

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

923-935 Bourke Street, Waterloo

Planning Proposal: PP-2021-6962

Background

In August 2023, the Council of the City of Sydney (**City**) approved a planning proposal to facilitate a mixed-use development including a retail supermarket at 923-935 Bourke Street, Waterloo (**Land**).

In January 2024 the City entered into a Planning Agreement to secure public benefits for the site including delivery of onsite affordable housing, electric vehicle charging infrastructure and sustainability initiatives for energy, water and waste.

The parties to the Planning Agreement have agreed to vary the Planning Agreement by amending the due date for the transfer of affordable housing units to 30 business days after the Occupation Certificate.

The purpose of this explanatory note is to support the notification of a draft Deed of Variation to the Planning Agreement, under section 7.4 of the *Environmental Planning and Assessment Act 1979 (Act)* by meeting the statutory requirements of regulation 205 of the *Environmental Planning and Assessment Regulation 2021 (Regulation)*.

This explanatory note has been prepared jointly by the parties.

The public benefits do not in any way exclude the developer or owner (as the case may be) from paying monies under sections 7.11 or 7.12 of the Act.

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

1. Parties to the Deed of Variation

The parties to the Deed of Variation are Fabcot Pty Ltd (**Developer**), Triton Atlas Corporation Pty Ltd (**Landowner**), and the Council of the City of Sydney (**City**).

2. Description of the Subject Land

The Deed of Variation applies to 923-935 Bourke Street, Waterloo being Lots 1, 2, 3 and Common Property in SP22322.

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

The objective of the Deed of Variation is to facilitate an orderly completion and transfer of the affordable housing units.

The nature of the Deed of Variation is to ensure that the affordable housing units and transferred to a Community Housing Provider no later than 30 business days after the issuing of an Occupation Certificate.

The effect of the Deed of Variation is for the public benefits to be delivered in a timely manner with the development of the Land (as set out in the Planning Agreement).

4. Assessment of the Merits of the Proposed Agreement

(a) How the Planning Agreement promotes the public interest and one or more of the objects of the Act

The 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 Planning Agreement promotes the objects of the Act by:

- providing improved community infrastructure which will support and service the existing and future population and will contribute to greater amenity and infrastructure in the locality through the inclusion of onsite affordable housing; and
- providing improved environmentally sustainable development through the inclusion of electric vehicle charging infrastructure and sustainability initiatives.

(b) How the Planning Agreement promotes the elements of the Council's charter and objects under the Local Government Act 1993

The Planning Agreement promotes several elements of the Council's charter under section 8 of the *Local Government Act 1993* (NSW) consistent with the guiding principles for Councils under that Act. In particular, 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) in its capacity as the custodian and trustee of public assets, 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 Planning Agreement on the public or any section of the public

The Planning Agreement will benefit the public and local community by providing improved services to the area, and the future buildings will achieve improved environmental performance. In this way the Planning Agreement promotes the public interest.

This Planning Agreement is in accordance with the relevant provisions of the Planning Proposal.

(d) Whether the Planning Agreement conforms with Council's capital works program

The Planning Agreement does not impact on Council's capital works program.

(e) The planning purpose or purposes of the Planning Agreement

The Planning Agreement will serve a planning purpose by enhancing community services and environmental performance to reflect the changing nature of the area and the needs of the growing residential and workforce population within Central Sydney.

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 with certain requirements prior to issue of construction, occupation or subdivision certificates.

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

- (i) A construction certificate is issued:** Executed community housing provider agreement in accordance with clause 3 of Schedule 3. Sustainable planning requirements in accordance with section 2 of Annexure C.
- (ii) An occupation certificate is issued:** Design, construction and fit-out of affordable housing in accordance with clause 2 of Schedule 3. Registration of the affordable housing restriction and transfer of the affordable housing dwellings to the community housing provider in accordance with clause 4 of Schedule 3. Provision of the electric vehicle infrastructure in accordance with Annexure B. Net zero emissions requirements in accordance with section 3 of Annexure C.
- (iii) A subdivision certificate is issued:** Nil