

North Sydney Council

Legal Document

LD 7427 Attached

Planning Agreement
(SSI 15_7400 Crows Nest Metro Over
Station Development – cond A15 - VPA)

Please ensure that this coversheet remains attached to this Legal Doc

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Planning Agreement

North Sydney Council

ABN 32 353 260 317

and

Sydney Metro

ABN 12 354 063 515

and

The Minister for Planning and Public Spaces

ABN 20 770 707 468

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THIS AGREEMENT is made on

16 June 2021

2021

BETWEEN:

- (1) **North Sydney Council** ABN 32 353 260 317 whose registered office is at 200 Miller Street, North Sydney 2060 (the **Council**);
- (2) **Sydney Metro** ABN 12 354 063 515 of Level 43, 680 George Street, Sydney NSW 2000 (the **Developer**); and
- (3) **The Minister for Planning and Public Spaces** ABN 20 770 707 468 of 4 Parramatta Square, 12 Darcy Street, Parramatta NSW 2150 (the **Minister**).

RECITALS:

- (A) The Developer is developing the Sydney Metro City & Southwest project (Project) which will operate from Chatswood to Bankstown. The Project comprises two core components - the Chatswood to Sydenham project, and the Sydenham to Bankstown upgrade.
- (B) Planning approval for the Chatswood to Sydenham component of the Project was granted on 9 January 2017 (application number SSI 15_7400)(CSSI Approval). The Crows Nest Metro Station will be constructed on the Sites as part of the CSSI Approval.
- (C) As part of the Chatswood to Sydenham component of the Project, the Developer made a concept State Significant Development (SSD) Development Application for Development Consent to carry out the Development on the Sites (being the Concept OSD Consent).
- (D) The concept proposal for the Development, includes a building envelope and development parameters and strategies for a future mixed use development above the approved Crows Nest Metro Station, and the fit-out and use of the over station development spaces approved within the station under the CSSI Approval. No physical works are proposed under the Concept OSD Consent. Approval for the physical works and associated final building design will be the subject of future detailed Development Applications.
- (E) In October 2018, the NSW Department of Planning, Industry and Environment (DPIE) released a draft Rezoning Proposal to change the planning controls for the Sites. The Rezoning Proposal was finalised and gazetted on 31 August 2020, applying new planning controls under the *North Sydney Local Environmental Plan 2013* (LEP) to the Sites. In addition, the *St Leonards and Crows Nest 2036 Plan* and the associated Special Infrastructure Contribution (SIC) scheme, was finalised by DPIE on 29 August 2020.
- (F) The Developer intends to procure the Development and the Crows Nest Metro Station on the Sites in accordance with the CSSI Approval, the Concept OSD Consent, the LEP and the *St Leonards and Crows Nest 2036 Plan*.
- (G) The Parties have agreed that monetary contributions will be payable to the Council in connection with the Development. Condition A15 of the Concept OSD Consent requires a planning agreement between the Developer and Council in accordance with "the commitments contained within the public benefit offer titled '*Sydney Metro - Crows Nest over station development VPA*' reference SM-20-00094429, prepared by Sydney Metro and dated 1 September", including payment of the Monetary Contributions. This Agreement has been prepared in accordance with Condition A15 and the offer referred to in that condition.

THE PARTIES AGREE AS FOLLOWS:

1. INTERPRETATION

1.1 Definitions

In this Agreement the following definitions apply:

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

Additional Contribution means a monetary contribution of \$2,000,000.

Concept OSD Consent means the Development Consent granted on 23 December 2020 for the concept State Significant Development Development Application SSD-9597 (as amended or modified from time to time).

Crows Nest Metro Station means the metro station to be constructed on the Sites.

CSSI Approval means the planning approval for the Chatswood to Sydenham component of the Project granted on 9 January 2017 (application number SSI 15_7400) as modified, including as modified from time to time in the future.

Dealing, in relation to the Sites, means selling, transferring, assigning, mortgaging, or charging the Sites but, for the avoidance of doubt, does not include the grant of an easement or covenant in respect of the Sites.

Development means the over station development to be constructed on the Sites over the Crows Nest Metro Station, which is the subject of the Concept OSD Consent.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

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 or administration of the GST.

LEP means *North Sydney Local Environmental Plan 2013*.

