

Explanatory Note

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Property: 25 George Street, North Strathfield NSW 2137 (**Land**)

LEP Amendment: 13

Introduction

The purpose of this explanatory note is to provide a summary to support the notification of a draft planning agreement (**Planning Agreement**) under Section 7.4 of the *Environmental Planning and Assessment Act 1979* (NSW) (**Act**), prepared in connection with a proposed change to the *Canada Bay Local Environmental Plan 2013* pursuant to LEP Amendment No 13.

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

Capitalised terms which are used but not defined in this Explanatory Note have the meaning given to them in the Planning Agreement.

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:

- (a) North Strathfield One Pty Ltd (ACN 165 499 589) (**Developer**); and
- (b) City of Canada Bay Council (ABN 79 130 029 350) (**Council**).

2. Description of the Land

This Planning Agreement applies to Lots 1 to 10 and the Common Property in Strata Plan 22302 (together known as 25 George Street, North Strathfield NSW 2137) (**Land**).

3. Background

The Land is owned by the Developer as the registered proprietor.

On 10 June 2016, the Planning Proposal was lodged with Council for the Instrument Change to the Canada Bay LEP. If the Instrument Change comes into force, the Developer proposes to lodge a Development Application for Development Consent to undertake Development on the Land.

The Planning Agreement specifies that, if Development Consent is granted for the purpose of carrying out Development on the Land, the Developer will provide public benefit to Council by way of Affordable Housing (**Affordable Housing**). The Affordable Housing is the provision in the Development of a minimum of 5% of the uplift of the Gross Floor Area, or 2 three-bedroom apartments, whichever is greater.

4. Description of the proposed change to the environmental planning instrument

The Planning Proposal proposes changes to the Canada Bay LEP as follows:

- (a) rezone the Land from IN1 General Industrial to R3 Medium Density Residential;

- (b) increase the maximum building height on the Land from 12m to 16m for the western quarter and 22 metres for the eastern portion; and
- (c) increase the floor space ratio (**FSR**) for the Land from 1:1 to 1.6:1.

5. Summary of objectives, nature and effect of the Planning Agreement (cl.25E(1)(a))

The objective of the Planning Agreement is in accordance with Council's Affordable Housing Policy and Council's stated commitment to enable affordable housing in the City of Canada Bay to maintain a diverse, vibrant and healthy community and to alleviate housing stress experienced by some individuals and families in the private rental housing market. The Planning Agreement does this by requiring the Affordable Housing to be transferred to Council.

The Planning Agreement outlines the legal obligations of each of the parties in relation to the provision of the Affordable Housing.

The effect of the Planning Agreement is to require the Developer to construct and transfer the Affordable Housing to Council for the nominal sum of \$1.

The Affordable Housing is to be finished in a similar manner and quality to the other apartments in the Development, and be completed with services connected and operational and in a manner suitable for occupation, in a similar manner to the other apartments in the Development.

In order to secure the obligations of the Developer under the Planning Agreement, the terms of the Planning Agreement require the provision of security to Council in the form of a bank guarantee, the registration of the Planning Agreement on the title of the Land, and the granting of a caveatable interest in the Land to Council by the Developer.

6. Assessment of the merits of the Planning Agreement, including the impact on the public or any relevant section of the public (cl.25E(1)(b))

Without the Planning Agreement, Council would not be in a position to require the construction and provision to Council of the Affordable Housing as part of any Development Consent granted in respect of the Land. Accordingly, the Planning Agreement provides a legal means of enabling the Developer to contribute rental housing for lower income households in the form of Affordable Housing at a nominal financial cost of \$1 to Council. The Planning Agreement includes a number of contractual rights to ensure this occurs.

The Planning Agreement does not require Council to grant consent to the Development, and can be terminated if Development Consent is not obtained.

7. How does the Planning Agreement promote the public interest and one or more objects of the Act?(cl.25E(2)(a))

The Planning Agreement promotes the objects of the Act, in particular, objects (v) and (viii) which relate to *"the provision and co-ordination of community services and facilities"* and *"the provision and maintenance of affordable housing"*, respectively.

These objects are satisfied as the Planning Agreement will ensure the delivery of the Affordable Housing to be offered by the Council as a public benefit to the community for use as 'affordable housing' as defined under the Act.

