

Voluntary Planning Agreement

DRAFT 18 November 2024

North Sydney Council
ABN 32 353 260 317

Sydney Metro
ABN 12 354 063 515

Contents

Parties	4
Background	4
Agreed terms	4
1 <i>Definitions and Interpretation</i>	4
1.1 Definitions	4
1.2 General	8
2 <i>Planning Agreement under the Act</i>	9
3 <i>Application of this Agreement</i>	9
4 <i>Operation of this Agreement</i>	9
5 <i>Contributions to be made under this Agreement</i>	9
6 <i>Application of s 7.11, s 7.12 and s 7.24 of the Act to the Development</i>	9
7 <i>Registration of this Agreement</i>	9
7.1 Registration	9
7.2 Removal from register	10
7.3 Caveat	10
8 <i>Review of this Agreement</i>	11
9 <i>Dispute Resolution</i>	11
9.1 Application	11
9.2 Negotiation	11
9.3 Not use information	11
9.4 Condition precedent to litigation	12
9.5 Summary or urgent relief	12
10 <i>Enforcement and security</i>	12
10.1 Application of this clause	12
10.2 Security	12
10.3 Replacement Security	13
10.4 Acquisition of Community Space and Easement in Gross	13
10.5 Restriction on the issue of Certificates	14
10.6 General Enforcement	14
11 <i>Notices</i>	15
12 <i>Approvals and consents</i>	15
13 <i>Assignment and Dealings</i>	16
13.1 Dealing by the Council	16

13.2	Dealing by the Developer	16
14	<i>General</i>	16
14.1	Costs	16
14.2	Entire Agreement	17
14.3	Further acts	17
14.4	Governing law and jurisdiction	17
14.5	Joint and individual liability and benefits	17
14.6	No fetter	17
14.7	Representations and warranties	18
14.8	Severability	18
14.9	Modification	18
14.10	Waiver	18
14.11	GST	18
14.12	Explanatory Note	19
14.13	Execution	19
14.14	Relationship between the Parties	19
Schedule 1	Contributions	20
Schedule 2	Construction terms	25
Schedule 3	Dedication Terms	33
Schedule 4	Easement Terms	35
Schedule 5	Summary of requirements (section 7.4)	37
Annexure A	Proposed Community Space (Intended for Childcare Facility)	39
Annexure B	Concept Design	40
Annexure C	Through Site Link	41
Annexure D	Draft Explanatory Note	42
Annexure E	Plan showing Land	46
Annexure F	Novation Deed	47

Agreement

Date

Parties

First party

Name	North Sydney Council (Council)
ABN	32 353 260 317
Contact	General Manager
Telephone	(02) 9936 8100

Second party

Name	Sydney Metro (Developer)
ABN	12 354 063 515
Contact	Ivan Glavinic (Executive Director, Property and Place)
Telephone	0408 896 736

Background

- A. The Developer owns the Land.
- B. The Developer proposes to carry out the Development on the Land and the adjoining Drainage Reserve 979505.
- C. To facilitate the Development, the Developer has lodged a Planning Proposal seeking to amend NSLEP 2013 as it relates to land at 52 McLaren Street, North Sydney as follows:
 - a. Increase the maximum building height for the land from RL110m to part RL 107m and part RL 156m;
 - b. Apply a maximum FSR of 5.3:1; and
 - c. Increase the minimum non-residential FSR from 0.5:1 to 1:1.
- D. The Developer has made an offer to enter into this Agreement to provide public benefits at the Developer's cost in connection with the Planning Proposal and Development.
- E. Council has accepted the offer to enter into this Agreement. The Parties wish to formalise that offer by entering into this Agreement in accordance with section 7.4 of the Act.

Agreed terms

1 Definitions and Interpretation

1.1 Definitions

In this Agreement, unless the context indicates a contrary intention:

Act means the *Environmental Planning and Assessment Act 1979* (NSW);

Affordable Housing has the same meaning as in the Act and section 13 of *State Environmental Planning Policy (Housing) 2021*;

Approval means any certificate, licence, consent, permit, approval or other requirement of any Authority having jurisdiction in connection with the activities contemplated by this Agreement;

Authority means any government, semi-governmental, statutory, administrative, fiscal or judicial body, department, commission, authority, tribunal, public or other person, agency or entity and includes a certifier accredited under the *Building and Development Certifiers Act 2018* (NSW);

Bank Guarantee means an irrevocable and unconditional undertaking that is not limited in time and does not expire by one of the following trading banks:

- (a) Australia and New Zealand Banking Group Limited,
- (b) Commonwealth Bank of Australia,
- (c) Macquarie Bank,
- (d) National Australia Bank,
- (e) St George Bank Limited,
- (f) Westpac Banking Corporation, or
- (g) Other financial institution approved by the Council,

to pay an amount or amounts of money to the Council on demand and containing terms and conditions reasonably acceptable to the Council;

Bond means a documentary performance bond in favour of Council which is signed and issued by an AA- credit rated insurer and that is in a form and substance satisfactory to Council, acting reasonably;

Business Day means any day except for Saturday or Sunday or a day which is a public holiday in Sydney;

Certificate of Practical Completion means the written certificate confirming the Works, or part of the Works, have been completed to the Council's satisfaction issued under **clause 8.1(b)(i)** of the Construction Terms;

Certification Regulation means the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*;

Claim means any claim, loss, liability, damage, proceeding, order, judgment or expense arising out of the operation of this Agreement;

Cold Shell means a standard of construction which denotes a space with an unfinished interior but includes the elements described in Part B of Annexure A.

Consent Authority has the same meaning as in the Act;

Construction Certificate means a construction certificate as defined under section 6.4 of the Act;

Construction Terms means the terms set out in **Schedule 2**;

Contributions means the dedication of land and provision of material public benefits required under this Agreement, the nature and extent of which are set out in the Schedule 1;

CPI means the All Groups Consumer Price Index applicable to Sydney published by the Australian Bureau of Statistics;

Dealing, in relation to the Land, means, without limitation, selling, transferring, assigning, mortgaging, charging, encumbering or otherwise dealing with this Agreement or the Land;

Dedication Terms means the terms in Schedule 3;

Development Application has the same meaning as in the Act;

Development Consent has the same meaning as in the Act;

Development means the proposed development of the Land and the adjoining Drainage Reserve 979505 for the purposes of a multi-storey mixed-use development comprising approximately 172 apartments, a three-storey commercial podium, basement car parking, Through-site Link and the Proposed Community Space;

Dispute means any dispute or difference between the parties arising out of, relating to or in connection with this Agreement, including any dispute or difference as to the formation, validity, existence or termination of this Agreement;

Easement in Gross means an easement in gross, limited in depth to allow the below-ground components of the Development, granted in favour of Council, that permits public access via the Through-site Link as detailed in the Easement Terms;

Easement Terms means the terms of an Easement in Gross set out in **Schedule 4**;

Explanatory Note means the explanatory note relating to and publicly notified with this Agreement, as required by section 205 of the Regulation, a draft of which is **Annexure E** ;

GST has the same meaning as in the GST Law;

GST Law has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition of or administration of GST;

Insolvent means the occurrence of any of the following:

- (a) a Party is liquidated, whether compulsorily or voluntarily (other than for the purpose of amalgamation or reconstruction whilst solvent);
- (b) a Party becomes unable to pay its debts as they fall due;
- (c) a Party enters into any arrangement with creditors;
- (d) a Party becomes subject to external administration within the meaning of Chapter 5 of the *Corporations Act 2001* (Cth), including having a receiver or administrator appointed over all or any part of its assets; or
- (e) anything analogous (such as analogous bankruptcy processes) or having a substantially similar effect to the events specified in clauses (a) to (d) of this definition, above, occurs in relation to a Party, including the Court appointment of a receiver;

Instrument Change means an amendment to the *North Sydney Local Environmental Plan 2013* in response to the Planning Proposal;

Land means Lot 2 DP 218407, known as 52 McLaren Street, North Sydney and adjoining land within Lots 1 and 2 DP 1150156 as shown on the plan at Annexure E ;

Law means:

- (a) any law applicable including legislation, ordinances, regulations, by-laws and other subordinate legislation;
- (b) any Approval, including any condition or requirement under it; and
- (c) any fees and charges payable in connection with the things referred to in paragraphs (a) and (b);

NSLEP 2013 means the *North Sydney Local Environmental Plan 2013*;

Occupation Certificate means an occupation certificate as defined under section 6.4 of the Act and includes an Occupation Certificate for part of a building;

Party means a party to this Agreement, including their successors and assigns;

Planning Proposal means planning proposal PP6/21 (Department of Planning Ref: PP-2023-5024) seeking to amend NSLEP 2013 as it relates to the Land and land within Drainage Reserve 979505 as follows:

- (a) amend the maximum building height from RL110m to part RL107 m and part RL 156m;
- (b) apply a maximum overall floor space ratio of 5.3:1; and
- (c) amend the minimum non-residential floor space ratio from 0.5:1 to 1:1.

Proposed Community Space means a combined indoor and outdoor area at the ground floor for the initial purpose of accommodating a child care facility at the northern end of the site generally in accordance with concept design within Annexure A.