Monetary Contributions means:

- (a) the Site Contribution; and
- (b) the Additional Contribution,

to be paid by the Developer to the Council in accordance with clause 5 of this Agreement.

Party means a party to this agreement, including their successors and assigns.

Project means the Sydney Metro City & Southwest metro rail line project.

Regulation means the *Environmental Planning and Assessment Regulation 2000* (NSW).

Site means Site A, Site B or Site C as appropriate, and **Sites** means Site A, Site B and Site C together.

Site A means the following lots:

- (a) 497 Pacific Highway, Crows Nest Lot 2 DP575046;
- (b) 501 Pacific Highway, Crows Nest Lot 1 DP575046;
- (c) 503 Pacific Highway, Crows Nest Lot 3 DP655677;
- (d) 507 Pacific Highway, Crows Nest Lot 4 DP1096359;
- (e) 511 Pacific Highway, Crows Nest Lot 10 DP 1060663;
- (f) 521 Pacific Highway, Crows Nest Lot B DP374468; and
- (g) 521 Pacific Highway, Crows Nest Lot A DP374468.

Site B means the following lots:

- (a) 477 Pacific Highway, Crows Nest Lot 100 DP 747672;
- (b) 479 Pacific Highway, Crows Nest Lot 101 DP 747672; and
- (c) 491-495 Pacific Highway, Crows Nest Lot A DP442804.

Site C means 14 Clarke Street, Crows Nest Lot 1 DP1223850.

Site Contribution means a monetary contribution to be paid in lieu of payments under section 7.11 of the Act in respect of each Site as follows:

- (a) in respect of Site A: \$7,025,381.95; and
- (b) in respect of Site B: \$2,265,601.63;
- (c) in respect of Site C: \$526,667.29,

which has been calculated in accordance with the Calculations Summary in Annexure B.

1.2 Interpretation

In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:

- (a) Headings are inserted for convenience only and do not affect the interpretation of this Agreement.
- (b) A reference in this Agreement to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
- (c) If the day on which any act, matter or thing is to be done under this Agreement is not a business day, the act, matter or thing must be done on the next business day.
- (d) A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- (e) A reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- (f) A reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.

- (g) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
- (h) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- (i) Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- (j) A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- (k) References to the word 'include' or 'including' are to be construed without limitation.
- (l) A reference to this Agreement includes the agreement recorded in this Agreement.
- (m) A reference to a party to this Agreement includes a reference to the servants, agents and contractors of the party, and the party's successors and assigns.
- (n) Any schedules and attachments form part of this Agreement.

2. PLANNING AGREEMENT UNDER THE ACT

The Parties agree that this Agreement is a planning agreement governed by Subdivision 2 of Division 7.1 of Part 7 of the Act.

3. APPLICATION OF THIS AGREEMENT

This Agreement applies to the Sites and to the Development.

4. OPERATION OF THIS AGREEMENT

The parties each agree that this Agreement operates on and from the date of this Agreement.

5. MONETARY CONTRIBUTIONS TO BE MADE UNDER THIS AGREEMENT

- (a) The Developer will, for the purpose of increasing the amount of public open space or providing public facilities in the North Sydney Local Government Area pay the Monetary Contributions to Council.
- (b) The parties agree that no increase in respect of CPI, nor any other increase, will be applied to the Monetary Contributions.
- (c) Payment of all Monetary Contributions will be made within 30 business days of Council providing a copy to the Developer of the fully executed Agreement.
- (d) Within 10 business days of the receipt by Council of the Monetary Contributions, the Council must provide a signed notice to the Developer in the form of Annexure A.

6. APPLICATION OF THE MONETARY CONTRIBUTIONS

- (a) The Council will upon receipt of each of the Monetary Contributions paid by the Developer in accordance with clause 5 of this Agreement and within a reasonable time after the date of this Agreement:
 - (i) use that contribution as it sees fit to:

- (A) acquire land for the provision of public facilities or open space;
 - (B) attend to the embellishment of land for public facilities or open space; or
 - (C) care for and maintain facilities or open space; or
- (ii) Council will apply the Monetary Contributions towards another public purpose within the North Sydney Local Government Area which the Council considers suitable.
- (b) For the avoidance of doubt, nothing in this Agreement requires the Council to:
- (i) spend the contributions made under this Agreement by a particular date; or
 - (ii) refund to the Developer any contributions made under this Agreement.

