

# Voluntary Planning Agreement

DRAFT FOR EXHIBITION

North Sydney Council

*ABN 32 353 260 317*

45 McLaren Pty Limited

*ACN 641 204 024*

Proprietors Strata Plan 14598

*ABN 49 980 034 036*

**Newcastle**

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# Agreement

## Date

## Parties

### First party

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

### Second party

<b>Name</b>	45 McLaren Pty Limited ( <b>Developer</b> )
<b>ACN</b>	641 204 024
<b>Contact</b>	
<b>Telephone</b>	

### Third party

<b>Name</b>	Proprietors Strata Plan 14598 ( <b>Landowner</b> )
<b>ABN</b>	49 980 034 036
<b>Contact</b>	
<b>Telephone</b>	

## Background

- A. The Developer has the right to own the Land pursuant to an option agreement.
- B. On 22 October 2020, the Developer made an application to the Council for the Instrument Change as set out in Schedule 1 for the purposes of making a Development Application to the Council for Development Consent to carry out the Development on the Land.
- C. The Instrument Change application was accompanied by an offer by the Developer to amend the DCP to incorporate site specific controls as they apply to the Land to enable the appropriate redevelopment of the Land.
- D. The Instrument Change application was accompanied by an offer by the Developer to enter into this agreement to make Development Contributions towards the Public Facilities if that Development proceeds.
- E. The parties have agreed to enter into this agreement for the delivery of the Development Contributions, including an appropriate adjustment to the Development Contributions if more restrictive parking rates are imposed as proposed in the amendment to the DCP or if there is a requirement for the Developer to make state infrastructure contributions.
- F. The estimated value of the Development Contributions is set out in Annexure B.

## Operative part

### 1 Definitions

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

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

**Affordable Housing Unit** means a strata lot containing a 1 x two bedroom apartment in the Development to be dedicated to Council for the purposes of affordable housing in accordance with clause 6.4 of this agreement;

**Address** means a party's address set out in the Notices clause of this agreement;

**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 registered certifier 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 which must be denominated in Australian dollars and be an unconditional undertaking with all the following requirements. It must:

- (a) be signed and issued by an Australian Prudential Regulation Authority (**APRA**) regulated authorised deposit taking institution or an insurer authorised by APRA to conduct new or renewal insurance business in Australia;
- (b) have at all times an investment grade security rating from an industry recognised rating agency;
- (c) have no expiry or end date;
- (d) have the beneficiary as Council;
- (e) be irrevocable;
- (f) state either individually, or in total with other lodged compliant forms of security, the relevant minimum amount required to be lodged as security; and
- (g) state the purpose of the deposit required in accordance with this agreement;

**Business Day** means a day on which banks are open for general banking business in Sydney, excluding Saturdays and Sundays;

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

**Common Property** means the Common Property SP14598;

**Compliance Certificate** means a compliance certificate as defined under section 6.4 of the Act;

**Construction Terms** means the terms set out in Schedule 5;

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

**Current Car Parking Rate** is the maximum number of car parks calculated for the Development in accordance with the DCP as at 22 August 2022;

**Damages** means all liabilities, losses, damages, costs and expenses, including legal fees and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties;

**DCP** means the *North Sydney Development Control Plan 2013*;

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

**Development** means the redevelopment of the Land for the purpose of a multi-storey mixed residential and commercial building which relies on the Instrument Change;

**Development Application** has the same meaning as in the Act;

**Development Consent** has the same meaning as in the Act;

**Development Contribution** means a monetary contribution, the dedication of land free of cost or the provision of a material public benefit required under this agreement;

**Dwelling** has the same meaning as in LEP 2013 and, for the purposes of this agreement, does not include any dwellings to be dedicated for Affordable Housing;

**Easement Terms** means the terms of a public access easement set out in Schedule 3;

**Future Car Parking Rate** is the maximum number of car parks calculated for the Development in accordance with the DCP as at the date the first Development Consent for the Development is determined;

**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 the GST;

**Instrument Change** means an amendment to LEP 2013 in response to the Planning Proposal;

**Land** means Lots 1-18 (inclusive) and common property in SP 14598, known as 45 McLaren Street, North Sydney;

**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);

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

**Monetary Contribution** means a monetary contribution payable by the Developer in accordance with clause 6.1 as adjusted in accordance with clause 6.1(b) and clause 6.5;

**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;

**Planning Proposal** means a proposal to amend LEP 2013 in the manner described in Schedule 1, known as PP6/20 (Council reference) and PP-2022-1259 (Department of Planning and Environment reference) and subject to a Gateway Determination issued by the Department of Planning and Environment dated 1 June 2022 and as altered on 26 August 2022;

**Public Domain Works** means the public domain improvement works including footpaths, kerb and guttering and other Public Facilities as described in Schedule 4 and clause 6.3;

**Public Facilities** means infrastructure, facilities, amenities and services that serve a public purpose;

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

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

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

**Strata Plan** means a strata plan, a strata plan of subdivision or a strata plan of consolidation that is registered in accordance with the *Strata Schemes Development Act 2015*; and

**Through Site Link Land** means that part of the Land shown in Schedule 2 and clause 6.2;

## 2 Interpretation

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

- (a) **(documents)** a reference to this agreement or another document includes any document which varies, supplements, replaces, assigns or novates this agreement or that other document;
- (b) **(references)** a reference to a party, clause, paragraph, schedule or annexure is a reference to a party, clause, paragraph, schedule or annexure to or of this agreement;
- (c) **(headings)** clause headings and the table of contents are inserted for convenience only and do not affect interpretation of this agreement;
- (d) **(person)** a reference to a person includes a natural person, corporation, statutory corporation, partnership, the Crown and any other organisation or legal entity and



their personal representatives, successors, substitutes (including persons taking by novation) and permitted assigns;

- (e) **(party)** a reference to a party to a document includes that party's personal representatives, executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns;
- (f) **(president, CEO or managing director)** the president, CEO or managing director of a body or Authority means any person acting in that capacity;
- (g) **(requirements)** a requirement to do any thing includes a requirement to cause that thing to be done, and a requirement not to do any thing includes a requirement to prevent that thing being done;
- (h) **(including)** including and includes are not words of limitation, and a list of examples is not limited to those items or to items of a similar kind;
- (i) **(corresponding meanings)** a word that is derived from a defined word has a corresponding meaning;
- (j) **(singular)** the singular includes the plural and vice-versa;
- (k) **(gender)** words importing one gender include all other genders;
- (l) **(parts)** a reference to one or more things includes each part and all parts of that thing or group of things but nothing in this clause implies that part performance of an obligation constitutes performance of that obligation;
- (m) **(rules of construction)** neither this agreement nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting;
- (n) **(legislation)** a reference to any legislation or provision of legislation includes all amendments, consolidations or replacements and all regulations or instruments issued under it;
- (o) **(time and date)** a reference to a time or date in connection with the performance of an obligation by a party is a reference to the time and date in Sydney, Australia, even if the obligation is to be performed elsewhere;
- (p) **(joint and several)** an agreement, representation, covenant, right or obligation:
  - (i) in favour of two or more persons is for the benefit of them jointly and severally; and
  - (ii) on the part of two or more persons binds them jointly and severally;
- (q) **(writing)** a reference to a notice, consent, request, approval or other communication under this agreement or an agreement between the parties means a written notice, request, consent, approval or agreement;
- (r) **(replacement bodies)** a reference to a body (including an institute, association or Authority) 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 power or functions;
- (s) **(Australian currency)** a reference to dollars or \$ is to Australian currency;
- (t) **(month)** a reference to a month is a reference to a calendar month; and

- (u) (year) a reference to a year is a reference to twelve consecutive calendar months.