Proposed Community Space Stratum Lot means the stratum lot created to contain the Proposed Community Space and to be dedicated to Council in accordance with this Agreement;

Register means the Torrens title register maintained under the *Real Property Act 1900* (NSW);

Registered Community Housing Provider has the same meaning as in *State Environmental Planning Policy (Housing) 2021*;

Regulation means the *Environmental Planning and Assessment Regulation 2021*;

Security means a Bank Guarantee or Bond;

Through-site Link means a pedestrian thoroughfare at least three (3) metres wide and open-to-sky along the eastern boundary of the Land that connects McLaren Street to Elliot Street and that will be subject to the Easement in Gross for public access 24 hours per day, 7 days a week, as generally identified in the location on the plan in **Annexure B**; and

Works means the works required to construct the Proposed Community Space as a Cold Shell and the works required to construct the Through-site Link required under this Agreement and as shown on the preliminary concept at **Annexure B**, including but not

limited to design, survey, planning, environmental assessment, obtaining approvals, engineering and construction.

1.2 General

In this Agreement the following definitions apply:

- (a) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (b) the singular includes the plural and vice versa;
- (c) the word "person" includes a firm, a body corporate, an unincorporated association or an authority;
- (d) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and assigns;
- (e) a reference to anything (including, without limitation, any amount) is a reference to the whole and each part of it and a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually;
- (f) "include" or "including" when introducing a list of items does not limit the meaning of the words to which the list relates to those items or to items of a similar kind;
- (g) if a Party is required to do something, that includes a requirement to cause that thing to be done, and if a Party is prohibited from doing anything, it is also prohibited from doing or omitting to do anything which allows or causes that thing to be done;
- (h) a reference to a statute, ordinance, code or law includes a State ordinance code or law of the Commonwealth of Australia;
- (i) a reference to a body, whether statutory or not which ceases to exist or whose powers or functions are transferred to another body is a reference to the body which replaces it or which substantially succeeds to its powers or functions;
- (j) no rule of construction applies to the disadvantage of a Party because that Party was responsible for the preparation of this Agreement;
- (k) any capitalised term used, but not defined in this Agreement, will have the meaning ascribed to it under, and by virtue of, the Act;
- (l) headings are inserted for convenience only and do not affect the interpretation of this Agreement;
- (m) a reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars;
- (n) a reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced;
- (o) a reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement;
- (p) a reference to this Agreement includes the agreement recorded in this Agreement; and

- (q) any schedules and attachments form part of this Agreement.

2 Planning Agreement under the Act

- (a) The Parties agree that this Agreement is a planning agreement within the meaning of section 7.4 of the Act.
- (b) **Schedule 4** of this Agreement summarises the requirements for planning agreements under section 7.4 of the Act and the way this Agreement addresses those requirements.

3 Application of this Agreement

This Agreement applies to:

- (a) the Instrument Change;
- (b) the Development; and
- (c) the Land.

4 Operation of this Agreement

This Agreement commences on and from the date it is executed by all Parties.

5 Contributions to be made under this Agreement

- (a) The Developer must deliver the Contributions to Council at the time and in the manner set out in Schedule 1.
- (b) The parties acknowledge and agree that the Contributions serve the public purposes set out in Schedule 1.

6 Application of s 7.11, s 7.12 and s 7.24 of the Act to the Development

- (a) Sections 7.11, 7.12 and Division 7.1, Subdivision 4 of the Act are not excluded from applying to the Land and the Development.
- (b) The benefits under this Agreement are not to be taken into consideration in determining a development contribution under section 7.11(6) of the Act.

7 Registration of this Agreement

7.1 Registration

- (a) The Developer represents and warrant to the Council that, on the date of this Agreement, it is the registered proprietor of the Land.
- (b) The Developer agrees to procure the registration of this Agreement under the *Real Property Act 1900* (NSW) in the relevant folios of the Register of the Land in accordance with section 7.6 of the Act.
- (c) The Developer will, at its own expense and promptly after the execution of this Agreement, take all practical steps, and otherwise do anything that the Council reasonably requires to procure:
 - (i) the consent of each person who has an estate or interest in the Land registered under the *Real Property Act 1900* (NSW) or is seized or possessed of an estate or interest in the Land;

- (ii) an acceptance of the terms of this Agreement and an acknowledgement in writing from any existing mortgagee in relation to the Land that the mortgagee will adhere to the provisions of this Agreement if it takes possession of the Land as mortgagee in possession,
- (iii) the execution of any documents; and
- (iv) the production of the relevant duplicate certificates of title, or electronic equivalents,

to enable the registration of this Agreement in accordance with **clause 7.1(b)**.

- (d) The Developer, at its own expense, will take all practical steps, and otherwise do anything that the Council reasonably requires:
 - (i) to procure the lodgement of this Agreement with the Registrar-General as soon as reasonably practicable after this Agreement comes into operation, but in any event, no later than 10 Business Days after that date; and
 - (ii) to procure the registration of this Agreement by the Registrar-General in the relevant folios of the Register for the Land as soon as reasonably practicable after this Agreement is lodged for registration.

7.2 *Removal from register*

The Council will, promptly after receipt of a request from the Developer, provide a release and discharge of this Agreement so that it may be removed from the folios of the Register for the Land (or any part of it) provided the Council is satisfied the Developer has duly fulfilled its obligations under this Agreement, and is not otherwise in default of any of the obligations under this Agreement.

7.3 *Caveat*

- (a) The Developer acknowledges and agrees that:
 - (i) when this Agreement is executed, the Council will have acquired and the Developer will have granted, an equitable estate and interest in the Land for the purposes of section 74F(1) of the *Real Property Act 1900* (NSW) and, consequently, the Council will have a sufficient interest in the Land in respect of which to lodge a caveat over the Land notifying of that interest; and
 - (ii) it will not object to the Council lodging a caveat in the relevant folios of the Register for the Land, nor will it seek to remove any caveat lodged by the Council, provided the caveat does not prevent registration of any Dealing or plan other than a transfer.
- (b) Council must, at the Developer's cost, lodge a withdrawal of any caveat in respect of the Land on the earlier of:
 - (i) the date that the Developer registers this Agreement under **clause 7.1**; or
 - (ii) the date upon which the Developer would otherwise be entitled to a release under **clause 7.2**.

8 Review of this Agreement

- (a) This Agreement may be reviewed or modified. Any review or modification of this Agreement will be conducted in the circumstances and in the manner determined by the Parties.
- (b) No modification or review of this Agreement will be of any force or effect unless it is in writing and signed by the Parties to this Agreement.
- (c) A Party is not in breach of this Agreement if it does not agree to an amendment to this Agreement requested by a party in, or as a consequence of, a review.

9 Dispute Resolution

9.1 Application

Any Dispute must be determined in accordance with the procedure in this clause 9.

9.2 Negotiation

- (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 and the Council's Representative for resolution. The Dispute Notice must:
 - (i) be in writing;
 - (ii) state that it is given pursuant to this clause 9; 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 any:
 - 1. provisions of this Agreement; and
 - 2. 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 and the Council's Representative must meet at least once to attempt to resolve the Dispute.
- (c) The Developer's Representative and the Council's Representative may meet more than once to resolve a Dispute. The Developer's Representative and the Council'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.

9.3 Not use information

The purpose of any exchange of information or documents or the making of any offer of settlement under this clause 9 is to attempt to settle the Dispute. Neither party may use any information or documents obtained through any dispute resolution process

undertaken under this clause 9 for any purpose other than in an attempt to settle the Dispute.

9.4 *Condition precedent to litigation*

Subject to clause 9.5, a party must not commence legal proceedings in respect of a Dispute unless:

- (a) a Dispute Notice has been given; and
- (b) the Resolution Period has expired.

9.5 *Summary or urgent relief*

Nothing in this clause 9 will prevent a party from instituting proceedings to seek urgent injunctive, interlocutory or declaratory relief in respect of a Dispute.

10 Enforcement and security

10.1 *Application of this clause*

- (a) Clauses 10.2, 10.3 and 10.5 will apply only to the extent that the Developer is not either Sydney Metro or another NSW Government agency.
- (b) The right of the Council to call on the Security, which is contained in clause 10.4, will only apply to the extent that the Developer is not either Sydney Metro or another NSW Government agency.

10.2 *Security*

- (a) The Developer must provide to Council, Security for the delivery of the Contributions as specified in Schedule 1.
- (b) Council may call on the Security provided under this clause if:
 - (i) the Developer is in material or substantial breach of this Agreement, and has failed to rectify the breach after having been given reasonable notice (which must not be less than 20 Business Days) in writing to do so; or
 - (ii) the Developer becomes Insolvent.
- (c) Subject to this clause, the Council may apply the proceeds of a Security in satisfaction of:
 - (i) any obligation of the Developer to carry out the Works;
 - (ii) any obligation of the Developer to pay for the costs of Council acquiring the Proposed Community Space or the Easement in Gross; and
 - (iii) any associated liability, loss, cost, charge or expense directly or indirectly incurred by the Council because of the failure by the Developer to comply with this Agreement.
- (d) Nothing in this **clause 10.2** prevents or restricts the Council from taking any enforcement action in relation to:
 - (i) any obligation of the Developer under this Agreement; or
 - (ii) any associated liability, loss, cost, charge or expense directly or indirectly incurred by the Council because of the failure by the Developer to comply with this Agreement,

that is not, or cannot, be satisfied by calling on the Security.

10.3 Replacement Security

- (a) At any time following the provision of the Security, the Developer may provide the Council with one or more replacement Securities totalling the amount of all the Securities required to be provided under this clause for the time being.
- (b) Within 20 Business Days of each anniversary of any Security provided under this Agreement, the Developer must provide Council with one or more replacement Securities (**Replacement Security**) in an amount calculated in accordance with the following:

$$A = \frac{B \times D}{C}$$

Where:

A is the amount of the Replacement Security;

B is the amount of the Security to be replaced;

C is the CPI for the quarter ending immediately before the date of the Security to be replaced; and

D is the CPI for the quarter ending immediately before the date of the Replacement Security;

provided A is greater than B.

