

23 September 2019

Debra Just  
 CEO  
 Willoughby City Council  
 Level 4, 31 Victor Street  
 Chatswood NSW 2067

Our ref: C Renner/39013192

Dear Ms Just

## 2 - 12 Chandos Street, St Leonards Planning Proposal Offer to enter into Planning Agreement

We act on behalf of Billan Property Pty Ltd (**Billan**), the proponent in relation to the enclosed planning proposal for 2 -12 Chandos Street, St Leonards.

We note that Council has a Voluntary Planning Agreement Policy adopted on 11 November 2013 (**2013 Policy**), as well as a draft Planning Agreement Policy that was publicly exhibited in January and February 2019 (**Draft 2019 Policy**).

As the Draft 2019 Policy is considered relatively imminent, and it updates the 2013 Policy and provides for “value capture contributions”, which do not form part of the 2013 Policy, we have prepared this offer in accordance with the Draft 2019 Policy.

The planning proposal proposes rezoning of the site to permit high density mixed use development, to a maximum of 70 storeys and an FSR of 34.4:1 (including a mandatory 2.5:1 for non-residential uses).

Although the Draft 2019 Policy – Procedures Manual refers to a Planning Agreement template, we note that the template itself was not included in the documents that were exhibited. We are therefore unable to provide this offer in the form of the template and have instead prepared this letter setting out the key terms of the offer.

### 1. Developer's details

- |     |                                     |  |
|-----|-------------------------------------|--|
| (a) | The Developer is:                   | Billan Property Pty Ltd<br>ACN 621 007 172<br>Suite 101, 25 Angas Street,<br>Meadowbank NSW 2114 |
| (b) | The Developer's solicitors will be: | Christina Renner<br>Dentons  |

Larrain Rencoret ► Hamilton Harrison & Mathews ► Mardemootoo Balgobin ► HPRP ► Zain & Co ► Delany Law ► Dinner Martin ► Maclay Murray & Spens ► Gallo Barrios Pickmann ► Muñoz ► Cardenas & Cardenas ► Lopez Velarde ► Rodyk ► Boekel ► OPF Partners

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- (c) The Developer is the developer of the land under a Property and Development Services Deed entered into with the landowner, Landan Development Pty Ltd.

## 2. Details of the land

The land to which the planning agreement will relate is lots 1 – 5 in DP4241, owned by Landan Development Pty Ltd, known as 2 – 12 Chandos Street, St Leonards.

## 3. Details of what the planning agreement relates to

- (a) Billan seeks a rezoning of the land under the *Willoughby Local Environmental Plan 2012* to change the zoning from B3 Commercial Core to B4 Mixed Use and to change the maximum building height from 20m to 24.3m and the FSR from 2.5:1 to 34.7:1, with an additional allowance of 3.8:1 for wintergardens.
- (b) The planning agreement will relate to and facilitate the delivery of local open space and public domain improvements.

## 4. Details of the contributions the developer will provide

Our client has carefully considered part 8 of the Draft 2019 Policy and has calculated the hypothetical residual value of the land if its planning proposal is entirely successful.

The hypothetical residual land value is \$116,366,106. This equates to a value of \$2,448 per square metre of GFA (not including wintergardens or the commuter end of trip facilities to be dedicated to Council).

The market value of the land is \$29,000,000, as at 16 February 2018.

$$\begin{aligned}\text{Value of contribution} &= (116,366,106 - 29,000,000) \times 50\% \\ &= \$43,683,053\end{aligned}$$

The planning agreement will provide for the delivery of public domain improvements between Christie Street and St Leonards Station, providing over 2,200 m<sup>2</sup> of new, high quality, public open space, and greatly improved pedestrian linkages between Christie Street and The Forum entrance to St Leonards train station.

### (a) Public Domain Improvements

Billan proposes to construct and embellish a new elevated public domain link over Chandos Street comprising 1,193 m<sup>2</sup> public open space, and linking Christie Park with access to St Leonards Station via The Forum.

This will include construction and embellishment works to Christie Park to integrate it into the new public domain link, and will also include:

1. a fully fitted out and leased retail space (of approximately 350 m<sup>2</sup>); and
2. a standalone kiosk on the elevated link,

that can be used by Council in the future for commercial income generating purposes.

Billan will also construct, embellish, and dedicate to Council, 1,020 m<sup>2</sup> of public open space on the site itself, as well as a 331 m<sup>2</sup> end of trip facility for use by commuters (including bicycle parking, showers, lockers etc).

The total cost of all of these public domain improvements is estimated at \$25,100,300, as further explained below.