### 3 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 7 of this agreement summarises the requirements for planning agreements under s 7.4 of the Act and the way this agreement addresses those requirements.

### 4 Application of this agreement

This agreement applies to:

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

### 5 Operation of this agreement

- (a) This agreement commences on and from the date it is executed by all parties.
- (b) Despite clause 5(a), the obligations under clause 6 to deliver Development Contributions does not operate unless the Instrument Change is made.

### 6 Contributions to be made under this agreement

#### 6.1 Monetary Contribution

- (a) Subject to clause 6.1(b), the Developer will pay a monetary contribution to Council calculated in accordance with the following formula:  
  

$$\text{Monetary Contribution} = (\text{total Dwellings approved} - 18) \times \$34,000$$
- (b) If the Future Car Parking Rate is less than the Current Car Parking Rate, the Monetary Contribution will be reduced by  $\$60,000 \times (\text{number of car spaces required by the Current Car Parking Rate for the Development} - \text{number of car spaces required by the Future Car Parking Rate for the Development})$ .
- (c) The Monetary Contribution will be indexed in accordance with increases in the CPI from the date of this agreement to the date of payment.
- (d) The Monetary Contribution must be paid to Council prior to the issue of an Occupation Certificate for any part of the Development.
- (e) The Monetary Contribution must be paid by way of bank cheque in favour of Council or by deposit by means of electronic funds transfer into an account specified by Council.
- (f) The Monetary Contribution will be taken to have been made when:
  - (i) the bank cheque has been received; or
  - (ii) cleared funds or electronic funds have been deposited in the Council's bank account.
- (g) The parties agree and acknowledge that the Monetary Contribution will be used by the Council for the delivery of community infrastructure and public domain upgrades within the Ward Street Precinct, at the Council's discretion.
- (h) For the avoidance of doubt, nothing in this agreement requires the Council to:

- (i) spend the Monetary Contribution made under this agreement by a particular date; or
- (ii) refund to the Developer any contribution made under this agreement
- (i) Any guarantee amount specified in clause 11.2 or in any other part of this agreement, is to be adjusted to reflect the monetary contribution determined in line with clause 6.1(b) and clause 6.5.

## 6.2 Through Site Link

- (a) The Developer will, at no cost to Council, register against the title to the Land:
  - (i) a covenant prohibiting any building or structures, including pillars, other than structures approved by the Council (acting reasonably) for the purposes of enhancing public domain areas, to be constructed on the Through Site Link Land; and
  - (ii) an easement in gross burdening the Through Site Link Land in favour of the Council permitting public access generally in accordance with the Easement Terms.
- (b) Any requirement to register an easement, covenant or other instrument against the title to the Land will be satisfied when the Developer provides to the Council a copy of the relevant title search showing the registration of the instrument.
- (c) Any covenant required under clause 6.2(a)(i) must be registered prior to the issue of the first Construction Certificate for any building on the Land forming part of the Development.
- (d) Any easement, required under clause 6.2(a)(ii) must be registered prior to the issue of an Occupation Certificate for any building on the Land forming part of the Development.
- (e) The parties agree that the proposed covenant and easement under this clause will serve the following public purposes:
  - (i) To increase the amount of and improve existing public open space areas in the vicinity of the Land.
  - (ii) To improve pedestrian circulation and the amenity of the public domain in the vicinity of the Land.
- (f) The Developer will design and construct works to the Through Site Link Land for the purposes of creating a publicly accessible walkway in accordance with:
  - (i) the technical requirements in the DCP;
  - (ii) Council's *Public Domain Style Manual and Design Codes and Infrastructure Specification Guide*; and
  - (iii) any development consent granted for those works.
- (g) The works required under clause 6.2(f) will be completed prior to the issue of an Occupation Certificate for any part of the Development.
- (h) The parties acknowledge that the obligations under this clause 6.2 include essential components of the Development. The parties acknowledge that., under this agreement, the Development is required to provide a through site link in accordance with this clause 6.2.

### 6.3 *Public Domain Works*

- (a) The developer will carry out public domain improvement works including footpaths, curb and guttering to the land shown in Schedule 4.
- (b) The Developers will carry out the Public Domain Works in accordance with:
  - (i) the Construction Terms;
  - (ii) the technical requirements in the DCP;
  - (iii) Council's *Public Domain Style Manual and Design Codes and Infrastructure Specification Guide*; and
  - (iv) any development consent granted for those works.
- (c) The Public Domain Works will be taken to have been completed for the purposes of this agreement when Council issues a Compliance Certificate for those works in accordance with the Construction Terms.
- (d) The Public Domain Works must be completed prior to the issue of an Occupation Certificate for the Development or any part of the Development.
- (e) The parties agree and acknowledge that the Works serve the public purpose of providing Public Facilities and improving the public domain in the locality of the Development.

### 6.4 *Affordable Housing*

- (a) Prior to the issue of an Occupation Certificate for the Development or any part of the Development, the Developer must, at no cost to Council construct, finish and fit out the Affordable Housing Unit as part of the Development, in accordance with the Construction Terms and any Development Consent granted for the Development.
- (b) Within 20 Business Days after:
  - (i) the issue of an Occupation Certificate for the Affordable Housing Unit; or
  - (ii) the registration of a Strata Plan for any part of the Development,
 whichever occurs later, the Developer must transfer the Affordable Housing Unit to the Council and so that immediately on transfer, the Council will have an estate in fee simple in possession, freed and discharged from all estates, interests, trusts, restrictions, dedications, reservations, rights, charges, rates, strata levies and contracts, except as may be permitted by Council.
- (c) The obligations under clause 6.4(a) will be taken to have been fulfilled for the purposes of this agreement when Council issues a Compliance Certificate for the construction and fit out of the Affordable Housing Unit.
- (d) The obligation under clause 6.4(b) will be taken to have been fulfilled for the purposes of this agreement when the transfer of the Affordable Housing Unit to Council is shown on the Register.
- (e) The parties acknowledge and agree that the Affordable Housing Unit is to be constructed, finished and dedicated to Council under this agreement for the purposes of the provision of affordable housing by Council or by its chosen community housing provider, at Council's sole discretion.

- (f) The Developer must, in accordance with the provisions of the Construction Terms, ensure that, on transfer of the Affordable Housing Unit, Council will have the benefit of any defects liability warranty given by a builder for the Development and the Affordable Housing Unit, together with any other warranties and guarantees applicable to other apartments in the Development.

