

Explanatory Note

(Section 205 of the Environmental Planning and Assessment Regulation 2021)

Draft Planning Agreement

The purpose of this explanatory note is to provide a summary of the proposed planning agreement (PA) prepared jointly between the Council of the City of Ryde and the Developer under s7.4 of the *Environmental Planning and Assessment Act 1979* (the Act).

This explanatory note has been prepared as required by section 205 of the *Environmental Planning and Assessment Regulation 2021*.

1 Parties:

Council of the City of Ryde (ABN 81 621 292 610) of Level 1, Building 0, Binary Centre, 3 Richardson Place, North Ryde NSW 2113 (**Council**)

Optus Administration Pty Limited (ACN 055 136 804) of 1 Lyonpark Road, MACQUARIE PARK (**Developer**)

2 Description of subject land:

Lot 511 DP 1153119 known as 1 Lyonpark Road, Macquarie Park is the subject Land under the Planning Agreement.

3 Description of proposed Development:

Construction of a single storey pavilion building and walkway, associated demolition works, landscaping, access and drainage works within the existing Optus Campus.

4 Background:

The Developer is the applicant for consent and modification of consent to the proposed Development and is not the registered proprietor of the Land. The Developer lodged a development application LDA2022/0145 (**Development Application**) with Council to carry out the proposed Development on the Land which is located within the Macquarie Park Corridor.

The Developer has offered to enter into a Planning Agreement with Council pursuant to section 7.4 of the Act to provide development contributions in order to access clause 6.9 of the *Ryde Local Environmental Plan 2014* Incentive Height and Incentive Floor Space Controls if development consent is granted to the Development Application.

Council provided consent to the Development Application on 13 October 2022 with deferred commencement condition requiring the Developer to enter into a Planning

Agreement with Council and register that Planning Agreement on title of the Land (**Deferred Commencement Development Consent**).

On 11 August 2023 the Developer made a revised offer to Council to dispense with the requirement of the deferred commencement condition being registration of the Planning Agreement on title of the Land and offered to make a Contribution for public purposes immediately upon entry into the Planning Agreement, and otherwise on the same terms as the previous offer.

On 30 November 2023, the Developer made a revised offer to Council to enter into a Planning Agreement whereby it would pay an adjusted Contribution amount, and otherwise on the same terms as the offer dated 11 August 2023.

On 26 September 2023 the Developer made an application for modification of the Deferred Commencement Development Consent with Council requesting removal of the deferred commencement condition being registration of the Planning Agreement on title of the Land MOD2023/0197 (**Modification Application**).

On 6 December 2023 Council issued consent to the Modification Application.

5 Summary of Objectives, Nature and Effect of the draft Planning Agreement:

The draft Planning Agreement provides for payment of a monetary contribution which will enable Council to provide a material public benefit for the broader community to be used for embellishment of public parks and open spaces in Macquarie Park and / or the Macquarie Park Access Network .

The draft Planning Agreement is a Planning Agreement under section 7.4 of the Act and is a binding relationship between Council and the Developer.

The draft Planning Agreement requires the Developer to pay the monetary contribution to Council in the amount of \$122,000 immediately upon execution of the Planning Agreement by all parties. The draft Planning Agreement also requires the Developer to comply with certain requirements including registration of the Agreement and provision of a Bank Guarantee in the event that the Developer has not met its obligations under the Planning Agreement including as to payment of the monetary contribution to Council immediately upon execution of this Agreement.

The Agreement does not exclude the application of sections 7.11, 7.12 or 7.24 of the Act to the Development and the Development Contributions are not to be taken into consideration in determining any development contribution under s7.11 of the Act.

The Agreement contains a number of machinery provisions including in relation to dispute resolution and enforcement.

6 Assessment of the merits of the Draft Planning Agreement:

The Planning Purposes served by the Draft Planning Agreement

- The provision of (or recoupment of the cost of providing) public amenities or public services;
- The funding of recurrent expenditure relating to the provision of public amenities;
- The monitoring of the planning impacts of development; and
- The conservation or enhancement of the natural environment.

How the Draft Planning Agreement promotes the Public Interest

- The public interest is promoted by the provision to Council of funds which it is able to apply towards recreational open space in the Macquarie Park Corridor;
- The contribution towards the embellishment of public parks and open spaces will encourage pedestrian activity and contribute to business and development activity within the Macquarie Park Corridor; and
- The contributions made are intended to positively affect the economic and social wellbeing of the Macquarie Park Corridor and wider community.

How the Draft Planning Agreement Promotes the Objects of the Environmental Planning and Assessment Act, 1979 (EP&A Act)

The provision of the monetary contribution required under the Planning Agreement will promote the objects of the Act, in particular:

- 1.3(a) “to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State’s natural and other resources”;
- 1.3(b) “to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment”;
- 1.3(c) “to promote the orderly and economic use and development of land”; and
- 1.3(i) “to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State”.

How the Draft Planning Agreement promotes elements of the Council’s charter under section 8 of the Local Government Act, 1993

- The draft Planning Agreement provides a means by which the Council engages in strategic planning to meet the diverse needs of the local community and is continuously improving recreational facilities within the local government area.
- In addition, the draft Planning Agreement provides a means by which the Council manages lands and other assets through a monetary contribution to meet current and future local community needs in an affordable way.

Conformity with the Council's Capital Works Program

The Draft Planning Agreement generally confirms with Council's 2020 – 2024 Delivery Plan and 2020 – 2021 Operation Plan.

Whether the Agreement specifies that certain requirements of the Agreement must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued

- The draft Planning Agreement requires the Developer to pay the monetary contribution immediately upon execution of the Agreement by all parties and in any event prior to the first Construction Certificate issuing for the Development and to deliver the pedestrian link easement prior to any Occupation Certificate issuing for the Development. The draft Planning Agreement also requires the Developer to comply with certain requirements including registration of the Agreement and provision of a Bank Guarantee in the event that the Developer has not met its obligations under the Planning Agreement including as to payment of the monetary contribution to Council immediately upon execution of this Agreement.

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