

Explanatory Note

Minister administering the *Environmental Planning and Assessment Act 1979* (ABN 20 770 707 468)

and

Bay Tower Pty Limited (ACN 099 267 464)
Thirty Four Walker Development Pty Ltd (ACN 613 670 107)
Thirty Four Walker Street Pty Ltd (ACN 165 847 076)
Twelve Walker Street Pty Ltd (ACN 166 282 542)
Twenty One Marquet Street Pty Ltd (ACN 165 919 693)
Twenty Three Marquet Street Pty Ltd (ACN 601 336 887)

Draft Planning Agreement

Introduction

The purpose of this explanatory note is to provide a plain English summary to support the notification of the draft planning agreement (the **Planning Agreement**) prepared under Subdivision 2 of Division 7.1 of Part 7 of the *Environmental Planning and Assessment Act 1979* (the **Act**).

The explanatory note has been prepared under section 205 of the *Environmental Planning and Assessment Regulation 2021* (the **Regulation**), including having regard to the Planning Agreements Practice Note dated February 2021.

The contents of this explanatory note have been agreed by the parties.

Parties to the Planning Agreement

The parties to the Planning Agreement are the Minister administering the *Environmental Planning and Assessment Act 1979* (ABN 20 770 707 468) (the **Minister**), and the following parties (collectively referred to as the **Developer**):

- (a) Bay Tower Pty Limited (ACN 099 267 464);
- (b) Thirty Four Walker Development Pty Ltd (ACN 613 670 107);
- (c) Thirty Four Walker Street Pty Ltd (ACN 165 847 076);
- (d) Twelve Walker Street Pty Ltd (ACN 166 282 542);
- (e) Twenty One Marquet Street Pty Ltd (ACN 165 919 693); and
- (f) Twenty Three Marquet Street Pty Ltd (ACN 601 336 887).

Description of the Subject Land

The land to which the Planning Agreement applies is set out in the table below (the **Subject Land**):

Lot	Deposited Plan	Folio Identifier	Address
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101	624798	101/624798	34 Walker Street, Rhodes NSW 2138
102	624798	102/624798	23 and 25-29 Marquet Street, Rhodes NSW 2138
40	1275410	40/1275410	23 and 25-29 Marquet Street, Rhodes NSW 2138

Description of the Proposed Development

The Developer has made DA2022/0162 relating to land at 34 Walker Street, Rhodes NSW 2138 comprising Lot 101 DP 624798, seeking to amend DA2017/0544 which approved:

'Demolition of existing structures, vegetation removal and construction of a shop-top housing development comprising 400 apartments, commercial space, community centre, recreation facility (indoor), centre-based child care facility, medical centre, basement parking for 583 cars and stratum subdivision into three lots'.

DA2022/0162 proposes to add approximately 273 additional residential units (apartments) in addition to those originally approved by the City of Canada Bay Council under DA2017/0544.

The Developer also proposes to make a development application relating to land at 23 and 25-29 Marquet Street, Rhodes NSW 2138, comprising Lot 102 DP 624798 and Lot 40 DP 1275410 for development that proposes a total residential gross floor area of up to 18,758m², subject to variations permitted under clause 4.6 of the *Canada Bay Local Environmental Plan 2013 (LEP)*.

Summary of Objectives, Nature and Effect of the Planning Agreement

The objective of the Planning Agreement is to facilitate the delivery of contributions from the Developer towards the provision of designated State public infrastructure referred to in clause 6.9 of the LEP, in relation to the land on which the proposed development would be carried out.

Under clause 6.9(4) of the LEP, 'designated State public infrastructure' means:

'public facilities or services that are provided or financed by the State (or if provided or financed by the private sector, to the extent of any financial or in-kind contribution by the State) of the following kinds—

- (a) State and regional roads,*
- (b) bus interchanges and bus lanes,*
- (c) land required for regional open space,*
- (d) social infrastructure and facilities (such as schools, hospitals, emergency services and justice purposes).'*

The Planning Agreement provides that the Developer will make a monetary contribution of \$10,000 per residential unit (subject to indexation in accordance with the Planning Agreement) (**Development Contribution**) for the purpose of clause 6.9 of the LEP. However, no contribution is payable in respect of the residential units originally approved under DA2017/0544.

An instalment of the Development Contribution will be payable prior to the issue of each relevant occupation certificate, in accordance with Schedule 4 to the Planning Agreement. This

ensures that the contribution is paid before any rights arise to actually occupy residential units in respect of which contributions are payable.

The Developer is required to provide security to the Minister in accordance with Schedule 5 to the Planning Agreement to secure compliance with the development contribution obligation. The amount of security required under Schedule 5 is \$4,510,000.

No capital works program by the Minister is associated with the Planning Agreement.

Assessment of the Merits of Planning Agreement

The Public Purpose of the Planning Agreement

In accordance with section 7.4(2) of the Act, the public purpose of the Planning Agreement is the provision of (or the recoupment of the cost of providing) transport or other infrastructure relating to land.

How the Planning Agreement Promotes the Public Interest

The Planning Agreement promotes the public interest by ensuring that an appropriate contribution is made towards the provision of designated State public infrastructure to satisfy needs that arise from or are contributed to by the development of the Subject Land under the development applications referred to above.

The amount offered to be paid is proportional to the number of residential units that will be constructed and occupied, and in this way promotes the public interest by linking the quantum of contributions to the increase in the need or demand for infrastructure arising from the intensification of development on the Subject Land.

The Developer's offer to contribute towards the provision of designated State public infrastructure will have a positive impact on the public who will ultimately use that infrastructure.

Requirements relating to Occupation Certificates

The Planning Agreement requires that a contribution amount relating to a residential unit must be paid prior to the issue of the relevant occupation certificate for a residential unit.

The Planning Agreement confirms that this pre-occupation certificate payment requirement is a restriction on the issue of an occupation certificate for a residential unit under section 48 of the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021* and therefore, a requirement that must be complied with before an occupation certificate may be issued.

Section 48 referred to above says that:

'If a planning agreement specifies requirements of the agreement that must be complied with before an occupation certificate for a building may be issued, a certifier must not issue an occupation certificate for the building unless the certifier is satisfied the requirements have been complied with.'

Given the above, the Planning Agreement therefore contains a restriction on the issue of an occupation certificate within the meaning of section 6.10(2)(d) of the Act.

Status of this explanatory note

This explanatory note has been agreed by parties proposing to enter into the Planning Agreement.

The parties have agreed that this explanatory note is not to be used to assist in construing the Planning Agreement.