## 6.5 *Additional Infrastructure Contributions*

- (a) In the event that Development Consent has not been granted and the Monetary Contributions in clause 6 of this agreement have not been made under this agreement and either:
  - (i) Any additional Special Infrastructure Contribution (SIC) or Regional Infrastructure Contribution (RIC) determination made under Part 7, Division 7.1, Subdivision 4 of the Act or any other similar state or regional infrastructure contribution applies to the Land and the Development which imposes a requirement for the Developer to pay a SIC or a RIC in relation to the Development or the Land; or
  - (ii) LEP 2013, following the Instrument Change, contains a provision requiring satisfactory arrangements for the provision of contributions to designated state infrastructure,

### **(the additional infrastructure contributions)**

the total value of the Monetary Contributions under clause 6.1 of this agreement is to be reduced by an amount that is equal to the amount of the additional infrastructure contributions until the value of the Monetary Contributions provided under clause 6.1 reaches \$0.

## 7 *Application of s 7.11, s 7.12 and s 7.24 of the Act*

- (a) This agreement does not exclude the application of section 7.11 of the Act to the Development.
- (b) This agreement does not exclude the application of section 7.12 of the Act to the Development.
- (c) This agreement does not exclude the application of section 7.24 of the Act to the Development.
- (d) The benefits under this agreement are not to be taken into consideration in determining a development contribution under section 7.11 of the Act.

## 8 *Registration of this agreement*

### 8.1 *Landowner Interest*

- (a) The Landowner represents and warrants to the Council that on the date of this agreement it is the registered proprietor of the Common Property.
- (b) The Developer represents and warrants that
  - (i) it is entitled to become the registered proprietor of the Land in accordance with option agreements it has entered into with the owners of the lots in SP 14958;
  - (ii) it has lodged and will maintain a caveat over the Land to protect its interest under the option agreements; and

- (iii) it is entitled to require the owners of the Land to consent to the registration of this agreement against all lots comprising the Land.

## 8.2 *Registration of this agreement*

- (a) 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.
- (b) The Developer must, at its own expense, 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 in writing addressed to NSW Land Registry Services of each person who:
    - (A) has an estate or interest in the Land registered under the *Real Property Act 1900* (NSW); or
    - (B) is seized or possessed of an estate or interest in the Land; and
  - (ii) the execution of any documents,
 to enable the registration of this agreement in accordance with this clause 8.2.
- (c) The Developer must, at its own expense, 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 20 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.
- (d) The Landowner consents to the registration of this agreement against the title to the Common Property and warrants that, as at the date of this agreement, the Landowner has resolved to enter into this agreement and consent to this agreement being registered against the title to the Common Property.
- (e) If the strata scheme SP14598 is terminated, this agreement must remain registered on any title created on termination and, if this agreement is removed from the Register, the Developer agrees to take all action without delay to have this agreement registered.

## 8.3 *Removal from Register*

The Developer may request, at its own cost, that Council 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.

## 8.4 *Caveat*

- (a) The Landowner acknowledges and agrees that:
  - (i) when this agreement is executed, the Council will have acquired and the Landowner 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 that interest;

- (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) The Council must, at the Developer's cost, register a withdrawal of any caveat in respect of the Land within five (5) Business Days after the Developer complies with clause 8.2 and must not lodge any other caveats on the titles to any of the Land, other than in accordance with clause 8.4(c).
- (c) The Developer agrees that:
  - (i) it will notify the Council that any Strata Plan for the Development has been registered within 5 Business Days of registration; and
  - (ii) it will not object to Council lodging a caveat in the relevant folios of the Affordable Housing Unit once the Strata Plan is registered, nor will it seek to remove any such caveat lodged by Council.

## 9 Review of this agreement

- (a) This agreement may be reviewed or modified by agreement between the parties using their best endeavours and acting in good faith.
- (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.

## 10 Dispute Resolution

### 10.1 *Reference to Dispute*

If a dispute arises between the parties in relation to this agreement, the parties must not commence any court proceedings relating to the dispute unless the parties have complied with this clause, except where a party seeks urgent interlocutory relief.

### 10.2 *Notice of Dispute*

The party wishing to commence the dispute resolution process must give written notice (**Notice of Dispute**) to the other parties of:

- (a) the nature of the dispute,
- (b) the alleged basis of the dispute, and
- (c) the position which the party issuing the Notice of Dispute believes is correct.

### 10.3 *Representatives of Parties to Meet*

- (a) The representatives of the parties must promptly (and in any event within 14 business days of the Notice of Dispute) meet in good faith to attempt to resolve the notified dispute.
- (b) The parties may, without limitation:

- (i) resolve the dispute during the course of that meeting,
- (ii) agree that further material or expert determination in accordance with clause 10.6 about a particular issue or consideration is needed to effectively resolve the dispute (in which event the parties will, in good faith, agree to a timetable for resolution); or
- (iii) agree that the parties are unlikely to resolve the dispute and, in good faith, agree to a form of alternative dispute resolution (including expert determination, arbitration or mediation) which is appropriate for the resolution of the relevant dispute.

#### 10.4 *Further Notice if Not Settled*

If the dispute is not resolved within 14 Business Days after the nominated representatives have met, either party may give to the other a written notice calling for determination of the dispute (Determination Notice) by mediation under clause 10.5 or by expert determination under clause 10.6.

#### 10.5 *Mediation*

If a party gives a Determination Notice calling for the dispute to be mediated:

- (a) the parties must agree to the terms of reference of the mediation within 15 Business Days of the receipt of the Determination Notice (the terms shall include a requirement that the mediation rules of the Institute of Arbitrators and Mediators Australia (NSW Chapter) apply;
- (b) the mediator will be agreed between the parties, or failing agreement within 15 Business Days of receipt of the Determination Notice, either Party may request the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter) to appoint a mediator;
- (c) the mediator appointed pursuant to this clause 10.5 must:
  - (i) have reasonable qualifications and practical experience in the area of the dispute; and
  - (ii) have no interest or duty which conflicts or may conflict with his or her function as a mediator he or she being required to fully disclose any such interest or duty before his or her appointment;
- (d) the mediator shall be required to undertake to keep confidential all matters coming to his or her knowledge by reason of his or her appointment and performance of his or her duties;
- (e) the parties must within 15 Business Days of receipt of the Determination Notice notify each other of their representatives who will be involved in the mediation (except if a resolution of the Council is required to appoint a representative, the Council must advise of the representative within 5 Business Days of the resolution);
- (f) the parties agree to be bound by any mediation settlement and may only initiate judicial proceedings in respect of a dispute which is the subject of a mediation settlement for the purpose of enforcing that mediation settlement; and
- (g) in relation to costs and expenses:
  - (i) each party must bear its own professional and expert costs incurred in connection with the mediation; and



- (ii) the costs of the mediator must be shared equally by the parties unless the mediator determines that a party has engaged in vexatious or unconscionable behaviour in which case the mediator may require the full costs of the mediation to be borne by that party.

