

North Sydney Council

Legal Document

LD 7441 Attached

Voluntary Planning Agreement for
PP 3/18 at 50-56 Atchison St, St Leonards

Please ensure that this coversheet remains attached to this Legal Doc

Voluntary Planning Agreement

North Sydney Council
ABN 32 353 260 317

Epic Leisure Pty Ltd
ACN 115 707 527

Newcastle

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Contents

Parties	1
Background	1
Operative part	1
1 <i>Definitions</i>	1
2 <i>Interpretation</i>	4
3 <i>Planning Agreement under the Act</i>	6
4 <i>Application of this agreement</i>	6
5 <i>Operation of this agreement</i>	6
6 <i>Contributions to be made under this agreement</i>	6
6.1 <i>Monetary Contribution</i>	6
6.2 <i>Public Access Area</i>	7
6.3 <i>Setback Area</i>	8
7 <i>Application of s 7.11, s 7.12 and s 7.24 of the Act</i>	9
8 <i>Registration of this agreement</i>	9
8.1 <i>Developer Interest</i>	9
8.2 <i>Registration of this agreement</i>	10
8.3 <i>Removal from Register</i>	10
8.4 <i>Caveat</i>	10
9 <i>Review of this agreement</i>	11
9.1 <i>Review by agreement</i>	11
9.2 <i>Adjustment to Monetary Contribution</i>	11
9.3 <i>State Infrastructure Contribution</i>	11
9.4 <i>Outcome of Review</i>	12
10 <i>Dispute Resolution</i>	13
10.1 <i>Reference to Dispute</i>	13
10.2 <i>Notice of Dispute</i>	13
10.3 <i>Representatives of Parties to Meet</i>	13
10.4 <i>Further Notice if Not Settled</i>	13
10.5 <i>Mediation</i>	13
10.6 <i>Expert determination</i>	14
10.7 <i>Litigation</i>	15
10.8 <i>No suspension of contractual obligations</i>	15

11	<i>Enforcement</i>	15
	11.1 Default	15
	11.2 Security	15
	11.3 Restriction on the issue of Certificates	17
	11.4 Acquisition of Easements	18
	11.5 General Enforcement	18
12	<i>Assignment and Dealings</i>	18
	12.1 Assignment	18
	12.2 Transfer of Land	19
	12.3 Further Acts	19
13	<i>Approvals and consents</i>	20
14	<i>No fetter</i>	20
	14.1 Discretion	20
	14.2 No fetter	20
15	<i>Notices</i>	21
	15.1 Notices	21
16	<i>General</i>	21
	16.1 Relationship between parties	21
	16.2 Time for doing acts	22
	16.3 Further assurances	22
	16.4 Variation	22
	16.5 Counterparts	22
	16.6 Legal expenses, valuation costs and stamp duty	22
	16.7 Entire agreement	22
	16.8 Representations and warranties	22
	16.9 Severability	22
	16.10 Invalidity	23
	16.11 Waiver	23
	16.12 GST	23
	16.13 Governing law and jurisdiction	23
	Schedule 1 Summary of requirements (section 7.4)	24
	Schedule 2 Easement in Gross (Public Access Area)	25
	Schedule 3 Easement in Gross (Setback Area)	27
	Annexure A Plan showing Public Access Area and Setback Area	30

Agreement

Date

Parties

First party

Name	North Sydney Council (Council)
ABN	32 353 260 317
Contact	General Manager
Telephone	(02) 9936 8100

Second party

Name	Epic Leisure Pty Ltd (Developer)
ACN	115 707 527
Contact	Edwin Chew
Telephone	(02) 9467 5825

Background

- A. The Developer owns the Land.
- B. Council has adopted the St Leonards / Crows Nest Planning Study- Precinct 2 and 3 which identifies the Land as being within both "Precinct 2" and "Precinct 3".
- C. The Developer proposes to carry out the Development which will include a multi-storey mixed use development with underground car parking and associated publicly accessible areas.
- D. To facilitate the Development, the Developer has lodged a Planning Proposal seeking the following amendments to LEP 2013:
 - (a) an amendment to the Height of Buildings Map to allow a maximum building height of 56m (excluding the lift overrun) on the Land;
 - (b) an amendment to the Floor Space Ratio Map to allow a maximum floor space ratio for the Land of 6.4:1; and
 - (c) an amendment to the Non-Residential Floor Space Ratio Map to provide a minimum non-residential floor space ratio for the Land of 1.7:1.
- E. The Developer has made an offer to enter into this agreement to provide public benefits in connection with the Planning Proposal and future Development of the Land.

