

Attachment C

**Planning Agreement - Public Benefit Offer -
232-240 Elizabeth Street, Surry Hills - dated
13 March 2024**

STASIA HOLDINGS PTY LIMITED | ABN 22139024344

151 Campbell Street, Surry Hills NSW | T: 02 9211 2182 | E: stasiapl@gmail.com

13 March 2024



Ms Monica Barone
General Manager
Council of the City of Sydney
GPO Box 1591
SYDNEY NSW 2001

By email: council@cityofsydney.nsw.gov.au
speters@cityofsydney.nsw.gov.au
JDirickxJones@cityofsydney.nsw.gov.au

Attention: Sally Peters
James Dirickx-Jones

Dear Ms Barone

Applicant's public benefit offer to enter into a planning agreement in connection with 232-240 Elizabeth Street, Sydney NSW

This is an offer by: Stasia Holdings Pty Ltd and The Owners – Strata Plan No 1379, the registered owners of the land subject to the offer.

At: 232 - 240 Elizabeth Street, Surry Hills, comprised of:

- all lots in SP1379 and the common property of that scheme;
- Lots 1 and 2 in DP779385; and
- Lot 1 DP664653,

(the land). This land accounts for the totality of the land subject of the public benefit offer.

For: This public benefit offer relates to a planning proposal seeking a change to planning controls in the *Sydney Local Environmental Plan 2012 (the LEP)* for the land.

The public benefit offer will apply to any change to an environment planning instrument (insofar as it applies to the site) such that:

- the maximum floor space ratio for the land is 7:1;
- the maximum building height for a building on the land is RL 50.330 metres;
- there is no change to the current MU1 Mixed Use zoning; and
- there are no other new or amended provisions of the local environment plan (when compared with what was in place on the date of this letter) that would have the practical effect of preventing the

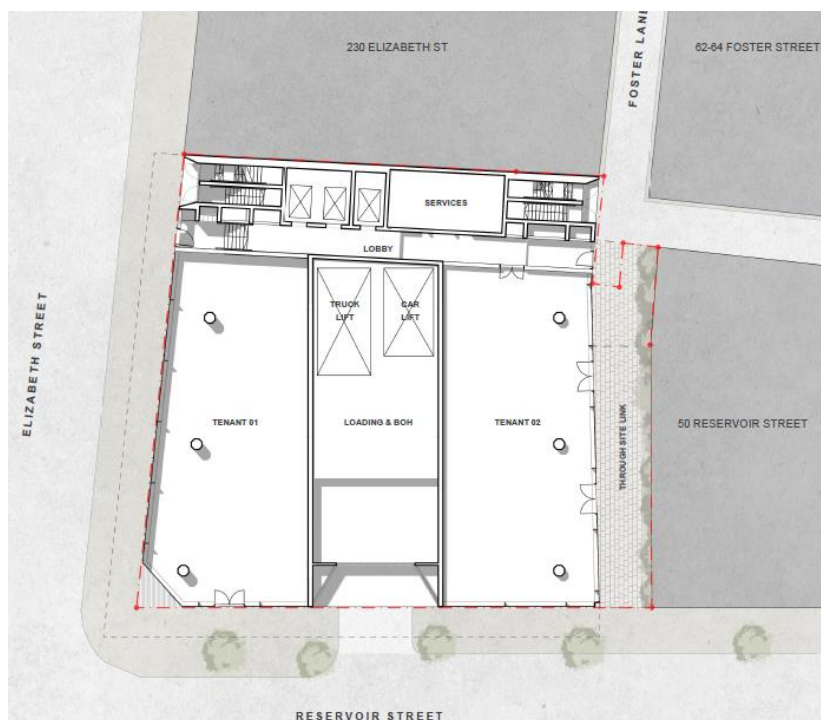
realisation of a commercial premises (within the meaning of the LEP) of the height, bulk and scale anticipated by the above numerical constraints for the site.

The planning agreement will apply to a future development of land (within the meaning of the LEP) of the height, bulk and scale anticipated by the above numerical constraints for the site.

The nature and extent of the provision to be made by the developer under the agreement, the time or times by which the provision is to be made and the manner by which the provision is to be made — section 7.4(3)(c)

The general nature and extent of the provision to be made under the offer, the time or times by which the provision is to be made by us are as follows:

- The development contribution will be the dedication of an area of land to the Council of the City of Sydney (**the City**) for the purpose of a road, specifically a pedestrian through-site link free of cost.
- The area of land is proposed as a through-site link in our planning proposal request for the land. The through-site link is adjacent to the eastern boundary of the land and will extend and connect Foster Lane to Reservoir Street, Surry Hills (**the through-site link land**).
- The approximate location of the through-site link land is depicted on the ground floor plan drawing extracted from page 19 of our 'Urban Design Study' prepared by Candalepas Associates dated 20 July 2023, below:



- The through-site link land will be limited in stratum, both in height and depth, specifically:
 - the lower limit of the stratum will be (at minimum) 200mm below the finished surface level; and
 - the upper limit of the stratum will be (at minimum) 8100mm, being the height equivalent to the combined height of the ground and first floors of the proposed building.
- The width of the through-site link land will be consistent with the width of Foster Lane and will be (at minimum) 3050mm wide.