- (c) On receipt of any Replacement Security, Council must immediately release and return to the Developer, as directed, the Securities it holds that have been replaced.
- (d) Council must promptly return the Security at the request of the Developer if any of the following occurs:
 - (i) the Developer fulfills the relevant obligations under this Agreement;
 - (ii) the Minister refuses to make the Instrument Change and the Developer withdraws the Planning Proposal seeking the Instrument Change; or
 - (iii) a Court of competent jurisdiction invalidates the Instrument Change and all avenues of appeal from that decision have been exhausted.

10.4 Acquisition of Proposed Community Space Stratum Lot and Easement in Gross

- (a) This clause constitutes an agreement for the purposes of section 30 of the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW).
- (b) If the Developer does not transfer the Proposed Community Space Stratum Lot or grant the Easement in Gross as required by this Agreement, the Council may compulsorily acquire those relevant interests in the land (that is, the Proposed Community Space Stratum Lot and the Easement in Gross to the extent that they have not been transferred as required by the Agreement), in which case the Developer consents to the Council compulsorily acquiring those interests for compensation in the amount of \$1.00, without having to follow the pre-acquisition procedures in the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW), and Council may call upon any Security provided under **clause 10.2** to cover any costs, including legal costs, incurred by the Council on acquisition of the land.

- (c) Except as otherwise agreed between the Developer and Council, the Developer must ensure the land subject to the acquisition in accordance with **clause 10.4(b)** are freed and discharged from all estates, interests, trusts, restrictions, dedications, reservations, rights, charges, rates, strata levies and contracts, except as may be permitted by this Agreement on the date that the Council will acquire the interests in accordance with this **clause 10.4**.
- (d) The Developer indemnifies and keeps indemnified the Council against all Claims made against the Council as a result of any acquisition by the Council of the whole or any part of the relevant land under this **clause 10.4**.
- (e) The Developer must pay the Council, promptly on demand, an amount equivalent to all costs, including legal costs, incurred by the Council acquiring the whole or any part of the relevant interest in land under this clause and, if the Developer fails to do so, the Council may call on the Security provided under **clause 10.2** for the purposes of reimbursing those costs.

10.5 *Restriction on the issue of Certificates*

- (a) In accordance with section 6.8 of the Act and section 21 of the Certification Regulation, a Construction Certificate for the Development or any part of the Development must not be issued unless the Developer has provided any Security required under **clause 10.2**.
- (b) In accordance with section 6.10(2) of the Act and section 48 of the Certification Regulation, an Occupation Certificate for the Development or any part of the Development must not be issued unless:
 - (i) the Works have been completed in accordance with the Construction Terms;
 - (ii) the Developer has provided, to Council's satisfaction, Security for any item of the Works for defects liability as required by the Construction Terms; and
 - (iii) the Developer has provided, to Council's satisfaction, a copy of a contract with a Registered Community Housing Provider for the management of Affordable Housing, as required by Schedule 1.

10.6 *General Enforcement*

- (a) Subject to clause 9, and without limiting any other remedies available to the Parties, this Agreement may be enforced by any party in any Court of competent jurisdiction.
- (b) Nothing in this Agreement prevents:
 - (i) a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Agreement or any matter to which this Agreement relates; and
 - (ii) the Council or Sydney Metro from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Agreement or any matter to which this Agreement relates.

11 Notices

- (a) Any notice, consent, information, application or request that must or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:
- (i) delivered or posted to that Party at its address set out below; or
 - (ii) emailed to that Party at its email address set out below.

to North Sydney Council: 200 Miller Street, Sydney NSW 2060
Email: council@northsydney.nsw.gov.au
Attention: General Manager

to Sydney Metro: L43, 680 George St, Sydney 2000
Email: sydneymetroproperty@transport.nsw.gov.au
Attention: Ivan Glavinic

- (b) If a Party gives the other Party three Business Days' notice of a change of its address or email address, any notice, consent, information, application or request is only given or made by that Party if it is delivered, posted or emailed to the latest address or email address.
- (c) Any notice, consent, information, application or request is to be treated as given or made at the following time:
- (i) if it is delivered, when it is left at the relevant address;
 - (ii) if it is sent by email, if an "undelivered receipt" is not received; or
 - (iii) if it is sent by post, five Business Days after it is posted.
- (d) If any notice, consent, information, application, or request is given or made on a day that is not a Business Day, or if it is given or made after 5:00pm on a Business Day in the place of the party to whom it is sent, it is to be treated as having been given or made at the beginning of the next Business Day.

12 Approvals and consents

The Parties acknowledge that:

- (a) except as otherwise set out in this Agreement, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Agreement in that Party's absolute discretion and subject to any conditions determined by the Party;
- (b) a Party is not obligated to give its reasons for giving or withholding consent or for giving consent subject to conditions; and
- (c) this Agreement does not impose any obligation on a Consent Authority to:
 - (i) grant development consent; or
 - (ii) exercise any function under the Act in relation to a change in an environmental planning instrument.

13 Assignment and Dealings

13.1 *Dealing by the Council*

- (a) The Council may Deal with its interest in this Agreement without the consent of the Developer if the Dealing is with a NSW Government Agency. The Council must give the Developer notice of the Dealing within five Business Days of the date of the Dealing.
- (b) The Council may not otherwise Deal with its interest in this Agreement without the consent of the Developer, such consent not to be unreasonably withheld or delayed.

13.2 *Dealing by the Developer*

- (a) The Developer must not Deal with this Agreement or the Land unless:
 - (i) the Council gives prior written consent, which must not be unreasonably withheld or delayed where the Developer complies with clause 13.2(a)(ii) to (vii); and
 - (ii) the Developer satisfies the Council, acting reasonably, that the rights of the Council will not be diminished or fettered in any way; and
 - (iii) the Council, the Developer and the third party the subject of the Dealing enter into a deed of novation generally in the form included in **Annexure F** to this Agreement with the Council's entry into such a deed not to be unreasonably withheld or delayed; and
 - (iv) prior to the proposed novation of its obligations under this Agreement to a third party (the **Incoming Party**), the Developer satisfies the Council (acting reasonably) that the Incoming Party has sufficient assets, resources and expertise required to perform the Developer's obligations under this Agreement;
 - (v) the Incoming Party provides to the satisfaction of Council any Security required under **clause 10.2** to secure the outstanding obligations under this Agreement;
 - (vi) the Incoming Party provides to the satisfaction of Council copies of insurances or other documents required under this Agreement for the carrying out of any Works;
 - (vii) any default under any provisions of this Agreement has been remedied or waived by the Council, on such conditions as the Council may determine; and
 - (viii) the Developer and the Incoming Party pay the Council's reasonable costs in relation to the assignment.

14 General

14.1 *Costs*

The Developer agrees to pay or reimburse Council all reasonable costs incurred in connection with the negotiation, preparation, execution, stamping, registering, release and discharge of this Agreement, including the reasonable costs of any legal advice

Council has received in connection with this Agreement within 10 Business Days after receipt of a notice from the Council as to the amount of those costs.

14.2 *Entire Agreement*

The contents of this Agreement constitute the entire agreement between the Parties and supersede any prior negotiations, representations, understandings or arrangements made between the Parties regarding the subject matter of this Agreement, whether orally or in writing.

14.3 *Further acts*

- (a) Each Party must promptly execute all documents and do all other things that another Party from time to time reasonably requests to effect, perfect or complete this Agreement and all transactions incidental to it.
- (b) If the time for doing any act or thing required to be done or a notice period specified in this Agreement expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.
- (c) If any act or thing required to be done is done after 5:00 pm on the specified day, it is taken to have been done on the following Business Day.

14.4 *Governing law and jurisdiction*

- (a) The laws applicable in New South Wales govern this Agreement.
- (b) The Parties submit to the non-exclusive jurisdiction of the Courts of New South Wales and any Courts competent to hear appeals from those Courts. The Parties will not object to the exercise of jurisdiction by those Courts on any basis.
- (c) Without preventing any other method of service, any document in an action may be served on a Party by being delivered or left at that Party's address set out in **clause 11(a)**.

14.5 *Joint and individual liability and benefits*

Except as otherwise set out in this Agreement, any agreement, covenant, representation or warranty under this Agreement by two or more persons binds those persons jointly and each of them individually, and any benefit in favour of two or more persons is for the benefit of them jointly and each of them individually.

14.6 *No fetter*

- (a) This Agreement is not intended to operate to fetter, in any manner, the exercise of any statutory power or discretion of the Council or Sydney Metro, including, but not limited to, any statutory power or discretion of the Council relating to the Development Application or any other application for Development Consent (all referred to in this Agreement as a '**Discretion**').
- (b) No provision of this Agreement is intended to constitute any fetter on the exercise of any Discretion. If, contrary to the operation of this clause, any provision of this Agreement is held by a Court of competent jurisdiction to constitute a fetter on any Discretion, the Parties agree:
 - (i) they will take all practical steps, including the execution of any further documents, to ensure the objective of this clause is substantially satisfied;

- (ii) in the event that (i) cannot be achieved without giving rise to a fetter on the exercise of a Discretion, the relevant provision is to be severed and the remainder of this Agreement has full force and effect; and
- (iii) to endeavour to satisfy the common objectives of the Parties in relation to the provision of this Agreement, which is to be held to be a fetter on the extent that is possible having regard to the relevant Court judgment.