Operative part

1 Definitions

In this agreement, unless the context indicates a contrary intention:

Act means the *Environmental Planning and Assessment Act 1979* (NSW);

Address means a party's address set out in the Notices clause of this agreement;

Approval means any certificate, licence, consent, permit, approval or other requirement of any Authority having jurisdiction in connection with the activities contemplated by this agreement;

Authority means any government, semi-governmental, statutory, administrative, fiscal or judicial body, department, commission, authority, tribunal, public or other person; agency or entity and includes a certifier accredited under the *Building Professionals Act 2005* (NSW).

Bank Guarantee means an irrevocable and unconditional undertaking that is not limited in time and does not expire by one of the following trading banks:

- (a) Australia and New Zealand Banking Group Limited,
- (b) Commonwealth Bank of Australia,
- (c) Macquarie Bank,
- (d) National Australia Bank,
- (e) St George Bank Limited,
- (f) Westpac Banking Corporation, or
- (g) Other financial institution approved by the Council,

to pay an amount or amounts of money to the Council on demand and containing terms and conditions reasonably acceptable to the Council;

Bond means a documentary performance bond in favour of Council which is signed and issued by an AA- credit rated insurer and that is in a form and substance satisfactory to Council, acting reasonably;

Business Day means a day on which banks are open for general banking business in Sydney, excluding Saturdays and Sundays;

Claim means any claim, loss, liability, damage, proceeding, order, judgment or expense arising out of the operation of this agreement;

Construction Certificate means a construction certificate as defined under section 6.4 of the Act;

CPI means the All Groups Consumer Price Index applicable to Sydney published by the Australian Bureau of Statistics;

Damages means all liabilities, losses, damages, costs and expenses, including legal fees and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties;

Dealing, in relation to the Land, means, without limitation, selling, transferring, assigning, mortgaging, charging, encumbering or otherwise dealing with the Land;

Development means a proposed multi-storey mixed use development on the Land as modified from time to time, including commercial or retail uses, residential apartments, underground car parking and associated public domain and landscaping works permitted as a consequence of the Instrument Change;

Development Application has the same meaning as in the Act;

Development Consent has the same meaning as in the Act;

Floor Space Ratio Map means the Floor Space Ratio Map in the LEP 2013;

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 of or administration of the GST;

Height of Buildings Map means the Height of Buildings Map in the LEP 2013;

Hume Street Park means the proposed public open space between Hume Street and Clarke Street, St Leonards;

Insolvent means the occurrence of any of the following:

- (a) a party is liquidated, whether compulsorily or voluntarily (other than for the purpose of amalgamation or reconstruction whilst solvent);
- (b) a party becomes unable to pay its debts as they fall due;
- (c) a party enters into any arrangement with creditors;
- (d) a party becomes subject to external administration within the meaning of Chapter 5 of the *Corporations Act 2001* (Cth), including having a receiver or administrator appointed over all or any part of its assets; or
- (e) anything analogous (such as analogous bankruptcy processes) or having a substantially similar effect to the events specified in clauses (a) to (d) above occurs in relation to a party, including the court appointment of a receiver.

Instrument Change means an amendment to LEP 2013 implementing the Planning Proposal;

Land means Lots 5 to 7 of Section 11 in Deposited Plan 2872, known as 50-56 Atchison Street, St Leonards;

Law means:

- (a) any law applicable including legislation, ordinances, regulations, by-laws and other subordinate legislation;
- (b) any Approval, including any condition or requirement under it; and
- (c) any fees and charges payable in connection with the things referred to in paragraphs (a) and (b);

LEP 2013 means the *North Sydney Local Environmental Plan 2013*;

Modification means any modification of the Development Consent under section 4.55 of the Act;

Monetary Contribution means a monetary contribution payable by the Developer in the amount of \$1,400,000.00;

Non-Residential Floor Space Ratio Map means the Non-Residential Floor Space Ratio Map in the LEP 2013;

