

EXPLANATORY NOTE PURSUANT TO REGULATION 205 OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT REGULATION 2021

320-322 BOTANY ROAD, 324 BOTANY ROAD & 6-12 O'RIORDAN STREET, ALEXANDRIA

Background

On 18 May 2020, the Council of the City of Sydney resolved to request that the Minister for Planning un-defer the land at 320-322 Botany Road, 324 Botany Road & 6-12 O'Riordan Street, Alexandria (**Land**) from Sydney Local Environmental Plan (Green Square Town Centre Stage 2) 2013. The request is subject to the execution of a Planning Agreement for the Land.

On 30 March 2022, the City entered into a Planning Agreement with Toga Development No 15 Pty Limited and Toga Project Services Pty Limited to deliver the following public benefits:

- a monetary contribution of \$4,440,000 (plus CPI) towards essential infrastructure in accordance with the Green Square Town Centre Infrastructure Strategy, less the cost of public domain works delivered by the Developer;
- the dedication of approximately 150.5 square metres of land for ground floor setbacks to Botany Road and O'Riordan Street;
- the dedication 583.6 square metres of land for the future Transport;
- developer's works to construct the footways to the ground floor setbacks and a temporary treatment to Transport Place; the design and construction of any proposed building to achieve 5.5 Star Base Building NABERS Energy Rating, 6 Star NABERS Energy Rating with Green Power on Operation, 5 Star Green Star (Design & As Built) Rating and meet the City's Green Infrastructure requirements for recycled water, energy efficiency and air conditioning refrigerant; and
- Right of carriageway and breakthrough works to enable below ground vehicular access to the adjoining lot to the north, 312-318 Botany Rd.

The parties to the Planning Agreement have agreed to vary the Planning Agreement to facilitate a change to the timing of the payment of the monetary contribution.

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 205 of the *Environmental Planning and Assessment Regulation 2021 (Regulation)*.

The public benefits do not in any way 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 Planning Agreement as amended.

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

The parties to the Deed of Variation to the Planning Agreement are Toga Development No 15 Pty Limited (**Landowner**) and Toga Project Services Pty Limited (**Developer**) and the Council of the City of Sydney (**City**).

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

At the time of execution, the Planning Agreement provided for the monetary contribution to be paid prior to the issue of the first construction certificate. Further to the Developer's preparation of a Development Application, the Developer has proposed to stage the construction into three construction certificates being CC1 (Excavation, foundation and

basement works to Ground Level), CC2 (Above ground works – structure, services, façade and roof) and CC3 (Public realm works)

The parties to the Planning Agreement have agreed to facilitate a change to the timing of the payment of the monetary contribution from prior to the issue of the first construction certificate to prior to the issue of second construction certificate. 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 facilitate a change to the timing of the payment of the monetary contribution.

The nature of the Deed of Variation to the Planning Agreement is to amend the Due Date of the Public Benefits as shown in Schedule 3.

The effect of the Deed of Variation is that the payment of the monetary contribution will occur prior to the issue of the second construction certificate.

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 Deed of Variation to the 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 Deed of Variation to the 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:** Payment of the Monetary Contribution prior to the issue of the second construction certificate.
- (ii) An occupation certificate is issued:** Nil.
- (iii) A subdivision certificate is issued:** Nil.