

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

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.

A public benefit offer was made by the property owner and developer to enter to enter into a Planning Agreement 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 purpose of this explanatory note is to provide a summary to support the notification of a Planning Agreement, under Section 93F 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)*.

The public benefits do not in any way exclude the developer or owner (as the case may be) from paying monies under s.7.11, 7.12 or 7.24 of the Act.

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

1. Parties to the Planning Agreement

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

2. Background to the Planning Agreement

The Green Square town centre is identified as a 'Strategic Centre' in the NSW Government's A Plan for Growing Sydney (2014). Priorities for this centre are to deliver mixed-use development including offices, retail, services and housing.

The 'deferred' planning controls for the town centre site are contained in Planning Proposal: *Sydney Local Environmental Plan 2010 (Green Square Town Centre) – Sites 301 Botany Road, 501 Botany Road, 509 Botany Road, 3 Joynton Avenue, 511-515 Botany Road, 97-115 Portman Street, 811 Elizabeth Street, Zetland; 312-318 Botany Road, 320-322 Botany*

Road, 324 Botany Road, 318A Botany Road, 6-12 O’Riordan Street and 2A Bourke Road, Alexandria.

The term ‘deferred’ is used in the context of the Environmental Planning and Assessment Act 1979 that allows the Minister for Planning to defer the inclusion of a matter in a proposed local environmental plan.

On 2 April 2012 Council approved the planning proposal subject to the provisions being ‘deferred’ from operation until planning agreements for the delivery of essential civil and public domain infrastructure to service development in the town centre are agreed between Council and individual landowners. The *Green Square Town Centre Infrastructure Strategy 2006* provides the basis for the terms of these agreements.

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

The objective of the Planning Agreement is to secure public benefits in connection with the undeferral of planning controls for the Land.

The nature of the Planning Agreement is to secure:

- 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.
- .

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 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 Planning Agreement promotes the elements of the Council’s charter

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 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 Planning Agreement on the public or any section of the public**

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 Planning Agreement conforms with Council's capital works program**

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

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

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 Agreement must be complied with before:

- (i) A construction certificate is issued:** Payment of monetary contribution and provision of a Bank Guarantee for the Developer's Works
- (ii) An occupation certificate is issued:** Dedication of land, Completion of Developer's Works, Completion of Green Infrastructure Completion of Breakthrough Works and granting and registering of the Instrument.
- (iii) A subdivision certificate is issued:** Completion of Developer's Works.