

# **Attachment F**

**Public Benefit Offer**



10 September 2021



Ms Monica Barone  
Chief Executive Officer  
City of Sydney Council  
456 Kent Street  
SYDNEY NSW 2000

*Attention: Matthew Girvan and Stan Fitzroy-Mendis*

Dear Ms Barone,

**Public Benefit Offer  
Darlinghurst Collection – 56-76, 82-106 & 110-122 Oxford Street, Darlinghurst**

Toga and Ashe Morgan (The Partnership) has prepared this Public Benefit Offer (PBO) to accompany two Development Applications for the redevelopment of the Darlinghurst Collection currently before the City of Sydney Council (Council), D/2020/1071 relating to 58-76, 82-106 Oxford Street Darlinghurst (known as Group 1 and Group 2), and D/2020/1072 relating to 110-122 Oxford Street Darlinghurst (known as Group 3).

The Partnership have developed a vision to revitalise the three building groups, as a collection of heritage buildings with consistent built form and complementary uses. The three sites account for a substantial portion of buildings on Oxford Street close to Taylor Square, presenting a prime opportunity to be a major driver in the renewal of the Oxford Street precinct.

Since the applications were lodged, The Partnership have identified further opportunities to contribute to and enhance the Oxford Street locality and surrounds, in particular through significant upgrade improvements to Foley Street (at the rear of the sites) in accordance with the in-principle Concept Design which is currently being agreed between Council and The Partnership.

This correspondence constitutes a formal offer to enter into a Voluntary Planning Agreement (VPA) for the delivery of the public benefits associated with upgrade works to Foley Street which will facilitate a shared zone consistent with Council's vision. This offer should be read in conjunction with the Foley Street VPA Concept Design and in light of the ongoing discussions between Council and The Partnership (refer to **Attachment A**).

Following further discussions with Council, this letter of offer can be translated into Council's standard template form for a VPA offer. We also understand that it may be Council's preference for two VPAs to be prepared and executed in association with the separate DAs and confirm we are comfortable with this approach.

The following letter outlines the proposal, the broader precinct vision, and formal public benefit offer.

## **1.0 Background**

The Partnership's vision for the Darlinghurst Collection will deliver:

- A new, high quality destination that will increase the daily permanent community of people in the area.
- A positive contribution to the Sydney City Fringe area providing a real catalyst for change for the neighbourhood.
- A permanent worker and visitor population base through strong activation with the introduction of multiple diverse users and uses, in turn contributing new job opportunities.
- An enriched and growing community as it becomes alive with people at all times of the day and night – with the buildings not shutting down after 5:00pm weekdays and on weekends.
- A project sympathetic to the area's rich cultural heritage.
- A commercial ecosystem that integrates creative and cultural start-ups that can contribute to the wider activation of the Oxford Street precinct.
- A fringe commercial office space which is both in demand and encouraged by the City of Sydney's Local Strategic Planning Statement (City Plan 2036).

In accordance with this vision, a summary of the two Development Applications (DAs) is provided below.

### **1.1 Group 1 and 2**

The Groups 1 and 2 DA seeks approval for the following development associated with Group 1 (excluding Zink Tailors) and Group 2:

- Demolition of various building elements, including part of the existing roof, partial demolition of certain internal walls and columns, and retention and refurbishment of the façade with minor alterations as required.
- Adaption of the lower ground/basement level to accommodate:
  - building services and plant;
  - bike storage and end of journey facilities; and
  - retail/food and beverage/café/bar and cultural/creative uses and tenancies with frontage to Foley Street including operating hours from 7:00am to 10:00pm, Monday to Sunday.
- Provision of a new publicly accessible through-site link from Oxford Street to Foley Street, with operation hours between 7:00am to 10:00pm, Monday to Sunday.
- Internal and external restoration and refitting of the existing heritage buildings for commercial offices, retail, food and beverage and cultural/creative spaces.
- Retention of the ground level awnings and refurbishment as required.
- Construction of new building additions on the rooftops of the heritage listed buildings to accommodate commercial offices, with external terrace space.
- Extension/augmentation of services and utilities to the development.

