

8.5. Crows Nest Metro Over Station Development Draft Voluntary Planning Agreement

AUTHOR: Marcelo Occhiuzzi, Manager Strategic Planning

ENDORSED BY: Joseph Hill, Director City Strategy

ATTACHMENTS:

1. Crows Nest Overstation VPA 11 February 2021 [8.5.1 - 15 pages]
2. Annexure B - Site Contributions [8.5.2 - 7 pages]

PURPOSE:

To recommend that Council enter into a Voluntary Planning Agreement with Sydney Metro relating to the Crows Nest Over Station Development.

EXECUTIVE SUMMARY:

Through the latter stages of the development of concept plans for the over station development for Crows Nest Metro, Council staff commenced preliminary discussions with Transport for NSW (TfNSW) regarding a Voluntary Planning Agreement (VPA) for the site.

Given that amendments to the planning controls for the site were pursued directly with the Department of Planning Industry and Environment, Council has had very little leverage to secure the extent of VPA value that would ordinarily be pursued for the “rezoning” of other sites. The concept development application was approved by the Minister for Planning and Public Spaces in December 2020. The ensuing consent for the site, requires that TfNSW enter into a VPA with Council which enables payment of all applicable developer contributions plus \$2M for public domain improvements, at the beginning of the development process, rather than at the end.

There are several advantages to this approach. Firstly, contributions money is made available “up front” rather than being received in periodic instalments aligning with the development of the land which would occur some years into the future. Secondly, this mechanism enables a greater degree of flexibility in the money's expenditure. It also dispenses with the need for Council to supplement such expenditure as would be the case under the current Section 7.11 Contributions Plan. In addition, there is the offer of a supplementary payment of \$2M which is over and above the applicant's normal contributions responsibilities.

The attached draft VPA identifies a total payment of approximately \$11.8M which comprises the “front loading” of the usual Section 7.11 contributions payable and a \$2M

supplement. This report recommends that the former of these be deposited in restricted revenue reserves to recognise their origins and the latter be used to supplement funding for the Holtermann Street Park initiative in Crows Nest that is currently the subject of a funding agreement with the Department of Planning Industry and Environment.

FINANCIAL IMPLICATIONS:

Council would ordinarily receive a total of approximately \$9.8M in S7.11 contributions arising from the development over the life of the development of the Over Station Development. This would occur periodically over the coming years depending on the timing of their development. The draft VPA is designed to consolidate these into one payment at the beginning of the process with an additional \$2M payment. The VPA payment would also liberate Council from the need to allocate matching funds from other sources of revenue, including general revenue, towards projects targeted by such payment as is broadly the requirement under Council's S7.11 Contributions Plan.

RECOMMENDATION:

- 1. THAT** Council endorse the attached draft Voluntary Planning Agreement for the purposes of public exhibition.
- 2. THAT** the General Manager be delegated authority to make minor amendments to the draft VPA that do not change its substance or intent prior to exhibition if necessary.
- 3. THAT** the draft Voluntary Planning Agreement be publicly exhibited for a period of 28 days.
- 4. THAT** Council appropriate the (approximately) \$9.8M within the appropriate Section 7.11 restricted reserves in recognition of the origins of this income and that the \$2M be used to supplement funding for the Holtermann Street Park initiative in Crows Nest.
- 5. THAT** a report be prepared for Council's consideration following the exhibition process detailing any submissions received and any amendments required to the draft VPA prior to its finalisation.

LINK TO COMMUNITY STRATEGIC PLAN

The relationship with the Community Strategic Plan is as follows:

1. Our Living Environment

1.4 Public open space and recreation facilities and services meet community needs

2. Our Built Infrastructure

2.1 Infrastructure and assets meet community needs

2.2 Vibrant centres, public domain, villages and streetscapes

3. Our Future Planning

3.4 North Sydney is distinctive with a sense of place and quality design

3.5 North Sydney is regulatory compliant

5. Our Civic Leadership

5.2 Council is well governed and customer focused

5.3 Community is informed and consulted

BACKGROUND

In October 2018, the Department of Planning, Industry and Environment (DPIE) publicly exhibited the Planning Proposal for the Crows Nest Metro site to increase the height limit identified in the North Sydney Local Environmental Plan (NSLEP) 2013 to enable 8, 17 and 27 storey buildings to be considered on the site (as described in Diagram 1 below). At the same time, the Department released the St Leonards/Crows Nest 2036 Plan and a series of supporting documents outlining proposed changes to the built form for the wider precinct.



