

Explanatory Note

Planning Agreement

273-275 Anzac Parade, Kingsford (DA/489/2020)

1 Introduction

- (1) The purpose of this Explanatory Note is to provide a plain English summary to support the notification of a proposed planning agreement (**Planning Agreement**) under s7.4 of the *Environmental Planning & Assessment Act 1979* (NSW) (**Act**).
- (2) This Explanatory Note has been prepared jointly between the parties as required by clause 205 of the *Environmental Planning & Assessment Regulation 2021* (NSW).
- (3) This Explanatory Note is not to be used to assist in construing the Planning Agreement.

2 Parties to the Planning Agreement

The parties to the Planning Agreement are as follows:

- (1) Randwick City Council (ABN 77 362 844 121) (**Council**).
- (2) Fusion Development Pty Ltd (ABN 69 097 880 567) (**Developer**).

3 Description of the Subject Land

The Planning Agreement applies to the Land comprising Lot 1 in DP940263 and Lot 1 in DP129966, known as 273-275 Anzac Parade, Kingsford and associated parts of Anzac Parade and Houston Lane as referred to in the Development Consent (**Land**).

4 Description of the Development

The Planning Agreement relates to the development generally described in development application DA/489/2020 and approved by the NSW Land and Environment Court under proceedings no. 2021/200198 on 23 May 2022 (**Development Consent**), which comprises of the demolition of existing structures and construction of a part 5, 11 and part 16 storey mixed use development with one tower elements comprising ground and first floor commercial with boarding house above comprising 141 boarding rooms, including a Manager's room, basement car parking, landscaping and associated works (**Development**).

5 Summary of objects, nature and effect of the Planning Agreement

The **objective** of the Planning Agreement is to provide community infrastructure, amenities and resources to the Randwick LGA community by facilitating the delivery of development contributions consisting of the following (**Contributions**):

- (1) An Affordable Housing Contribution, being a Monetary Contribution to the value of the Contribution Value as set out in Item 1 of **Schedule 1**.
- (2) A Community Infrastructure Contribution (**CIC**) being:
 - (a) a Monetary Contribution to the value of the Contribution Value set out in Item 2 of **Schedule 1**; or

- (b) if works in lieu of the Monetary Contribution in paragraph (a) are being carried out, the Works as set out in Items 3, 4 and 5 of **Schedule 1** (or Monetary Contributions to the value of the Contribution Value set out in **Schedule 1** to the extent that each of those Works are not completed) (**CIC Works**).

The Developer must notify Council of its intention to pay the CIC Monetary Contribution or carry out the CIC Works prior to the issue of a Construction Certificate in connection with the Development (**Relevant CC**).

If it becomes apparent during the design process (with the detailed design to be agreed prior to the issue of the Relevant CC) that the parties cannot agree on the detailed design or the Works cannot be conducted at a reasonable cost by the Developer, then the Developer may elect to provide that CIC Contribution Value as a Monetary Contribution instead.

The **intent** of the Planning Agreement is to facilitate the provision of the Contributions by the Developer.

The Planning Agreement will be registered on the title of the Land.

Council will be able to withhold Occupation Certificates until such time as those Contributions are made.

The Developer will provide Council with the following bank guarantees to ensure completion of the Contributions:

- (1) A bank guarantee for an amount equivalent to one hundred and ten per cent (110%) of the Contribution Value for the CIC Works (**Work Security**).
- (2) A bank guarantee for an amount equivalent to ten per cent (10%) of the Contribution Value for each item of CIC Works prior to the completion of an item of Work to satisfy any defects in the Works during the relevant Defect Liability Period (which will be twelve (12) months commencing from the date the item of Works is completed) (**Defects Security**).

The **nature** of the Planning Agreement is a contractual relationship between the Council and the Developer for providing the Contributions.

The **effect** of the Planning Agreement is that the Developer will provide the Contributions in the manner provided for by the Planning Agreement (as applicable) and as set out in **Schedule 1**.

6 Assessment of the merits of the Planning Agreement

6.1 The planning purposes served by the Planning Agreement

In accordance with section 7.4(2) of the Act, the Planning Agreement promotes the following public purposes:

- (1) Provision of contributions to accommodate and meet the demands of future developments and to mitigate the potential impacts of the Development on existing infrastructure.
- (2) The provision of monetary contributions to meet the demands for infrastructure in relation to affordable housing, public amenities and public services.
- (3) The monitoring of the planning impacts of development on the Land.