#### 10.6 *Expert determination*

If the dispute is not resolved under clause 10.3 or clause 10.5, or the parties otherwise agree that the dispute may be resolved by expert determination, the parties may refer the dispute to an expert, in which event:

- (a) the dispute must be determined by an independent expert in the relevant field:
  - (i) agreed upon and appointed jointly by the parties; and
  - (ii) in the event that no agreement is reached or no appointment is made within 20 Business Days of the agreement to refer the dispute to an expert, appointed on application of a party by the then President of the Law Society of New South Wales;
- (b) the expert must be appointed in writing and the terms of the appointment must not be inconsistent with this clause;
- (c) the determination of the dispute by such an expert will be made as an expert and not as an arbitrator and will be in writing and contain the reasons for the determination;
- (d) the expert will determine the rules for the conduct of the process but must conduct the process in accordance with the rules of natural justice;
- (e) each party must bear its own costs in connection with the process and the determination by the expert and must share equally the expert's fees and costs; and
- (f) any determination made by an expert pursuant to this clause is final and binding upon the parties except unless:
  - (i) within 20 Business Days of receiving the determination, a party gives written notice to the other party that it does not agree with the determination and commences litigation; or
  - (ii) the determination is in respect of, or relates to, termination or purported termination of this agreement by any party, in which event the expert is deemed to be giving a non-binding appraisal.

#### 10.7 *Litigation*

If the dispute is not finally resolved in accordance with this clause 10, then either party is at liberty to litigate the dispute.

#### 10.8 *No suspension of obligations*

Subject to any interlocutory order obtained under clause 10.1, the referral to or undertaking of a dispute resolution process under this clause 10 does not suspend the parties' obligations under this agreement.

### 11 *Enforcement*

#### 11.1 *Default*

- (a) In the event a party considers another party has failed to perform and fulfil an obligation under this agreement, it may give notice in writing to the other party

(**Default Notice**) giving all particulars of the matters in respect of which it considers default has occurred and by such notice require the default to be remedied within a reasonable time not being less than 20 Business Days.

- (b) In determining a reasonable time, regard must be had to both the nature of the default and the work or other action required to remedy it and whether or not the continuation of the default constitutes a public nuisance or raises other circumstances of urgency or emergency.
- (c) If a party disputes the Default Notice it may refer the dispute to dispute resolution under clause 10 of this agreement.

## 11.2 *Bank Guarantee*

- (a) Prior to the issue of a Construction Certificate for any part of the Development, or within 90 days of the issue of a Development Consent for the Development (whichever occurs first), the Developer must provide to the Council a Bank Guarantee or Bank Guarantees in the amount of:
  - (i) \$2,278,000, or any adjusted amount determined in accordance with clause 6.1(b) or clause 6.5 to secure the delivery of the Monetary Contribution; and
  - (ii) \$1,000,000 to secure the works associated with the Development Contributions under clause 6.2, 6.3 and 6.4 of this Agreement.
- (b) The Council may call on a Bank Guarantee provided under this clause if:
  - (i) the Developer is in material or substantial breach of this agreement and has failed to rectify the breach within a reasonable period of time after having been given reasonable notice (which must not be less than 21 Business Days) in writing to do so in accordance with clause 11.1 of this agreement; or
  - (ii) the Developer becomes insolvent.
- (c) Within 20 Business Days of each 12 month anniversary of a Bank Guarantee provided under clause (a), the Developer must provide Council with one or more replacement Bank Guarantees (**replacement Bank Guarantee**) in an amount calculated in accordance with the following:

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

Where:

A is the amount of the replacement Bank Guarantee,

B is the amount of the Bank Guarantee to be replaced,

C is the CPI for the quarter ending immediately before the date of the Bank Guarantee to be replaced,

D is the CPI for the quarter ending immediately before the date of the replacement Bank Guarantee,

provided A is greater than B.

- (d) On receipt of a replacement Bank Guarantee provided under clause 11.2(c), the Council must release and return to the Developer, as directed, the Bank Guarantee that has been replaced as soon as reasonably practicable.

- (e) At any time following the provision of a Bank Guarantee under this clause, the Developer may provide the Council with one or more replacement Bank Guarantees totalling the amount of all Bank Guarantees required to be provided under this clause for the time being. On receipt of such replacement Bank Guarantee, the Council must release and return to the Developer, as directed, the Bank Guarantee(s) which it holds that have been replaced as soon as reasonably practicable.
- (f) Subject to this clause and the provisions of this agreement, the Council may apply the proceeds of a Bank Guarantee in satisfaction of:
  - (i) any obligation of the Developer under this agreement to deliver the Development Contributions, and
  - (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;

and for the purposes of satisfying any obligations of the Developer under this agreement may enter the Land and carry out any works on the Land.

- (g) The Council must promptly return a Bank Guarantee provided under this clause if requested by the Developer and the Developer has either:
  - (i) satisfied all obligations under this agreement, including any obligation to provide a defects liability security under the Construction Terms; or
  - (ii) satisfied the obligations to which the Bank Guarantee relates and received written notice from Council (acting reasonably) that Council holds sufficient Bank Guarantees to secure outstanding obligations under this agreement.
- (h) For the avoidance of doubt, the Developer may direct Council in writing to continue to hold a Bank Guarantee in satisfaction of the requirement to submit a Bank Guarantee or Bond under the Construction Terms for defects liability.
- (i) Nothing in this clause 11.2 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 a Bank Guarantee.

### **11.3 Restriction on the issue of Certificates**

- (a) In accordance with section 6.8 of the Act and clause 21 of the Regulation (Certificate), a Construction Certificate for any part of the Development must not be issued unless Council has confirmed in writing that:
  - (i) the covenant required under clause 6.2(a) has been registered; and
  - (ii) Council has received the Bank Guarantee required under clause 11.2(a).
- (b) In accordance with section 6.10 of the Act and clause 48 of the Regulation (Certification), an Occupation Certificate for any part of the Development must not be issued unless the Council has confirmed in writing that:

- (i) the Monetary Contribution, calculated in accordance with clause 6.1(b) and clause 6.5 has been paid;
- (ii) the easement for public access required over the Through Site Link Land has been registered;
- (iii) the Public Domain Works have been completed;
- (iv) the works to construct the Affordable Housing Unit have been completed; and
- (v) any defects liability security required under the Construction Terms has been provided.

#### 11.4 Compulsory Acquisition

- (a) If the Developer does not grant the interest in the Through Site Link to Council as required by this Agreement, the Council may compulsorily acquire the relevant interest, in which case the Developer consents to the Council compulsorily acquiring that interest 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* and may call upon any Bank Guarantee provided under clause **Error! Reference source not found.** to cover any costs, including legal costs, incurred by the Council on acquisition of the interest.
- (b) If the Developer does not dedicate the Affordable Housing Unit to Council as required by this agreement, the Council may, once the Strata Plan is registered creating the Affordable Housing Unit, compulsorily acquire the Affordable Housing Unit, in which case the Developer consents to the Council compulsorily acquiring that land 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* and may call upon any Bank Guarantee provided under clause 11.2 to cover any costs, including legal costs, incurred by the Council on acquisition of the land.
- (c) Clauses 11.4(a) and 11.3(b) constitute an agreement for the purposes of section 30 of the *Land Acquisition (Just Terms Compensation) Act 1991*.
- (d) Except as otherwise agreed between the Developer and Council, the Developer must ensure the relevant land is 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 interest or land in accordance with clause 11.4(a) or clause 11.3(b).
- (e) 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 interest or land under clause 11.4(a) or clause 11.3(b).
- (f) 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 or land under clause 11.4(a) or clause 11.3(b) that are not or cannot be recovered by calling on a Bank Guarantee.