Occupation Certificate means an occupation certificate as defined under section 6.4 of the Act, and includes an interim Occupation Certificate or a final Occupation Certificate;

Planning Proposal means PP 3/18 lodged with the Council on 6 April 2018, seeking to amend LEP 2013:

- (a) to increase the building height control applying the Land from 20m to 56m (excluding the lift overrun);
- (b) to establish an overall maximum floor space ratio control applying to the Land of 6.4:1; and
- (c) to increase the minimum non-residential floor space ratio control applying to the Land from 0.6:1 to 1.7:1;

Public Access Area means a pedestrian thoroughfare between 4.6m and 5.6m metres wide (with a minimum width of 4.6m), connecting Atchison Street to Atchison Lane, as generally identified in the location on the plan attached at **Annexure A**;

Public Access Easement means an easement in gross limited in depth to the finished floor level of the ground floor of the Development and limited in height not less than 7.0m above ground floor level granted in favour of the Council that permits public access via the Public Access Area and a positive covenant which are generally in the terms set out in **Schedule 2**;

Register means the Torrens title register maintained under the *Real Property Act 1900* (NSW);

Regulation means the *Environmental Planning and Assessment Regulation 2000*;

Related Body Corporate has the meaning given to that term in s 9 of the *Corporations Act 2001* (Cth);

Security means a Bank Guarantee or Bond and includes the Easement Security and the Monetary Contributions Security;

Setback Area means a 3 metre building setback from the Atchison Street boundary of the Land, as shown on the plan attached at **Annexure A**; and

Setback Easement means an easement in gross limited in depth to the finished floor level of the ground floor of the Setback Area and unlimited in height granted in favour of the Council that permits public access via the Setback Area and is generally in the terms set out in **Schedule 3**.

2 Interpretation

In this agreement, unless the context indicates a contrary intention:

- (a) **(documents)** a reference to this agreement or another document includes any document which varies, supplements, replaces, assigns or novates this agreement or that other document;
- (b) **(references)** a reference to a party, clause, paragraph, schedule or annexure is a reference to a party, clause, paragraph, schedule or annexure to or of this agreement;
- (c) **(headings)** clause headings and the table of contents are inserted for convenience only and do not affect interpretation of this agreement;
- (d) **(person)** a reference to a person includes a natural person, corporation, statutory corporation, partnership, the Crown and any other organisation or legal entity and their personal representatives, successors, substitutes (including persons taking by novation) and permitted assigns;

- (e) **(party)** a reference to a party to a document includes that party's personal representatives, executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns;
- (f) **(president, CEO or managing director)** the president, CEO or managing director of a body or Authority means any person acting in that capacity;
- (g) **(requirements)** a requirement to do any thing includes a requirement to cause that thing to be done, and a requirement not to do any thing includes a requirement to prevent that thing being done;
- (h) **(including)** including and includes are not words of limitation, and a list of examples is not limited to those items or to items of a similar kind;
- (i) **(corresponding meanings)** a word that is derived from a defined word has a corresponding meaning;
- (j) **(singular)** the singular includes the plural and vice-versa;
- (k) **(gender)** words importing one gender include all other genders;
- (l) **(parts)** a reference to one or more things includes each part and all parts of that thing or group of things but nothing in this clause implies that part performance of an obligation constitutes performance of that obligation;
- (m) **(rules of construction)** neither this agreement nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting;
- (n) **(legislation)** a reference to any legislation or provision of legislation includes all amendments, consolidations or replacements and all regulations or instruments issued under it;
- (o) **(time and date)** a reference to a time or date in connection with the performance of an obligation by a party is a reference to the time and date in Sydney, Australia, even if the obligation is to be performed elsewhere;
- (p) **(joint and several)** an agreement, representation, covenant, right or obligation:
 - (i) in favour of two or more persons is for the benefit of them jointly and severally; and
 - (ii) on the part of two or more persons binds them jointly and severally;
- (q) **(writing)** a reference to a notice, consent, request, approval or other communication under this agreement or an agreement between the parties means a written notice, request, consent, approval or agreement;
- (r) **(replacement bodies)** a reference to a body (including an institute, association or Authority) which ceases to exist or whose powers or functions are transferred to another body is a reference to the body which replaces it or which substantially succeeds to its power or functions;
- (s) **(Australian currency)** a reference to dollars or \$ is to Australian currency;
- (t) **(month)** a reference to a month is a reference to a calendar month; and
- (u) **(year)** a reference to a year is a reference to twelve consecutive calendar months.

