

EXPLANATORY NOTE

PURSUANT TO SECTION 205 OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT REGULATION 2021

WATERLOO ESTATE (SOUTH)

Draft Planning Agreement

The draft Planning Agreement (**Planning Agreement**) is between the Council of the City of Sydney, the Minister administering the *Environmental Planning and Assessment Act 1979* and the NSW Land and Housing Corporation. It applies to the following:

Planning Proposal: The planning proposal described in the document titled “Plan Finalisation Report – PP – 2021-3265 – Waterloo Estate (South) – Sydney Local Environmental Plan 2012 Amendment No. 83” dated November 2022.

Proposed Development: The re-development of Waterloo Estate (South) as set out in the Planning Proposal, being a mixed-use development that includes retail, commercial and residential development (including social and affordable housing), new public infrastructure for roads, footpaths, through site links and parks and community facilities.

Background

A planning proposal to amend the planning controls that apply to Waterloo Estate (South) (**Land**) under *Sydney Local Environmental Plan 2012 (SLEP 2012)* was publicly exhibited by the Department of Planning and Environment from 3 March to 29 April 2022.

The Planning Proposal included changes to:

- Land use
- Heights of Buildings
- Floor space ratio controls
- Land for parks
- How buildings should be designed
- Car parking requirements
- Social and affordable housing requirements
- Heritage and conservation
- Retail and active street front requirements

On 11 November 2022, *Sydney Local Environmental Plan 2012 (Amendment No 83)* was made to give effect to the finalised planning proposal with deferred commencement to allow the finalisation of a planning agreement to deliver public infrastructure on the development site.

The purpose of this explanatory note is to support the notification of the Planning Agreement, under section 7.4 of the *Environmental Planning and Assessment Act 1979 (Act)*, in accordance with section 205 of the *Environmental Planning and Assessment Regulation 2021 (Regulation)*.

This explanatory note has been prepared having regard to the Planning Agreements Practice Note and its contents have been agreed by the parties.

This explanatory note is not to be used to assist in construing the Planning Agreement.

1. Parties to the Planning Agreement

The parties to the Planning Agreement are New South Wales Land and Housing Corporation (**Developer**), Minister administering the *Environmental Planning and Assessment Act 1979* (**Minister**) and the Council of the City of Sydney (**City**).

2. Description of the Subject Land

The Planning Agreement applies to land collectively known as Waterloo Estate (South) bounded by Raglan Street in the north, Cope Street in the west, McEvoy Street in the south, and Waterloo Park, Kellick Street, Gibson Street, Wellington Street and George Street to the east (**Subject Land**)

The Subject Land, owned by the Developer, is the following land in Waterloo Estate (South):

ADDRESS	LOT / DEPOSITED PLAN
1. 117 Wellington Street, 123 Wellington Street, 104 Raglan Street, 87-95 Cooper Street, 209 Cope Street, 213-219 Cooper Street, Waterloo	Lot 1 DP 217386
2. N/A	Lot 3 DP 217386
3. 238-246 George Street, 100-102 Raglan Street, 113 Wellington Street, 46-54 Cooper Street, Waterloo	Lot 1 DP 225159
4. 229-231 Cope Street, Waterloo	Lot 3 DP 10721
5. 6 John Street, Waterloo	Lot 1 DP 533762
6. 97-109 Cooper Street, Waterloo	Lot A DP 105916 Lot B DP 105916 Lot C DP 105916 Lot 14 DP 10721
7. 248-254 George Street, Waterloo	Lot 2 DP 533678
8. 232 Pitt Street, Waterloo	Lot 10 DP 635663
9. 104 Wellington Street, Waterloo	Lot 11 DP 635663
10. 74-76 Wellington Street, Waterloo	Lot 1 DP 224728
11. 331 George Street, 240 Pitt Street, 8 John Street, Waterloo	Lot 3 DP 533680
12. 247-251 Cope Street, Waterloo	Lot 1 DP 533679
13. 339-341 George Street, Waterloo	Lot 1 DP 77168
14. 250 Pitt Street, Waterloo	Lot 313 DP 606576

3. Summary of the Objectives, Nature and Effect of the Proposed Agreement

The objective of the Planning Agreement is to secure public benefits in connection with the Planning Proposal for the Land and the redevelopment of the Subject Land in Waterloo Estate (South) as described above (the **Proposed Development**).

The Planning Agreement will require the following public benefits to be provided:

- Land dedications for new road reserves and embellishment works for those road reserves
- Embellishment of existing road reserves;

- Land dedication and embellishment of approximately 23,600sqm for public open space
- Land dedication and embellishment for approximately 2,400sqm of community facilities.