#### 11.5 General Enforcement

- (a) 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 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.

## 12 Assignment and Dealings

### 12.1 Assignment

- (a) The Developer is not to settle on the sale or assignment or novation of its interest under this agreement to another party (**Incoming Party**) unless before settlement the Developer:
  - (i) procures the execution by the Incoming Party of an agreement in favour of the Council on the same terms as this agreement;
  - (ii) delivers any replacement Bank Guarantees provided by the Incoming Party as required under this agreement; and
  - (iii) satisfies the Council that the Developer is not in breach of this agreement at the time of settlement of the sale, assignment or novation.
- (b) Any purported dealing in breach of this clause is of no effect.

### 12.2 Transfer of Land

- (a) Prior to any transfer, assignment or disposal of the whole or any part of their right, title or interest in the land (present and future) or in the Development to another person, the Landowner and Developer must ensure:
  - (i) they have, at no cost to the Council, first procured the execution by the Transferee of a deed of novation on reasonable terms acceptable to Council;
  - (ii) they are not in breach of this agreement; and
  - (iii) they agree to pay the Council's reasonable legal costs in relation to the transfer, assignment or disposition, including any costs in connection with legal advice about or the execution of the deed of novation.
- (b) Clause 12.2(a) does not apply to a transfer, assignment or disposition of the Landowner's interest in the Land to the Developer.

## 13 Approvals and consents

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 discretion, acting reasonably, and subject to any conditions determined by the party.

## 14 No fetter

### 14.1 Discretion

This agreement is not intended to operate to fetter, in any manner, the exercise of any statutory power or discretion of the Council, including, but not limited to, any statutory power or discretion of the Council relating to the Planning Proposal, Development

Application or any other application for Development Consent (all referred to in this agreement as a “**Discretion**”).

#### 14.2 *No fetter*

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:

- (a) They will take all practical steps, including the execution of any further documents, to ensure the objective of this clause is substantially satisfied,
- (b) In the event that (a) 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
- (c) 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.

### 15 Notices

#### 15.1 *Notices*

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

- (a) must be in writing and signed by a person duly authorised by the sender;
- (b) must be addressed as follows and delivered to the intended recipient by hand, by prepaid post or by email at the address below, or at the address last notified by the intended recipient to the sender after the date of this agreement:
  - (i) to North Sydney Council: 200 Miller Street, North Sydney 2060  
Email: council@northsydney.nsw.gov.au  
Attention: General Manager
  - (ii) to 45 McLaren Pty Ltd Suite 506, Level 5  
55 Miller Street, Pyrmont NSW 2009  
Email: info@podia.com.au  
Attention: Michael Grassi
  - (iii) to Proprietors Strata Plan Suite 506, Level 5  
SP 14598 55 Miller Street, Pyrmont NSW 2009  
Email: info@podia.com.au  
Attention: Michael Grassi
- (c) is taken to be given or made:
  - (i) in the case of hand delivery, when delivered;
  - (ii) in the case of delivery by post, three 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); and
  - (iii) in the case of delivery by email, when the sender receives an email acknowledgement from the recipient's information system showing the Notice

has been delivered to the email address stated above or when the Notice is first opened or read by the recipient, whichever occurs first; and

- (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.

## 15.2 *Address for Service*

If a party gives the other party 3 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 other party if it is delivered, posted or emailed to the latest address or email address.

# 16 General

## 16.1 *Relationship between 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.

## 16.2 *Time for doing acts*

- (a) 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.
- (b) 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.

## 16.3 *Further assurances*

Each party must promptly execute all documents and do all other things reasonably necessary or desirable to give effect to the arrangements recorded in this agreement.

## 16.4 *Variation*

A provision of this agreement can only be varied by a later written document executed by or on behalf of all parties and in accordance with the provisions of the Act.

## 16.5 *Counterparts*

This agreement may be executed in any number of counterparts. All counterparts taken together constitute one instrument.

#### 16.6 *Legal expenses, valuation costs and stamp duty*

- (a) The Developer must pay Council's reasonable legal costs incurred with the negotiation, preparation, execution, stamping and registering of this agreement, including the costs of obtaining any legal advice in connection with this agreement.
- (b) The costs referred to in clause 16.6(a) must be paid no later than 10 business days after receiving a demand from the Council to pay such costs.
- (c) The Developer agrees to pay Council any administrative fees as required by Council, acting reasonably, in connection with the administration of this agreement, including any fees imposed by the Department of Planning and Environment for lodgement of this agreement on the NSW Planning Portal.

#### 16.7 *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.

#### 16.8 *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.

#### 16.9 *Severability*

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. 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.

#### 16.10 *Invalidity*

- (a) A word or provision must be read down if:
  - (i) this agreement is void, voidable, or unenforceable if it is not read down;
  - (ii) this agreement 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 (a)**, the provision is void, voidable or unenforceable if it is not severed; and
  - (ii) this agreement will be void, voidable or unenforceable if it is not severed.
- (c) The remainder of this agreement has full effect even if **clause 16.10(b)** applies.

#### 16.11 *Waiver*

- (a) A right or remedy created by this agreement cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right or remedy does not constitute a waiver of that right or remedy, nor does a waiver



(either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.

- (b) 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. A waiver by a party is only effective if it is in writing. 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.

#### 16.12 GST

- (a) Words and expressions which are not defined in this agreement but which have a defined meaning in 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) 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.

#### 16.13 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.

#### 16.14 Section 10.7 Planning Certificate

- (a) The Developer acknowledges and agrees that the Council will include a notation that this agreement has been entered into on any Planning Certificate issued under section 10.7 relating to the Land.
- (b) Council will remove the notation as required under clause 16.14(a) in relation to the Land, upon the satisfactory delivery of all aspects of the contribution under this agreement.

#### 16.15 Explanatory Note

- (a) Annexure A contains the Explanatory Note relating to this agreement required by clause 205 of the Regulation.
- (b) Pursuant to clause 205(5) of the Regulation, the parties agree that the Explanatory Note is not to be used to assist in construing this agreement.