14.7 *Representations and warranties*

The Parties represent and warrant that they have the power and authority to enter into this Agreement and comply with their obligations under the Agreement, and that entry into this Agreement will not result in the breach of any law.

14.8 *Severability*

- (a) The Parties acknowledge that under and by virtue of section 7.4(4) of the Act, any provision of this Agreement is not invalid by reason only that there is no connection between the Planning Proposal or the Development and the object of the expenditure of any money required to be paid by that provision.
- (b) The Parties agree that to the extent permitted by law, this Agreement prevails to the extent of its inconsistency with any law.
- (c) If a clause or part of a clause of this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way.
- (d) If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement but the rest of this Agreement is not affected,

14.9 *Modification*

No modification of this Agreement will be of any force or effect unless it is in writing and signed by the Parties to this Agreement and is in accordance with the provisions of the Act.

14.10 *Waiver*

- (a) The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement does not amount to a waiver of any obligation of, or breach of obligation by, another Party.
- (b) A waiver by a Party is only effective if it is in writing.
- (c) A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach, or as an implied waiver of that obligation or breach in relation to any other occasion.

14.11 *GST*

- (a) In this **clause 14.11**, unless there is a contrary indication, words and expressions which are not defined in this Agreement but which have a defined meaning in the GST Law have the same meaning as in the GST Law.
- (b) Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this Agreement are exclusive of GST.

- (c) The Parties agree, in accordance with Class Ruling 2013/13, that the contributions required to be made under this Agreement are exempt from GST.
- (d) If GST is imposed on any supply made under or in accordance with this Agreement, the Developer must pay the GST or pay to the Council an amount equal to the GST payable on or for the taxable supply, whichever is appropriate in the circumstances.

14.12 Explanatory Note

The Explanatory Note annexed at **Annexure D** prepared in connection with this Agreement pursuant to the Regulation is not to be used to interpret this Agreement.

14.13 Execution

This Agreement may be executed in any number of counterparts, each of which:

- (a) may be executed electronically or in handwriting; and
 - (b) will be deemed an original whether kept in electronic or paper form, and
- all of which will taken together will constitute one and the same document.

14.14 Relationship between the Parties

- (a) Nothing in this Agreement:
 - (i) constitutes a partnership between the Parties; or
 - (ii) except as expressly provided, makes a Party an agent of another Party for any purpose.
- (b) A Party cannot in any way or for any purpose:
 - (i) bind another Party; or
 - (ii) contract in the name of another Party.
- (c) If a Party must fulfil an obligation and that Party is dependent on another Party, then that other Party must do each thing reasonably within its power to assist the other in the performance of that obligation.

Schedule 1 Contributions

Contribution Item	Public Purpose	Nature and Extent	Timing	Manner of Delivery	Security Required	Timing of Security
Construction of Proposed Community Space (Intended for Childcare facility)	The Proposed Community Space contribution will serve the public purpose of providing community facilities that will meet the physical, social, cultural or intellectual welfare needs of the community.	<p>The Developer must, as part of the Development, construct the Proposed Community Space as a Cold Shell in accordance with:</p> <ul style="list-style-type: none"> (a) the concept design in Annexure B, (b) the Construction Terms; and (c) any Approval for those Works. 	The Proposed Community Space must be constructed prior to the issue of an Occupation Certificate for the Development.	The Works to construct the Proposed Community Space will be taken to have been completed when Council issues a Certificate of Practical Completion for those Works.	Security equivalent to the estimated cost of the Works to construct the Proposed Community Space in accordance with this Agreement.	Prior to the issue of a Construction Certificate for the Development.
Monetary Contribution towards the fitout of the Proposed Community Space	The contribution towards the fit out of the Proposed Community Space will serve the public purpose of providing community facilities	The Developer must pay \$650,000 (indexed in accordance with increases in the CPI from the date of this agreement to the date of payment) to the	The monetary contribution must be delivered prior to the issue of a Construction Certificate for any above	The contribution will be taken to have been made when cleared funds have been received in the account nominated by Council.	N/A	N/A.

Contribution Item	Public Purpose	Nature and Extent	Timing	Manner of Delivery	Security Required	Timing of Security
	that will meet the physical, social, cultural or intellectual welfare needs of the community.	Council instead of carrying out the fit out works.	ground works associated with the Development.			
Dedication of Proposed Community Space Stratum Lot	The Proposed Community Space contribution will serve the public purpose of providing community facilities that will meet the physical, social, cultural or intellectual welfare needs of the community.	Within 60 Business Days after the issue of a Certificate of Practical Completion for the Proposed Community Space and the issue of an Occupation Certificate for the Proposed Community Space, the land is to be dedicated free of cost in accordance with the Dedication Terms.	The Proposed Community Space Stratum Lot must be dedicated to Council before an Occupation Certificate is issued in respect of any residential component of the Development. The dedication of the Proposed Community Space Stratum Lot will be completed when an Occupation Certificate is issued for the Proposed Community Space and Council receives confirmation from the Developer that it is the registered proprietor of the Proposed Community	The Proposed Community Space Stratum Lot must be transferred to Council at no cost to Council in accordance with the Dedication Terms.	<p>The security provided for the construction of the Proposed Community Space will be retained by Council until the Proposed Community Stratum Lot is dedicated to Council.</p> <p>The security may be called on by Council to pay the costs of any acquisition of the Proposed Community Space Stratum Lot</p>	Refer to terms of Contribution Item: <i>Construction of Proposed Community Space</i>

Contribution Item	Public Purpose	Nature and Extent	Timing	Manner of Delivery	Security Required	Timing of Security
			Space Stratum Lot on the Register.			
Through Site Link	Pedestrian amenity, safety and connection to transport links and other infrastructure	<p>The Developer must carry out Works to construct the Through-site Link as public domain, including landscaping, seating and integration with the podium of the Development, generally in accordance with:</p> <ul style="list-style-type: none"> (d) the specifications in Annexure C; (e) the concept design in Annexure B, (f) the Construction Terms; and (g) any Approval for those Works. <p>The Developer must register the Easement in Gross (in accordance with the Easement</p>	<p>The Works to construct the Through-site Link must be completed prior to the issue of an Occupation Certificate for the Development.</p> <p>The Easement in Gross must be registered prior to the issue of an Occupation Certificate for the Development.</p>	<p>The Works to construct the Through-site Link will be taken to have been completed when Council issues a Certificate of Practical Completion for those Works.</p> <p>The Developer must provide a copy of a title and dealing search to Council confirming that the Easement in Gross has been registered.</p>	Security equivalent to the estimated cost of the Works to construct the Community Space in accordance with this Agreement.	Prior to the issue of a Construction Certificate for the Development.

Contribution Item	Public Purpose	Nature and Extent	Timing	Manner of Delivery	Security Required	Timing of Security
		Terms) over the Through-site Link.				
Construction and management of Affordable Housing	To increase and improve the provision of affordable housing in the North Sydney Local Government Area	<p>A minimum of 5% of the residential gross floor area (as defined in NSLEP 2013) of the Development must be managed by a Registered Community Housing Provider as Affordable Housing.</p> <p>This agreement is to be updated, in accordance with clause 8 and clause 14.9, if required under any formal affordable housing policy applicable to the site that the NSW Government releases prior to the finalisation of the Planning Proposal, in accordance with the conditions of the Gateway Determination PP-2021-5024 dated</p>	The Affordable Housing Contribution must be provided for a minimum 10 years after an Occupation Certificate is issued for the Affordable Housing.	Prior to the issue of an Occupation Certificate for the Development, the Developer must provide to Council a copy of a contract it has entered into with a Registered Community Housing Provider for the management of the Affordable Housing and a plan showing the location of the Affordable Housing in comparison to other residential components of the Development.	N/A	N/A

Contribution Item	Public Purpose	Nature and Extent	Timing	Manner of Delivery	Security Required	Timing of Security
		22 March 2024, as amended from time to time.				

Schedule 2 Construction terms

1 Interpretation

For the purposes of this **Schedule 2**, the defined terms and interpretation principles in **clause 1** of this Agreement will apply and, unless context indicates a contrary intention:

Builder means any entity contracted under the Construction Contract to carry out the Works;

Construction Contract means the contract between the Developer and its Builder to carry out the Works (whether or not that is a contract for the Works only or forms part of a contract for the building of other components of the Development);

Defects Liability Period means in respect of each item of building works which together comprise the Works the period of 12 months from the date on which the Works are delivered to Council in accordance with this Agreement;

Detailed Design means the final specifications and finishes for the Works prepared in accordance with **clause 5.2** of this **Schedule 1** and will include the engineering design of the Works, the location for the Works, installation specifications and estimated costs of construction and/or installation;

Services means all water, gas, electricity, television, drainage, sewerage, cable TV, data communications, telecommunications and other services which are required under a development consent within the meaning of the Act or an Approval and which are necessary or desirable for the construction or operation of the Development;

Superintendent means the Superintendent appointed under any Construction Contract.

2 Requirements of Authorities and Approvals

2.1 These Construction Terms must be read and construed subject to:

- (a) any requirements or conditions of any Development Consent;
- (b) the requirements of and conditions imposed by all relevant Authorities and all Laws relating to the Development and the construction of the Development.

2.2 If the Developer requires any Approvals in order to carry out the obligations under this Agreement, then the Developer will acquire all Approvals necessary to carry out the Works at its own cost.

2.3 The Developer must ensure that the Works carried out under this Agreement are carried out:

- (a) in accordance with the relevant Development Consent for the Works and all Approvals and the requirements of all Laws, including without limitation, work health and safety legislation; and
- (b) in a good and workmanlike manner and so that they are diligently progressed until completion;

AND it is acknowledged that to the extent that there is any inconsistency between this Agreement and any Approval the terms of the Approval shall take precedence.