<b>Zones</b>	<b>Description of contribution to Public open space</b>	<b>Cost</b>	<b>Total</b>
<b>Elevated Platform Link</b>	Cost of Construction	13,490,000	
<b>1193m2</b>	Standalone Kiosk	250,000	
	Play equipment	100,000	
	External Furniture	173,000	
	Public Art / Sculpture	650,000	
	Soft Landscaping	666,000	
	Public Lift	450,000	
	Public End of trip facility - (Stratum ownership TBA)	808,800	
	Maintenance allowance for 10 years	500,000	
	<b>SUB-TTL</b>		<b>17,087,800</b>
<b>Christie Park</b>	Cost of Construction	5,595,000	
<b>1168m</b>	Soft Landscaping	241,000	
	Turn key offer including establishing lease and fitout for Council	887,500	
	Maintenance allowance for 12 months	52,000	
	<b>SUB-TTL</b>		<b>6,775,500</b>
<b>Site</b>	Cost of Construction and embellishment of open space	1,237,000	
<b>1020m2</b>			
	<b>SUB-TTL</b>		<b>1,237,000</b>
	<b>TTL</b>		<b>25,100,300</b>

Billan is willing to consider various different ownership/public access and maintenance arrangements for the public open space to be located on the site itself, subject to Council's preference.

(b) Monetary contribution

Billan also offers to provide \$18,582,753 for the embellishment and improvement of Gore Hill Oval.

If the planning proposal is amended during the assessment process to provide for lower height and FSR controls, this will impact on the hypothetical residual land value and, accordingly, the value of the contribution that can be offered in the planning agreement.

For example, if the final planning proposal resulted in a reduced density over that proposed, Billan estimates that the value of the contribution would need to be adjusted as follows:

Height	Value of Contribution
60 storeys	\$39,190,003
55 storeys	\$32,382,432

This would mean that if a lower density is ultimately achieved as part of the planning proposal, Billan would still be able to deliver the public domain improvements but the amount of the monetary contribution would need to be adjusted so that the total value of contributions under the planning agreement does not exceed the required value capture amount.

Depending on Council's priorities, it may be possible to increase the total value of monetary contributions under the planning agreement, if section 7.11 and 7.12 contributions are excluded.

The precise contributions to be provided under the planning agreement will be subject to discussion and negotiation with Council and will be dependent upon the final form of the planning proposal that may be supported by Council.

Because the value of the contributions offered under the planning agreement relate to an appropriate value capture, in accordance with the Draft 2019 Policy, and are based on detailed feasibility analysis, the planning agreement will also exclude the possibility of unexpected potential additional future costs.

## 5. Application of sections 7.11, 7.12 and 7.24

The application of these sections will not be excluded (unless Council wishes to increase the monetary contribution that would otherwise be provided under the planning agreement).

## 6. Security

The provision of contributions will be a prerequisite to development of the land progressing, as completion of the public domain works contributions will be linked to the release of the whole building occupation certificate.

Appropriate security for the public domain works to be carried out off-site will be provided to Council prior to the issue of any construction certificate authorising above ground works, which can be progressively released back to the developer as certain milestones are achieved.

Depending upon the final quantum and form of the monetary contribution, this may be paid prior to the first occupation certificate for the development.

We note that the Draft 2019 Policy – Procedures Manual suggests that bank guarantees should be provided as security for monetary contributions, with the first bank guarantee payable upon execution of the planning agreement.

However, we note that this is in fact a very unusual practice and is, in many ways, akin to requiring a bank guarantee for the payment of section 7.11 developer contributions upon the issue of a development consent.

Development feasibility and a developer's capacity to pay are relevant considerations in accordance with the Department of Planning and Environment's *Draft Practice Note Planning Agreements 2016*. It is simply commercially unviable to front-load the contribution burden in this manner, such that a developer is carrying the full monetary contribution burden from the moment the development commences, which may be years before it can expect to realise any revenue from the development.

We note that the Court of Appeal has conclusively confirmed that it is not necessary, for the purpose of section 7.4(3)(g) of the Act, for monetary development contributions to be the subject of a bond or bank guarantee<sup>1</sup>. The *Draft Practice Note Planning Agreements 2016* also suggests that financial security is generally only appropriate in the case of an obligation to carry out works, or where a developer seeks to postpone its obligations under a planning agreement to a time later than the time originally specified for performance.

For these reasons, we are of the view that the requirement to pay a monetary contribution can be appropriately secured by the combination of registration of the planning agreement on the title of the land, and the creation of a restriction on the issue of an occupation certificate.

The planning agreement will be registered on the title of the land described in 2 above, and the landowner will be a party to the planning agreement for this purpose.

This restriction on development, registration of the planning agreement on the title to the land, and any financial or other security for the completion of the off-site public domain works, provides for sufficient enforceability of the planning agreement.

## **7. Timing and staging of the obligations**

This has been addressed above.

## **8. Legal and notification costs**

Billan agrees that it will bear Council's reasonable costs associated with preparing and notifying the planning agreement.

Yours sincerely



Christina Renner  
**Partner**  
Accredited Specialist Planning and Environment

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<sup>1</sup> *Huntlee Pty Ltd v Sweetwater Action Group Inc; Minister for Planning & Infrastructure v Sweetwater Action Group Inc* (2011) 185 LGERA 429