8. How does the Planning Agreement promote elements of the Council's charter? (cl 25E(2)(d))

Section 8 of the *Local Government Act* 1993 (NSW), previously set out the Council's charter. However, commencing 23 September 2016, the charter has been replaced with 'Guiding principles for councils' under section 8A of the *Local Government Act*.

Section 25E(2)(d) of the Environmental Planning and Assessment Regulation 2000 has not been amended to reflect the change. The current (section 8A Guidelines), and previous (section 8 Charter), requirements of the *Local Government Act* are addressed below.

The Planning Agreement promotes the following elements of the Council's charter, as stated under the previous wording of section 8 of the *Local Government Act* 1993 (NSW):

- *“to 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”*

The Planning Agreement will provide adequate and appropriate affordable housing which Council will manage in accordance with its Affordable Housing Policy.

- *“to have regard to the long term and cumulative effects of its decisions” and “to engage in long-term strategic planning on behalf of the local community”.*

The Planning Agreement will promote Council's long term strategic planning by ensuring that there are types of housing within the local government area which will remain affordable to households of varying economic status within the local community in the future. The provision of Affordable Housing pursuant to the Planning Agreement is consistent with the objective of Council's Affordable Housing Policy which include:

- improving access to rental housing that is affordable for low to moderate income households and by doing so, helping to alleviate housing stress;
- ensuring that the affordable rental housing mix is appropriate to the changing needs of households with regard to size and type, location, sustainability and community connectedness; and
- efficiently managing revenue provided through the affordable rental housing program to procure, manage and grow the affordable rental housing portfolio in the Canada Bay local government area.

- *“to effectively plan for, account for, and manage the assets for which it is responsible”.*

The provision of the Affordable Housing as set out in the Planning Agreement will ensure the provision of the Affordable Housing, at nominal cost to Council, to be used and managed by Council, in accordance with its Affordable Housing Policy to provide affordable accommodation for lower income households.

- *“to exercise its functions in a manner that is consistent with and promotes social justice principles of equity, access, participation and rights”.*

By providing affordable housing, Council aims to assist people earning low to moderate incomes to live and work in the City of Canada Bay, provide them with improved rental housing security and enable them to establish savings for the private rental market or home ownership. The Planning Agreement will deliver to Council additional affordable housing which Council can use towards achieving this aim.

The Planning Agreement promotes the following elements of the Guiding principles for Councils in the exercise of Council functions, as stated under section 8A of the *Local Government Act 1993* (NSW):

- *“manage lands and other assets so that current and future local community needs can be met in an affordable way.”*

The Planning Agreement provides a mechanism through which Council can manage its assets by delivering rental housing, in an affordable way.

- *“work with others to secure appropriate services for local community needs.”*

The Planning Agreement provides a mechanism for Council to work with others, being the Developer, to secure the construction and provision of Affordable Housing within the Council's local government area.

9. What planning purposes does the Planning Agreement serve? (cl.25E(2)(e))

A planning purpose is served by the provision of the Affordable Housing for use as 'affordable housing' in accordance with section 1.3 of the Act, by improving access to rental housing and ensuring there is a diverse affordable rental housing mix provided.

The Planning Agreement provides a “reasonable means” for achieving the planning purposes since it contractually binds the Developer to provide the Affordable Housing in the manner set out in the Planning Agreement. It also provides appropriate security for the Affordable Housing through:

- the provision of a bank guarantee;
- registration of the Planning Agreement on the title of the Land; and
- the granting of a caveatable interest in the Land to Council by the Developer.

The Planning Agreement will provide a public benefit in terms of the construction and provision of Affordable Housing as it will be costly to obtain these public benefits through other statutory means. The Planning Agreement is the most suitable instrument by which the construction and provision of the Affordable Housing can be delivered.

10. Does the Planning Agreement conform with Council's capital works program? (cl.25E(2)(f))

Yes. The Planning Agreement conforms with the Council's capital works program in that the Affordable Housing will be provided to Council at no real cost to Council.

11. Does the Planning Agreement specify that certain requirements must be complied with prior to a construction certificate, occupation certificate, or subdivision certificate being issued? (cl.25E(2)(g))

Yes.

Prior to the Construction Certificate being issued, the Developer must provide a guarantee to Council as security for the Developer performing its obligations under the Planning Agreement. The guarantee is to be in the amount specified in clause 7.1.2 of the Planning Agreement.

Prior to the Occupation Certificate being issued, the Developer must submit a copy of the Affordable Housing Notice of Completion to Council.