

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

## 67-77 EPSOM ROAD, ROSEBERY

### Development Application No. D/2008/102 and D/2015/624

The purpose of this explanatory note is to provide a summary to support the notification of a Deed of Variation of 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 Reg 25E of the *Environmental Planning and Assessment Regulation 2000 (Regulation)*.

This explanatory note is not to be used to assist in construing the Deed of Variation of Planning Agreement.

### Background

On 30 July 2010, consent was granted for a Stage 1 Development Application for five residential buildings and one mixed use building, all with associated basement levels and public domain works at 67-77 Epsom Road and 95 Dalmeny Avenue, Rosebery (**Land**).

On 21 March 2016, consent was granted for a Stage 2 Development Application for the construction of a part 6 and part 13 storey mixed use building, containing 267 residential units, 49 services apartments, 17 ground floor retail tenancies and two levels of basement parking for 283 vehicles (**Building A**). The consent for Building A has subsequently been modified to allow 266 residential units, 71 serviced apartments and 13 ground floor retail tenancies.

Conditions of the Stage 1 and Stage 2 development consents required the upgrade of the Epsom Road / Link Road intersection from a roundabout to a signalised intersection (**Intersection**) be completed prior to the issue of any Occupation Certificate for Building A.

In April 2020, the Council of the City of Sydney received requests to modify the development consents from Toplace Pty Ltd seeking to delete or delay the requirement to signalise the Intersection until after the issue of an Occupation Certificate for Building A.

On 21 December 2020, the City entered into a Planning Agreement with the Developer and the Landowner in relation to that development. The Planning Agreement secures the upgrade of the Intersection within 16 months of the issue of the first Occupation Certificate for Building A (**Public Benefits**).

The Developer and Council have agreed to enter into a Deed of Variation of Planning Agreement (**Variation Deed**) to facilitate a change to the timing of the completion of the Public Benefits.

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

The parties to the Deed of Variation of Planning Agreement are Toplace Pty Ltd (**Developer**), Jolyn Place Pty Ltd (**Landowner**) and the Council of the City of Sydney (**Council**).

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

The upgrade of the Epsom Road / Link Road Intersection relies on the cooperation of three separate landowners for the dedication of land and construction of the works. Negotiation with the other landowners have resulted in an agreement for Toplace Pty Ltd to deliver the intersection works on their behalf.

Due to the complexity of the project and delays in achieving approvals on the design documentation, the obligation to complete the construction of the Intersection by the required due date in the Planning Agreement cannot be met. A revised completion date has been agreed by the Parties.

To facilitate this change in timing of completion of the works, a variation to the Planning Agreement is required.

### **3. Summary of the Objectives, Nature and Effect of the Proposed Deed of Variation**

The objective of the Variation Deed is to ensure the design and construction of the Intersection meets requirements as contemplated in the original Planning Agreement.

The nature of the Variation Deed is to amend the timing of the completion of the works under the Planning Agreement.

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

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

The Variation Deed 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 Planning Agreement as amended by the Variation Deed 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 Variation Deed promotes the elements of the Council's charter**

The Planning Agreement as amended by the Variation Deed promotes a number of elements of the Council's charter under section 8 of the *Local Government Act 1993* (NSW). In particular, the Planning Agreement as amended by the Variation Deed 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 Variation Deed on the public or any section of the public**

The Planning Agreement as amended by the Variation Deed will benefit the public and local community as it will improve community infrastructure in the immediate vicinity of the site.

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

Yes. The Variation Deed conforms with Council's capital works program.

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

The Planning Agreement as amended by the Variation Deed 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 as amended by the Variation Deed 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 with certain requirements prior to issue of construction, occupation or subdivision certificates**

The following requirements of the Planning Agreement as amended by the Variation Deed must be complied with before:

**(i) A construction certificate is issued:** Nil.

**(ii) An occupation certificate is issued:** Installation and commissioning of traffic signals and associated signage and linemarking, prior to the issue of any Occupation Certificate for any Serviced Apartments, and completion of the Developer's Works prior to the issue of any Occupation Certificate for the retail tenancies

**(iii) A subdivision certificate is issued:** Nil.