

## **Macleay Streetscape Improvements – Works on Private Land**

**File No: S120379**

### **Summary**

This report outlines the details of, and need for, two proposed Access Deeds between the Council of the City of Sydney and two private landowners to enable the upgrade of privately owned footway sections as part of the Macleay Streetscape Improvement Project.

The Macleay Streetscape Improvement Project was endorsed by Council on 29 June 2020, following approval through the Local Pedestrian, Cycling and Traffic Calming Committee on 18 June 2020. The original project scope was from Orwell Street to Challis Avenue, Potts Point. On 29 March 2021, Council endorsed additional work in Macleay Street to extend the improvements to McDonald Street. The works for Macleay Street include a paving and kerb upgrade (including kerb extensions and build outs).

Two sections of footway on the western side of Macleay Street, between Manning Street and Rockwall Crescent, are on privately owned land parcels (at 77 and 81 Macleay Street, Potts Point). An easement for public right of way (Easement) in favour of the Council of the City of Sydney is in place for both parcels and responsibility for the maintenance of the land rests with the respective landowners.

This report recommends that Council enters into formal agreements with the owners of the land parcels for the City to undertake footway upgrade works consistent with the City's current works to Macleay Street.

The proposed works to upgrade the footway paving will improve pedestrian accessibility and visual amenity.

## **Recommendation**

It is resolved that:

- (A) Council enters into Access Deeds with the owners of 77 and 81 Macleay Street, Potts Point, generally in accordance with Confidential Attachment B to the subject report, that allows the City to fund and undertake footway upgrade works to the privately owned sections of footway in Macleay Street currently burdened by an Easement for public right of way in favour of the City;
- (B) authority be delegated to the Chief Executive Officer to finalise and execute the Access Deeds; and
- (C) Council note the financial implications detailed in Confidential Attachment C to the subject report.

## **Attachments**

- Attachment A.** Macleay Street Private Property Mark Up
- Attachment B.** Deeds of Agreement - 77 and 81 Macleay Street (Confidential)
- Attachment C.** Financial Implications (Confidential)

## Background

1. The Macleay Streetscape Improvement Project was endorsed by Council on 29 June 2020, following approval through the Local Pedestrian, Cycling and Traffic Calming Committee on 18 June 2020.
2. The original project scope was from Orwell Street to Challis Avenue, Potts Point. On 29 March 2021, Council endorsed additional work in Macleay Street to extend the improvements to McDonald Street.
3. Two small parcels of land forming part of 77 and 81 Macleay Street are privately owned paved areas (refer to Attachment A). Public access through these parcels of land is protected by an easement for public right of way in favour of the Council of the City of Sydney (Easement). Responsibility for maintenance of the land parcels currently rests with the respective land owners.
4. Any works Council proposes to undertake at the cost of Council on private land require consent from the landowner.
5. The works for Macleay Street include the following improvements:
  - (a) a paving and kerb upgrade (including kerb extensions and build outs);
  - (b) continuous footpath treatments along both sides of Macleay Street between Orwell Street and McDonald Street;
  - (c) enhanced street lighting with the addition of Smartpoles;
  - (d) new street furniture including seating, bike racks and bubblers;
  - (e) new garden beds and plantings; and
  - (f) a raised intersection at Greenknowe Avenue.

## Access Deed

6. An Access Deed (summarised at Confidential Attachment B) has been drafted for execution between the Council of the City of Sydney and the respective landowners of numbers 77 and 81 Macleay Street, Potts Point.
7. The Access Deeds define the proposed works to be undertaken by the City on the land and outline each party's obligations.

## Strategic Alignment - Sustainable Sydney 2030-2050 Continuing the Vision

8. Sustainable Sydney 2030-2050 Continuing the Vision renews the communities' vision for the sustainable development of the city to 2050. It includes 10 strategic directions to guide the future of the city, as well as 10 targets against which to measure progress. This report is aligned with the following strategic directions and objectives:
  - (a) Direction 5 – A city for walking, cycling and public transport – the project improves pedestrian amenity and safety through enhanced footpath treatments, localised footpath widening and continuous footpath treatments, improved lighting and increased amenities such as seating and bubblers.