3 Planning Agreement under the Act

- (a) The parties agree that this agreement is a planning agreement within the meaning of section 7.4 of the Act.
- (b) **Schedule 1** of this agreement summarises the requirements for planning agreements under s 7.4 of the Act and the way this agreement addresses those requirements.

4 Application of this agreement

This agreement applies to:

- (a) the Land;
- (b) the Development; and
- (c) the Instrument Change.

5 Operation of this agreement

This agreement commences on and from the date it is executed by all parties.

6 Contributions to be made under this agreement

6.1 *Monetary Contribution*

- (a) The Developer will pay to Council the Monetary Contribution in accordance with this clause 6.1.
- (b) Subject to clause 9.2, the Monetary Contribution must be paid to Council as follows:
 - (i) prior to the issue of a Construction Certificate for the Development for any above-ground works approved under a Development Consent, or such other time as agreed by the parties in writing, the Developer must pay to Council 50% of the Monetary Contribution increased but not decreased, in accordance with movements in the CPI from the date of this agreement to the date of payment; and
 - (ii) prior to the issue of the first Occupation Certificate for the Development, or such other time as agreed by the parties in writing, the Developer must pay to Council the remaining 50% of the Monetary Contribution increased but not decreased in accordance with movements in the CPI from the date of this agreement to the date of payment.
- (c) Any agreement by the parties to vary the timing for payment of the Monetary Contribution will not take effect until the amendment has been:
 - (i) confirmed in writing; and
 - (ii) signed by the parties.
- (d) The Monetary Contribution must be paid by way of bank cheque in favour of Council or by deposit by means of electronic funds transfer into an account specified by Council.
- (e) The Monetary Contribution will be taken to have been made when the Council notifies the Developer in writing that the bank cheque has been received and

cleared funds or electronic funds have been deposited in the Council's bank account.

- (f) The parties agree and acknowledge that the Monetary Contribution will be used by the Council as it sees fit to:
 - (i) acquire land for the improvement of Hume Street Park as required;
 - (ii) carry out the embellishment of Hume Street Park; and
 - (iii) care for and maintain Hume Street Park.
- (g) Subject to clause 9.3, in the event Council determines not to acquire the land for the purposes of establishing Hume Street Park, the Council agrees that the contributions made under this agreement will be applied towards the embellishment and maintenance of other land for the purposes of public open space and recreation within the North Sydney Local Government Area and within the suburbs of St Leonards and Crows Nest only.
- (h) For the avoidance of doubt, nothing in this agreement requires the Council to:
 - (i) spend the Monetary Contribution made under this agreement by a particular date; or
 - (ii) refund to the Developer any contribution made under this agreement.

6.2 Public Access Area

- (a) The Developer agrees to establish the Public Access Area as part of the Development, in accordance with this **clause 6.2**.
- (b) The Developer agrees and acknowledges that:
 - (i) any Development Consent or Modification relating to a building on the Land may require development of the Public Access Area so it is consistent with any standards and specifications provided by the Council, and suitable for public use as a pedestrian thoroughfare;
 - (ii) prior to the issue of any Occupation Certificate for the Development, or such other time as agreed by the parties in writing, it will design and construct the Public Access Area in a good and workmanlike manner and in accordance with any technical requirements in *North Sydney Development Control Plan 2013* and Council's Public Domain Style Manual and Design Code, unless otherwise specified by the Council, and any Development Consent.
- (c) The works to develop the Public Access Area must be completed to Council's satisfaction, acting reasonably, prior to the issue of the first Occupation Certificate for the Development, or such other time as agreed by the parties in writing.
- (d) Prior to the issue of any Occupation Certificate for the Development or such other time as agreed by the parties in writing, the Developer must lodge the Public Access Easement for registration.
- (e) The Developer must do all things reasonably required to procure registration of the Public Access Easement including responding in a timely manner to requisitions issued by NSW Land Registry Services.
- (f) For the avoidance of doubt:

- (i) The Developer will be taken to have established the Public Access Area as required by this agreement when the Council is satisfied that the works to develop the Public Access Area are complete and the Public Access Easement has been registered.
 - (ii) The lodgement of the Public Access Easement with NSW Land Registry Service does not constitute completion of the obligation to register the Public Access Easement.
 - (iii) The Public Access Easement will be taken to have been registered for the purposes of this clause 6.2 when the Developer has provided Council with a copy of the registered dealing.
- (g) Any agreement by the parties to vary the timing for the design and construction of the Public Access Area, completion of the works to the Public Access Area or registration of the Public Access Easement permitted by clause 6.2(b)(ii), (c) and (d) will not take effect until the amendment has been:
- (i) confirmed in writing; and
 - (ii) signed by the parties.
- (h) The Developer acknowledges and agrees that the Public Access Area will serve the purposes of improving pedestrian circulation and improve the amenity of the public domain by encouraging active street frontages.

6.3 Setback Area

- (a) The Developer agrees to establish the Setback Area as part of the Development in accordance with this **clause 6.3**.
- (b) The Developer agrees and acknowledges that:
 - (i) any Development Consent or Modification relating to a building on the Land may require development of the Setback Area so it is consistent with any standards and specifications provided by the Council, and suitable for public use;
 - (ii) prior to the issue of the first Occupation Certificate for the Development, or such other time as agreed by the parties in writing, it will design and construct the Setback Area in a good and workmanlike manner and in accordance with any technical requirements in *North Sydney Development Control Plan 2013* and Council's Public Domain Style Manual and Design Code, unless otherwise specified by the Council, and any Development Consent.
- (c) The works to develop the Setback Area must be completed to Council's satisfaction, acting reasonably, prior to the issue of the first Occupation Certificate for the Development.
- (d) Prior to the issue of a Construction Certificate for any above-ground works approved under a Development Consent, or such other time as agreed by the parties in writing, the Developer is to register a restrictive covenant against the title to the Land prohibiting the erection of any building or structure on or above the finished floor level of the ground floor of the Setback Area other than improvements consistent with the Setback Easement and approved by Council, including works of art, street furniture, tables and seating, signage including but

not limited to rules of behaviours, security, lighting, planter boxes and any other public domain improvements.

- (e) Prior to the issue of the first Occupation Certificate for the Development, or such other time as agreed by the parties in writing, the Developer must lodge for registration against the title to the Land the Setback Easement.
- (f) The Developer must do all things reasonably required to procure registration of the Setback Easement including responding in a timely manner to requisitions issued by NSW Land Registry Services.
- (g) For the avoidance of doubt:
 - (i) The Developer will be taken to have established the Setback Area as required by this agreement when the Council is satisfied that the works to develop the Setback Area are complete and the Setback Easement has been registered.
 - (ii) The lodgement of the Setback Easement with NSW Land Registry Service does not constitute completion of the obligation to register the Setback Easement.
 - (iii) The Setback Easement will be taken to have been registered for the purposes of this clause 6.3 when the Developer has provided Council with a copy of the registered dealing.
- (h) Any agreement by the parties to vary the timing for the design and construction of the Setback Area, completion of the works to the Setback Area or registration of the Setback Easement permitted by clause 6.3(b)(ii), (c), (d) and (e) will not take effect until the amendment has been:
 - (i) confirmed in writing; and
 - (ii) signed by the parties.
- (i) The Developer acknowledges and agrees that the Setback Area will serve the purposes of improving pedestrian circulation and improve the amenity of the public domain by encouraging active street frontages.

7 Application of s 7.11, s 7.12 and s 7.24 of the Act

- (a) This agreement does not exclude the application of section 7.11 of the Act to the Development.
- (b) This agreement does not exclude the application of section 7.12 of the Act to the Development.
- (c) This agreement does not exclude the application of section 7.24 of the Act to the Development.
- (d) The benefits under this agreement are not to be taken into consideration in determining a development contribution under section 7.11 of the Act.

8 Registration of this agreement

8.1 *Developer Interest*

The Developer represents and warrants to the Council that on the date of this agreement it is the registered proprietor of the Land.

