

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 and 11 April 2023) 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.