

Annexure D

Explanatory Note

Explanatory Note**Exhibition of draft Voluntary Planning Agreement****PP6/21: 52 McLaren Street, North Sydney***Environmental Planning and Assessment Regulation 2021 (section 205)***Draft Planning Agreement**

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 7.4 of the *Environmental Planning and Assessment Act 1979 (the Act)*.

Section 205(1) of the *Environmental Planning and Assessment Regulation 2021* (**“the EPA Regulation”**) requires that an Explanatory Note must be prepared to accompany a planning agreement.

The Explanatory Note must address the requirements of section 205(1)(a)-(b) of the EPA Regulation. This Explanatory Note has been prepared to address these requirements.

Additionally, in preparing the Explanatory Note, the planning authority must consider any relevant practice note prepared by the Planning Secretary under clause 203(6). The relevant practice note is *Planning agreements: Practice note – February 2021* published by the former NSW Department of Planning, Industry and Environment (now the Department of Planning and Environment).

This practice note has been considered by the parties in the course of preparing this Explanatory Note.

Parties

Sydney Metro (**Developer**) made an offer to North Sydney Council (**Council**) to enter into a Planning Agreement in connection with the Planning Proposal for land at 52 McLaren Street, North Sydney.

Description of the Land

The land to which the Planning Agreement applies is Lot 2 DP 218407 and adjoining land within Lots 1 and 2 DP 1150156, known as 52 McLaren Street, North Sydney (**the Land**).

The Development

The Planning Agreement relates to proposed development of the Land (and adjoining Drainage Reserve 979505) for the purpose of a multi-storey mixed use residential and commercial development comprising approximately 172 apartments, a three-storey commercial podium, basement car parking, through-site link and community space initially to be used for a child care facility.

Description of the Planning Proposal to which the Planning Agreement applies

To facilitate the Development, the Developer has lodged a Planning Proposal. The Planning Proposal (PP6/21) seeks to amend the *North Sydney Local Environment Plan 2013 (NSLEP)* to:

- (a) Increase the maximum building height for the Land from RL 110m to part RL 107m and part RL 156m;

- (b) Impose a maximum floor space ratio (**FSR**) of 5.3:1; and
- (c) Increase the minimum non-residential FSR from 0.5:1 to 1:1.

For completeness, the Planning Proposal also applies to Drainage Reserve 979505 which adjoins the Land.

Summary of Objectives, Nature and Effect of the Planning Agreement

Objectives

The objective of the Planning Agreement is to provide a mechanism by which contributions towards public purposes can be made in connection with the proposed amendment to NSLEP and the future development of the Land to benefit the community.

The public benefits include the provision of a community facility or childcare facility, improved pedestrian amenity and safety and the establishment and maintenance of a through-site pedestrian link.

Nature

A Planning Agreement of this kind may require a developer to dedicate land free of costs, pay a monetary contribution, or provide any other material public benefit to be used for or applied towards a public purpose.

In this case, the Planning Agreement will require the following:

- (a) Construction of a stratum lot of approximately 900 m² in area within the Development and dedication of that land to Council together with payment of a monetary contribution to fitout the stratum lot for use as a community facility or a child care facility;
- (b) Establishment of a pedestrian through-site link of at least 3m wide that is open-to-sky connecting McLaren Street and Elliot Street with an easement for public access 24 hours a day, 7 days a week; and
- (c) Providing at least 5% of the residential gross floor area of the Development for use as affordable housing, with the affordable housing to be managed by a Community Housing Provider.

The monetary contribution is to be paid prior to the issue of a Construction Certificate for the Development. The contributions involving the delivery of works and grant of an easement for public access, are to be completed before the issue of an Occupation Certificate for any part of the Development. The requirement to dedicate the community facility space must be satisfied before the issue of an Occupation Certificate for any residential component of the Development. The Developer is required to confirm it has entered into a contract for management of the affordable housing prior to the issue of an Occupation Certificate for the Development and must provide affordable housing for a period of 10 years after an Occupation Certificate is issued.

The contributions are also guaranteed by Securities in the form of a Bond or Bank Guarantee, which will be indexed in accordance with increases in the Consumer Price Index from the date of the Agreement to the date the Works are completed.

Effect

In general terms, delivery of the contributions is timed in a way that is practicable for the Developer and still provides for the enhancement and improvement of public domain and open space to meet the needs of the new residents and the community.

The Planning Agreement provides for the enforcement of the Planning Agreement by a suitable means if there is a breach by the Developer. The contributions are to be delivered prior to the issue of an occupation certificate for the Development or any part of the Development. An occupation certificate cannot be lawfully issued if the required contributions have not been made.

The Planning Agreement is to be registered on the title to the Land.

Assessment of the Merits of the Planning Agreement

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

The draft Planning Agreement promotes the following objectives of the Act:

- a. *Promotes the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources* (section 1.3(a)).
- b. *Promotes the orderly and economic use and development of land* (section 1.3 (c)).
- c. *Promotes good design and amenity of the built environment* (section 1.3(g)).

The Planning Agreement will enable the utilisation of the development potential of the Land, while requiring the Developer to make provision for public purposes. The Planning Agreement promotes the public interest because it will require the provision of community facilities that will benefit existing and future residents and workers in the area. These contributions will have a positive impact on the public and will provide for the social welfare of the community.

The contribution required under the Planning Agreement is additional to any normal contribution that will ordinarily need to be made in relation to the development.

The proposed contribution under the Planning Agreement is consistent with the Council's strategic plans and policy documents.

The Planning Purposes served by the Planning Agreement

The Planning Agreement facilitates the implementation of Council's strategic plans and, through the development contributions, provides existing and future residents in the area with improved facilities and pedestrian amenity.

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

The Planning Agreement will contribute towards meeting the demand for community facilities and affordable housing and will provide for pedestrian amenity, safety and connection in the local government area. The Planning Agreement will assist the Council to meet the current and future needs of the local community.

The contribution proposed under the Planning Agreement does not conform with the Council's capital works program. This is because the opportunity to obtain the contributions has arisen outside of the Council's capital works program.

The Planning Agreement will not have an adverse effect on this capital works program. Overall, the Planning Agreement is likely to result in more capital works (to the benefit of the community) than would be the case without the Planning Agreement.

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 requires the works and grant of the easement to be completed before the issue of an **occupation certificate** for the Development. The registration of the Planning Agreement and the provision of a Security for the obligations under the Planning Agreement must be provided prior to the issue of a **construction certificate** for the Development.

Status of the Explanatory Note

This Explanatory Note has been prepared jointly between the parties.

The parties have agreed that this Explanatory Note is not to be used to assist in construing the Planning Agreement.