8.2 *Registration of this agreement*

- (a) The Developer agrees to procure the registration of this agreement under the *Real Property Act 1900* (NSW) in the relevant folios of the Register of the Land in accordance with section 7.6 of the Act.
- (b) The Developer at its own expense will, promptly after the execution of this agreement, take all practical steps, and otherwise do anything that the Council reasonably requires to procure:
 - (i) the consent of each person who:
 - (A) has an estate or interest in the Land registered under the *Real Property Act 1900* (NSW); or
 - (B) is seized or possessed of an estate or interest in the Land,
 - (ii) the execution of any documents; and
 - (iii) the production of the relevant duplicate certificates of title,
 to enable the registration of this agreement in accordance with this **clause 8.2**.
- (c) The Developer, at its own expense, will take all practical steps, and otherwise do anything that the Council reasonably requires:
 - (i) to procure the lodgement of this agreement with the Registrar-General as soon as reasonably practicable after this agreement comes into operation, but in any event, no later than 40 Business Days after that date; and
 - (ii) to procure the registration of this agreement by the Registrar-General in the relevant folios of the Register for the Land as soon as reasonably practicable after this agreement is lodged for registration.

8.3 *Removal from Register*

The Council will provide a release and discharge of this agreement so that it may be removed from the folios of the Register for the Land (or any part of it) provided the Council is satisfied the Developer has provided the Contributions in accordance with this agreement, and is not otherwise in default of any of the obligations under this agreement.

8.4 *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 the Developer's cost, register a withdrawal of any caveat in respect of the Land within five (5) Business Days after the Developer complies

with **clause 8.2** and must not lodge any other caveats on the titles to any of the Land.

9 Review of this agreement

9.1 Review by agreement

- (a) This agreement may be reviewed or modified by agreement between the parties using their best endeavours and acting in good faith.
- (b) For the purposes of this clause 9.1 and subject to clauses 9.2 and 9.3:
 - (i) no modification or review of this agreement will be of any force or effect unless it is in writing and signed by the parties to this agreement; and
 - (ii) a party is not in breach of this agreement if it does not agree to an amendment to this agreement requested by a party in, or as a consequence of, a review.

9.2 Adjustment to Monetary Contribution

- (a) If the Development as approved by a Development Consent (**Approved Development**) achieves a total gross floor area equal to or less than 6499 m² and a total FSR equal to or less than 6:1 then within 20 Business Days of either party making a written request for review, the Council and the Developer must meet to review this agreement in accordance with the principles in clause 9.2(b), using their best endeavours and acting in good faith.
- (b) If a review of this agreement is carried out under clause 9.2(a) the parties must consider during that review process, whether the quantum of Monetary Contribution payable by the Developer under this agreement should be reduced having regard to:
 - (i) the total gross floor area and total FSR of the Approved Development; and
 - (ii) the planning controls applicable to the Land.

9.3 State Infrastructure Contribution

- (a) The Parties acknowledge that:
 - (i) On 31 August 2020, before the date of this agreement, the NSW State Government has adopted the Local Character Statement, the Green Plan and the *Environmental Planning and Assessment (Special Infrastructure Contribution - St Leonards and Crows Nest) Determination 2020 (SIC Determination)*, the *Environmental Planning and Assessment (Special Infrastructure Contribution - St Leonards and Crows Nest) Direction 2020 (Ministerial Direction)* and the *Environmental Planning and Assessment Amendment (St Leonards and Crows Nest Special Contributions Area) Order 2020 (Order)*;
 - (ii) The Land is identified within the St Leonards and Crows Nest Special Contributions Area in the SIC Determination and the Order and consequently, the SIC Determination applies to the Land;
 - (iii) As at the date of this agreement:
 - (A) The Land is not identified as "intensive residential use land" within the meaning of the SIC Determination; and

