Datacenters (Australia) Pty Limited (ACN 163 792 078) (Microsoft and both the Landowner and the Developer)

### **Description of the Subject Land**

The Planning Agreement applies to Lot 2 DP DP 1271142, (the Subject Land). A copy of the Subject Land deposited plan is attached at Annexure A to the Planning Agreement. The Subject Land is located at 657-769 Mamre Road, Kemps Creek.

### **Description of the Proposed Development**

Microsoft has lodged Development Application SSD 10101987 with the Department of Planning, seeking approval for the state significant development for a data centre on the Land. A copy of the plans for the development proposal are provided at Annexure D to the Planning Agreement. Upon approval of the SSD application, the Developer proposes to erect a warehouse and office structure to house a data centre within the warehouse structure. The development will be within the Altis Frasers' Kemps Creek Industrial Estate and Altis Frasers will be delivering the public infrastructure to service the whole estate including the Microsoft Subject Land.

### **Offer to Enter into Planning Agreement**

There is no s.7.11 Contributions Plan applying to the Subject Land. However, the Environmental Planning & Assessment Regulations require that the Developer enter into a planning agreement with Council prior to the Minister making a determination with respect to the SSD Application.

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

The Planning Agreement requires the Developer to pay the monetary contribution of \$8,423,505.96 before the issue of the first construction certificate for the proposed development.

The Developer is not required to provide a bank guarantee in respect of the obligation, as the payment of the monetary contribution must be made prior to the issue of the first construction certificate.

The Planning Agreement will be registered on the title to the Subject Land. The Council may lodge a caveat over the property.

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

In accordance with section 7.4(2) of the Act, the Planning Agreement requires that Microsoft provide Council with funds for the purposes of any of the following (or a combination thereof): acquisition of land for open space purposes, the embellishment, maintenance of that land or any public works.

## **Calculation and Assessment of Merits of Planning Agreement**

The Council and the Developer agree that the appropriate monetary contribution for the development of the Subject Land was to be calculated by adopting the relevant calculation for monetary contributions that applies in the Mamre Road East Precinct Section 7.11 Contributions Plan.

The basis for this contribution and the purposes for which it is to be applied has direct regard to the fact that there was no contributions plan for the Subject Land and the Council identified that there is a shortfall of public open space within the precinct.

The Council and Microsoft have assessed the Planning Agreement and 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 an appropriate monetary contribution towards the likely costs of the Council's provision of regional public open space within the Western Sydney Employment Area.

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

The Planning Agreement promotes the public interest by ensuring that an appropriate contribution is made to Council, for it to provide regional open space within the precinct and Western Sydney Employment Area, to satisfy needs that arise from development of the Subject Land.

The Developer's offer to make the monetary contribution towards the provision of regional open space and public works will have a positive impact on the public who ultimately use the regional open space provided by Council.

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

The Planning Agreement promotes the objects of the Act, as outlined in section 1.3 of the Act, by:

- promoting of the orderly and economic use and development of land; and
- promoting good design and amenity of the built environment.

The Planning Agreement promotes the objects of the Act set out above by facilitating development of the Subject Land in accordance with the Planning Agreement.

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

The Planning Agreement requires that payment of the monetary contribution must be made prior to the issue of a construction certificate for any construction approved by the SSD application.

**END OF EXPLANATORY NOTE**