6.2 How the Planning Agreement promotes the public interest

In accordance with the objects of the Act, the Planning Agreement promotes the public interest in the following manner:

- (1) By providing certainty for the Developer and Council as to the provision of the Contributions directed towards community infrastructure within the Randwick LGA community.
- (2) By promoting the social and economic welfare of the community and a better environment.
- (3) By promoting the delivery of affordable housing.
- (4) The promotion and co-ordination of the orderly and economic use and development of Land to which the Planning Agreement applies.
- (5) The Planning Agreement will provide an opportunity for involvement and participation by members of the community in development assessment and are invited to make comment on the Planning Agreement.

6.3 How the Planning Agreement promotes Council's guiding principles

The Planning Agreement promotes a number of Council's guiding principles under section 8A of the *Local Government Act 1993* (NSW), as follows:

- (1) The exhibition of the Planning Agreement facilitates the involvement of members of the public in the consultation process for the Planning Agreement.
- (2) To plan strategically for the provision of effective and efficient services and regulation to meet the diverse needs of the local community.
- (3) To act fairly, ethically and without bias to the interests of the local community.
- (4) To recognise diverse local community needs and interests.
- (5) To have regard to the long term and cumulative effects of its decisions on future generations.
- (6) Transparent decision-making and active engagement with local communities, through the use of the integrated planning and reporting framework and other measures.
- (7) To engage in long-term strategic planning on behalf of the local community;
- (8) The Planning Agreement makes it clear that Council has a statutory role as consent authority in relation to the development proposal and that the Planning Agreement is not intended to unlawfully influence the exercise of Council's regulatory functions.

7 Identification of whether the Planning Agreement conforms with the Council's capital works program

The Planning Agreement conforms with Council's local infrastructure delivery plans in meeting the development objectives for the establishment, ongoing management and development of infrastructure on community land, which are consistent with the community expectations for local infrastructure.

Schedule 1: Contributions

Item	Contributions	Public Purpose	Timing	Contribution Value
1	Affordable Housing Levy Monetary Contribution	Provision of affordable housing	Prior to the issue of any Occupation Certificate in respect of the Development.	The amount of the contribution is payable in accordance with condition 91 of the Development Consent and must be calculated at the time that it is required to be paid in accordance with clause 6.18 of the <i>Randwick Local Environmental Plan 2012</i> (RLEP) and the <i>Kensington and Kingsford Town Centres - Affordable Housing Plan</i> adopted by the Council on 10 December 2019 and will be calculated using: (1) the relevant indexed Affordable Housing Levy Monetary Contribution Rate pursuant to part 2.8 of the <i>Kensington and Kingsford Town Centres - Affordable Housing Plan</i> (being an amount of \$593.75 per square metre as at the date of this document); and (2) the area of residential floor space determined on the basis of the final design of the Development. The Affordable Housing Levy Monetary Contribution Rate is indexed twice a year, being the first day of January and July, with reference to the most recently published median strata dwelling price in Randwick City Local Government Area. As at the date of this Planning Agreement, the Contribution Value is estimated to be \$2,523,150 (being 6,408 square metres of residential floor space payable at a rate of \$393.75/sqm). [Note: Final figure to be confirmed prior to execution]
Community Infrastructure Contribution				
2	CIC Monetary Contribution	Improvement of local infrastructure	Prior to the issue of the first Construction Certificate in respect of the Development.	The amount of the contribution will be calculated at the time that it is required to be paid in accordance with clause 6.17 of the <i>Randwick Local Environmental Plan 2012</i> (RLEP), the <i>Kensington and Kingsford Town Centres – Community Infrastructure Contributions Plan</i> adopted by the Council on 10 December 2019 and will be calculated (which includes for the sake of clarity any indexation required under clause 5.4 of this document) using: (1) the relevant Community Infrastructure Contribution Rate (being an amount of \$475.00 per square metre as at the date of this document); and

				(2) the area of additional residential floor space within the Development above the maximum building height plane allowable under clause 4.3 of the RLEP determined on the basis of the final design of the Development. In accordance with this document, the CIC Monetary Contribution will be reduced by the value of any CIC Works which are carried out. As at the date of this Planning Agreement, the Contribution Value for the Community Infrastructure Contribution is estimated to be \$1,135,725 (being 2,391 square metres of floor space payable at a rate of \$475/sqm). [Note: Final figure to be confirmed prior to execution]
3	CIC Works in Lieu - Construction of footpath upgrade to Anzac Parade frontage.	Improvement of local infrastructure	Prior to the issue of any Occupation Certificate in respect of the Development.	\$238,191.00
4	CIC Works in Lieu - Construction of other public realm works and upgrades to Anzac Parade frontage	Improvement of local infrastructure	Prior to the issue of any Occupation Certificate in respect of the Development.	\$12,075.00
5	CIC Works in Lieu - Construction of other laneway upgrades	Improvement of local infrastructure	Prior to the issue of any Occupation Certificate in respect of the Development.	\$191,569.00