- (B) clause 6 of the SIC Determination does not apply to the Land nor the Development.
- (iv) The Land may be identified as “intensive residential use land” within the meaning of the SIC Determination following the making of the Instrument Change such that clause 6 of the SIC Determination will apply to the Land and the Development.
- (b) In the event that the Contributions have not been made under this agreement and either:
 - (i) The SIC Determination, or any other Special Infrastructure Contribution (SIC) determination made under Part 7, Division 7.1, Subdivision 4 of the Act or any other similar state or regional development contribution applies to the Land and the Development which imposes a requirement for the Developer to pay a SIC in relation to the Development or the Land; or
 - (ii) LEP 2013, following the Instrument Change, contains a provision requiring satisfactory arrangements for the provision of contributions to designated state or regional infrastructure,

within 20 Business Days of either party making a request for a review, the Council and the Developer must meet to review this agreement in accordance with the principles in **clause 9.3(c)**, using their best endeavours and acting in good faith.
- (c) If a review of the Agreement is carried out under **clause 9.3(b)**, the parties must consider during that review process a reduction of the quantum of Monetary Contribution payable by the Developer to the Council under this agreement (and any subsequent release of all or part of the Security provided by the Developer under this agreement) taking into account:
 - (i) the amount of the SIC that is payable by the Developer in connection with the Development; and/or
 - (ii) the infrastructure to be provided and the amount of any contributions or works required as a result of the requirement to enter into satisfactory arrangements to provide contributions for designated state or regional infrastructure.
- (d) For the avoidance of doubt, nothing in clause 6.1(g) operates to release or alleviate the Council of its obligation to meet with the Developer to review this agreement in accordance with this clause 9.3.

9.4 Outcome of Review

- (a) Any agreement reached during a review under **clause 9.2** or **clause 9.3** will not constitute an amendment to this agreement until the amendment has been:
 - (i) confirmed in writing as a proposed amendment to this agreement;
 - (ii) publicly notified in accordance with the Regulation
 - (iii) approved by Council after consideration of any public submissions; and;
 - (iv) signed by the parties.
- (b) A failure by a Party to agree to participate in a review under **clause 9.2** or **clause 9.3** is taken to be a dispute for the purposes of **clause 10**.

- (c) If the Parties cannot agree to the terms of any amendment following a review under **clause 9.2** or **clause 9.3**, either Party may refer the matter to dispute resolution under **clause 10**.
- (d) Nothing in this **clause 9** operates as a requirement for Council to pay any money to the Developer or to refund to the Developer or any other entity, any amount paid to it under this agreement or for any other purpose.

10 Dispute Resolution

10.1 Reference to Dispute

If a dispute arises between the parties in relation to this agreement, the parties must not commence any court proceedings relating to the dispute unless the parties have complied with this clause, except where a party seeks urgent interlocutory relief.

10.2 Notice of Dispute

The party wishing to commence the dispute resolution process must give written notice (**Notice of Dispute**) to the other parties of:

- (a) The nature of the dispute,
- (b) The alleged basis of the dispute, and
- (c) The position which the party issuing the Notice of Dispute believes is correct.

10.3 Representatives of Parties to Meet

- (a) The representatives of the parties must promptly (and in any event within 14 business days of the Notice of Dispute) meet in good faith to attempt to resolve the notified dispute.
- (b) The parties may, without limitation:
 - (i) resolve the dispute during the course of that meeting,
 - (ii) agree that further material or expert determination in accordance with **clause 10.6** about a particular issue or consideration is needed to effectively resolve the dispute (in which event the parties will, in good faith, agree to a timetable for resolution); or
 - (iii) agree that the parties are unlikely to resolve the dispute and, in good faith, agree to a form of alternative dispute resolution (including expert determination, arbitration or mediation) which is appropriate for the resolution of the relevant dispute.

10.4 Further Notice if Not Settled

If the dispute is not resolved within 14 Business Days after the nominated representatives have met, either party may give to the other a written notice calling for determination of the dispute (Determination Notice) by mediation under **clause 10.5** or by expert determination under **clause 10.6**.

10.5 Mediation

If a party gives a Determination Notice calling for the dispute to be mediated:

- (a) The parties must agree to the terms of reference of the mediation within 15 Business Days of the receipt of the Determination Notice (the terms shall

include a requirement that the mediation rules of the Institute of Arbitrators and Mediators Australia (NSW Chapter) apply;