3 Costs of Works

All costs of the Works must be borne by the Developer.

4 Project Management and Contractor Engagement

- 4.1 The Developer will be responsible for managing the Works.
- 4.2 The Developer will ensure that any contractor it engages to carry out the Works agrees to:
 - (a) carry out the Developer's obligations in these Construction Terms as part of any Construction Contract; and
 - (b) request a Council representative to be present at each on-site meeting attended by the Superintendent and to ensure the Council representative is present at the meeting.

5 Design Development and Approvals

5.1 Design

- (a) Prior to submitting a Development Application for the Development, the Developer must prepare a draft design for the Works in accordance with:
 - (i) the concept for the Works set out in **Annexure B**;
 - (ii) the North Sydney Public Domain Style Manual and Design Codes;
- (b) The Developer and the Council must work in consultation with each other to prepare and agree on the design and must both act reasonably and with due expedition in their consultations with each other.

5.2 Detailed Design

- (a) Prior to submitting an application for a Construction Certificate for the Development, the Developer must provide a copy of the draft Detailed Design to the Council for approval.
- (b) The draft Detailed Design must be consistent with the concept for the Works in **Annexure B**, the standards and specifications referred to in **clause 5.1(a)** of this Schedule and the concept design agreed in accordance with **clause 5.1** of this Schedule.
- (c) Within 15 Business Days of receiving the draft Detailed Design, Council will respond to the Developer with any suggested amendments to the Detailed Design.
- (d) If the Detailed Design is not completed and agreed within 15 Business Days of Council providing its suggested amendments in accordance with **clause 5.2(c)** of this Schedule, to avoid possible delays to the issue of a Certificate of Practical Completion, the Council will, in its sole discretion, be entitled to decide on any outstanding or undecided matter or item relating to areas that are to be accessible to the public, provided that any decision made by Council under this clause:
 - (i) is consistent with the obligation of the Developer to carry out the Works under this Agreement; and
 - (ii) is consistent with the Development Consent; and
 - (iii) does not materially and adversely affect the Development; and
 - (iv) is not unreasonable.

- (e) Any acceptance by the Council of the Detailed Design under this **clause 5** of this Schedule is not to be taken as approval of or to any Construction Certificate for the Works.

5.3 **Good faith**

The Parties must act promptly and in good faith to consult in relation to the concept design and the Detailed Design of the Works.

6 **Carrying out of Works**

6.1 **Communication**

The Developer must keep Council reasonably informed of progress of the Works and provide to Council such information about the Works as Council reasonably requests.

6.2 **Standard of Works**

- (a) Unless otherwise provided, the Developer shall, and must cause the Builder to, use suitable new materials and proper tradesmanlike workmanship when carrying out the Works.
- (b) The qualitative standard of the design and finishes for the Works must be in accordance with Council's specifications for the Works as provided during the preparation of the concept design and Detailed Design.
- (c) The Developer will obtain any relevant standards (including design standards), specifications, or guidelines and any other requirements or policies referred to in **clause 6.2** of this Schedule from Council if the Council fails to deliver them to the Developer.
- (d) The Developer may, but is not obliged to, reinstate any Works where damage or destruction is as a result of:
 - (i) any act or omission of Council or its employees, consultants or agents relating to any part of the Works under this Agreement; or
 - (ii) the use or occupation by the Council or its employees, consultants or agents, Council's representatives or other contractor of the Council of any part of the Works.

7 **Inspection**

- (a) On completion of the Detailed Design, the Council will provide a schedule of inspections to be undertaken by Council (**Inspection Schedule**) to occur at specified stages of the construction of the Works (**Inspection Stage**). If the Council does not provide the Inspection Schedule, the Developer must request the Inspection Schedule from the Council prior to the Works commencing.
- (b) Five Business Days prior to reaching an Inspection Stage as set out in the Inspection Schedule, the Developer must notify the Council of the proposed inspection date (**Inspection Date**).
- (c) On the Inspection Date, or other agreed date, the Developer must ensure that any employees, contractors, agents or representatives of Council have access to and may enter the land on which the Works are taking place to inspect the Works.

- (d) In addition to carrying out inspections in accordance with the Inspection Schedule, the Council may enter the land on which the Works are taking place to inspect the progress of the Works, subject to:
 - (i) the terms of the Construction Contract (save for any clause of the Construction Contract which prevents the Council from accessing the land);
 - (ii) giving reasonable notice to the Developer;
 - (iii) complying with all reasonable directions of the Developer; and
 - (iv) being accompanied by the Developer or a nominee, or as otherwise agreed.
- (e) The Council may, acting reasonably, within 5 Business Days of carrying out an inspection (either under **clause 7(c)** or **7(d)** of this Schedule), notify the Developer of any defect or non-compliance in the Works and direct the Developer to carry out work to rectify that defect or non-compliance within a reasonable period of time. Such work may include, but is not limited to:
 - (i) removal of defective or non-complying material;
 - (ii) demolishing defective or non-complying work;
 - (iii) reconstructing, replacing or correcting any defective or non-complying work; and
 - (iv) not delivering any defective or non-complying material to the site of the Works.
- (f) If the Developer is issued a direction to carry out further work under **clause 7(e)** of this Schedule, the Developer must, at its cost, rectify the defect or non-compliance specified in the Notice within the time period specified in the Notice, provided that it is reasonable having regard to the nature of the works.
- (g) If the Developer fails to comply with a direction to carry out work given under **clause 7(e)** of this Schedule, the Council will be entitled to refuse to accept that the Works (or the relevant part of the Works) meet the Council's standards and specifications and may refuse to issue a Certificate of Practical Completion, until the required Works have been completed to the Council's satisfaction, acting reasonably.
- (h) For the avoidance of doubt, any acceptance by the Council that the Developer has rectified a defect or non-compliance identified in a notice issued under **clause 7(e)** of this Schedule does not constitute:
 - (i) acceptance by the Council that the Works comply with all Approvals and Laws; or
 - (ii) an Approval by the Council in respect of the Works; or
 - (iii) an agreement or acknowledgment by the Council that the Works or the relevant part of the Works are complete and may be delivered to the Council in accordance with this agreement.

8 Completion

8.1 Practical Completion

- (a) When the Developer considers that the Works, or any part of the Works, are complete, the Developer must send a Notice to the Council accompanied by complete works as executed plans, any relevant certificates or consents of any public utility authority and a request for written certification from the Council that the Works are complete.
- (b) Within 10 Business Days of receipt of the notice under **clause 8.1(a)** of this Schedule, the Council will carry out an inspection of the Works and will, acting reasonably, either:
 - (i) provide written certification to the Developer that the Works have been completed (**Certificate of Practical Completion**); or
 - (ii) notify the Developer of any additional information required or matters which must be addressed by the Developer prior to the certification being issued.
- (c) If the Developer is required to provide additional information or address any matters under **clause 8.1(b)(ii)** of this Schedule, the Developer will provide that information to Council or address those matters within 10 Business Days of receiving the notice or within a reasonable period of time and make a further request under **clause 8.1(a)** of this Schedule for written certification that the Works have been completed.
- (d) Practical completion will be achieved in relation to the Works or any part of the Works when a Certificate of Practical Completion has been issued for those Works.

8.2 Delivery of documents

- (a) The Developer must as soon as practicable, and no later than 20 Business Days after the date on which the Certificate of Practical Completion is issued in respect of the Works or any part of the Works deliver to the Council, complete and legible electronic copies of:
 - (i) all 'as built' full-sized drawings, specifications and relevant operation and service manuals;
 - (ii) all necessary certificates including the certificates of any consultants of the Developer that the Council may reasonably require, and Approvals of any public utility authority (where relevant); and
 - (iii) copies of all Approvals required for use of the land subject to the Works.
- (b) The Developer must as soon as practicable, and no later than 20 Business Days after the date on which the Certificate of Practical Completion is issued in respect of the Works or any part of the Works, provide the Council with a tour of the land subject to the Works and provide reasonable instructions on the operation and use of the Services on that land.

8.3 Assignment of Warranties and Causes of Action

- (a) The Developer must assign (as beneficial owner) or cause to be assigned to Council the benefit of any warranties and guarantees obtained by the Developer

and the Builder (and capable of assignment) with respect to any material or goods incorporated in or forming part of the Works.

- (b) To the extent that any such warranties or guarantees cannot be assigned, the Developer must, at the request of Council, do anything reasonably required by Council to enforce such warranties or guarantees for the benefit of Council.

8.4 Defects Liability Period

- (a) During the Defects Liability Period, the Council (acting reasonably) may give to the Developer a notice (**Rectification Notice**) in writing that identifies a defect in the Works and specifies:
 - (i) action required to be undertaken by the Developer to rectify that defect (**Rectification Works**); and
 - (ii) the date on which the defect must be rectified (**Rectification Date**).
- (b) The Developer must comply with the Rectification Notice by:
 - (i) procuring the performance of the Rectification Works by the Rectification Date, or such other date as agreed between the Parties;
 - (ii) keeping the Council reasonably informed of the action to be taken to rectify the defect; and
 - (iii) carrying out the Rectification Works.
- (c) The Council must give the Developer and its contractors any access required to carry out the Rectification Works.
- (d) When the Developer considers that the Rectification Works are complete, the Developer must notify the Council and provide documentation, plans or invoices which establish that the Rectification Works were carried out.
- (e) The Council may inspect the Rectification Works within 15 Business Days of receiving a Notice from the Developer under **clause 8.14(d)** of this Schedule and, acting reasonably:
 - (i) issue a further Rectification Notice if it is not reasonably satisfied that the Rectification Works are complete; or
 - (ii) notify the Developer in writing that it is satisfied the Rectification Works are complete.
- (f) The Developer must meet all costs of and incidental to rectification of defects under this **clause 8.4**.
- (g) If the Developer fails to comply with a Rectification Notice, then the Council may do such things or take such action as is necessary to carry out the Rectification Works, including accessing and occupying any part of the Land without further notice to the Developer, and may:
 - (i) call upon any Security provided to the Council under **clause 8.5** of this Schedule to meet its costs of carrying out Rectification Works; and
 - (ii) recover as a debt due to the Council by the Developer in a Court of competent jurisdiction, any difference between the amount of the Security and the costs incurred by the Council in carrying out Rectification Works.

