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1 March 2021

Anthony Witherdin  
Director of Key Sites Assessments  
Department of Planning, Industry and Environment  
4 Parramatta Square  
Parramatta 2124 NSW

Dear Mr Witherdin,

## **WATERLOO METRO QUARTER - PROPOSED PUBLIC BENEFITS AND COMMUNITY FACILITY**

This letter has been prepared by Urbis in response to items **1(a) and 1(b) – Public Benefit** raised by Department of Planning, Industry and Environment (DPIE) in the Request to Submissions (RTS) letter dated 14 December 2021. The RFI letter relates specifically to the Waterloo Metro Quarter Northern Precinct Detailed SSD-10440, including the publicly accessible open space - Raglan Plaza proposed under this SSD DA. However this letter also provides clarity on the delivery of public benefits across the broader Waterloo Metro Quarter site.

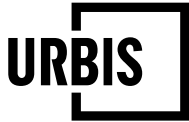
This letter documents how Condition A12 of the concept approval SSD-9393 is fully satisfied through the concurrently proposed development by the applicant (WL Developer Pty Ltd) across the Waterloo Metro Quarter site. Notably, this letter provides additional evidence to demonstrate that the proposed childcare centre within the podium of Building 2 (Central Precinct SSD-10439) meets the definition of a community facility under *Sydney Local Environmental Plan 2012 (SLEP 2012)* and that it satisfies the requirements for the provision of a 2,000m<sup>2</sup> community facility under the concept approval SSD-9393.

### **Satisfaction of Condition A12**

Condition A12 of the concept approval provides that:

*Prior to the determination of the first Future Development Application, the Applicant or its successors must enter into a Planning Agreement and/or other legally binding agreement to the satisfaction of the Planning Secretary securing the provision of the following public benefits of the Concept:*

- a) *a minimum 5% of approved residential gross floor area dedicated or transferred to a Registered Community Housing Provider as affordable housing*
- b) *70 social housing dwellings dedicated or transferred as agreed by NSW Land and Housing Corporation*
- c) *publicly accessible open space provision of minimum 2,200m<sup>2</sup> across the Metro Quarter site including its final area, design and ongoing management, noting partial provision of this publicly accessible open space may also be delivered under the CSSI Approval*



- d) *community facilities gross floor area of a minimum 2,000m<sup>2</sup> including its final area, design and future operating model. Community facilities are as defined in the Sydney Local Environmental Plan 2012.*

The requirements of Condition A12 are satisfied in the following manner:

- A minimum of 5% of the residential gross floor area proposed to be delivered across the Waterloo Metro Quarter site (including the floor space to be used for student housing in the Southern Precinct SSD-10437) is to be delivered as affordable housing. This affordable housing is nominated on the architectural plans and in the Environmental Impact Statement (**EIS**) submitted with the Central Precinct SSD DA (SSD-10439).
- The required affordable housing will be constructed by the applicant, as required under the Project Delivery Agreement between the applicant and Sydney Metro. The stratum title of the affordable housing will be registered and transferred to a Registered Community Housing Provider, as required under the terms of the Project Delivery Agreement.
- 70 social housing dwellings are proposed to be delivered within 'Building 4' included within the Southern Precinct of the Waterloo Metro Quarter. The social housing dwellings have been designed to satisfy the design and functional requirements of the NSW Land and Housing Corporation and are nominated in the architectural plans and in the EIS submitted with the Southern Precinct SSD DA.
- The required social housing dwellings will be constructed by the applicant, as required under the Project Delivery Agreement between the applicant and Sydney Metro. The stratum title of the social housing will be registered and transferred to the NSW Land and Housing Corporation by Sydney Metro, as required under the terms of the Project Delivery Agreement and will be secured by way of a Public Positive Covenant on title.
- A minimum of 2,200m<sup>2</sup> of publicly accessible open space is proposed to be delivered by the applicant and Sydney Metro across the Waterloo Metro Quarter. This area generally comprises Raglan Plaza (684m<sup>2</sup>) documented on the landscape plans submitted with this SSD DA and the Cope Street Plaza (1,675m<sup>2</sup>, including areas for future licensed outdoor dining) documented on the landscape plans submitted with the Southern Precinct SSD DA.
- The required publicly accessible open space will be constructed by the applicant and the station contractor for Sydney Metro, as required under the Project Delivery Agreement and Station Delivery Deed. The stratum of the publicly accessible open space will remain under the ownership of Sydney Metro and the applicant. The applicant's land will be burdened by a section 88A instrument registered on the title to secure the relevant public access and recreation easement in perpetuity.
- It is noted that additional publicly accessible open space is proposed to be provided within the various over station development SSD DAs in the form of through-site links, widened footpaths, a shared way, and open space at Church Yard and Church Square. While these areas are proposed to be publicly accessible, they are not proposed or required to be delivered under Condition A12 of SSD-9393.
- A tenancy within Level 1 and Level 2 of the podium of Building 2 (Central Precinct) is nominated to be used as a community facility, in accordance with the definition provided within the SLEP 2012, on the architectural plans and in the EIS submitted with the Central Precinct SSD DA. The minimum gross floor area of this tenancy is 2,000m<sup>2</sup>. This tenancy will be used in perpetuity for 'community facilities' as required by Condition A12 and will be secured by way of a Public Positive Covenant on title.
- The following sections outline how the proposed use of this tenancy as a 'centre-based child care facility' within the Central Precinct SSD DA will meet the relevant requirements of Condition A12 of the concept approval (SSD-9393) and the SLEP 2012.

### ***That a childcare centre meets the definition of a community facility***

#### Response:

Condition A12 of the concept approval requires the submission of a planning agreement and/or other legally binding agreement to secure the delivery of a community facility as defined in the SLEP 2012 of a minimum area of 2,000m<sup>2</sup>, including its final area design and future operating model, prior to the determination of the first detailed development application on the site.

'Community facility' is defined under SLEP 2012 as:

*community facility means a building or place—*

*(a) owned or controlled by a public authority or non-profit community organisation, and*

*(b) used for the physical, social, cultural or intellectual development or welfare of the community,*

*but does not include an educational establishment, hospital, retail premises, place of public worship or residential accommodation.*

The structure of the definition of a 'community facility' implies that multiple uses or functions may be consistent with its broad designation, as several specific uses have been excluded from constituting a 'community facility'. If the drafter of the definition of a community facility intended to preclude the land use being applied to a childcare centre, it would have excluded this use from the definition as was done for other land uses such as a place of public worship and hospital.

There are several types of activities and uses that constitute a 'community facility' and the nominated tenancy could be used for different types of community facilities from time to time given the requirement for the community facility to be delivered in perpetuity. As such it is logical that the definition of a 'community facility' be broad to enable the use of such spaces to be adaptable and suitable for an evolving and changing community.

Specific to Central Precinct SSD-10439, the use proposed within the nominated community facility tenancy is a "centre-based child care facility" operated by a non-for-profit organisation.

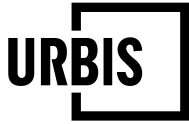
Local councils across Greater Sydney frequently include childcare centres in their community infrastructure plans (e.g. Cumberland Community Facilities Strategy 2019-2029), demonstrating childcare centres may consistently meet the intellectual, developmental and welfare needs of the community, consistent with the requirements of a 'community facility'.

The City of Sydney has previously defined centre-based child care facilities as community facilities, such as the approved childcare centre and community space located at 271-275 Bourke Street Darlinghurst (DA reference D2013/868). The childcare centre is operated by Goodstart Early Years Limited, which is a registered non-for-profit organisation.

The Australian Charities and Not-for-profits Commission (**ACNC**) is the national regulator of charities. The ACNC permits childcare centre operators as being classified as a non-for-profit organisations. This has been applied to other childcare operators such as Goodstart Early Years Limited.