### **1.2 Group 3**

The Group 3 DA seeks approval for the following development associated with Group 3:

- Demolition of various building elements, including part of the existing roof, partial demolition of certain internal walls and columns, and façade amendments as required to the existing buildings.
- Adaption of the lower ground/basement level to accommodate: – building services and plant;

- retail/food and beverage/café/bar and cultural/creative uses and tenancies with frontage to Foley Street including operating hours from 7:00am to 10:00pm, Monday to Sunday.
- hotel back of house areas.
- Primary access to the lower ground hotel reception from Foley Street and secondary access from Oxford Street.
- Internal and external restoration and refitting of the existing heritage buildings for retail, food and beverage, cultural/creative spaces, and a hotel with 75 rooms.
- Retention of the ground level awnings and refurbishment as required.
- Construction of a new building addition on the rooftop of the heritage listed buildings to accommodate hotel rooms and an external pool area.
- Extension/augmentation of services and utilities to the development.

## 2.0 Statutory Framework

Under the *Environmental Planning and Assessment Act 1979* (the Act), Part 7 relates to infrastructure contributions, including planning agreements made between a planning authority (Council) and a person (The Partnership). Section 7.4(1) of Part 7 in the Act defines a planning agreement as follows:

- (1) A planning agreement is a voluntary agreement or other arrangement under this Division between a planning authority (or 2 or more planning authorities) and a person (the developer)—*
- (a) who has sought a change to an environmental planning instrument, or*
- (b) who has made, or proposes to make, a **development application** or application for a complying development certificate, or*
- the developer is required to dedicate land free of cost, pay a monetary contribution, or provide any other **material public benefit**, or any combination of them, to be used for or applied towards a public purpose.*
- (our emphasis added)*

As such, The Partnership is able to enter into a VPA with Council for the delivery of the public benefits associated with works to Foley Street in connection with the two separate DAs (D/2020/1071 and D/2020/1072).

## 3.0 Public Benefit Offer

### 3.1 Works-in-kind

The Partnership acknowledge the opportunity to deliver upgrades to Foley Street in line with the redevelopment of the Darlinghurst Collection. These upgrades to Foley Street would create a shared zone and will provide a material public benefit to the general public and the broader locality. As such, The Partnership offer to undertake works-in-kind to upgrade Foley Street within the area identified on the plan at **Attachment A**, and create a shared zone in accordance with the ongoing discussions between Council and The Partnership. Accordingly, this public benefit offer relates to the land identified as Foley Street within the agreed in-principle Concept Design (refer to **Attachment A**).

The works anticipated within the agreed Concept Design include:

- Creating a shared zone from Langley Street to Taylor Square for pedestrians and motorists to share at all times, generally including:

- Closure of Foley Street between Crown and Langley Street
- Making Langley Street one way with south bound traffic
- New paving and kerb treatments to Foley Street.
- Extending the footpath across Foley Street near the intersection with Crown Street, but maintaining the same treatment of the existing footpaths either side.
- Extending the footpath across Foley Street near the intersection with Palmer Street, but maintaining the same treatment of the existing footpaths either side.
- Tie in works to Foley Street
- Installing removable and fixed bollards on Foley Street between Crown and Palmer streets.
- Stormwater works related directly to Foley Street upgrades.

It is understood that ongoing discussions are required to finalise the scope of works based on a modification of the Council's concept design for Foley Street. It is anticipated that the execution of the VPA will be reliant on the finalisation of the final design.

### 3.2 Timing

Section 7.7(3) of Part 7 in the Act states that Council can require a planning agreement to be entered into as a condition of a development consent, but only if it requires a planning agreement that is in the terms of an offer made by the developer in connection the subject development application(s).

### 3.3 Material Public Benefit and Offset of Contributions

The *City of Sydney Development Contributions Plan 2015* guides contributions outside Central Sydney, and offers the following in regard to material public benefits proposed by applicants:

*Applicants can offer to enter into a planning agreement with Council to provide an alternative to a monetary contribution under this plan.*

*Specifically, applicants can offer to dedicate land free of cost, pay a monetary contribution, provide works in kind or provide another material public benefit, or any combination of these, to be used for or applied towards a public purpose in full or partial satisfaction of a monetary contribution under this plan.*

It is apparent from the range of City of Sydney publications, from strategic plans, DCPs, laneway policies and contribution plans that the upgrade and revitalisation of pedestrian spaces and laneways is a desired goal of the Council. Such upgrades contribute to improved pedestrian access, walkability, amenity, safety, outdoor enjoyment and sense of community. Therefore, it is clear that the proposed delivery of upgrades to Foley Street by The Partnership represent a material public benefit and that they are consistent with the ethos of the contributions plan with respect to providing open space and transport improvements. Accordingly, the delivery of the Foley Street upgrades and a new shared zone as an offset to the monetary contributions required by the contributions plan will form the basis of a future VPA. The contributions to be levied under section 7.11 are calculated to be **\$1,091,083.23**.

