



LEGACYPROPERTY

27 September 2018
The General Manager
North Sydney Council
200 Miller Street
North Sydney NSW 2000

Dear Sir,

LETTER OF OFFER TO ENTER INTO A VOLUNTARY PLANNING AGREEMENT: PLANNING PROPOSAL FOR 253 - 267 PACIFIC HIGHWAY, NORTH SYDNEY

This is a letter of offer to enter into a planning agreement. The offer is made by LegPro 45 Pty Ltd (the **owner**).

This letter has been prepared in support of a planning proposal submitted to North Sydney Council on behalf of the owner. Set out below are details of the planning proposal and the general terms on which a planning agreement would be prepared.

We are submitting this letter of offer for Council's consideration prior to the drafting of the planning agreement. Our intention is that any draft planning agreement would be prepared and exhibited concurrently with the planning proposal, following the Gateway Determination.

Development Overview

A planning proposal was lodged over the subject site at 253 – 267 Pacific Highway, North Sydney which seeks to amend the maximum building height, the maximum floor space ratio (**FSR**) and the minimum non-residential FSR under the *North Sydney Local Environmental Plan 2013 (North Sydney LEP 2013)*, that applies to the subject site.

The planning proposal does not seek to change the current B4 Mixed Use zoning.

The planning proposal is accompanied by an indicative concept plan prepared by PTW and supporting technical studies which provide further guidance with respect to the future redevelopment of the site as anticipated under the planning proposal.

The indicative concept plan provides for approximately 89 residential apartments and 1,667sqm of non-residential gross-floor area (**GFA**) to be used for office, retail and community uses. The concept proposal also provides basement parking for 40 cars.

The objectives of the planning proposal and the outcomes sought to be delivered include to:

- provide compatible land uses that contribute to the creation of a vibrant and active community, including the potential for residential, commercial and community uses to co-locate;
- provide a consolidated development solution across multiple sites to enable a future cohesive development and public domain outcomes;

- capitalise on the natural development potential of the site given its strategic highway location between two railway stations;
- create opportunities for small scale retail and commercial businesses to locate in a more affordable location, close to the North Sydney Central Business District;
- provide high quality publicly accessible spaces at the ground level, which activate West Street and the Pacific Highway; and
- provide affordable key worker housing in the centre.

Voluntary Planning Agreement Offer

On 18 February 2013, Council adopted the “Voluntary Planning Agreement Policy” to provide a fair, transparent and accountable framework for the preparation and consideration of voluntary planning agreements.

Legacy Property Pty Ltd proposes to prepare and submit for Council’s consideration a draft voluntary planning agreement in accordance with the terms of Council’s policy. It is proposed that the planning agreement will provide for:

- dedication of 233m² of the residential yield on Level 2 of the development (which equates to 3 x 1 bedroom apartments and 1 x studio apartment) to Council or an affordable housing provider for use as affordable housing for low and very low income renters, in accordance with the objectives of the *North Sydney Affordable Housing Strategy 2015*;
- dedication of 349m² of GFA on Level 2 of the development to Council to be used as affordable office space by ‘start-up’ businesses. The commercial space will be provided in the form of a partial fit-out, including finished walls, ceiling, flooring and basic service connections for electricity, water and sewer;
- dedication of 55m² of GFA on the ground level of the development to Council to be used for community facilities, as defined by the *North Sydney LEP 2013*. The community space will be provided in the form of a partial fit-out, including finished walls, ceiling, flooring and basic service connections for electricity, water and sewer;
- construction of a portion of new road within the boundaries of the site to widen Church Lane from 3-4.5m to 6m and the excision of approximately 130m² of land from the site area for dedication to the Council for the purpose of the new road following construction of the nominated works; and
- embellishment of approximately 200m of footpaths and public domain around the site on the Pacific Highway, West Street, Church Lane and McLaren Street.

It is estimated that the total value of the offer is in the order of \$9.2 million, consisting of approximately \$8.45 million worth of dedicated floor space and land, and \$0.75 million worth of works.

The timing of the delivery of the material public benefit items will be provided in the draft planning agreement to be submitted to Council for endorsement to enable future public exhibition. The value of the contribution and material public benefit offering is based on the development proposed under the submitted planning proposal. In the event of changes to the proposed built form controls as part of the planning proposal, the

owner reserves the right to adjust its planning agreement offer. Furthermore, the owner reserves the right to adjust its planning agreement offer based on the market conditions prior to the exhibition of any draft planning agreement.

Parties to the planning agreement

The parties to the planning agreement will be LegPro 45 Pty Ltd as the owner and the Council.

Land to which the planning agreement applies

The planning agreement will apply to the site, being land described as Lot 10 DP749576, Lot B DP 321904, Lot 51 DP 714323, SP 22870 and SP 16134.

Timing of the obligations

The planning agreement will be entered into prior to the publication of the environmental planning instrument giving effect to the planning proposal.

The obligation to provide the contributions under the planning agreement must be satisfied prior to the issue of an occupation certificate for any building erected on the site in accordance with any future development consent for the erection of a mixed use development incorporating residential, retail and commercial uses on the site.

Enforcement of the planning agreement by suitable means

The owner does not propose to lodge a bank guarantee (or similar) in relation to the above obligations. This is because the planning agreement will provide for the enforcement of the agreement by a suitable means in the following ways:

- The owner will arrange for the registration of the planning agreement on the title of the site. This means that the agreement will be binding on, and enforceable against, the owner of the site from time to time as if each owner for the time being had entered into the agreement (section 7.6 of the *Environmental Planning and Assessment Act 1979*).
- Prior to registration, the owner will not be able to assign or novate its rights under the agreement, or transfer its interest in the land, without Council's consent. The Council's consent may not be unreasonably withheld, but consent may be withheld if the owner is in breach of the agreement. The restriction will not prevent the use of the land as security for the purpose of finance.
- An occupation certificate will not be able to be issued if:
 - the necessary construction required by the planning agreement has not been completed;
 - the relevant land has not been dedicated; and/or
 - the relevant easement-in-gross has not been imposed (section 6.10 of the *Environmental Planning and Assessment Act 1979*).

Dispute resolution

The planning agreement will contain a mechanism for the resolution of disputes by way of mediation.

Formal document

A planning agreement will need to be prepared in accordance with this offer. It should be expected that this document will contain reasonable safeguards to protect the owner's interests and those of the Council that are not expressly referenced in this letter. Ultimately, any agreement will be dependent on the finalisation of this document in a form that is satisfactory to both the owner and the Council.

Costs of negotiating and exhibiting the planning agreement

The owner is prepared to pay the Council's reasonable costs of negotiating and exhibiting the planning agreement.

Next steps

This letter of offer is submitted to Council for your consideration. We would welcome the opportunity to meet with Council to discuss this proposal after which time, we would proceed with drafting the planning agreement.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Tim Turpin', with a long horizontal flourish extending to the right.

Tim Turpin
Head of Development