EXPLANATORY NOTE PURSUANT TO SECTION 205 OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT REGULATION 2021

155 MITCHELL ROAD, ERSKINEVILLE

Development Application Nos. D/2025/448

Background

On 3 March 2017, deferred commencement consent was granted for a Concept Development Application for works at 57 Ashmore St & 165-175 Mitchell Rd, Erskineville. (D/2015/966) The DA comprised a concept plan for a mixed use precinct including residential, commercial and recreation uses. The development includes building envelopes for nine development blocks ranging in height between 2 and 8 storeys and concept design for public domain works including new streets, a park and new trunk drainage.

On 25 July 2017, the City entered into a planning agreement with the Developer in relation to that development. The Planning Agreement provides for the delivery of the following public benefits over 7 phases of development:

- Construction and dedication of road reserves for Foundry Street, Stovemaker Lane, Metters Street, Coppersmith Lane, Macdonald Street, Alpha Street and Hadfield Lane
- Construction and dedication of McPherson Park
- Construction and dedication of a pedestrian/cyclist thoroughfare Kooka Walk
- Construction of three pedestrian through site links
- Construction of trunk drainage through the development

On 18 October 2017, the Concept Development Consent became operational. The development has commenced, with Phases 1 and 2 complete and Phases 3 and 4 under construction.

On 3 June 2025, the Council of the City of Sydney received a new amending Concept Development Application for Phases 5, 6 and 7 of the development (D/2025/448), seeking consent for:

- revised building envelopes incorporating amended building height in storey, street wall heights, building setback requirements; and

- a 30% uplift in floor space ratio of Phases 5 to 7 of the development in accordance with the State Environmental Planning Policy (Housing) 2021 (Housing SEPP), as it proposes to provide 15% of the floor space ratio as in-fill affordable housing; (**Development Application**)

on land at 155 Mitchell Road, Erskineville (**Land**).

A public benefit offer was made by the property owner to enter into a new Planning Agreement in relation to the Development Application to build 15% of the total Gross Floor Area of Phases 5, 6 and 7 for affordable housing (13,592.7sqm for around 169 affordable housing units) in a standalone building (Stage H) to be managed by a Tier 1 CHP in perpetuity. (**Planning Agreement**)

The purpose of this explanatory note is to provide a summary to support the notification of a Planning Agreement, under Section 7.4 of the *Environmental Planning and Assessment Act 1979* (**Act**).

This explanatory note has been prepared jointly by the parties as required by Section 205 of the *Environmental Planning and Assessment Regulation 2021* (**Regulation**).

The public benefits do not in any way exclude the developer or owner (as the case may be) from paying monies under s.7.11, 7.12 or Division 7.1, Subdivision 4 of the Act.

This explanatory note is not to be used to assist in construing the Planning Agreement.

1. Parties to the Planning Agreement

The parties to the Planning Agreement are Erskineville Investments Pty Ltd (**Landowner**), and the Council of the City of Sydney (**Council**).

2. Description of the Subject Land

The Planning Agreement applies to 155 Mitchell Road, Erskineville being Lot 20 in DP1290687.

3. Summary of the Objectives, Nature and Effect of the Proposed Agreement

The objective of the Planning Agreement is to secure public benefits in connection with the Development Application for the Land.

The nature of the Planning Agreement is to secure on site affordable housing to Building H of the development in perpetuity.

4. Assessment of the Merits of the Proposed Agreement

(a) How the Planning Agreement promotes the public interest and one or more of the objects of the Act

The Planning Agreement promotes the objects of the Act, in particular the objects identified in Section 1.3 (b) and 1.3(g) of the Act which is to promote the supply, delivery and maintenance of housing, including affordable housing and to promote good design and amenity of the built environment. The agreement will secure in perpetuity affordable housing in the local area.

(b) How the Planning Agreement promotes the elements of the Council's charter

The Planning Agreement promotes a number of elements of the Council's charter under section 8 of the *Local Government Act* 1993 (NSW). In particular, the Planning Agreement through the delivery of the public benefits allows Council to:

(i) provide directly or on behalf of other levels of government, after due consultation, adequate, equitable and appropriate services and facilities for the community and to ensure that those services and facilities are managed efficiently and effectively;

(ii) exercise community leadership;

(iii) properly manage, develop, protect, restore, enhance and conserve the environment of the area for which it is responsible, in a manner that is consistent with and promotes the principles of ecologically sustainable development;

(iv) bear in mind that it is the custodian and trustee of public assets and to effectively plan for, account for and manage the assets for which it is responsible;

(v) engage in long-term strategic planning on behalf of the local community; and

(vi) keep the local community and the State government (and through it, the wider community) informed about its activities.

(c) The impact of the Planning Agreement on the public or any section of the public

The Planning Agreement will benefit the public and local community as it will provide affordable housing within the Ashmore Precinct urban renewal area.

(d) Whether the Planning Agreement conforms with Council's capital works program

Yes. The Planning Agreement conforms with Council's capital works program.

(e) The planning purpose or purposes of the Planning Agreement

The Planning Agreement will serve the planning purpose by incorporating affordable housing in perpetuity within the precinct.

It is considered that the Planning Agreement provides for a reasonable means by which to achieve these planning purposes given the extent of the statutory tools that are available to Council by which it can deliver the proposed public benefits.

(f) Compliance of certain requirements prior to issue of construction, occupation or subdivision certificates.

The following requirements of the Agreement must be complied with before:

(i) **A construction certificate is issued:** Execution of the Stage 2 Community Housing Provider Agreement prior to the first Construction Certificate for fit out and façade works for Building G and H (excluding any Construction Certificate issued for the Early Works DA)

(ii) **A subdivision certificate is issued:** Completion of the Developer's Works must be achieved before a subdivision certificate is issued for Buildings G and H

(iii) **An occupation certificate is issued:** Design, construction and fit-out of the Affordable Housing Building, subdivision and creation of the stratum lot for the Affordable Housing Building, and Registration of the Affordable Housing Restriction prior to the issue of an Occupation Certificate for Buildings G and H