Diagram 1 – Site Plan

In August 2020, the changes to the planning controls for the Metro site were published in the Government Gazette which amended the NSLEP 2013 Height of Buildings Map. This enabled taller buildings to be considered on these sites as part of the Crows Nest Over Station Development (OSD).

Whilst the amendment to the planning controls were pursued independently by Transport for NSW (TfNSW) through a Planning Proposal as outlined above, it is worth noting that the St Leonards Crows Nest 2036 Plan was finalised by the NSW Government in August 2020 which reflected the scale and extent of development of the Metro site as has now been approved.

The initial State Significant Development Application (SSDA) Concept Plan for the Crows Nest (OSD) was exhibited in late 2018. Various amendments were made more recently to this concept plan. These amendments were *placed on public exhibition between 9 September to 6 October 2020 and* reported to the Council meeting of 28 September 2020. The SSDA was subsequently approved by DPIE on 23 December 2020. Conditions have been placed on this consent issued by the Minister for Planning and Public Spaces, which require Voluntary Planning Agreements to be entered into to deliver affordable housing (with the NSW Government) and monetary contributions (with North Sydney Council). The latter of these requires the following:

VOLUNTARY PLANNING AGREEMENT / CONTRIBUTIONS

- A15. A Voluntary Planning Agreement(s) (VPA) between Sydney Metro (or its nominated entity) and North Sydney Council shall be prepared 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 2020, including:
- (a) a lump sum prepayment of monetary contribution in lieu of Section 7.11 contribution requirements (as agreed with Council); and
 - (b) a \$2 million monetary contribution for public domain improvements.
- A16. The VPA shall be exhibited and executed by 30 June 2021, or such other date as agreed by the Planning Secretary. A copy of the executed VPA(s) shall be submitted to the Secretary.
- A17. The Applicant must comply with the provisions of the Planning Agreement(s) entered into with North Sydney Council under Subdivision 2 of Division 7.1 of Part 7 of the *Environmental Planning & Assessment Act, 1979*, which relates to the project that is the subject of this approval. The Applicant shall continue to liaise with Council and the local community during the development process.
- A18. Any Planning Agreement prepared must be in accordance with Division 7.1 of Part 7 of the EP&A Act.

CONSULTATION REQUIREMENTS

Community engagement will be undertaken in accordance with Council's Community Engagement Protocol.

DETAIL

It has been Council's practice that sites seeking increases in development capacity resulting from changes to planning controls such as height, be encouraged to enter into Voluntary Planning Agreements (VPA). The purpose of this is to deliver local public benefits at the same time that increases in development potential are being sought. This approach has successfully delivered various VPAs in the context of managed and planned growth within this and other precincts of North Sydney.

In this context, TfNSW has offered to enter into a VPA with Council. Council's earlier responses were to seek to increase the value of the VPA offer proportionate to the value of uplift being sought. These requests were rejected by TfNSW.

It should be noted that unlike other VPAs negotiated, Council was not responsible for the implementation of the height increases pursued by Metro. DPIE controlled that process and the changes to the planning controls have already been facilitated and are now in force. Council therefore had very little leverage in these negotiations. This continues to be the case. This is a very different scenario to Council's standard VPA negotiation processes that have occurred in the past which have been characterised by Council retaining a greater degree of autonomy over the planning process.

Voluntary Planning Agreement

The development approach by TfNSW is to design and deliver the actual rail station in conjunction with building "C" (the smallest of the three proposed buildings as shown Diagram 1), then sell the airspace of buildings "A" and "B" to a future developer of these sites. A development application for building C is expected to be lodged in the next few months.