- We will deliver the contribution in accordance with the development consent, and we anticipate that we will pave the through-site link.
- The timing for the delivery of the contribution is to be the earlier of the following:
 - prior to the issue of an occupation certificate;
 - if the dedication is to be effected under section 49 of the *Local Government Act 1993* and/or section 9 of the *Roads Act 1993*) — upon the registration of a plan of subdivision that would give effect to that dedication.
- The key precondition **before** there is any requirement for us to provide the public benefit contribution, is the change to an environment planning instrument (insofar as it applies to the site) anticipated by the planning proposal for the land.

The planning agreement will comply with the requirements of the *Environmental Planning and Assessment Act 1979* (the **EP&A Act**) and the *Environmental Planning and Assessment Regulation 2021*.

Whether the agreement would exclude (wholly or in part) or would not exclude the application of section 7.11, 7.12 or division 7.1 subdivision 4 of the PE&A Act to the development — section 7.4(3)(d)

The agreement would not exclude:

- local infrastructure contributions that are set under a contributions plan (section 7.11);
- fixed infrastructure contributions that are set outside of a contributions plan (section 7.12); and
- housing and productivity contributions (division 7.1, subdivision 4).

Whether benefits under the agreement would or would not be taken into consideration in determining a development contribution under section 7.11 of the EP&A Act — section 7.4(3)(e)

The benefits under the agreement are not to be taken into consideration in determining a development contribution under section 7.11 of the EP&A Act.

A mechanism for the resolution of disputes under the agreement— section 7.4(3)(f)

The procedure for the resolution of disputes would be determined generally in accordance in the City's *Sample Planning Agreement*.

We note that this would not affect our right of to commence a merit ('class 1') appeal in the Land and Environment Court.

The enforcement of the agreement by a suitable means— section 7.4(3)(g)

The *Planning agreements: Practice Note — February 2021*, published by the Department of Planning, Industry and Environment (the **practice note**) (which is a mandatory consideration for the City) says that tying the performance of a developer's obligations to the issuing of construction, subdivision or occupation certificates may provide a suitable means of enforcing the planning agreement (page 14).

The planning agreement will contain enforcement mechanisms generally as per the standard terms in the City's *Sample Planning Agreement*.

Security

We will provide security by way of a bank guarantee or documentary performance bond for the paving of the through-site link, prior to the issue of the construction certificate for the through-site link pavement works.

The value of the security shall be in accordance with the City's *Statement of Revenue Policy - fees and charges*, specifically the rate for Public Domain Works Bond for 'Stone, Brick or Concrete Paver Footway' calculated on a square metre basis. The security shall be released to us upon the completion of our development contribution.

The procedural provisions concerning the management and return of the security will generally be in accordance with City's *Sample Planning Agreement*.

Other key terms and conditions

The City's *Sample Planning Agreement* appears to contain termination clauses suited to a planning agreement that is linked to development application under assessment. The termination provision offered below is appropriate to a planning agreement offered in connection with a changes to an environmental planning instrument. For example, if the planning proposal does not proceed, the agreement should not remain on title or on-foot.

A party would be able to terminate the agreement by giving 42 days written notice to the other party if, either:

- the change to the environmental planning instrument has not commenced within 12 months of the date of the agreement; or
- after the change to an environmental planning instrument, it is (or becomes) unlawful for a development consent to be granted for the development.

The agreement would have other terms generally in accordance with the relevant terms in the City's *Sample Planning Agreement* (as published as on the City's website on the date of this letter.

Acceptance of an offer

It is intended that should any change to an environment planning instrument (insofar as it applies to the site) anticipated by the planning proposal be made, this offer will be consolidated and crystallised into a voluntary planning agreement with the City.

This offer may only be accepted:

- after the full text of a planning agreement and explanatory note have been negotiated and agreed;
- after 28 days following the giving of public notice under section 7.5(1) of the EP&A Act; and
- by means of the formal execution of the formal agreement by all parties.

No legal or equitable rights or obligations arise (for either party) in connection with this offer or the proposed agreement prior to such acceptance being completed.

Preparation of the planning agreement

In this letter, a reference to the City's *Sample Planning Agreement* is a reference to the document published as on the City's website on the date of this letter.

We note that City's *Planning Agreement Guidelines* state that the City will prepare the first draft of the planning agreement.

If you or any City's staff (other than your legal staff) wish to discuss this offer, please contact Giovanni Cirillo (giovanni@planninglab.com.au) on 0447 755 799.

If your legal representatives have any queries regarding this offer they may contact our legal representatives Mills Oakley, namely Amelia Stojevski at astojevski@millsoakley.com.au and on (02) 8289 5802 or Aaron Gadiel at agadiel@millsoakley.com.au on (02) 8035 7858.

Yours sincerely

Name of applicant and registered owner: **Stasia Holdings Pty Ltd**



Signature of [George Karageorge, Director] for and on behalf of Stasia Holdings Pty Ltd

Date: ...13 March 2024.....

Name of applicant and registered owner: **The Owners – Strata Plan No 1379**



Signature of [George Karageorge, Director] for and on behalf of The Owners – Strata Plan No 1379

Date: ...13 March 2024.....