

Annexure B Explanatory Note

Explanatory Note

Exhibition of draft Voluntary Planning Agreement

PP2/22: 12-14 Waters Road, Neutral Bay

Environmental Planning & Assessment Regulation 2021 (section 205)

Planning Agreement

The purpose of this Explanatory Note is to provide a plain English Summary to support the notification of a draft voluntary Planning Agreement (“**the Planning Agreement**”) under Section 7.4 of the *Environmental Planning and Assessment Act 1979* (“**the Act**”).

Section 205(1) of the *Environmental Planning and Assessment Regulation 2021* (“**the EPA Regulation**”) requires that an Explanatory Note must be prepared to accompany a planning agreement.

The Explanatory Note must address the requirements of section 205(1)(a)-(b) of the EPA Regulation. This Explanatory Note has been prepared to address these requirements.

Additionally, in preparing the Explanatory Note, the planning authority must consider any relevant practice note prepared by the Planning Secretary under clause 203(6). The relevant practice note is *Planning agreements: Practice note – February 2021* published by the former NSW Department of Planning, Industry and Environment (now the Department of Planning and Environment).

This practice note has been considered by the parties in the course of preparing this Explanatory Note.

Parties

CE Waters Pty Limited as trustee for CE Waters Development Trust and CE Waters Retail Pty Ltd as trustee for CE Waters Retail Trust (“**Developer**”) made an offer to North Sydney Council (“**Council**”) to enter into a Planning Agreement, in connection with a Planning Proposal for land at 12-14 Waters Road, Neutral Bay.

Description of subject land

The land to which the Planning Agreement applies is:

- (a) Lots 1 to 16, 32 and 33 in SP 68360;
- (b) Lot 34 in SP 75848;
- (c) Lot 35 in SP88483; and
- (d) Lot 18 in DP 537700,

known as 12-14 Waters Road, Neutral Bay (“**the Land**”).

The Development

The Planning Agreement relates to proposed development of the Land to which the Planning Agreement applies for redevelopment of the Land for the purpose of a mixed use residential and commercial development with basement parking and public domain works, including development generally anticipated in the Planning Proposal.

Description of the Planning Proposal to which the Planning Agreement applies

To facilitate the Development, the Developer has lodged a Planning Proposal. The Planning Proposal (PP2/22 -Council's reference and PP-2021-7492 Department of Planning and Environment's reference) which was issued a Gateway Determination) by the Department of Planning and Environment on 23 December 2022 seeks to amend the *North Sydney Local Environmental Plan 2013* ("**NSLEP 2013**") to:

- (a) increase the maximum building height for the Land on the Height of Buildings Map to 22m;
- (b) include a site specific provision to enable rooftop structures, plant and equipment to a maximum building height of 24m; and
- (c) provide a minimum non-residential floor space ratio for the Land on the Non-Residential Floor Space Ratio Map of 1.2:1.

Summary of Objectives, Nature and Effect of the Planning Agreement

Objectives

The objective of the Planning Agreement is to provide a mechanism by which contributions towards public purposes can be made in connection with the future development of the Land to benefit the community.

The public benefits include the provision of monetary contributions to be used towards the improvement of the public domain within the Neutral Bay Town Centre.

Nature

A Planning Agreement of this kind may require a developer to dedicate land free of costs, pay a monetary contribution, or provide any other material public benefit to be used for or applied towards a public purpose.

In this case, the Planning Agreement will require payment of \$1,900,000.

The monetary contribution will be used towards the delivery of community infrastructure and public domain upgrades within the Neutral Bay Town Centre.

The monetary contribution will be payable prior to the issue of an Occupation Certificate for any part of the Development. The monetary contribution amount will be indexed in accordance with increases in the consumer price index from the date of agreement to the date of payment.

Effect

In general terms, delivery of the contributions is timed in a way that is practicable for the Developer and still provides for the enhancement of public domain and open space to meet the needs of the new residents and the community.

The Planning Agreement provides for the enforcement of the Planning Agreement by a suitable means if there is a breach by the Developer. The contributions are to be delivered prior to the issue of an occupation certificate for the Development or any part of the Development. An occupation certificate cannot be lawfully issued if the required contributions have not been made.

The Planning Agreement is to be registered on the title to the Land.

Where it is relevant to a development application, a consent authority must take into consideration a planning agreement — or any draft planning agreement — that a developer has entered into or offered to enter into (respectively).

A planning agreement cannot impose an obligation on a planning authority to actually grant a development consent. A merit assessment of the proposed development must still be carried out.

Assessment of the Merits of the Planning Agreement

How the Planning Agreement Promotes the Objects of the Act and the public interest

The draft Planning Agreement promotes the following objectives of the Act:

- a. *Promotes 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 (section 1.3(a)).*
- b. *Promotes the orderly and economic use and development of land (section 1.3 (c)).*
- c. *Promotes good design and amenity of the built environment (section 1.3(g)).*

The Planning Agreement will enable the utilisation of the development potential of the Land, while requiring the Developer to make provision for public purposes. The Planning Agreement promotes the public interest because it will require the provision of public domain improvements that will benefit existing and future residents and workers in the area. These contributions will have a positive impact on the public and will provide for the social and economic welfare of the community.

The contribution required under the Planning Agreement is additional to any normal contribution that will ordinarily need to be made in relation to the development.

The proposed contribution under the Planning Agreement is consistent with the Council's strategic plans and policy documents.

The Planning Purposes served by the Planning Agreement

The Planning Agreement facilitates the implementation of Council's strategic plans and will enable the Council to provide improved public amenities and facilities for new development in the locality of the Development.

The Planning Agreement will require development contributions that will improve public amenity.

Whether the Planning Agreement conforms with the Council's Capital Works Program

The Planning Agreement offers a monetary contribution that will enable the Council to embellish and maintain public domain in the vicinity of the Development. The Planning Agreement will enable the Council to provide public domain and community facilities to meet the current and future needs of the local community.

The contribution proposed under the Planning Agreement does not conform with the Council's capital works program. This is because the opportunity to obtain the contributions has arisen outside of the Council's capital works program.

The Planning Agreement will not have an adverse effect on this capital works program. Overall, the Planning Agreement is likely to result in more capital works (to the benefit of the community) than would be the case without the Planning Agreement.

Whether the Planning Agreement specifies that certain requirements must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued

The Planning Agreement requires the monetary contribution to be paid before the issue of an **occupation certificate** for the Development. The registration of the Planning Agreement must be completed prior to the issue of a **construction certificate** for the Development.

Status of the Explanatory Note

This Explanatory Note has been prepared jointly between the parties.

The parties have agreed that this Explanatory Note is not to be used to assist in construing the Planning Agreement.