- (h) The Developer must request that Council inspect the Works 28 days prior to the end of the Defects Liability Period. The Council must inspect the Works at any time after receiving the request from the Developer and before the end of the Defects Liability Period.
- (i) If, prior to the end of the Defects Liability Period, the Developer fails to request the inspection, the Council may extend the Defects Liability Period so that the inspection may be carried out.

8.5 Security for Defects Liability

- (a) Prior to the issue of a Certificate of Practical Completion for each item of the Works, the Developer must deliver to the Council Security in an amount equivalent to 2.5% of the construction costs for the particular item of Works.
- (b) The Developer advises and the Council acknowledges its awareness that the Bonds or Bank Guarantees may be supplied by the Builder and form a part of the security held by the Developer from the Builder under the terms of the Construction Contract, provided that:
 - (i) any Bond or Bank Guarantee provided by the Builder benefits the Council and satisfies the requirements of this agreement; and
 - (ii) the Developer procures an agreement from the Builder and the Builder's bank that the Council will be entitled to call on any Bond or Bank Guarantee provided by the Builder, in accordance with the terms of this Agreement and the terms of any Construction Contract.
- (c) Within 10 Business Days after the Defects Liability Period for a particular item of Works has expired Council must (if it has not called on it) return the Bond or Bank Guarantee referred to in **clause 8.5(a)** of this Schedule for that item of Works (or any remaining balance of it) to the Developer.
- (d) Notwithstanding **clause 8.4(c)** of this Schedule, if during the Defects Liability Period for a particular item of Works, the Council issues a Rectification Notice and the Rectification Notice is not complied with, then the Council need not deliver the balance of any Bonds or Bank Guarantees provided to it until that defect has been rectified.
- (e) The Council must deliver the balance of any Bond or Bank Guarantee for the Defects Liability Period to the Developer within 14 days after the Defects Liability Period has ended.

9 Risk

The Developer undertakes the Works entirely at its own risk.

10 Insurance

- (a) Prior to the commencement of the construction of any of the Works, the Developer must ensure the Builder effects and the Developer must produce evidence to the Council of the following insurances issued by an insurer approved by the Council (acting reasonably) in a form approved by the Council (acting reasonably):
 - (i) construction works insurance for the value of the Works;
 - (ii) public risk insurance for at least \$20 million;

- (iii) workers compensation insurance as required by Law.
- (b) The Developer must provide evidence of currency of insurance required by **clause 10(a) of this Schedule 1** upon request by the Council, acting reasonably, throughout the term of this Agreement.

11 Indemnities

The Developer indemnifies the Council, its employees, officers, agents and contractors from and against all Claims in connection with the carrying out by the Developer of the Works except to the extent such Claim arises either directly or indirectly as a result of the Council or its employees, officers, agents, contractors or workmen's negligence, default, act or omission.

12 Intellectual Property Rights

The Council acknowledges that the Developer or its contractors hold all rights to copyright and any intellectual property which may exist in the Works. To the extent the Developer has or receives intellectual property rights for the Works, the Developer shall assign those intellectual property rights to Council or permit use thereof.

13 Risk of contamination

The Developer acknowledges and agrees:

- (a) that it is responsible for the management and remediation of any contamination present upon or under the land on which the Works are to be carried out;
- (b) it will attend to any necessary remediation at its own cost;
- (c) prior to the dedication of the Proposed Community Space Stratum Lot and the grant of the Easement in Gross, the Developer must provide to Council a site audit report and site audit statement in accordance with the *Contaminated Land Management Act 1997* confirming that the land forming the Proposed Community Space Stratum Lot and the Easement in Gross meets relevant soil quality guidelines and Residential A health-based investigation levels (HIL A) and is suitable for its intended use in accordance with this Agreement;
- (d) to the fullest extent permitted by Law indemnify and release the Council from any Claim which might arise from any contamination with respect to the land on which the Works are to be carried out.

14 Plans

The Parties acknowledge and agree that further detail and refinement of plans and documents in connection with this agreement may be necessary having regard to the following matters:

- (a) matters affecting Works not capable of identification on or before the date of this agreement; or
- (b) by agreement between the Parties.

Schedule 3 Dedication Terms

1 Interpretation

1.1 In this Schedule:

- (a) **Management Statement** means either the building management statement pursuant to section 196J of the *Conveyancing Act 1919* or the strata management statement pursuant to section 108 of the *Strata Schemes Development Act 2015* accompanying the Stratum Plan;
- (b) **Stratum Documents** means the Stratum Plan, Stratum Instrument and the Management Statement;
- (c) **Stratum Instrument** means the section 88B instrument to be registered with the Stratum Plan; and
- (d) **Stratum Plan** means the stratum plan of subdivision subdividing the Land to create the Proposed Community Space Stratum Lot.

2 Proposed Community Space Stratum Lot

- 2.1 The Developer must, at its cost, prepare and procure registration of the Stratum Plan.
- 2.2 Council intends to use the Proposed Community Space Stratum Lot for the purposes of a childcare facility as its first use.
- 2.3 The Developer must obtain an Occupation Certificate for the Proposed Community Space Stratum Lot prior to transfer to Council.

3 Stratum Documents

3.1 The Developer must:

- (a) obtain the approval of Council of the Stratum Documents prior to finalising and registering the Stratum Documents;
- (b) prepare and submit to Council for its approval, drafts of the Stratum Documents;
- (c) amend the Stratum Documents as required by Council, acting reasonably, and resubmit the amended drafts to Council until they are approved by Council;
- (d) not amend the Stratum Documents approved by Council without the written consent of Council, acting reasonably;
- (e) ensure the allocation of voting rights and the costs of shared facilities is fair and reasonable having regard to Council's intended use of the Proposed Community Space Stratum Lot for public purposes; and
- (f) ensure the Stratum Documents contain provisions protecting Council's rights under the Stratum Documents and providing the agreed allocation of costs cannot be changed without the consent of Council.

3.2 The Developer must obtain Council's approval to:

- (a) any proposal requiring the payment of contributions or levies towards the cost of operating, maintaining and repairing shared facilities; or
- (b) any proposal to strata subdivide the building (prior to lodgement of any development application for strata subdivision), including any strata management

statement or similar document that attributes unit entitlements and requires payment of strata administrative and capital works levies.

- 3.3 The Developer must ensure that any strata administrative and capital works levies required to be paid in connection with the Proposed Community Space Stratum Lot only relate to the operation of the non-residential components of the building.
- 3.4 Any consent or approval which the Developer is required to obtain from the Council under this clause 3, must not be unreasonably withheld.

4 Transfer of Proposed Community Space Stratum Lot

- 4.1 In accordance with the timing provisions in Schedule 1, the Developer must transfer the Proposed Community Space Stratum Lot to Council in accordance with the *NSW Participation Rules* under the *Electronic Conveyancing National Law (NSW)*.
- 4.2 The Developer must transfer the Proposed Community Space Stratum Lot to the Council, at no cost to Council, and freed and discharged from all estates, interests, trusts, restrictions, dedications, reservations, easements, rights, charges, rates and contracts in, over or in connection with the land, including but not limited to, municipal rates and charges, water rates and land tax.
- 4.3 The obligation to transfer the Proposed Community Space Stratum Lot will be taken to have been satisfied when Council is the registered proprietor for the Community Space Stratum Lot on the Register.
- 4.4 The Developer must, in accordance with the provisions of the Construction Terms, ensure that, on transfer of the Proposed Community Space Stratum Lot, Council will have the benefit of any defects liability warranty given by a Builder for the Proposed Community Space, together with any other warranties and guarantees in accordance with clause 8.3 of the Construction Terms.

Schedule 4 Easement Terms

Definitions

For the purpose of this Schedule 4 of this Agreement, the following words have the following meanings:

Council means North Sydney Council and its successors;

Easement means the Easement created in accordance with this Schedule 4 of this Agreement;

Easement Site means the location of the Through-site Link as defined in clause 1 of this Agreement;

Lot Burdened means the Land;

Owner of the Lot Burdened means the registered proprietor of the Lot Burdened from time to time.

