

Explanatory Note for Draft Planning Agreement - 5 Haran Street, Mascot

The purpose of this Explanatory Note is to provide a plain English Summary to support the notification of a draft Planning Agreement (**“the Planning Agreement”**) under Section 93F of the *Environmental Planning and Assessment Act 1979* (**“the Act”**).

This Explanatory Note has been prepared jointly between the parties as required by Clause 25E of the *Environmental Planning and Assessment Regulation 2000* (**“the Regulation”**).

This Explanatory Note is not to be used to assist in construing the Planning Agreement.

Parties

Central Element Pty Ltd (ACN 151 022 203) (**“Developer”**) of registered office Goodwin Chivas & Co and C E Concepts Pty Ltd (ACN 149 323 857) (**“Owner”**) of registered office Goodwin Chivas & Co have made an offer to the City of Botany Bay (**“the Council”**) to enter into a Planning Agreement in relation to a Development Application (DA12/86) approved by the Land and Environment Court on 5 June 2013 and as amended by a Section 96AA modification application, submitted to Council on 11 November 2015, and approved on 6 April 2016 by the City of Botany Bay.

Description of subject land

The land to which the Planning Agreement applies is described as follows:

Lot 1 in DP 1189157 known as 5 Haran Street, Mascot

Description of the development to which the Planning Agreement applies

Development Consent No.12/86 was refused by Council on 27 February 2013.

The applicant appealed Council’s refusal to the Land and Environment Court of NSW (case number 10142 of 2013), where, following an agreement between the applicant and Council pursuant to Section 34 of the *Land and Environment Court Act 1979*, the Court granted consent to DA-12/86 subject to conditions, on 5 June 2013 (**Consent**)

The Consent provides for the demolition of the existing structures and the erection of a nine storey residential flat building containing 30 apartments and two levels of basement parking at 5 Haran Street, Mascot. Condition 66 of the Consent required the applicant to enter into a

Planning Agreement with Council, pursuant to section 93F of the Act, to undertake various public open space works to the land being developed by Council as Linear Park and the Haran Street cul-de-sac, as well as some work on the applicant's land. The Planning Agreement was to be entered into prior to the issue of the Occupation Certificate.

A draft Planning Agreement was endorsed by Council on 20 August 2014 and was advertised for a period of 30 days commencing on 24 June 2014. That Planning Agreement was not entered into because it did not correspond with Council's plans to develop and undertake the works Council had designed for Linear Park (via Development Application DA-15/131).

On 11 November 2015, Council received an application (**Modification Application**) pursuant to Section 96AA of the *Environmental Planning and Assessment Act 1979 (Act)* seeking to modify Condition No. 66 of the Consent. The Modification Application was to, essentially, carry out the work provided for by Condition 66 on the applicant's land, but pay an agreed monetary contribution to Council in order for Council to carry out the work in respect of Linear Park, via a fresh planning agreement.

On 29 February 2016, it was agreed that the applicant would make a monetary contribution in the amount of \$48,405.00.

On 18 March 2016, Central Element Pty Ltd provided Council with an irrevocable offer to enter into this Planning Agreement, subject to approval of the Modification Application. The provision of a material public benefit, in the form of a monetary contribution in the amount of \$48,405.00, to be applied towards the public purpose of the provision of Linear Park public open space works.

The Section 96(AA) application was approved by Council on 6 April 2016.

Summary of Objectives, Nature and Effect of the Planning Agreement

In accordance with Condition 66B of the Development Consent (DA12/86) as amended, Central Element Pty Ltd and C E Concepts Pty Ltd offered to provide to Council payment of a monetary contribution to Council in the amount of \$48,405.00, for the material public benefit of public open space works in respect of Linear Park, referred to in Council's Mascot Station Precinct s94 Contributions Plan.

Assessment of the Merits of the Proposal

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

The Planning Agreement promotes the following objectives of the Act:

- the provision of land for public purpose.

The Planning Agreement will result in an improvement to the public open space within the Mascot area.

How the Planning Agreement promotes elements of the Council's charter

The Planning Agreement promotes the following elements of the Council's charter under Section 8 of the Local Government Act 1993 (NSW):

- to 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.

The impact of the Planning Agreement on the public or any section of the public

The Planning Agreement is likely to benefit the public and local community as it will contribute to the landscape works at Linear Park. The monetary contribution will enable Council to improve the existing infrastructure and facilities in the area.

b) The planning purpose or purposes of the Planning Agreement

The development contributions proposed to be provided under the Planning Agreement will be used to achieve the purpose of enhancing the users' experience of Linear Park.

c) Whether the Planning Agreement conforms with Council's capital works program

The Planning Agreement conforms with the 2015/16 Capital Works Program.

d) Compliance of certain requirements prior to issue of construction, occupation or subdivision certificates.

The following requirements of the Agreement must be complied with:

- Within 7 days of execution of the planning agreement:** Payment of monetary contribution of \$48,405.00 towards the public open space works at Linear Park.
- A construction certificate is issued:** N/A
- An occupation certificate is issued:** N/A
- A subdivision certificate is issued:** N/A