TfNSW previously offered the dedication of a component of floor space within Building "C" as a community facility. This was offered to be provided instead of any of the usual developer contributions being payable as part of the development process. Council staff rejected this offer, preferring the cash to be paid "up front" which affords a greater degree of flexibility and choice to Council.

As is Council's normal practice, the attached draft VPA (Attachment 1) has been reviewed by our legal advisors to ensure that Council's interests are protected. The current draft VPA comprises the following components:

- Up-front payment of all developer contributions (section 7.11 contributions, previously referred to as section 94 contributions). This would be to the value of approximately \$9.8M which would otherwise be payable at later

stages of the development process and would be received in stages, quite probably several years into the future.

- The payment of an additional \$2M monetary contribution for public domain improvements, also paid up front.
- The total \$11.8M monetary contribution is payable within 40 days of the VPA being executed.

For clarity, the breakdown of the S7.11 contributions of approximately \$9.8M which would ordinarily be payable *in alignment with the development of the land which would occur some years into the future*, is derived from the following categories under Council’s S7.11 Contributions Plan:

Infrastructure Type	
Open Space and Recreation	\$3,115,024
Public Domain	\$5,610,892
Active Transport	\$320,195
Community Facilities	\$625,683
Plan Administration	\$145,856
TOTAL	\$9,817,651

Whilst Council’s Developer Contributions Plan is an excellent source of revenue to help fund important infrastructure projects, there are several constraints to this as a source of funds. Without the draft VPA being in force, developer contributions would be paid after the development consent stage of the process and would be required to be spent in accordance with Council’s adopted Contributions Plan. The widely acknowledged disadvantage of traditional development contributions is that there is a significant lag between payment and delivery of infrastructure as contributions are pooled over time. This is an important consideration in a fast-growing precinct like Crows Nest where there the local community experiences growth alongside long-term plans for embellished or new supporting infrastructure. The “up front” payment of \$9.8M + \$2M will be able to be directed towards important local infrastructure that is otherwise unable to be delivered. The other noted disadvantage of the contributions framework is the lack of flexibility in the expenditure of funds raised. Again, the draft VPA seeks to address this by enabling Council to nominate the projects it would like to fund through this up-front monetary payment.

The current drafting of the VPA identifies that this monetary contribution retains wide ranging flexibility to deliver infrastructure projects. Whilst this level of flexibility is beneficial, it is recommended the component of the VPA calculated in reference to the adopted Section 7.11 Local Contributions Plan, continue to be accounted for in the same manner as the standard way for such contributions. This will ensure the integrity of the expenditure of the funds collected through this draft VPA.

The \$2M additional payment, could reasonably be spent on the Holtermann Street Park project that the Department of Planning, Industry and Environment (DPIE) have pledged a \$15.1M contribution towards. Preliminary internal work has commenced on this project and an agreement has been entered into with DPIE for \$2.5m with payment in 2 parts (\$900k on signing the agreement and \$1.6m on adoption of preferred concept design).

It is also important to note that there are detailed development applications yet to be lodged and determined for Buildings A, B and C in the coming months and/or years. Council will no doubt be making submissions in response to those applications to DPIE as the consent authority. This draft VPA, like other VPAs, includes a provision (clause 20) that makes it clear Council entering into the VPA does not affect the manner in which it conducts its legal and approval obligations and responsibilities. In other words, entering into this VPA will not alter the way in which Council responds to future development applications lodged by or on behalf of TfNSW or indeed any other related process. Clause 20 of the VPA states:

“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”.

Process

Should Council resolve to endorse the draft VPA, it will be publicly exhibited for a period of 28 days in accordance with Council’s Community Engagement Protocol and the requirements the Environmental Planning and Assessment Regulations 2000. Once this has occurred, it will be reported back to Council for a final decision with the benefit of public comment.