Easement Terms

1. The Owner of the Lot Burdened grants to the Council and members of the public full and free right to go, pass and repass over the Lot Burdened at all times (but only within the Easement Site):
 - a. with or without companion animals (as defined in the *Companion Animals Act 1998*) or other small pet animals; and
 - b. on foot without vehicles (other than wheelchairs or other disabled access aids), unless vehicles are being used to access the building on the Land via clearly identified entry and exit points;

for all lawful purposes.
2. The Owner of the Lot Burdened must, to the satisfaction of Council, acting reasonably:
 - a. keep the Easement Site (including any services in, on or under the Lot Burdened) in good repair and condition;
 - b. maintain and repair the Easement Site and all improvements on it;
 - c. keep the Easement Site clean and free from rubbish; and
 - d. maintain sufficient public liability insurance covering the use of the Easement Site in accordance with the terms of this Easement.
3. The Owner of the Lot Burdened must ensure that any rules made by an Owner's Corporation relating to the Easement Site have been approved by the Council, acting reasonably.
4. If any member or members of the public loiter or congregate, for any purpose which the owner of the Lot Burdened, acting reasonably, considers to be a nuisance or a safety risk, the Owner of the Lot Burdened may either remove those members of the public, or arrange for their removal by an appropriate authority.
5. The Owner of the Lot Burdened may erect safety signage and any other appropriate signage, and may erect CCTV cameras on the Lot Burdened.
6. The Owner of the Lot Burdened may engage security personnel to monitor and control the behaviour of the public including but not limited to prohibiting smoking, consumption of alcohol (except within licensed areas), passage of animals apart from those referred to in clause 1(a) of the Easement Terms, bicycles and skateboards and the like in

accordance with any rules made by an Owner's Corporation relating to the Lot Burdened.

7. The Owner of the Lot Burdened may, with the Council's prior written consent (except in the case of an emergency, in which case the Council's prior written consent is not required) temporarily close or temporarily restrict access through all or part of the Lot Burdened for the time and to the extent necessary but only on reasonable grounds for the purposes of:
 - a. construction, construction access, repairs, maintenance, replacement and alteration to the Lot Burdened or any improvements in, on or under the Lot Burdened; or
 - b. security, public safety or evacuation of the Lot Burdened and adjoining buildings.
8. Subject to ensuring the provision of access in accordance with clause 1 of the Easement Terms, the Owner of the Lot Burdened may, with the consent of Council:
 - a. carry out works in the Lot Burdened for the purposes of enhancing the Lot Burdened;
 - b. install or erect works of art, street furniture, awnings, tables and chairs associated with the ground floor commercial premises, notice boards or any other similar improvements at ground level within the Lot Burdened; and
 - c. use the Lot Burdened;in a manner consistent with any outdoor or footway dining policy of the Council.

Release and variation of Easement

9. The Council is solely empowered to release this Easement.
10. The Easement may only be varied by written agreement between the Council and the Owner of the Lot Burdened.

Schedule 5 Summary of requirements (section 7.4)

Subject and subsection of the Act	Planning Agreement
Planning instrument and/or Development Application – Section 7.4(1) The Developer has: <ul style="list-style-type: none"> (a) Sought a change to an environmental planning instrument <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No (b) Made, or propose to make a Development Application <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No (c) Entered into an agreement with, or are otherwise associated with, a person to whom paragraph (a) or (b) applies <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No 	
Description of the land to which the planning Agreement applies – Section 7.4(3)(a)	See the definition of “Land” in clause 1 .
Description of the change to the environmental planning instrument to which the agreement applies – Section 7.4(3)(b)	See the definition of “Instrument Change” and “Planning Proposal” in clause 1 .
The scope, timing and manner of delivery of contribution required by the Planning Agreement – Section 7.4(3)(c)	See clause 5 and Schedule 1 .
Applicability of section 7.11 of the Act – Section 7.4(3)(d)	Not excluded - see clause 6
Applicability of section 7.12 of the Act – Section 7.4(3)(d)	Not excluded - see clause 6
Applicability of Division 7.1, Subdivision 4 of the Act – Section 7.4(3)(d)	Not excluded - see clause 6
Whether benefits are to be taken into consideration under section 7.11 – Section 7.4(3)(e)	Not taken into account - see clause 6
Mechanism for dispute resolution – Section 7.4(3)(f)	See clause 9
Enforcement of the Planning Agreement – Section 7.4(3)(g)	See clause 10
Registration of the Planning Agreement – Section 7.4(3)(g), section 7.6	See clause 7
No obligation to grant consent or exercise functions – Section 7.4(9)	See clause 14.6

Executed as deed

Executed for and on behalf of **North**)
Sydney Council ABN 32 353 260 317 by)
its authorised delegate in accordance with)
a resolution of the Council dated [...])
)
)

.....
Signature of witness

.....
Signature of Authorised Delegate

.....
Print name of witness

.....
Print name and position of Authorised
Delegate

Executed for and on behalf of **Sydney**)
Metro ABN 12 354 063 515 by its)
authorised delegate in accordance with)
delegation made on [date]:)
)
)

.....
Signature of Witness

.....
Signature of Authorised Delegate

.....
Print name of Witness

.....
Print name and position of Authorised
Delegate

Annexure A Proposed Community Space (Intended for Childcare Facility)

Part A: Proposed Community Space – General Specifications

The Proposed Community Space must be at least 900 square metres, including indoor floor space of at least 450sqm and an outdoor area of at least 450sqm and located at ground floor level of the podium.

The Proposed Community Space Stratum Lot must include six dedicated car parking spaces within the basement and associated access to those spaces and lift access to the ground level.

The Proposed Community Space must be constructed as a Cold Shell in accordance with Part B of this Annexure.

Part B: Proposed Community Space - Cold Shell Construction

The internal components of the Space are to comprise a standard of construction which denotes a space with an unfinished interior that includes, but is not limited to, the following elements:

- (a) electrical distribution board;
- (b) emergency lighting;
- (c) fire and smoke detection devices and fire extinguishers;
- (d) fire sprinklers;
- (e) smoke management system;
- (f) sewer connection;
- (g) heating, ventilation and air-conditioning; and
- (h) water connection
- (i) telecommunications connection
- (j) access to one lift and accompanying shaft to a finished level.

The external components of the Space are to comprise a standard of construction which denotes a space with an unfinished surface that includes, but is not limited to, the following elements:

- (a) water connection;
- (b) boundary fencing to the site;
- (c) stormwater connection; and
- (d) finished and marked car parking sites.

Part C: Proposed Community Space – Fitout & Embellishment

A monetary contribution is to be provided to Council in accordance with Clause 5 and Schedule 1 of this Agreement to enable the fitout of the Proposed Community Space.

Annexure C Through Site Link

The objectives and specification for Through -Site Link to be consistent with those specified within *North Sydney Development Control Plan 2013* as it applies to the Land.

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

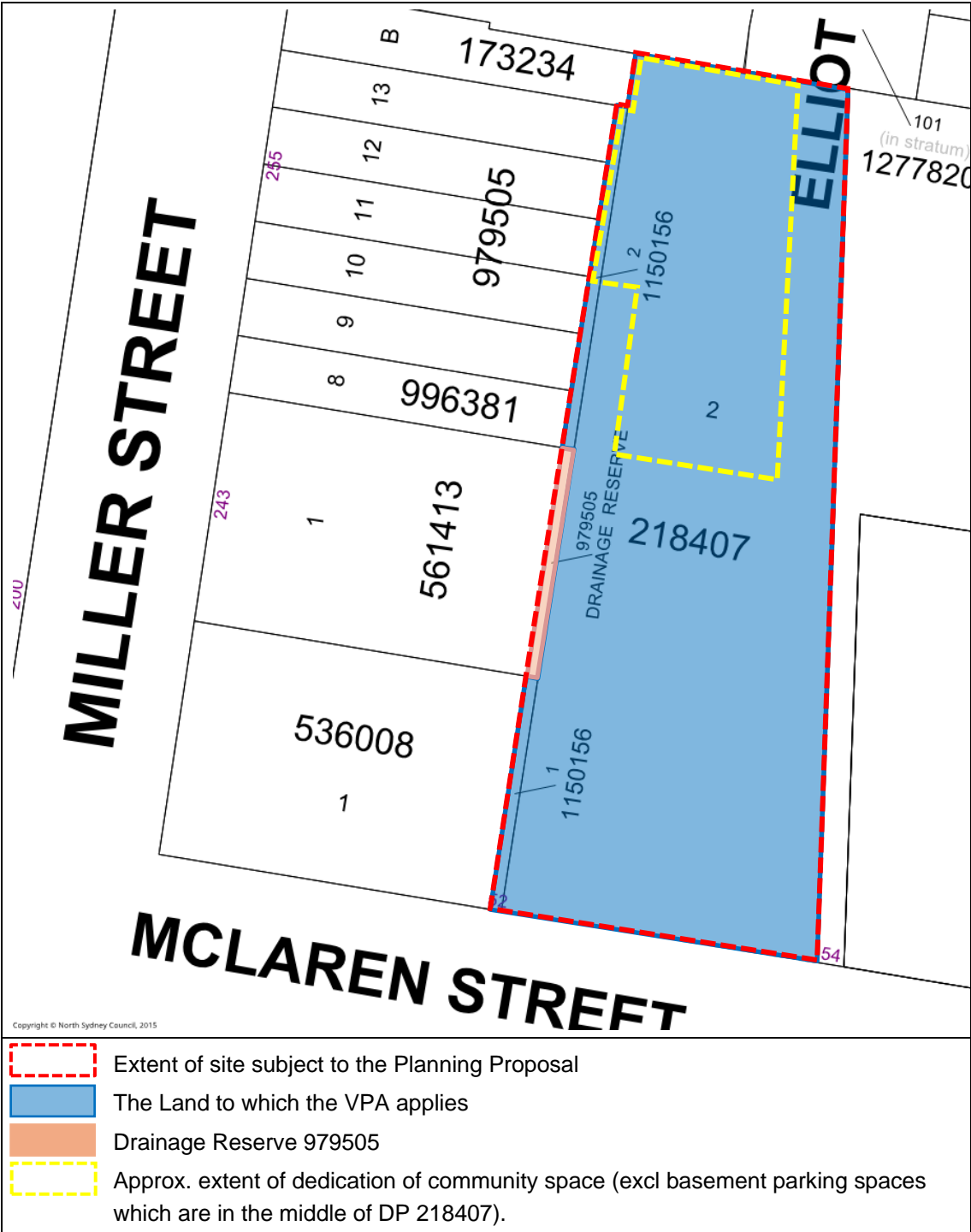
The Planning Agreement requires the works and grant of the easement to be completed before the issue of an **occupation certificate** for the Development. The registration of the Planning Agreement and the provision of a Security for the obligations under the Planning Agreement must be provided prior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

Annexure E Plan showing Land



Parties

Address [Address]

Address [Address]

Address [Address]

- A. The Council and the Developer are parties to the Original Agreement.
- B. The Original Agreement relates to the whole of the Land.
- C. The Developer proposes to sell the Land to the Transferee.
- D. The Developer wishes to assign its rights and obligations under the Original Agreement to the Transferee.
- E. The parties to this deed have agreed to the novation of the obligations under the Original Agreement to the Transferee.

