

Annexure D Draft Explanatory Note

**Explanatory Note**  
**Exhibition of draft Voluntary Planning**  
**Agreement PP5/22: 71-89 Chandos Street, St**  
**Leonards**

*Environmental Planning and 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 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**

TWT Development Pty Ltd and 75 Chandos Street Pty Ltd (**Developer**) made an offer to North Sydney Council (**Council**) to enter into a Planning Agreement in connection with the Planning Proposal for land at 71-89 Chandos Street, St Leonards.

**Description of the Land**

The land to which the Planning Agreement applies is:

- (a) Lot 1, DP 900998, known as 71-73 Chandos Street;
- (b) Lot 1, DP 115581, known as 75 Chandos Street;
- (c) Lot 28 and 29, DP 455939, known as 79-81 Chandos Street;
- (d) Lot A and B, DP 443166, known as 83-85 Chandos Street;
- (e) Lot 31, Section 11, DP 2872, known as 87 Chandos Street; and
- (f) Lot 32, Section 11, DP 2872, known as 89 Chandos

Street, known as 71-89 Chandos Street, St Leonards (**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 multi-storey mixed use residential and commercial development with basement parking, through-site link and communal open space and landscaping, 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 (PP5/22 – Council's reference) seeks to amend the *North Sydney Local Environment Plan 2013 (NSLEP)* to:

- (a) Increase the maximum building height for the Land to 43m;
- (b) Include a site-specific provision that allows the maximum building height to be exceeded by no more than 2m for the purposes of a lift overrun and providing inclusive access to communal open space at the rooftop level;
- (c) Impose a maximum floor space ratio (**FSR**) of 4:1; and
- (d) Increase the minimum non-residential FSR from 0.6:1 to 1:1.

## 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 public open space through the embellishment of a linear park, and pedestrian amenity through the establishment and maintenance of a through- site link.

### 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 the following:

- (a) Dedication and embellishment of approximately 179 m<sup>2</sup> of private land to Council at a depth no less than 3m below ground level, and embellishment of approximately 271m<sup>2</sup> of public land for the purposes of a linear park along Oxley Street;
- (b) Establishment of a pedestrian through site-link approximately 6m wide and 38.5m in length (approximately 215m<sup>2</sup> in total) that is open-to-sky connecting Chandos Street to Atchison Lane with easement for public access for 24 hours a day, 7 days a week;
- (c) Construction of all outdoor lighting for the through-site link;
- (d) Landscaping and improvements to public domain on-site;
- (e) Providing maintenance and management of the through-site link and Oxley Street linear park; and

- (f) Payment of a monetary contribution in the amount of \$405,000, paid in two instalments and indexed in accordance with Consumer Price Index from the date of the agreement to the dates of payment.

Half of the monetary contribution is to be paid prior to the issue of a construction certificate for the Development, with the remaining half to be paid prior to the issue of an occupation certificate for the Development. The works, dedication of land and grant of an easement for public access, are to be completed before the issue of an Occupation Certificate for any part of the Development. The Works are also guaranteed by a Security in the form of a Bond or Bank Guarantee, which will be indexed in accordance with increases in the Consumer Price Index from the date of the Agreement to the date the Works are completed.

### **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 and improvement 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 open space and public domain and infrastructure 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 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, through the development contributions, provides existing and future residents in the area with improved public open space and pedestrian amenity.

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

The Planning Agreement will provide for improvement of public infrastructure, the public domain and open space areas in the vicinity of the Development. The Planning Agreement will assist the Council 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 registration of the Planning Agreement, payment of half of the monetary contribution and the provision of a Security for the obligations under the Planning Agreement must be provided prior to the issue of a **construction certificate** for the Development. The Planning Agreement also requires the remaining half of the monetary contribution to be paid, and the works, land dedication and grant of the easement to be completed before the issue of an **occupation 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.