The effect of the proposed agreement is for the public benefits to be delivered in a timely manner with the Proposed Development of the Land (as set out in the Planning Agreement).

The Planning Agreement provides that sections 7.11 and 7.12 of the Act relating to imposition of conditions requiring contributions will not apply to the Proposed Development.

However, the Planning Agreement provides for an ability for a "top up" monetary contribution to be paid to the City by the Developer or a "credit" to be applied against contributions which may be required for future development of the adjacent Waterloo Estate (North) and Waterloo Estate (Central) depending on:

- the value of certain works for the Public Benefits being provided by the Developer; and
- the monetary contributions which would be payable under the current *City of Sydney Development Contributions Plan 2015* subject to applicable Ministerial directions in respect of the Development.

The value of the works and land delivered and the monetary contributions payable will be determined in accordance with the mechanism in Planning Agreement for the purpose of determining the "top up" or "credit" amounts.

It is expected that this value will be more than the monetary contribution that would have been payable in relation to the Proposed Development had the application of sections 7.11 and 7.12 of the Act to the development not been excluded and contributions were to be calculated under the *City of Sydney Development Contributions Plan 2015* as currently in force. If this occurs, then a Credit Amount will be acknowledged and applied to future development of Waterloo Estate (North) and Waterloo Estate (Central). However, if the value of the works and land delivered is less than the monetary contribution that would have been payable then the balance will be paid as a monetary contribution to the Council to be spent on infrastructure in accordance with the *City of Sydney Development Contributions Plan 2015*.

4. Assessment of the Merits of the Proposed Agreement

(a) How the Planning Agreement promotes the public interest and one or more of the objects of the Act

The Planning Agreement promotes the objects of the Act, in particular the objects identified in section 1.3 (c) and 1.3(g) of the Act, which are to promote the orderly and economic use and development of land and to promote good design and amenity of the built environment. The agreement will provide community infrastructure which will support and service the existing and future population and will contribute to greater amenity and infrastructure of those areas.

(b) How the Planning Agreement promotes the elements of the Council's charter and objects under the Local Government Act 1993

The Planning Agreement promotes a number of elements of the Council's charter under section 8 of the *Local Government Act 1993* (NSW) consistent with the guiding principles for Councils under that Act. In particular, the Planning Agreement through the delivery of the public benefits allows Council to:

- (i) provide directly or on behalf of other levels of government, after due consultation, adequate, equitable and appropriate services and facilities for the community and to ensure that those services and facilities are managed efficiently and effectively;
 - (ii) exercise community leadership;
 - (iii) properly manage, develop, protect, restore, enhance and conserve the environment of the area for which it is responsible, in a manner that is consistent with and promotes the principles of ecologically sustainable development;
 - (iv) in its capacity as the custodian and trustee of public assets, effectively plan for, account for and manage the assets for which it is responsible;
 - (v) engage in long-term strategic planning on behalf of the local community; and
 - (vi) keep the local community and the State government (and through it, the wider community) informed about its activities.
- (c) The impact of the Planning Agreement on the public or any section of the public**

The Planning Agreement will benefit the public and local community as it will improve community infrastructure in the immediate vicinity of the site as part of the Waterloo Estate redevelopment.

- (d) Whether the Planning Agreement conforms with Council's/Minister's capital works program**

Yes. The Planning Agreement conforms to Council's capital works program. No relevant capital works program by the Minister for Planning is associated with the Planning Agreement.

- (e) The planning purpose or purposes of the Planning Agreement**

The Planning Agreement will serve a planning purpose by enhancing the public domain and local infrastructure to reflect the changing nature of the area and the needs of the anticipated incoming population.

The parties consider that the Planning Agreement provides for a reasonable means by which to achieve these planning purposes given the extent of the statutory tools that are available to Council by which it can deliver the proposed public benefits.

- (f) Compliance with certain requirements prior to issue of construction, occupation or subdivision certificates.**

The following requirements of the Planning Agreement must be complied with before:

- (i) **A construction certificate is issued:** Provision of the bank guarantees for certain phases of the Proposed Development as set out in the Planning Agreement.
- (ii) **An occupation certificate is issued:** Dedication of the transfer land and Completion of the Developer's Works as applicable and provision of bank guarantees for part of the public open space and community facilities at certain phases of the Proposed Development as set out in the Planning Agreement.
- (iii) **A subdivision certificate is issued:** Nil.