

Explanatory Note

Exhibition of Deed of Variation to Planning Agreement

Lot 3A DP 322456, Lot 4A DP 322456, Lot 5 DP 7809, Lot 1 DP 128928, Lot 20 DP 706341, Lot C DP 390897 and Lot 1 DP 555756, known as 189 Macquarie Street, Parramatta

Environmental Planning & Assessment Regulation 2000 (clause 25E)

Planning Agreement

The purpose of this Explanatory Note is to provide a plain English summary to support the notification of a draft Deed of Variation to a Voluntary Planning Agreement (**Variation Deed**) under section 7.4 of the *Environmental Planning and Assessment Act 1979* (**Act**).

The Variation Deed proposes changes to the arrangements under a Planning Agreement dated 15 April 2015 between Parramatta City Council, JKN Para Pty Ltd, Toplace Pty Ltd and Jean Nassif (**Planning Agreement**). The Planning Agreement requires the delivery of contributions in connection with a change to the provisions of the former *Parramatta City Centre Local Environmental Plan 2007* and the development of land at 189 Macquarie Street, Parramatta.

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

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

Parties

The parties to the Variation Deed are Parramatta City Council (**Council**), JKN Para Pty Ltd (**Developer**), Toplace Pty Ltd and Jean Nassif. Toplace Pty Ltd and Jean Nassif entered into the original Planning Agreement as guarantors.

Description of subject land

The land to which the Variation Deed and Planning Agreement apply is described as Lot 3A DP 322456, Lot 4A DP 322456, Lot 5 DP 7809, Lot 1 DP 128928, Lot 20 DP 706341, Lot C DP 390897 and Lot 1 DP 555756, known as 189 Macquarie Street, Parramatta (**Land**).

Description of the Planning Proposal and Development to which the Planning Agreement applies

The original Planning Agreement applied to a planning proposal seeking to amend the LEP to allow for:

- (a) a maximum building height of 91.3m;
- (b) a maximum gross floor area of 36,000 square metres, excluding any space used only for private balconies and communal open space;
- (c) a maximum gross floor area of 2,750 square metres for the purpose of communal and private open space areas,

but only where the design of the building or alteration is the result of an architectural design competition, the consent authority is of the opinion that the development exhibits design excellence and the consent authority is of the opinion that the development provides a public car park.

The Planning Agreement also applied to the proposed development of the Land including the erection of a mixed use building on the site containing various levels of car parking (Development).

Summary of Objectives, Nature and Effect of the Planning Agreement and Variation Deed

The original Planning Agreement was prepared in accordance with a Project Delivery Agreement (PDA) between Council and the Developer, which at the time proposed the site be developed for predominantly residential purposes, subject to a public car park being delivered to Council as part of its redevelopment. The original Planning Agreement contains provisions requiring the Developer to deliver a Public Car Park containing at least 650 car parking spaces to be owned and operated by Council, in addition to road works, streetscape works and works to construct and deliver a public pedestrian thoroughfare.

The Developer has now partly constructed the mixed-use development on the Land. Council has received an offer to vary the contributions under the Planning Agreement. If the Variation Deed is executed, the Planning Agreement will continue to require a Public Car Park (as defined in the *Local Government Act 1993*) to be constructed and operated as part of the Development, but the car park will not be retained in Council's ownership. Covenants will be registered on title requiring the ongoing operation of a public car park. Similarly, the public pedestrian thoroughfare and streetscape works will still be required, but those items will be made available to the public through the registration of easements, rather than the land being retained in Council ownership.

Under the Planning Agreement, the Developer also received a "discount" in contributions payable for the Development on the basis that a Public Car Park was to be owned by Council. The Developer is not entitled to retain the benefit of that "discount", as the Developer is no longer required to deliver the Public Car Park to Council. Notwithstanding that, the "discount" was calculated based on the provision of a car park consisting of 715 spaces. The Development as constructed contains less than 715 parking spaces. The Variation Deed therefore requires the payment of a monetary contribution to account for the shortfall in parking spaces.

Assessment of the Merits of the Variation to the Planning Agreement

How the Variation to the Planning Agreement Promotes the Objects of the Act and the public interest

The draft Variation Deed will mean that the Planning Agreement continues to promote the following objectives of the Act:

- to promote the orderly and economic use and development of land; and
- to promote good design and amenity of the built environment.

The proposed amendment to the Planning Agreement will continue to promote the public interest as it will result in the improvement of the public domain within the Parramatta CBD and will provide for public car parking.

The Planning Purposes served by the Planning Agreement

In accordance with section 7.4(2) of the Act, the amended Planning Agreement will continue to require contributions towards the provision of public domain areas, community infrastructure, pedestrian amenity and pedestrian safety and public car parking within the Parramatta CBD.

How the Planning Agreement promotes the objectives of the *Local Government Act 1993* and the elements of the Council's Charter

By continuing to require the provision of public facilities, the amended Planning Agreement will be consistent with the following purposes of the *Local Government Act 1993*:

- to facilitate engagement with the local community by councils, councillors and other persons and bodies that constitute the system of local government,
- to provide for a system of local government that is accountable to the community and that is sustainable, flexible and effective.

By enabling Council to provide public amenities and improve public domain areas, the amended Planning Agreement will be consistent with the following guiding principles for councils, set out in section 8A of the *Local Government Act 1993* (replacing the Council's Charter):

- Councils should provide strong and effective representation, leadership, planning and decision-making.
- Councils should carry out functions in a way that provides the best possible value for residents and ratepayers.
- Councils should plan strategically, using the integrated planning and reporting framework, for the provision of effective and efficient services and regulation to meet the diverse needs of the local community.
- Councils should manage lands and other assets so that current and future local community needs can be met in an affordable way.
- Councils should consider the long term and cumulative effects of actions on future generations.
- Councils should consider the principles of ecologically sustainable development.
- Councils should actively engage with their local communities, through the use of the integrated planning and reporting framework and other measures.

Whether the Planning Agreement Conforms with Council's Capital Works Program

Council's Management Plan incorporates capital work projects aimed at providing and improving infrastructure in the CBD. In this respect, the provision of the contributions under the amended Planning Agreement to provide public car parking and improve public domain areas conforms to that intent.

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

The Planning Agreement, as amended by the Variation Deed, will require the following:

- (a) The Public Car Park to be completed and ready for operation prior to the issue of an Occupation Certificate for the Development.

(b) Registration of covenants requiring the Public Car Park to be operated and maintained as a public car park (as defined in the *Local Government Act 1993*) at the same as the registration of a subdivision plan creating the lot containing the public car park or prior to the issue of any Occupation Certificate for an residential component of the Development, whichever occurs first.

(c) Delivery of the road works on or before the date on which an Occupation Certificate is issued for the Public Car Park.

(d) Delivery of the streetscape works and public thoroughfare works on or before the date on which an Occupation Certificate is issued in respect of that part of the Development constituting the residential tower.

(e) A Plan of Management for the operation of the Public Car Park to be approved by Council prior to the issue of any Subdivision Certificate for the lot containing that car park.