Draft (3): 11 February 2021

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

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 **[Note: DPIE to check ABN and insert address]** (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 Application SSD-9579 (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-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:

in respect of Site A: \$7,025,382; and

in respect of Site B: \$2,265,602;

in respect of Site C: \$526,667,

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 40 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 7(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, but does not apply to any Development Application for a change of use or further development after the space is first occupied.
- (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) subject to clause 14, 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. CAVEAT

- (a) The Developer acknowledges and agrees that:
 - (i) when this agreement is executed, the Council is deemed to have acquired and the Developer is deemed to 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 Developer's cost, register a withdrawal of any caveat in respect of the Land within five Business Days after the Developer pays the Monetary Contribution under clause 6.

9. **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.

10. **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.

11. **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. **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:

Address:

Email:

- (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.

13. **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.

14. **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.

15. **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.

16. **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.

17. **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.

18. **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.

19. **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.

20. **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.

21. **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.

22. **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.

23. **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.

24. **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.

25. **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.

26. **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.

27. **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

Signature of agent

Name

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

Signature of authorised delegate

Name

Name and position of authorised delegate

SIGNED by **MINISTER FOR PLANNING AND PUBLIC SPACES (ABN 20 770 707 468)**, by its duly authorised delegate, in the presence of:

Signature of witness

Signature of delegate

Name

Name

[Note: Minister for Planning's execution block to be confirmed by DPIE]

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-9579 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

[Insert sheet 3 of the SM contributions calculations]

S7.11 Calculations (February 2021)

TOWER A COMMERCIAL COMPONENT								
Proposed GFA sqm*	Employment rate (workers / sqm)	Total workers	Open Space	Public Domain Improvements	Active Transport	Community Facilities	Plan Administration	TOTAL RATE
38,607	1 per 21 sqm	1838	\$926.00	\$2,576.00	\$147.00	\$186.00	\$58.00	\$3,893.00
Sub Total			\$1,702,384.86	\$4,735,792.00	\$270,249.00	\$341,947.71	\$106,628.86	\$7,157,002.43
TOTAL								\$7,157,002.43

*Excludes station GFA

TOWER A RETAIL COMPONENT								
Proposed GFA sqm*	Employment rate (workers / sqm)	Total workers	Open Space	Public Domain Improvements	Active Transport	Community Facilities	Plan Administration	TOTAL RATE
1,600	1 per 57 sqm	76	\$926.00	\$2,576.00	\$147.00	\$186.00	\$58.00	\$3,893.00
Sub Total			\$70,552.38	\$196,266.67	\$11,200.00	\$14,171.43	\$4,419.05	\$296,609.52
TOTAL								\$296,609.52

*Excludes station GFA

S7.11 Calculations (February 2021)

TOWER B RETAIL COMPONENT			Open Space	Public Domain Improvements	Active Transport	Community Facilities	Plan Administration	TOTAL RATE
Proposed GFA sqm*	Employment rate (worker / sqm)	Total workers						
267	1 per 57 sqm	5	\$926.00	\$2,576.00	\$147.00	\$186.00	\$58.00	\$3,893.00
Sub Total			\$4,337.58	\$12,066.53	\$688.58	\$871.26	\$271.68	\$18,235.63
TOTAL								\$18,235.63

*Excludes station GFA

TOWER B RESIDENTIAL COMPONENT			
Unit Type	Unit Nos.	Rate of Occupancy	Number of Residents
Bedsit	0	1.4	0.0
1 Bed	65	1.4	91.0
2 bed	65	2.0	130.0
3 bed	13	2.6	33.8
4 bed	0	2.6	0.0
TOTAL	143		254.8

Total Number
of Residents
255

<p>Contribution = Number of Residents x Rate per Resident</p> <p>= 255 x \$9,775</p> <p>= \$0</p>

S7.11 Calculations (February 2021)

TOWER C COMMERCIAL COMPONENT			Open Space	Public Domain Improvements	Active Transport	Community Facilities	Plan Administration	TOTAL RATE
Proposed GFA sqm*	Employment rate (worker / sqm)	Total workers						
Total sqm	3031	1 per 21 sqm	\$926.00	\$2,576.00	\$147.00	\$186.00	\$58.00	\$3,893.00
Sub Total			\$133,652.67	\$371,802.67	\$21,217.00	\$26,846.00	\$8,371.33	\$561,889.67
TOTAL			\$561,889.67					

