

# Appendix 1 (Clause 36)

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Environmental Planning and Assessment Regulation 2000

(Clause 25E)

## Explanatory Note

### Draft Planning Agreement

The Parties propose to enter into a planning agreement under s93F of the Environmental Planning and Assessment Act 1979 (**Act**).

### Parties

The Parties to the agreement are:

- North Sydney Council of 200 Miller Street North Sydney 2060 (**Council**); and
- Anson City Developments 1 (Australia) Pty Ltd (**Developer**)

### Description of the Land to which the Draft Planning Agreement Applies

The Draft Planning Agreement applies to Lot 1 and Lot 2 DP 455937, Lot 1 DP 1022881 and Lot 1 DP 577070 located at 617- 621 Pacific Highway, St Leonards (**Site**).

### Description of Proposed Development and Proposed Change to an Environmental Planning Instrument

The redevelopment of the Site including the demolition of existing buildings and construction of a mixed use development on the Site, containing retail and office facilities, a Proposed Arts Centre and residential apartments and which relies on proposed changes to the *North Sydney Local Environmental Plan 2013* (**LEP**). The proposed redevelopment of the Site will be generally consistent with the scale and height of the concept development outlined within a planning proposal lodged by the Developer with Council on 23 March 2017 requesting the amendments to the LEP.

The proposed amendment to the LEP includes the following:

- (a) Amend Schedule 1: Additional Permitted Uses to allow “shop top housing” as a permissible use on the Site;
- (b) Amend the NSLEP, 2013 Height of Buildings Map to provide for a maximum building height of 180m on the Site;
- (c) Amend the Floor Space Ratio Map to provide for a maximum Floor Space Ratio of 25.4:1 on the Site; and
- (d) Amend the NSLEP, 2013 Non-Residential Floor Space Ratio Map to provide for a minimum Non-Residential Floor Space Ratio of 4.7:1 on the Site.

### Summary of Objectives, Nature and Effect of the Draft Planning Agreement

#### Objectives of Draft Planning Agreement

Under the Draft Planning Agreement the Developer has offered to provide a material public benefit as part of the carrying out the Development, if approved.

#### Nature of Draft Planning Agreement

The Draft Planning Agreement is a planning agreement under s93F of the Environmental Planning and Assessment Act 1979 (**Act**). The Draft Planning Agreement is a voluntary agreement under which

Development Contributions (as defined in clause 1.1 of the Draft Planning Agreement) are made by the Developer for various public purposes (as defined in s93F(2) of the Act).

The Developer proposes to construct and fit out a Proposed Arts Centre as part of the Development, and dedicate the Proposed Arts Centre (as a stratum lot) to the Council.

### **Effect of the Draft Planning Agreement**

#### **The Draft Planning Agreement:**

- relates to the proposed change to the LEP and the carrying out by the Developer of Development on the Development Site,
- does not exclude the application of s94, s94A or 94EF of the Act to the Development;
- requires the provision of a material public benefit, being the construction, fit out and dedication of a Proposed Arts Centre,
- is to be registered on the titles to the Development Site,
- imposes restrictions on the Parties assigning an interest under the agreement,
- provides two dispute resolution methods for a dispute under the agreement, being expert determination and mediation,
- requires the provision of bank guarantees and other measures as security for the Developer's obligations under the agreement;
- provides that the agreement is governed by the law of New South Wales.

### **Assessment of the Merits of the Draft Planning Agreement**

#### **The Planning Purposes Served by the Draft Planning Agreement**

The Draft Planning Agreement proposes the construction and dedication of a Proposed Arts Centre to Council. The facility will provide a new public space in a central location to further the social and cultural needs of the community.

The provision of this public facility will serve the needs of the residents, workers and visitors to the locality and will therefore:

- promote and co-ordinate the orderly and economic use and development of the land to which the agreement applies; and
- provide and co-ordinate the provision of public facilities in connection with the Development.

The North Sydney Community Strategic Plan 2013–2023 (**CSP**) outlines the community-wide priorities and aspirations for the local government area, and provides long-term goals, objectives and actions to achieve these visions. The CSP is Council's most important strategic document and is used to guide and inform Council's decision making and planning for the next ten years.

The relevant Directions, Outcomes, and Strategies of the CSP that will be met by the delivery of the Proposed Arts Centre include:

#### **Direction: 2. Our Built Environment**

Outcome: 2.1 Infrastructure, assets and facilities that meet community needs

Outcome: 2.2 Improved mix of land use and quality development through design excellence

Outcome: 2.3 Vibrant, connected and well maintained streetscapes and villages that build a sense of community

**Direction: 4. Our Social Vitality**

Outcome: 4.3 Enhanced arts and cultural programs and facilities

Outcome: 4.8 Enhanced Community facilities, information and services.

**How the Draft Planning Agreement Promotes the Public Interest and the Objects of the Act**

The Draft Planning Agreement promotes the Public Interest because it will provide public facilities that will serve the needs of the community in the location of the Development.

By providing this public facility as part of the Development, the proposal promotes the following objects of the Act:

*(a) to encourage:*

*(i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,*

*(ii) the promotion and co-ordination of the orderly and economic use and development of land,*

...

*(iv) the provision of land for public purposes,*

*(v) the provision and co-ordination of community services and facilities ...*

**How the Draft Planning Agreement Promotes the Elements of the Council's Charter, now the Guiding Principles for Councils**

By entering into this agreement for the provision of community facilities, Council is exercising its functions in accordance with the following guiding principles in section 8A of the Local Government Act 1993:

*(a) Councils should provide strong and effective representation, leadership, planning and decision-making.*

*(b) Councils should carry out functions in a way that provides the best possible value for residents and ratepayers.*

*(c) Councils should plan strategically, using the integrated planning and reporting framework, for the provision of effective and efficient services and regulation to meet the diverse needs of the local community.*

...

*(f) Councils should manage lands and other assets so that current and future local community needs can be met in an affordable way.*

*(g) Councils should work with others to secure appropriate services for local community needs.*

**Whether the Draft Planning Agreement Conforms with the Authority's Capital Works Program**

The Planning Agreement offers contributions that will enable the Council to provide community facilities for arts and cultural purposes, the need for which will be created by the Development. While the Council's Capital Works Program does not include any proposals to acquire land for the Proposed Arts Centre, it does include proposals to improve community facilities and the provision of the contributions under the Planning Agreement will not be inconsistent with the Council's Capital Works Program. The

Planning Agreement will enable Council to provide for the current and future open space needs of the local community.

**Whether the Draft Planning Agreement specifies that certain requirements must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued**

The Draft Planning Agreement requires:

- (a) the provision of Bank Guarantees and other security prior to the issue of a Construction Certificate for the Development; and
- (b) the completion and the transfer of the Proposed Arts Centre prior to the issue of an occupation certificate for any residential unit in the Development.