This is relevant as the ACNC has also been satisfied that childcare centre organisations are to the benefit of the public and are for 'advancing social or public welfare', specifically the 'advancement of education' as the recognised charitable purpose.

As such the proposed centre-based child care facility meets the definition of a 'community facility' and is able to satisfy the community facility floor space as required under the concept approval.



***The community facility would be owned or controlled by a public authority or non-profit community organisation. The mechanism (such as a restriction on land title or similar) that would be put in place to restrict the use of the property for a community facility.***

Response:

As per the requirement of the community facility definition under SLEP 2012, the community facility tenancy is required to be controlled by a non-for-profit organisation (or public authority).

The proposed operator will meet this definition as it is a registered non-for-profit organisation. Irrespective of the detail provided by this particular operator, any future operator of this tenancy will be required to satisfy this requirement as a pre-requisite for signing a lease for this space.

The SLEP 2012 community facilities definition contemplates "ownership or control". Accordingly, ownership is not mandated to satisfy the definition (The LEP uses "control" as an alternative to ownership because typically planning does not get involved in the instruments or structures people use to occupy or manage land). The word "control" is meant to encompass the common understanding of the word being:

*"to exercise direction over; command"*

A lease is the effective way to provide control. A tenant that has exclusive possession over all of the premises, clearly has control over the premises. That is, the tenant has direction over and command over the place for the term of the lease to the exclusion of all others. The landlord cannot interfere with the quiet enjoyment by the tenant of the premises leased to it. No other person can enter without permission of the tenant.

Such a lease for this particularly tenancy provides control to a non-for profit entity or government for the design, fit-out and operation for a centre-based child care facility related to the tenancy shown on plan, with a minimum of areas 2,000sqm GFA. We reiterate that as a condition on title, any future operator of the tenancy will be required to meet the above requirements, in addition to the restriction.

As further comfort on this, we can confirm that the lease terms will provide that:

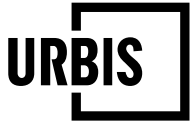
- The tenant has exclusive possession of all of the 2,000sqm tenancy;
- The tenant's permitted use is limited to centre-based child care facility;
- The landlord's right to interfere with the tenant's control is limited to the usual rights of termination or inspection in relation to breaches; and
- The tenant cannot assign the lease unless the tenant meets the criteria in the restriction on use and the entity is a non-profit community organisation or public authority.

***How the community facility would be retained in perpetuity, consistent with the Concept Approval and Sydney LEP 2012.***

Response:

The use of the tenancy as a community facility will be secured in perpetuity by a condition of approval which requires:

- Prior to the issue of the occupation certificate, the developer is to register on title a restriction on use that would ensure the use to remain in perpetuity as a community facility, namely:
  - A restriction that portion of the building must not be used: "other than a use carried out by a public authority or non-profit community organisation, and where the use is for the physical, social,



cultural or intellectual development or welfare of the community and that is not an educational establishment, hospital, retail premises, place of public worship or residential accommodation”

The above commitment is to be secured via a deed documented between the applicant and a government entity, which would tie OC of the relevant stratum with registration of an encumbrance on the title being an 88E instrument that restricts the use of it to a community facility. This deed would serve as the legally binding agreement which secures the community facility use into perpetuity because the stratum of 2,000sqm GFA in Building 2 (Central Precinct SSD-10439) will, in perpetuity be burdened by the requirement to only be used as per the definition of a Community Facility (refer above).

This covenant on title would be to the benefit of a government entity and could not be overridden by a development consent or a tenant.

We trust this information, in addition to a copy of the referenced legally binding agreements submitted under a separate cover, satisfies item No.1 raised in the Request for a Response to Submissions letter and assist the DPIE in finalising the assessment of the development application and prepare a recommendation for approval.

Should you wish to discuss any of the above matters further, please do not hesitate to contact the undersigned.

Yours sincerely,

A handwritten signature in black ink, appearing to read "A. Ryan". The signature is fluid and cursive, with a horizontal line extending to the right.

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