Land has the meaning given to that term in the Original Agreement.

Original Agreement means the voluntary planning agreement made under section 7.4 of the Act dated [date].

Required Obligations means the obligations of the Developer under the terms of the Original Agreement.

1.2 References to certain general terms

In this deed unless the contrary intention appears:

- (a) a reference to this deed or another instrument includes any variation or replacement of them;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (c) the singular includes the plural and vice versa;
- (d) the word person includes a firm, body corporate, an unincorporated association or an authority;
- (e) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and assigns;
- (f) an agreement, representation or warranty on the part of or in favour of two or more persons binds or is for the benefit of them jointly and severally;
- (g) a reference to anything (including, without limitation, any amount) is a reference to the whole or any part of it and a reference to a group of persons is a reference to anyone or more of them;
- (h) "include" in any form when introducing a list of items does not limit the meaning of the words to which the list relates to those items or to items of a similar nature; and
- (i) capitalised terms which are used in this deed but are not otherwise defined have the meaning given to them in the Original Agreement.

1.3 Headings

Headings are inserted for convenience and do not affect the interpretation of this deed.

2 Novation

2.1 Original Agreement

Subject to clause 2.4 and with effect from the Effective Date:

- (a) the Transferee is substituted for the Developer as a party to the Original Agreement, and agrees to perform the Required Obligations of the Developer;
- (b) the Transferee will be bound by the Original Agreement, and will be entitled to the benefit of the Original Agreement, as if the Transferee was a party to the Original Agreement instead of the Developer;
- (c) all references to the Developer in the Original Agreement shall be taken to be a reference to the Transferee; and
- (d) the Developer is released and discharged from all obligations and liabilities, and from all claims (whether for Costs, Legal Costs, damages, fees or otherwise),

arising under the Original Agreement insofar as the Original Agreement relates to the Required Obligations.

2.2 Performance by Transferee

The Transferee must perform all the obligations of the Developer, under the Original Agreement, whether or not the relevant obligations relate to works performed prior to the date of this deed, including, but not limited to:

- (a) the delivery of all public benefits to Council (including the Contribution Items); and
- (b) the provision of all Securities to Council.

2.3 Release of Securities

The parties expressly acknowledge and agree that:

- (a) Council will release any Security provided to Council under the provisions of the Original Agreement to the party that provided the Security (or as otherwise directed by that party in writing) within 14 days after the provision of replacement Security by the Transferee; and
- (b) nothing in this clause 2.3 will be read or construed as a waiver of any right held by Council relating to or arising from the performance of the Original Agreement by the Developer before the date of this Deed.

2.4 Liability before Effective Date

- (a) The Developer warrants to the Council and the Transferee that, up to and including the Effective Date, it has complied with all its obligations under the Original Agreement due as at the Effective Date.
- (b) Notwithstanding any other provision of this deed, the Developer is not released, relieved or discharged from liability under the Original Agreement before the Effective Date, or in relation to any breach of any provision of the Original Agreement occurring before the Effective Date (to the extent that it is not remedied by the Effective Date) in so far as the Original Agreement relates to the Required Obligations.

3 Affirmation of the Original Agreement

The Original Agreement will be read and construed subject to this deed, and in all other respects the provisions of the Original Agreement are ratified and confirmed, and, subject to the variation and novation contained in this deed, the Original Agreement will continue in full force and effect.

4 GST

Where a supply made under this deed gives rise to a liability for GST, the consideration to be provided for that supply (other than under this clause) shall be increased by an additional amount equal to the GST payable on the supply. The additional amount must be paid, and the supplier must provide a tax invoice, at the same time as the other consideration for that supply is to be provided under this deed. Terms used in this clause have the meanings in the *A New Tax System (Goods and Services Tax) Act 1999*.

5 Stamp duty and costs

- (a) The Developer and the Transferee are jointly and severally liable for the Council's legal costs of and incidental to the negotiation, preparation and execution of this deed, and must reimburse the Council for such legal costs promptly on demand.
- (b) The Transferee will pay all stamp duty arising directly or indirectly from this deed.

6 General

6.1 Further Acts

- (a) Each party will take all steps, execute all deeds and do everything reasonably required by any other party to give effect to any of the actions contemplated by this deed.
- (b) This deed binds each party which signs it even if other parties do not, or if the execution by other parties is defective, void or voidable.

6.2 Authority and power

- (a) Each party represents and warrants that:
 - (i) it has the full power and authority to enter into and to perform its obligations under this deed;
 - (ii) the execution, delivery and performance by it of this deed does not and will not contravene any provision of:
 - (A) any Law, authorisation, ruling, consent, judgment, order or decree of any Authority; or
 - (B) its constituent documents,
 and does not and will not result in a breach or default in any material respect under any agreement binding it; and
- (b) any authorisations required in connection with the execution, delivery and performance by it and the validity and enforceability against it of this deed have been obtained or effected and are in full force, and there has been no material default by it in the performance of any of the terms and conditions of any of those authorisations.
- (c) [OPTIONAL CLAUSE – If Transferee is a trustee] - The Transferee entering into this deed as a trustee warrants that:
 - (i) it holds the Land on trust for the [name of trust] (**Trust**);
 - (ii) it has the power under the [name of trust deed] (**Trust Deed**):
 - (A) enter and deliver this Deed; and
 - (B) perform its obligations under this Deed;
 - (iii) all action required by the Trust Deed to authorise:
 - (A) its execution and delivery of this Deed; and
 - (B) the performance of its obligations under this Deed,
 has been taken;
 - (iv) the execution by it of this Deed and the performance by it of its obligations or the exercise of its rights under this Deed does not contravene the Trust Deed;

- (v) it is the sole trustee and no action is currently taking place or pending to remove it as trustee of the Trust or appoint a new or additional trustee of the Trust;
 - (vi) it has a right to be fully indemnified out of the assets of the Trust in respect of the obligations incurred by it under this Deed and it has not released, disposed of or restricted its equitable lien over the Trust which secures that indemnity;
 - (vii) it is not aware of any reason why the assets of the Trust Deed might be insufficient to satisfy or discharge the obligations and liabilities incurred by it under this Deed;
 - (viii) it is not and has never been in breach of the Trust Deed;
 - (ix) it has complied with its obligations in connection with the Trust;
 - (x) the Trust has not been terminated and no action is pending to terminate the Trust; and
 - (xi) no vesting date for Trust has been determined.
- (d) The Transferee indemnifies the Council, and agrees to keep the Council indemnified, in respect of any loss or liability in any way connected with a breach of a warranty in clause 6.2(c).

6.3 Invalidity

- (a) A word or provision must be read down if:
 - (i) this deed is void, voidable, or unenforceable if it is not read down;
 - (ii) this deed will not be void, voidable or unenforceable if it is read down; and
 - (iii) the provision is capable of being read down.
- (b) A word or provision must be severed if:
 - (i) despite the operation of clause Annexure F6.3(a), the provision is void, voidable or unenforceable if it is not severed; and
 - (ii) this deed will be void, voidable or unenforceable if it is not severed.
- (c) The remainder of this deed has full effect even if clause Annexure F6.3(b)(i) or (ii) applies.

6.4 Notices

Any notice given under or in connection with this deed (**Notice**):

- (a) must be in writing;
- (b) must be addressed and delivered to the intended recipient by hand, by post, or by email at the address below or to the latest address for the party as notified in writing:
 - (i) to Council: [Address]
Email: [email]
Attention: [contact]

(ii) to Developer [Address]
Email: [email]
Attention: [contact]

(iii) to Transferee [Address]
Email: [email]
Attention: [contact]

- (c) is taken to be given and received:
- (i) in the case of hand delivery, when delivered;
 - (ii) in the case of email, if an “undelivered receipt” is not received; and
 - (iii) in the case of delivery by post, five Business Days after the date of posting (if posted to an address in the same country) or seven Business Days after the date of posting (if posted to an address in another country).
- (d) if under clause (c) a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent, or later than 5:00 pm (local time), it is taken to have been given or made at the start of business on the next Business Day in that place.

6.5 Assignment

A party may not assign or otherwise deal with their rights under this deed or allow any interest in them to arise or be varied without the consent of the other parties.

6.6 Governing law

This deed is governed by the law in force in the place specified in the New South Wales and the parties submit to the non-exclusive jurisdiction of the courts of that place.

6.7 Counterparts

This deed may be executed electronically and may be executed in any number of counterparts and the counterparts taken together constitute one and the same instrument.

Executed as a deed

[Insert execution blocks]