- (b) Direction 7 - Resilient and diverse communities – the project will provide an improved public domain that meets the needs of a wide variety of user groups and provides opportunities for social interaction.

### **Social / Cultural / Community**

9. The project will provide improved amenity for local residents and visitors to the city to encourage walking and social interaction.
10. The project will also improve the material quality of the public domain to compliment the important local character of the street.

### **Organisational Impact**

11. The works outside 77 and 81 Macleay Street will not create additional City-owned assets.
12. Maintenance of the footway areas fronting 77 and 81 Macleay Street will remain with the respective property owners following completion of the City's work.

### **Risks**

13. If the Access Deeds are not entered into with the landowners of 77 and 81 Macleay Street, the City will not be in a position to undertake the footpath upgrade works on those parcels of land. This will result in inconsistent paving treatments along this section of footway (between the privately owned brick paving and City-owned concrete unit paving) and potential issues with the flow of surface stormwater across the land due to level changes.

### **Social / Cultural / Community**

14. The proposed upgrade works will improve the safety, amenity and character of Macleay Street by providing consistent, high quality paving finishes. The works will create allow safer pedestrian activation while maintaining the heritage, character and feel of Macleay Street.

### **Maintenance**

15. There will be no change to the maintenance of the privately owned sections. This will remain the responsibility of the respective land owners.

### **Financial Implications**

16. As noted above, the works outside 77 and 81 Macleay Street will not create additional City-owned assets and are therefore not a capital project. Funding for the works will be accommodated within the City's footway operational budgets. Sufficient funds are available and no additional funding is required for paving works in the two parcels of private land.
17. The current delivery program proposes implementation commencing in August 2022 (pending execution of the Access Deeds) to align with the expected completion of the Macleay Streetscape Improvement Project works.
18. The component cost for the works on private property are itemised in Confidential Attachment C.

### Relevant Legislation

19. Local Government Act 1993 - Section 377(1)(n) states that only Council can resolve to carry out work on private land for an amount that is less than the amount or rate fixed by Council for the carrying out of any such work. As there is no rate fixed for undertaking the type of work proposed on private land, Council approval is required before the works can proceed.
20. Local Government Act 1993 - Section 10A provides that a council may close to the public so much of its meeting as comprises the discussion of information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business.
21. Attachments B and C contain confidential commercial information which, if disclosed, would:
  - (a) confer a commercial advantage on a person with whom Council is conducting (or proposes to conduct) business; and
  - (b) prejudice the commercial position of the person who supplied it.
22. Discussion of the matter in an open meeting would, on balance, be contrary to the public interest because it would compromise Council's ability to negotiate fairly and commercially to achieve the best outcome for its ratepayers.

### Critical Dates / Time Frames

23. Completing the works to the privately owned sections of land in conjunction with the City's current Macleay Streetscape Improvement Project works will result in optimal cost efficiency for the City and minimise disruption to business owners and the community.
24. The Macleay Streetscape Improvement Project is currently on track for completion by the end of August 2022. Approval is sought to allow execution of Access Deeds and commencement of works to the private land parcels from August 2022, in line with the completion of the main project works.

### Public Consultation

25. Representatives of the owners of 77 and 81 Macleay Street have been consulted about the proposed work to the privately owned sections of footway. Consultation occurred through site meetings, by email and by phone calls.
26. On 28 March 2022 and 11 April 2022, the City sought in principle approval by email from each owner to proceed towards formalising an Access Deed, subject to Council approval.

27. Approval in principle from both owners has been provided on the understanding that there is no cost to them for the works.
28. If approval to enter into the Access Deeds is obtained, notification will be sent to the landowners and the residents of the affected buildings prior to construction commencing on the private land parcels. The notification will include the final design plan and an updated program of works.

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