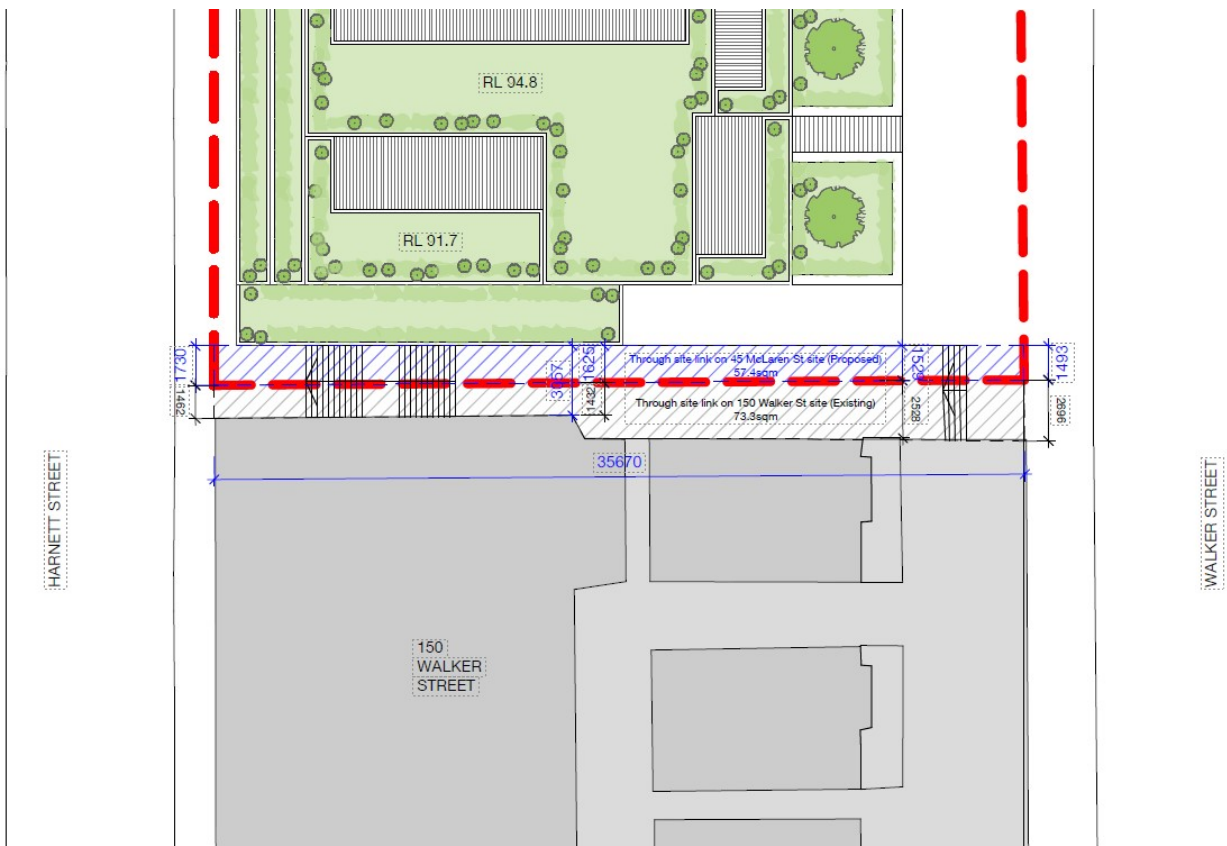
## Schedule 1                      Planning Proposal

The Developer has sought the following amendments to LEP 2013:

- (a) A change to the Land Zone Map referred to in clause 2.2 of LEP 2013 from R4 High Density Residential to B4 Mixed Use for the Land (or MU1 Mixed Use if the Employment Zone Reforms are implemented prior to the finalisation of this proposed amendment).
- (b) A change to the Height of Buildings Map referred to in Clause 4.3(2) of LEP 2013 to increase the maximum building height from 12m to part RL 103 and Part RL 115 for the Land. Relevantly, clause 4.3(2) of LEP 2013 provides that a building is not to exceed the maximum height shown on the Height of Buildings Map. The map relating to clause 4.3(2) currently provides a height limit of 12m for the Development Site.
- (c) A change to the Floor Space Ratio Map referred to in Clause 4.4(2) of LEP 2013 to allow a maximum floor space ratio of 6.25:1 for the Land. Relevantly, clause 4.4(2) of LEP 2013 provides that a maximum floor space ratio for a building on any land shown on the Floor Space Ratio Map. The map relating to clause 4.4(2) currently shows no maximum floor space ratio for the Land.
- (d) A change to the Non-residential Floor Space Ratio Map referred to in Clause 4.4A(2) of LEP 2013 to require a minimum non-residential floor space ratio of 1:1 for the Land. Relevantly, clause 4.4A(2) of LEP 2013 provides that a minimum non-residential floor space ratio for a building on any land shown on the Non-residential Floor Space Ratio Map. The map relating to clause 4.4A(2) currently shows no minimum non-residential floor space ratio for the Land.
- (e) Amend Clause 4.4A of LEP 2013 to enable residential accommodation to be permitted with development consent at the ground level of a future development on the Land, where the residential accommodation fronts Walker Street.
- (f) Amend Clause 6.12A of LEP 2013 to enable residential accommodation to be permitted with development consent at the ground level of a future development on the Land, where the residential accommodation fronts Walker Street.

Schedule 2

Through Site Link Land



## Schedule 3 Easement Terms

In this Schedule **Easement Site** means the Through Site Link Land.

- 1 The owner of the Easement Site grants to the Council and members of the public full and free right to go, pass and repass over the Easement Site at all times:
  - (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 Easement Site must, to the satisfaction of Council, acting reasonably:
  - (i) keep the Easement Site (including any services in, on or under the Easement Site) in good repair and condition;
  - (ii) maintain and repair the Easement Site and all improvements on the Easement Site;
  - (iii) keep the Easement Site clean and free from rubbish; and
  - (iv) maintain sufficient public liability insurance with a minimum amount of \$20,000,000 per claim covering the use of the Easement Site in accordance with the terms of this Easement.
- 3 The owner of the Easement Site 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 Easement Site, acting reasonably, considers to be a nuisance or a safety risk, the owner may either remove those members of the public, or arrange for their removal by an appropriate authority.
- 5 The owner of the Easement Site may erect safety signage and any other appropriate signage and may erect CCTV cameras in the Easement Site.
- 6 The owner of the Easement Site 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, bicycles and skateboards and the like in accordance with any rules made by an Owner's Corporation relating to the Easement Site.
- 7 The owner of the Easement Site 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 Easement Site 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 Easement Site or any improvements in, on or under the Easement Site; or
  - (b) security, public safety or evacuation of the Easement Site and adjoining buildings.

- 8 Subject to ensuring the provision of access in accordance with above clause 1 of this Schedule, the owner of the Easement Site may, provided any necessary planning approvals are obtained:
- (a) Carry out works in the Easement Site for the purposes of enhancing the Easement Site;
  - (b) Install or erect works of art, street furniture, or any other similar improvements at ground level within the Easement Site; and
  - (c) Use the Easement,
- in a manner consistent with Council's *North Sydney CBD Public Domain Strategy*, or any such policy of the Council that replaces that policy.
- 9 The Council is solely empowered to release this Easement.
- 10 This Easement may only be varied by written agreement between the Council and the owner of the Easement Site.

Schedule 4

Public Domain Works

# PUBLIC DOMAIN WORKS AREA



## Schedule 5 Construction Terms

### 1 Interpretation

For the purposes of this Schedule, the defined terms in clause 1 of this agreement and the Interpretation principles in clause 2 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 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 a Compliance Certificate is issued for the Works.