7. APPLICATION OF S7.11, S7.12 AND S7.24 OF THE ACT TO THE DEVELOPMENT

- (a) Sections 7.11, 7.12 and 7.24 of the Act will not apply to the Development pursuant to the Concept OSD Consent by the Developer or any other person or entity with the benefit of the Concept OSD Consent.
- (b) The parties acknowledge that clause 5(a) applies to all Development which is the subject of the Concept OSD Consent including the fit-out and use of retail spaces within the station.
- (c) The Parties agree that:
- (i) this Agreement is intended to be for the benefit of and enforceable by the Developer and any purchaser or transferee of the Sites (or any part thereof) or any other person who is undertaking the Development pursuant to the Concept OSD Consent; and
 - (ii) on the Developer entering into an agreement for the sale, transfer or development of any of the Sites (or any part thereof), if requested by the Developer the Council will enter into an agreement with the purchaser, transferee or other party under which the Council agrees that the purchaser, transferee or other party will have the benefit of clause 7(a) to this Agreement.

8. REVIEW OF THIS AGREEMENT

This Agreement may be reviewed or modified by the agreement of the parties using their best endeavours and acting in good faith.

9. DISPUTE RESOLUTION

- (a) If any dispute arises out of this Agreement (**Dispute**) a party to the agreement must not commence any court or arbitration proceedings unless the parties to the Dispute have complied with the following paragraphs of this clause except where a party seeks urgent interlocutory relief.
- (b) A party to this Agreement claiming that a dispute has arisen out of or in relation to this Agreement must give written notice (**Notice**) to the other party to this Agreement specifying the nature of the dispute.
- (c) If the parties do not agree within 21 days of receipt of the Notice (or such further period as agreed in writing by them) as to:

- (i) the dispute resolution technique (eg mediation or expert determination) and procedures to be adopted;
- (ii) the timetable for all steps in those procedures; and
- (iii) the selection and compensation of the independent person required for such technique,

the parties must mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales as published by the Law Society of New South Wales from time to time, and, the President of the Law Society of New South Wales or the President's nominee will select the mediator and determine the mediator's remuneration.

10. 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.

11. NOTICES

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

Council

Attention: The General Manager
 Address: 200 Miller Street, North Sydney NSW 2068
 Email: council@northsydney.nsw.gov.au

Developer:

Attention: Deputy Chief Executive
 Address: Level 43, 680 George Street, Sydney NSW 2000
 Email: rebecca.mcphee@transport.nsw.gov.au

Minister:

Attention: The Secretary, Department of Planning, Industry and Environment

Address: 4 Parramatta Square, 12 Darcy Street, Parramatta NSW
2150

Email: planningagreements@planning.nsw.gov.au

- (b) If a Party gives the other Party three business days' notice of a change of its address or email address, any notice, consent, information, application or request is only given or made by that other Party if it is delivered or posted to the latest address or email address.
- (c) Any notice, consent, information, application or request is to be treated as given or made at the following time:
 - (i) If it is delivered, when it is left at the relevant address.
 - (ii) If it is sent by post, three business days after it is posted.
 - (iii) If it is sent by email, when the sender receives confirmation on its server that the message has been transmitted without error.

12. **APPROVALS AND CONSENT**

Except as otherwise set out in this Agreement, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Agreement in that Party's absolute discretion and subject to any conditions determined by the Party. A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

13. **ASSIGNMENT AND DEALINGS**

The Developer may assign or novate its rights and obligations under this Agreement or enter into any Dealings in relation to a Site without the consent of the Council provided that, in addition to any other requirements of this Agreement:

- (a) in the case of assignment or novation of rights and obligations under this Agreement, the Developer has, at no cost to Council, first secured the execution by the person with whom it is dealing, of all necessary documents in favour of Council by which that person agrees to be bound by any ongoing obligations under the agreement in respect of the relevant Site as if they were a party to the agreement; and
- (b) in respect of all Dealings, the Developer is not in breach of this Agreement.

14. **COSTS**

The Developer agrees to pay or reimburse Council all reasonable legal costs up to an amount of \$15,000.00 (including GST) incurred in:

- (a) the negotiation, preparation and execution of this agreement, including the reasonable costs of any legal advice Council has received in connection with this agreement, and
- (b) any other costs required to be paid by the Developer under this agreement,

within 10 business days after receipt of a tax invoice from Council as to the amount of those costs and attaching the invoices received by Council for those costs.