*Excludes Station GFA

TOWER C RETAIL COMPONENT			Open Space	Public Domain Improvements	Active Transport	Community Facilities	Plan Administration	TOTAL RATE
Proposed GFA sqm*	Employment rate (worker / sqm)	Total workers						
Total sqm	20	1 per 57 sqm	\$926.00	\$2,576.00	\$147.00	\$186.00	\$58.00	\$3,893.00
Sub Total			\$881.90	\$2,453.33	\$140.00	\$177.14	\$55.24	\$3,707.62
TOTAL			\$3,707.62					

*Excludes Station GFA

Assumptions

- 1 Contribution rates as at 2020/2021 (from NS Council website)
- 2 GFA is based on information from exhibited Concept SSD EIS
- 3 Residential rates capped at \$20K per unit - but cap will be lifted - so higher actual rate may apply
- 4 No contributions for Station GFA (metro infrastructure not levied)
- 5 No contributions for retail approved with Metro CSSI application (ie not part of SDD DA)
- 6 Credits based on estimated worker population, adjusted downwards
- 7 Draft contributions plan has a blanket rate (no specific areas anymore)

S7.11 Calculations (February 2021)

Table 1 s 7.11 contribution rates for residential development

Infrastructure item	Per resident*	Per 0 or 1 bed dwelling, secondary dwelling or boarding house rooms	Per self-contained seniors housing dwelling	Per 2 bed secondary dwelling	Per 2 bed dwelling	Per 3 or more bed dwelling
Open Space and Recreation facilities	\$5,382	\$7,535	\$7,535	\$7,535	\$10,765	\$11,013
Public Domain	\$2,996	\$4,194	\$4,194	\$4,194	\$5,992	\$6,130
Active Transport	\$171	\$239	\$239	\$239	\$342	\$350
Community facilities	\$1,081	\$1,514	\$1,514	\$1,514	\$2,162	\$2,212
Plan administration and management	\$144	\$202	\$202	\$202	\$289	\$296
Total	\$9,775	\$13,685	\$13,685	\$13,685	\$19,550	\$20,000**

* the per resident rate is relevant to calculating the contributions for group homes and hostels

**capped at \$20,000 as per Minister's Direction

Important Note: At the time this plan was prepared, consent authorities could not impose a monetary contribution on a residential development that exceeded \$20,000 per lot or dwelling. This restriction is due to a direction made by the Minister for Planning on 17 July 2017.

ALL Residential Development
Per Resident Rate 9,775

Sydney Metro calculation method

TOWER B RESIDENTIAL COMPONENT

Unit Type	Unit Nos.	Open Space and Recreation	Public Domain	Active Transport	Community facilities	Plan administration and management	TOTAL RATES	Capped	TOTAL
Bedsit	0	\$7,535.00	\$4,194.00	\$239.00	\$1,514.00	\$202.00	\$13,684.00		\$0
1 Bed	65	\$7,535.00	\$4,194.00	\$239.00	\$1,514.00	\$202.00	\$13,684.00		\$889,460
2 bed	65	\$10,765.00	\$5,992.00	\$342.00	\$2,162.00	\$289.00	\$19,550.00		\$1,270,750
3 bed	13	\$11,013.00	\$6,130.00	\$350.00	\$2,212.00	\$296.00	\$20,001.00	\$20,000.00	\$260,000
4 bed	0	\$11,013.00	\$6,130.00	\$350.00	\$2,212.00	\$296.00	\$20,001.00	\$20,000.00	\$0
TOTAL	143								\$2,420,210

North Sydney Council calculation method

TOWER B RESIDENTIAL COMPONENT

Unit Type	Unit Nos.	Persons per dwelling	No. of persons	Rate	TOTAL
Bedsit	0				
1 Bed	65	1.4	91	\$9,775.00	\$889,525
2 bed	65	2	130	\$9,775.00	\$1,270,750
3 bed	13	2.6	34	\$9,775.00	\$330,395
4 bed	0				\$0
TOTAL	143		\$254.80		\$2,490,670