### 3.4 Value of VPA

The value of the proposed Foley Street upgrades will be determined with the final design of the upgrades which is to be defined in consultation with Council staff. The in-principle Concept Design provided at **Attachment A** has been costed by a Quantity Surveyor, representing a total value of the VPA proposed to be \$1,479,000.

In light of the value of the VPA which will deliver works-in-kind that have a material public benefit, it is appropriate that the contributions under section 7.11, which are calculated at be \$1,091,083.23 be fully offset. It is also proposed that an amount of \$300,000, representing 0.5% of the Capital Investment Value (CIV) of the project, be included within the VPA amount of \$1,479,000 in lieu of a separate public art levy of 1% (note: it is anticipated an additional 0.5% of CIV will be allocated to public art over and above the VPA offer).

### 4.0 Dispute Resolution

Toga proposes the VPA contain a dispute resolution mechanism which will allow disputes to be settled. A clause similar to the below would be anticipated in any VPA.

*(a) If any Dispute arises, a party to the Dispute (Referring Party) may by giving notice to the other party or parties to the Dispute (Dispute Notice) refer the Dispute to the Developer's Representative, the Landowner's Representative and the City's Representative for resolution. The Dispute Notice must:*

*(i) be in writing;*

*(ii) state that it is given pursuant to this clause; and*

*(iii) include or be accompanied by reasonable particulars of the Dispute including:*

*(A) a brief description of the circumstances in which the Dispute arose;*

*(B) references to an*

*(aa) provisions of this document; and*

*(bb) acts or omissions of any person, relevant to the Dispute; and*

*(C) where applicable, the amount in dispute (whether monetary or any other commodity) and if not precisely known, the best estimate available.*

*(b) Within 10 Business Days of the Referring Party issuing the Dispute Notice (Resolution Period), the Developer's Representative, the Landowner's Representative and the City's Representative must meet at least once to attempt to resolve the Dispute.*

*(c) The Developer's Representative, the Landowner's Representative and the City's Representative may meet more than once to resolve a Dispute. The Developer's Representative, the Landowner's Representative and the City's Representative may meet in person, via telephone, videoconference, internet-based instant messaging or any other agreed means of instantaneous communication to effect the meeting.*

### 4.0 Conclusion

The Partnership has prepared this Public Benefit Offer to accompany two Development Applications for the redevelopment of the Darlinghurst Collection currently before Council, D/2020/1071 relating to 58-76, 82-106 Oxford Street Darlinghurst, and D/2020/1072 relating to 110-122 Oxford Street Darlinghurst.

10 September 2021



We submit the abovementioned offers for the City of Sydney Council's consideration, as a framework for a future VPA to support these DAs. We trust that this offer clearly demonstrates our commitment via works-in-kind to better the immediate precinct environment, and meet the needs of the people who live and work in and in the vicinity of the site.

The details of the conditions upon which the Public Benefit Offer is made are summarised below:

1. The VPA will apply to Foley Street as indicated on the in-principle Concept Design (**Attachment A**).
2. The VPA will include an offset of Section 7.11 contributions that would ordinarily be payable.
3. The VPA will include an amount of 0.5% of the CIV to be directed to the Foley Street works in lieu of a separate public art levy of 1% of CIV (Note, a 0.5% of the CIV will still be allocated for public art).
4. The Partnership will address any contamination issue within the Foley Street upgrade works in accordance with statutory requirements.

With the benefits of this proposal in mind, and with the desire to revitalise the Oxford Street precinct, we are seeking to formalise this offer through a VPA following determination of D/2020/1071 and D/2020/1072.

We are willing and keen to meet with you and your team where possible to ensure a successful framework can be facilitated for the future realisation of a positive outcome on this site. Should you require any additional information, or should you have any queries about this matter, please do not hesitate to contact the undersigned.

Yours sincerely,

Vincent Santos  
Senior Development Manager  
TOGA

Attachment A (2 x sheets):

Foley St VPA Works General Arrangement Plan Sheet 1 of 2 (rev P4)

Foley St VPA Works General Arrangement Plan Sheet 2 of 2 (rev P3)