**Detailed Design** means the final specifications and finishes for the Works prepared in accordance with clause 5.1 of this Schedule and will include the 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.

**Works** means the Public Domain Works and the works required to fit out the Affordable Housing Unit as required under this agreement.

### 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 Detailed Design**

- (a) Prior to submitting any application for Approval of the Works, the Developer must consult with Council about the proposed location for the Affordable Housing Unit and must provide a copy of the draft Detailed Design to the Council for approval.
- (b) The Detailed Design for the Affordable Housing Unit must be equivalent in quality and standard to that of other two-bedroom apartments with the same vertical location in the Development (excluding any changes to the standard design requested by a purchaser of such an apartment) and be consistent with the scope of works set out in Schedule 6.
- (c) Within 15 Business Days of receiving the Detailed Design, Council will respond to the Developer with any suggested amendments to the Detailed Design.
- (d) Council and the Developer must act promptly and in good faith to consult with each other to prepare and agree the Detailed Design and must both act reasonably and with due expedition in their consultations with each other.
- (e) If the Detailed Design is not completed and agreed within 15 Business Days of Council providing its suggested amendments in accordance with clause 5.1(c) of this Schedule, to avoid possible delays to the completion of the Works, 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 or transferred to Council, provided that any decision made by Council under this clause:
  - (i) is consistent with the obligation 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.

5.2 Any acceptance by the Council of the Detailed Design under this Schedule is not to be taken as approval of or to any Construction Certificate for 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 and tradesmanlike workmanship when carrying out the Works.
- (b) The qualitative standard of the design and finishes for the Works must be no less than those described in the following documents:
  - (i) Any relevant Australian Standard;
  - (ii) Any relevant design standards or guidelines and any other requirements or policies applied by the Council from time to time in assessing the adequacy of any works or improvements proposed for the public domain or to be accessible to the public in accordance with this agreement.
- (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(b)(ii) of this Schedule from Council if the Council fails to deliver them to the Developer.

## 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 to inspect the Works.
- (d) In addition to carrying out inspections in accordance with the Inspection Schedule, the Council may enter the Land or any part of the Land on which the Works are located 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 are 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 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 have rectified a defect or non-compliance identified in a notice issued under 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 a Compliance Certificate to the Developer confirming that the Works have been completed; 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 **Error! Reference source not found.**, 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 Compliance Certificate 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 Compliance Certificate is issued in respect of the Works or any part of the Works deliver to the Council, complete and legible 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 a Compliance Certificate 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, either 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 either the Developer under clause 8.18.1(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 Bond or Bank Guarantee 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 deposit 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:
  - (i) the Developer fails to request the inspection, or
  - (ii) the Council does not carry out 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 Compliance Certificate for each item of the Works the Developer must deliver to the Council Bonds or Bank Guarantees in an amount equivalent to 2.5% of the construction costs for the particular item of Works.
- (b) The Council acknowledges 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 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 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 costs; and
- (c) 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 6                      Affordable Housing Unit

### 1            Nature

- (a)     The Affordable Housing Unit is to be a residential apartment, being a dwelling that is included in a residential apartment development within the meaning of the *State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development* as at the date of this agreement.
- (b)     The Affordable Housing Unit must be designed and constructed in accordance with any relevant Australian Standard and any relevant design standards or guidelines and any other requirements or policies applied by Council from time to time.
- (c)     The Developer must obtain any relevant standards (including design standards), specifications or guidelines and any other requirements or policies referred to in clause 1(b) of this schedule from Council.
- (d)     The Affordable Housing Unit must be constructed and fitted out using suitable new materials and proper and workmanlike manner so that they are diligently progressed to completion and must be constructed and fitted out to the same standard as other dwellings of a similar configuration and similar vertical location within the Development.

### 2            Identification

- (a)     Prior to lodgement of any Development Application for the Development, the Developer must consult with Council about the location of the Affordable Housing Unit and any specific requirements for the location of the dwelling having regard to accessibility and security.
- (b)     Subject to clause 2(c) of this Schedule, the Affordable Housing Unit will be identified by the Developer in a Development Application (or, where there is a proposed relevant change to a floor plan, a Modification Application) provided that, in making that identification, this Schedule must be complied with.
- (c)     The Developer may revise the identification by written notice to the Council (and that revised identification has effect) if:
  - (i)     the Development Consent to a Development Application is granted subject to a condition that materially modifies the floor plans of the Development; and
  - (ii)    the purpose of the revised identification is to make an identification that is equivalent to the identification in the Development Application, but adjusted to address the modified floor plans; and
  - (iii)   that the Affordable Housing Unit as revised meets the criteria specified in this Schedule.

### 3            Specifications

- (a)     Each dwelling must, at the time of dedication, be ready for occupation, including final:
  - (i)     finishes;
  - (ii)    plastering;
  - (iii)   tiling;

- (iv) windows and frames;
  - (v) cabinets and wardrobes;
  - (vi) fixtures and fittings;
  - (vii) kitchen stove and oven;
  - (viii) dishwasher;
  - (ix) sink; and
  - (x) toilet and shower facilities.
- (b) The quality (in terms of finish, fixtures and appliances) of the dwellings must be equivalent to that provided for other dwellings within the Development (or where such quality varies across the Development, such quality must be equivalent to that provided for other dwellings of a similar configuration and similar vertical location within the Development).
- (c) The dwelling must not be used as a display suite or temporary sales office prior to it being dedicated to Council.



## Schedule 7                      Summary of requirements (section 7.4)

Subject and subsection of the Act	Planning Agreement
<p><b>Planning instrument and/or Development Application – Section 7.4(1)</b></p> <p>The Developer has:</p> <p>Sought a change to an environmental planning instrument</p> <p>Made, or propose to make a Development Application</p> <p>Entered into an agreement with, or are otherwise associated with, a person to whom paragraph (a) or (b) applies</p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>
<p><b>Description of the land to which the planning Agreement applies – Section 7.4(3)(a)</b></p>	<p>See the definition of “Land” in clause 1.</p>
<p><b>Description of proposed change to environmental planning instrument or development – Section 7.4(3)(b)</b></p>	<p>See the definitions of “Development”, “Instrument Change” and “Planning Proposal” in clause 1 and Schedule 1.</p>
<p><b>The scope, timing and manner of delivery of contribution required by the Planning Agreement – Section 7.4(3)(c)</b></p>	<p>See clause 6</p>
<p><b>Applicability of section 7.11 of the Act – Section 7.4(3)(d)</b></p>	<p>The application of section 7.11 of the Act is not excluded in respect of the Development.</p>
<p><b>Applicability of section 7.12 of the Act – Section 7.4(3)(d)</b></p>	<p>The application of section 7.12 of the Act is not excluded in respect of the Development.</p>
<p><b>Applicability of section 7.24 of the Act – Section 7.4(3)(d)</b></p>	<p>The application of section 7.24 of the Act is not excluded in respect of the Development.</p>
<p><b>Mechanism for dispute resolution – Section 7.4(3)(f)</b></p>	<p>See clause 10.</p>
<p><b>Enforcement of the Planning Agreement – Section 7.4(3)(g)</b></p>	<p>See clause 8 and clause 11.</p>
<p><b>Registration of the Planning Agreement – Section 7.4(3)(g) and section 7.6</b></p>	<p>See clause 8.2</p>
<p><b>No obligation to grant consent or exercise functions – Section 7.4(9)</b></p>	<p>See clause 14.</p>

