

Explanatory Note

Planning Agreement

277-291 Anzac Parade, Kingsford (DA/477/2022)

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) Iglu No. 215 Pty Ltd (ACN 653 910 064) as trustee for the Iglu Property Trust No. 215 (ABN 42 518 096 550) (**Developer**).

3 Description of the Subject Land

The Planning Agreement applies to the Land comprising Lots A & B in DP394221, Lots 11 & 12 in DP716333, Lot 3 in DP129966 and Lot 101 DP 860478, known as 277-291 Anzac Parade, Kingsford (**Land**).

4 Description of the Development

The Planning Agreement relates to the development generally described in development application DA/477/2022 (**Development Consent**) consisting of the partial demolition of an existing structure and construction of a part three (3) and part eighteen (18) storey mixed use development over one (1) level of basement comprising retail, commercial and 285 coliving (student accommodation) rooms with associated indoor and outdoor communal space and landscaping (**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, 5 and 6 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**).
- (3) A local infrastructure contribution pursuant to s7.12 of the Act (**s7.12**), being:
 - (a) a Monetary Contribution to the value of the Contribution Value set out in Item 7 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 8 and 9 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) (**s7.12 Works**).

The Developer must notify Council of its intention to:

- (1) pay the CIC Monetary Contribution or carry out the CIC Works; and
- (2) pay the s7.12 Monetary Contribution or carry out the s7.12 Works,

prior to the issue of a Construction Certificate for above ground works in connection with the Development (which excludes any Construction Certificate for site preparation, all retaining structures, demolition, piling, shoring, excavation and basement works) (**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 Contribution Value as a Monetary Contribution instead. In that regard, Council must use that Monetary Contribution for works on any land upon which the Works were intended to be carried out. However, Council has the absolute discretion as to which parts of that land upon which it undertakes works and is not obligated to carry out works on all of that land.

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 Construction Certificates, Subdivision Certificates and 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 Works (**Work Security**).
- (2) A bank guarantee for an amount equivalent to ten per cent (10%) of the Contribution Value for each item of 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 a Construction Certificate for above ground works (excluding any CC for site preparation, all retaining structures, demolition, piling, shoring, excavation and basement works).	<p>The amount of the contribution 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:</p> <p>(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 \$625.00 per square metre as at the date of this Planning Agreement); and</p> <p>(2) an area of 8,974 square meters of residential floor space approved by the Development Consent.</p> <p>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.</p> <p>As at the date of this Planning Agreement, the Contribution Value is estimated to be \$5,608,750.00 (being 8,974 square metres of residential floor space payable at a rate of \$625.00/sqm). [Note: Final figure to be confirmed]</p>
Community Infrastructure Contribution				
2	CIC Monetary Contribution	Improvement of local infrastructure	Prior to the issue of a Construction Certificate for above ground works (excluding any CC for site preparation, all retaining structures, demolition, piling, shoring, excavation and basement works).	<p>If a CIC Monetary Contribution is payable, 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 (CIC Plan)</i> adopted by the Council on 10 December 2019 and will be calculated (which includes for the sake of clarity any indexation required in accordance with section 7 of the CIC Plan) using:</p> <p>(1) the relevant Community Infrastructure Contribution Rate (being an amount of \$475.00 per square metre as at the date of this Planning Agreement); and</p>

				<p>(2) an area of 4,488 square metres of additional residential floor space within the Development above the maximum building height plane allowable under clause 4.3 of the RLEP approved under the Development Consent.</p> <p>As at the date of this Planning Agreement, the Contribution Value for the CIC Monetary Contribution is estimated to be \$2,131,800.00. (being 4,488 square metres of floor space payable at a rate of \$475/sqm). [Note: Final figure to be confirmed]</p>
3	CIC Works in Lieu - Anzac Parade footpaths and intersections at Anzac Parade and Strachan Street.	Improvement of local infrastructure	Prior to the issue of the first Occupation Certificate in respect of the Development.	\$250,000.00
4	CIC Works in Lieu - Other public realm works and upgrades at Anzac Parade.	Improvement of local infrastructure	Prior to the issue of the first Occupation Certificate in respect of the Development.	\$481,800.00
5	CIC Works in Lieu - Local road improvement and upgrades at Strachan Street.	Improvement of local infrastructure	Prior to the issue of the first Occupation Certificate in respect of the Development.	\$600,000.00
6	CIC Works in Lieu - Laneway upgrades at Houston Lane.	Improvement of local infrastructure	Prior to the issue of the first Occupation Certificate in respect of the Development.	\$800,000.00
Section 7.12 Contribution				
7	Section 7.12 Monetary Contribution	Public infrastructure in the Kensington and Kingsford	Prior to the issue of a Construction Certificate for above ground works (excluding any CC for site preparation, all retaining structures, demolition, piling, shoring,	If a s7.12 Monetary Contribution is payable, the amount of the contribution will be calculated at the time that it is required to be paid as indexed in accordance with section 10 of the <i>Section 7.12 Development Contributions Plan – Kensington and Kingsford Town Centres</i> adopted by the Council on 10 December 2019.

		community.	excavation and basement works).	A s7.12 Monetary Contribution will not be payable if the value of the s7.12 Works is equal to the values of the s7.12 Monetary Contribution Amount.
8	Section 7.12 Works in Lieu - Undergrounding of overhead power lines on Strachan Street.	Public infrastructure in the Kensington and Kingsford community.	Prior to the issue of the first Occupation Certificate in respect of the Development.	\$900,000.00
9	Section 7.12 Works in Lieu - Poles with street lighting on Strachan Street, which must be delivered in accordance with V1 and PR4 categories of the Australian standard AS1158.1.1:2022.	Public infrastructure in the Kensington and Kingsford community.	Prior to the issue of the first Occupation Certificate in respect of the Development.	\$417,250.00