DATA: GFA and uses of existing buildings on site (pre Sydney Metro)

Site	Property Address	Site Area	GBA	Approx NLA	Convert NLA to GFA		
C	14-20A Clarke St, Crows Nest (Lot 1 only)	609	n/a	738	848.7	Vehicle sales or hire p	Beaurepaires
B	477 Pacific Hwy Crows Nest	517.5	790	715	822.25	Bulky goods retail	2 storey retail homewares with maybe retail or office above
B	479 Pacific Hwy Crows Nest	707.8			707.8	Restaurant	Vacant Development
B	491-495 Pacific Hwy Crows Nest	645	676	680	782	Business premises	2 storey Post Office (office above?)
A	497 Pacific Hwy Crows Nest	321.2	n/a	700	805	Bulky goods retail	2 Storey furniture retail (Villa) with retail/office above
A	501 Pacific Hwy Crows Nest	308	n/a	700	805	Bulky goods retail	Single storey retail furniture (Proud Furniture)
A	503-505 Pacific Hwy Crows Nest	316.1	n/a	700	805	Bulky goods retail	Two storey retail furniture (Zizz)
A	507-509 Pacific Hwy Crows Nest	316.2	n/a	700	805	Bulky goods retail	Single storey retail furniture (Oz)
A	511-519 Pacific Hwy Crows Nest	940	750	3,000	3450	Bulky goods retail	3 storeys, ground floor 2 retail shops, furniture/carpet, office above
A	521-543 Pacific Hwy Crows Nest	1668			1668	Vehicle sales or hire p	Car yard plus shop

TOTAL

CALCULATIONS: 5.711 Credits for existing uses

Site	Property Address	GF use	Rate (GFA per worker)			1F use	Rate (GFA per worker)			2F use	GFA	Rate (GFA per worker)		Total	Rounding	Credit rate per	
			GFA	per worker	Subtotal		GFA	per worker	Subtotal			per worker	Subtotal			worker	Subtotal
C	14-20A Clarke St, Crows Nest (Lot 1 only)	Vehicle	424.35	88	4.8	Vehicle	424.35	88	4.8	-	-	-	9.64	10	\$3,893	\$38,930	
B	477 Pacific Hwy Crows Nest	Shops	411.125	57	7.2	Shop	411.125	57	7.2	-	-	-	14.43	15	\$3,893		
B	479 Pacific Hwy Crows Nest	Restaurant	707.8	21	33.7	-	-	-	-	-	-	-	33.70	34	\$3,893		
B	491-495 Pacific Hwy Crows Nest	Shops	391	57	6.9	Shop	391	57	6.9	-	-	-	13.72	14	\$3,893	\$245,259	
A	497 Pacific Hwy Crows Nest	Bulky goods	402.5	126	3.2	Office	402.5	33	12.2	-	-	-	15.39	16	\$3,893		
A	501 Pacific Hwy Crows Nest	Bulky goods	402.5	126	3.2	Bulky goods	402.5	126	3.2	-	-	-	6.39	7	\$3,893		
A	503-505 Pacific Hwy Crows Nest	Bulky goods	402.5	126	3.2	Bulky goods	402.5	126	3.2	-	-	-	6.39	7	\$3,893		
A	507-509 Pacific Hwy Crows Nest	Bulky goods	402.5	126	3.2	Bulky goods	402.5	126	3.2	-	-	-	6.39	7	\$3,893		
A	511-519 Pacific Hwy Crows Nest	Bulky goods	1150	126	9.1	Bulky goods	1150	126	9.1	Office	1150	33	34.85	54	\$3,893		
A	521-543 Pacific Hwy Crows Nest	Vehicle	1668	88	19.0	-	-	-	-	-	-	-	18.95	19	\$3,893	\$428,230	
Total														183			\$712,419

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