## Executed as an agreement

**Executed** for and on behalf of **North** )  
**Sydney Council** by its authorised )  
delegate in accordance with a resolution )  
of the Council dated [date]: )  
 )  
 )

.....  
Witness

.....  
Authorised Delegate

.....  
Name of Witness

.....  
Name of Authorised Delegate

[Insert further execution clauses for Developer and Landowner]

## Annexure A Explanatory Note

## Explanatory Note

### Exhibition of draft Voluntary Planning Agreement

### PP6/20: 45 McLaren Street, North Sydney

*Environmental Planning & Assessment Regulation 2021 (section 205)*

#### Planning Agreement

The purpose of this Explanatory Note is to provide a plain English Summary to support the notification of a draft voluntary 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 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 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

45 McLaren Pty Ltd (“**Developer**”) made an offer to North Sydney Council (“**Council**”) to enter into a Planning Agreement, in connection with a Planning Proposal for land at 45 McLaren Street, North Sydney. The Owners Corporation for the registered strata scheme SP14598 (“**Landowner**”) are also a party to the agreement.

#### Description of subject land

The land to which the Planning Agreement applies is Lots 1-18 (inclusive) and common property in SP 14598, known as 45 McLaren Street, North Sydney (“**the Land**”).

#### The development

The Planning Agreement relates to proposed development of the Land to which the Planning Agreement applies for redevelopment of the Land for the purpose of a multi-storey mixed residential and commercial building, which relies on the amendment to the planning controls set out in the Instrument Change.

#### 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 (PP6/20 -Council’s reference and PP-2022-1259 Department of Planning and Environment’s reference) which was issued a Gateway Determination) by the Department of Planning and Environment on 1 June 2022 (and as altered on 26 August 2022) seeks to amend the *North Sydney Local Environmental Plan 2013* (“**NSLEP 2013**”) to:

- (a) Rezone land from R4 High Density Residential to B4 Mixed Use (or MU1 Mixed Use if the Employment Zone Reforms are implemented prior to the finalisation of this proposed amendment).
- (b) Increase the maximum building height from 12m to part RL 103 and Part RL 115 for the Land.
- (c) Allow a maximum floor space ratio of 6.25:1 for the Land.
- (d) Require a minimum non-residential floor space ratio of 1:1 for the Land.
- (e) Amend Clause 4.4A of LEP 2013 to enable residential accommodation to be permitted with development consent at the ground level of a future development on the Land, where the residential accommodation fronts Walker Street.
- (f) Amend Clause 6.12A of LEP 2013 to enable residential accommodation to be permitted with development consent at the ground level of a future development on the Land, where the residential accommodation fronts Walker Street.

## **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 future development of the Land to benefit the community.

The public benefits include the provision of community facilities and services in the Ward Street Precinct, improvement of pedestrian amenity and the public domain within the locality of the Development and the provision of affordable housing as part of the Development.

### **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:

- (a) the payment of monetary contributions for each new dwelling built on the Land;
- (b) the provision of a publicly accessible through site link along the southern boundary of the site;
- (c) public domain improvement works; and
- (d) the dedication of an apartment in the Development to be used for the purposes of affordable housing.

The monetary contribution will be payable in the amount of \$34,000 per new dwelling, currently estimated to be about \$2,278,000 (plus indexation). The contribution may, however, be reduced in accordance with clause 6.1(b) and clause 6.5 of the Agreement pending the adoption of revised car parking rates in the DCP and any future additional contributions.

The monetary contribution will be used towards the delivery of community infrastructure and public domain upgrades within the Ward Street Precinct.

The monetary contribution will be payable prior to the issue of an Occupation Certificate for any part of the Development. The monetary contribution amount will be indexed in accordance with increases in the consumer price index from the date of agreement to the date of payment.

The through site link will be provided by means of a public access easement to be registered prior to the issue of an occupation certificate for the Development.

Public domain upgrade works to footpaths, kerb and guttering and improved landscaping around Walker Street, McLaren Street and Harnett Street as shown on the plans attached to the Planning Agreement will be required to be completed prior to the issue of an occupation certificate for the Development.

On completion of the Development (within 20 Business Days after an Occupation Certificate is issued or registration of a Strata Plan for any part of the Development, whichever occurs later), a two-bedroom apartment in the Development will be dedicated to Council to be provided as affordable housing.

The total value of the contributions is estimated to be \$5.8 million.

### **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 of public domain and open space and improvement of to meet the needs of the new residents and the community, as well as providing additional affordable housing in the area.

The Planning Agreement provides for the enforcement of the Planning Agreement by a suitable means if there is a breach by the Developer, including by calling on a bank guarantee to be provided under the agreement.

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.

Where it is relevant to a development application, a consent authority must take into consideration a planning agreement — or any draft planning agreement — that a developer has entered into or offered to enter into (respectively).

A planning agreement cannot impose an obligation on a planning authority to actually grant a development consent. A merit assessment of the proposed development must still be carried out.

## **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 public domain and open space improvements that will benefit existing and future residents and workers in the area and will provide additional affordable housing in the North Sydney Local Government Area. These contributions will have a positive impact on the public and will provide for the social and economic 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 will enable the Council to provide improved public amenities and facilities for new development in the locality of the Development.

The Planning Agreement will require development contributions that will improve public amenity and minimise development impacts.

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

The Planning Agreement offers a monetary contribution that will enable the Council to embellish and maintain public open space areas in the vicinity of the Development. The Planning Agreement will enable the Council to provide public domain and open space and affordable housing 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 monetary contribution, public domain works, through site link and works to construct the affordable housing unit be delivered before the issue of an **occupation certificate**.

The Planning Agreement provides that a **construction certificate** is not to be issued unless a restrictive covenant over the through-site link has been registered and a bank guarantee to secure the delivery of all contributions has been provided.

#### **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 B                      Estimated Value of Development Contributions

The Development Contributions to be delivered under this agreement have the following estimated value:

- (a) The estimated value attributed to the Monetary Contribution is \$2,278,000 subject to any adjustment determined in accordance with cl 6.1(b) and clause 6.5 (based on an additional 67 apartments);
- (b) The estimated value attributed to the extension of the through site link is \$1,800,000;
- (c) The estimated value attributed to the public domain improvement works is \$200,000; and
- (d) The estimated value attributed to the affordable housing contribution is \$1,500,000.

The values in this Annexure are estimates only and the Developer is required under this agreement to deliver the contributions even if the actual cost of the contributions is greater than the estimated value. Nothing in this Annexure may be taken as an agreement that the contributions to be delivered are capped or limited to an amount or value.