15. **ENTIRE AGREEMENT**

This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with. No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Agreement was executed, except as permitted by law.

16. **FURTHER ACTS**

Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to affect, perfect or complete this Agreement and all transactions incidental to it.

17. **GOVERNING LAW AND JURISDICTION**

This Agreement is governed by the law of New South Wales. The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The Parties will not object to the exercise of jurisdiction by those courts on any basis.

18. **JOINT AND INDIVIDUAL LIABILITY AND BENEFITS**

Except as otherwise set out in this Agreement, any agreement, covenant, representation or warranty under this Agreement by 2 or more persons binds them jointly and each of them individually, and any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

19. **NO FETTER**

Nothing in this Agreement shall be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

20. **REPRESENTATION AND WARRANTIES**

The Parties represent and warrant that they have 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.

21. **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.

22. **MODIFICATION**

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

23. **WAIVER**

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.

24. **GST**

The parties acknowledge that the Monetary Contributions are not subject to GST. If any Party becomes liable to pay GST on a supply made to the other Party under this Agreement and the supply was not priced to include GST, then the recipient of the supply must pay an additional amount equal to the GST on that supply to the other Party within 40 business days of receipt of a valid tax invoice.

25. **SECTION 10.7 CERTIFICATE**


The Developer acknowledges and agrees that the Council will include a notation that this Agreement has been entered into on any certificate issued under section 10.7 of the Act relating to the Sites.

26. **COUNTERPARTS**

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

EXECUTED as an agreement.

SIGNED by **SYDNEY METRO (ABN 12 354 063 515)**, by its duly authorised agent, in the presence of:



Signature of witness

JACQUELINE HUMMEL

Name



Signature of agent

IVAN GLAVINIC

Name

SIGNED for and on behalf of **NORTH SYDNEY COUNCIL (ABN 32 353 260 317)**, by its authorised delegate, in accordance with a resolution of the Council dated

in the presence of:



Signature of witness

Louise Jones

Name

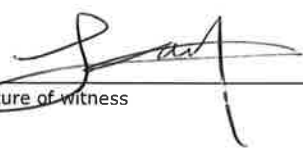


Signature of authorised delegate

KM Gouldthorp
General Manager

Name and position of authorised delegate

SIGNED for and on behalf of the **MINISTER FOR PLANNING AND PUBLIC SPACES (ABN 20 770 707 468)**, in the presence of:



Signature of witness

SANGHYOU YAWG

Name of witness in full



Signature of the Minister for Planning and Public Spaces or delegate

BRETT WHITWORTH

Name of Minister for Planning and Public Spaces or delegate

12 DARCY ST, PARRAMATTA NSW 2150

Address of witness

ANNEXURE A

[NORTH SYDNEY COUNCIL LETTERHEAD]

DEVELOPMENT CONTRIBUTIONS NOTICE

The Developer
Sydney Metro
Level 43, 680 George Street, Sydney NSW 2000

Attention: Deputy Chief Executive
Email: rebecca.mcphee@transport.nsw.gov.au

[Date]

Dear Sir/Madam

Concept Development Consent SSD-9597 – Crows Nest Metro Station Over Station Development

We refer to the Voluntary Planning Agreement (**VPA**) relating to Consent SSD-9597 which was entered into by Council, Sydney Metro and the Minister for Planning and Public Spaces on [date].

This Notice confirms that all Monetary Contributions (as defined in that VPA) payable by the Developer under the VPA have been paid. There are no outstanding amounts due and no further payments required under the VPA.

Yours faithfully

ANNEXURE B
SITE CONTRIBUTION

Calculations Summary

	SITE A	SITE B	SITE C	TOTAL
Residential	\$0.00	\$2,492,625.00	\$0.00	\$2,492,625.00
Commercial	\$7,157,002.43	\$0.00	\$561,889.67	\$7,718,892.10
Retail	\$296,609.52	\$18,235.63	\$3,707.62	\$318,552.77
Subtotal	\$7,453,611.95	\$2,510,860.63	\$565,597.29	\$10,530,069.87
Less Credit	\$428,230.00	\$245,259.00	\$38,930.00	\$712,419.00
TOTAL	\$7,025,381.95	\$2,265,601.63	\$526,667.29	\$9,817,650.87