

# EXPLANATORY NOTE PURSUANT TO REGULATION 25E OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT REGULATION 2000

## 106-116 EPSOM ROAD, ZETLAND

### Development Application No. D/2011/1760

#### Background

On 30 July 2013, consent was granted for the Stage 1 Development Application for demolition of existing structures, proposed land uses including retail/commercial floor space and residential uses, building envelopes including basements, internal street layout including footpaths and other pedestrian/cycle within the site, location and development of open space as per the landscape concept plan concept for infrastructure upgrades including stormwater and flood mitigation measures, and development staging. (D/2011/1760).

On 10 June 2016, the City entered into a Planning Agreement in relation to that development (**Original Planning Agreement**). The Original Planning Agreement provides for the following public benefits:

- Construction and dedication of road reserves for George Julius Avenue, Peters Street and Letitia Street
- Dedication only of parkland for future development of Gunyama Park and part of George Julius Avenue
- Creation of an easement and associated landscaping of an existing stormwater channel

The parties to the Original Planning Agreement agreed to vary the Original Planning Agreement to facilitate a change to the staging and scope of the Public Benefits to align with the detailed Development Application (D/2015/913) and include the upgrade of the stormwater channel through the site (Green Square Stormwater Drain Works) and additional road reserves (Rose Valley Way and the Epsom Road setback). The variation was effected by execution of a replacement Planning Agreement on 28 May 2018 that consolidated the amendments to the Original Planning Agreement (**Replacement Planning Agreement**).

On 8 February 2022 the Replacement Planning Agreement was novated from Lincon Development Pty Ltd to a new landowner Lincon Epsom Projects Pty Limited as trustee of the Lincon Epsom Projects Unit Trust.

A S4.55 application has been lodged on the detailed Development Consent (D/2015/913/G) to modify the approved subdivision plans. The proposed modification seeks to amend the order in which the buildings are delivered, from Blocks B, C, A then D to Block D, C, B then A. Consequently the order in which the infrastructure that supports the development must also be amended.

The purpose of this explanatory note is to provide a summary to support the notification of the Deed of Variation to the Planning Agreement, under Section 7.4 of the *Environmental Planning and Assessment Act 1979 (Act)*.

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

The public benefits partially exclude the developer or owner (as the case may be) from paying monies under s7.11, 7.12 or 7.24 of the Act.

This explanatory note is not to be used to assist in construing the Replacement Planning Agreement.

#### 1. Parties to the Deed of Variation to the Planning Agreement

The parties to the Deed of Variation to the Planning Agreement are Lincon Epsom Projects Pty Limited as trustee of the Lincon Epsom Projects Unit Trust (**Owner**) and the Council of the City of Sydney (**Council**).

## **2. Background to the Deed of Variation to the Planning Agreement**

At the time of execution, the Original Planning Agreement and Replacement Planning Agreement provided for the works and land to be dedicated in stages in association with adjacent buildings. The Council and Owner have agreed to adjust the staging of the Public Benefits to align with the new delivery order of the development blocks. To facilitate these changes in staging, a variation to the Planning Agreement is required. The variation will be effected by the Deed of Variation to the Planning Agreement.

## **3. Summary of the Objectives, Nature and Effect of the Deed of Variation to the Planning Agreement**

The objective of the Deed of Variation to the Planning Agreement is to require and facilitate a change to the delivery order of the Developer's Works and dedications of land.

The nature of the Deed of Variation to the Planning Agreement is to amend the staging of the Public Benefits as shown in Schedule 6 to reflect the necessary infrastructure to support the delivery order of the buildings.

The effect of the Deed of Variation is that the works and land dedications will be delivered in a manner that reflects the Developer's preferred delivery order of the buildings.

## **4. Assessment of the Merits of the Proposed Agreement**

### **(a) How the Deed of Variation to the Planning Agreement promotes the public interest and one or more of the objects of the Act**

The Deed of Variation of Planning Agreement promotes the objects of the Act, in particular objects identified in Section 1.3 (c) and 1.3(g) of the Act which is to promote the orderly and economic use and development of land and to promote good design and amenity of the built environment. The agreement will provide a contribution towards community infrastructure which will support and service the existing and future population and will contribute to greater amenity and infrastructure of those areas.

### **(b) How the Deed of Variation to the Planning Agreement promotes the elements of the Council's charter**

The Deed of Variation to the Planning Agreement promotes a number of elements of the Council's charter under section 8 of the *Local Government Act 1993* (NSW). In particular, the Replacement Planning Agreement through the delivery of the public benefits allows Council to

- (i) 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;
- (ii) exercise community leadership;
- (iii) 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;

- (iv) bear in mind that it is the custodian and trustee of public assets and to effectively plan for, account for and manage the assets for which it is responsible;
- (v) engage in long-term strategic planning on behalf of the local community; and
- (vi) keep the local community and the State government (and through it, the wider community) informed about its activities.

**(c) The impact of the Deed of Variation to the Planning Agreement on the public or any section of the public**

The Deed of Variation to the Planning Agreement will benefit the public and local community as it will improve community infrastructure in the immediate vicinity of the site as part of the Green Square urban renewal area.

**(d) Whether the Deed of Variation to the Planning Agreement conforms with Council's capital works program**

Yes. The Replacement Planning Agreement conforms with Council's capital works program.

**(e) The planning purpose or purposes of the Deed of Variation to the Planning Agreement**

The Deed of Variation to the Planning Agreement will serve the planning purpose by enhancing the public domain and local infrastructure to reflect the changing nature of the area and the needs of the anticipated incoming population.

It is considered that the Planning Agreement provides for a reasonable means by which to achieve these planning purposes given the extent of the statutory tools that are available to Council by which it can deliver the proposed public benefits.

**(f) Compliance of certain requirements prior to issue of construction, occupation or subdivision certificates.**

The following requirements of the Deed of Variation to the Planning Agreement must be complied with before:

- (i) **A construction certificate is issued:** Provision of Security to Council
- (ii) **An occupation certificate is issued:** Completion of the developer's work and dedication of land in respect of the relevant stage of development.
- (iii) **A subdivision certificate is issued:** Nil.