

Explanatory Note
Planning Agreement
137-151 Anzac Parade, Kensington (DA/810/2021)

1 Introduction

- (1) The purpose of this Explanatory Note is to provide a plain English summary to support the notification of a proposed Voluntary Planning Agreement (**Planning Agreement**) under s7.4 of the *Environmental Planning and 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 and Assessment Regulation 2021* (**Regulations**).
- (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:

- (1) Randwick City Council (ABN 77 362 844 121) (**Council**); and
- (2) Toga Addison Pty Ltd (ABN 49 609 273 092) in its own capacity and as trustee for Toga Addison Unit Trust (ABN 56 742 581 520) (**Developer**).

3 Description of the Land to which the Planning Agreement applies

The Planning Agreement applies to the land comprising Lot 10 Section 3 Deposited Plan 3897, Lot 1 Deposited Plan 554563, Lot 2 Deposited Plan 554563, Lot B Deposited Plan 340818, Lot C Deposited Plan 100646, Lot D Deposited Plan 100646, Lot 10 Deposited Plan 828868 and Lot 1 Deposited Plan 573636 located at 137-151 Anzac Parade, Kensington (**Land**).

4 Description of the Development to which the Planning Agreement applies

The Planning Agreement relates to the development generally described in development application DA/810/2021 (**Development Consent**) consisting of the demolition of existing structures, site remediation, and construction of a nine (9) storey mixed use development comprising ground floor commercial/retail premises and one-hundred and forty-two (142) dwellings on floors above, two (2) levels of basement parking with vehicular access from Anzac Parade, tree removal, associated landscape and public domain works (variation to building height) (**Development**).

5 Summary of Public Benefit, Objectives, Nature and Effect of the Planning Agreement

The Developer is required to provide the following public benefit in accordance with the Planning Agreement:

- (1) Prior to the issue of the first Occupation Certificate in respect of the Development, an **Affordable Housing Levy Monetary Contribution** be calculated at the time that it is required to be paid in accordance with clause 6.18 of the Affordable Housing Policy and will be calculated using the relevant indexed Affordable Housing Contribution Rate pursuant to part 2.8 of the Affordable Housing Policy (being an amount of \$540.62 per

square metre as at the date of the Planning Agreement. The Developer must only pay the Affordable Housing Levy Monetary Contribution to Council for any shortfall in the total floor area of the Designated Land to be dedicated to Council pursuant to the Planning Agreement.

- (2) Prior to the issue of the fourth Construction Certificate in respect of the Development, a **CIC Monetary Contribution** be calculated at the time that it is required to be paid in accordance with clause 6.17 of the Randwick Local Environmental Plan 2012, the Kensington and Kingsford Town Centres – Community Infrastructure Contributions Plan and will be calculated using:
 - (a) the relevant Community Infrastructure Contribution Rate (being an amount of \$475.00 per square metre as at the date of the Planning Agreement); and
 - (b) the area of additional residential floor space within the Development above the maximum building height plane allowable under clause 4.3 of the Randwick Local Environmental Plan determined on the basis of the final design of the Development.
- (3) Prior to the issue of the first Occupation Certificate in respect of the Development, the dedication of one (1) bedroom, two (2) bedroom or three (3) bedroom dwellings comprising an internal area of no less than 50.0 sqm within the Development with an aggregate floor area of up to three percent (3%) of the total floor area of the Development and minimum ancillary car parking permitted by Council for the dwellings with the nature and extent of such dwellings to be determined by the Developer and approved by Council and generally in accordance with the finishes in the Kensington Finishes Schedule (**Designated Land**).
- (1) Prior to the issue of the fourth Construction Certificate in respect of the Development, landscape upgrades including Water Sensitive Urban Design (including but not limited to) Anzac Parade frontage as generally shown on the Location Plan and pursuant to item 6 of 'Appendix – Schedule of Community Infrastructure' in the Kensington and Kingsford Town Centres – Community Infrastructure Contributions Plan and determined in accordance with the Planning Agreement (**CIC Works**). Upon Completion of the CIC Works:
 - (a) the amount of the CIC Monetary Contribution required to be paid by the Developer is reduced by the CIC Works Value; and
 - (b) the Developer must pay to Council any difference between the CIC Monetary Contribution and the CIC Works Value.

Council, at any time prior to the approval of the detailed design of the CIC Works and for any reason, may provide written notice to the Developer that it no longer agrees with the CIC Works being carried out. If Council and the Developer are not able to agree on the detailed design, specification or cost to complete the CIC Works, or if the Developer forms the view prior to commencing the CIC Works that the Developer cannot carry out the CIC Works at a reasonable cost, then the Developer may serve written notice on Council advising that it will no longer undertake the CIC Works. If a party or the parties no longer agree with the CIC Works being carried out, the Developer is required to pay the full amount of the CIC Monetary Contribution.

The **objective** of the Planning Agreement is to provide a material public benefit to be applied towards community infrastructure.

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

The **effect** of the Planning Agreement is that the Developer will provide the Public Benefit in the manner provided for by the Planning Agreement (as applicable).

6 Assessment of the Merits of the Planning Agreement and Impact on the Public

The Planning Agreement promotes:

- (1) the public interest; and
- (2) the objects of the Act.

The Planning Agreement will provide a material public benefit to be applied towards community infrastructure and also provides a benefit by way of monetary contributions, including towards affordable housing.

7 Identification of how the Planning Agreement promotes the public interest

The Planning Agreement supports the public interest in the following ways:

- (1) By facilitating the improvement of public infrastructure to be utilised by the broader community.
- (2) By promoting the social and economic welfare of the community and a better environment.
- (3) By providing increased opportunity for community participation in environmental planning and assessment.
- (4) To promote the orderly and economic use and development of land.
- (5) To promote the delivery and maintenance of affordable housing.

8 How the Planning Agreement promotes the Guiding Principles for Councils

The Planning Agreement promotes a number of the Guiding Principles for Councils under section 8A of the *Local Government Act 1993* (NSW), as follows:

- (1) To plan strategically, using the integrated planning and reporting framework, for the provision of effective and efficient services and regulation to meet the diverse needs of the local community.
- (2) To manage land and other assets so that current and local community needs can be met in an affordable way.
- (3) To act fairly, ethically and without bias in 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) Providing strong and effective representation, leadership, planning and decision-making.
- (8) Applying the integrated planning and reporting framework in carrying out functions so as to achieve desired outcomes and continuous improvements.

(9) Working with others to secure appropriate services for local community needs

9 Identification of whether the Planning Agreement conforms with the Council's local infrastructure delivery plan

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.