- (b) The mediator will be agreed between the parties, or failing agreement within 15 Business Days of receipt of the Determination Notice, either Party may request the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter) to appoint a mediator;
- (c) The mediator appointed pursuant to this clause 10.5 must:
 - (i) have reasonable qualifications and practical experience in the area of the dispute; and
 - (ii) have no interest or duty which conflicts or may conflict with his or her function as a mediator he or she being required to fully disclose any such interest or duty before his or her appointment;
- (d) The mediator shall be required to undertake to keep confidential all matters coming to his or her knowledge by reason of his or her appointment and performance of his or her duties;
- (e) The parties must within 15 Business Days of receipt of the Determination Notice notify each other of their representatives who will be involved in the mediation (except if a resolution of the Council is required to appoint a representative, the Council must advise of the representative within 5 Business Days of the resolution);
- (f) The parties agree to be bound by a mediation settlement and may only initiate judicial proceedings in respect of a dispute which is the subject of a mediation settlement for the purpose of enforcing that mediation settlement; and
- (g) In relation to costs and expenses:
 - (i) Each party will bear its own professional and expert costs incurred in connection with the mediation; and
 - (ii) The costs of the mediator will be shared equally by the parties unless the mediator determines that a party has engaged in vexatious or unconscionable behaviour in which case the mediator may require the full costs of the mediation to be borne by that party.

10.6 *Expert determination*

If the dispute is not resolved under **clause 10.3** or **clause 10.5**, or the parties otherwise agree that the dispute may be resolved by expert determination, the parties may refer the dispute to an expert, in which event:

- (a) The dispute must be determined by an independent expert in the relevant field:
 - (i) agreed upon and appointed jointly by the parties; and
 - (ii) in the event that no agreement is reached or no appointment is made within 20 Business Days of the agreement to refer the dispute to an expert, appointed on application of a party by the then President of the Law Society of New South Wales;
- (b) The expert must be appointed in writing and the terms of the appointment must not be inconsistent with this clause;

- (c) The determination of the dispute by such an expert will be made as an expert and not as an arbitrator and will be in writing and contain the reasons for the determination;
- (d) The expert will determine the rules for the conduct of the process but must conduct the process in accordance with the rules of natural justice;
- (e) Each party will bear its own costs in connection with the process and the determination by the expert and will share equally the expert's fees and costs; and
- (f) Any determination made by an expert pursuant to this clause is final and binding upon the parties except unless:
 - (i) Within 20 Business Days of receiving the determination, a party gives written notice to the other party that it does not agree with the determination and commences litigation; or
 - (ii) The determination is in respect of, or relates to, termination or purported termination of this agreement by any party, in which event the expert is deemed to be giving a non-binding appraisal.

10.7 *Litigation*

If the dispute is not *finally* resolved in accordance with this **clause 10**, then either party is at liberty to litigate the dispute.

10.8 *No suspension of contractual obligations*

Subject to any interlocutory order obtained under **clause 10.1**, the referral to or undertaking of a dispute resolution process under this **clause 10** does not suspend the parties' obligations under this agreement.

11 **Enforcement**

11.1 *Default*

- (a) In the event a party considers another party has failed to perform and fulfil an obligation under this agreement, it may give notice in writing to the other party (**Default Notice**) giving all particulars of the matters in respect of which it considers default has occurred and by such notice require the default to be remedied within a reasonable time not being less than 20 Business Days.
- (b) In determining a reasonable time, regard must be had to both the nature of the default and the work or other action required to remedy it and whether or not the continuation of the default constitutes a public nuisance or raises other circumstances of urgency or emergency.
- (c) If a party disputes the Default Notice it may refer the dispute to dispute resolution under **clause 10** of this agreement.

11.2 *Security*

- (a) Prior to the issue of a Construction Certificate for any building comprising any residential component of the Development on the Land, the Developer must provide to the Council Security in the amount of \$50,000 to secure the works to the Public Access Area and Setback Area and lodgement of the easements, positive covenant and restrictive covenant required under this agreement (**Easement Security**).

- (b) Prior to the issue of a Construction Certificate for any building comprising any residential component of the Development, the Developer must provide to the Council Security in the amount of \$700,000 indexed in accordance with CPI from the date of this agreement to the date of the Security to secure the payment of the component of the Monetary Contribution payable in accordance with **clause 6.1(b)(ii) (Monetary Contribution Security)**.
- (c) The Council may call on a Security provided under this clause if:
- (i) the Developer is in material or substantial breach of this agreement and has failed to rectify the breach within a reasonable period of time after having been given reasonable notice (which must not be less than 21 Business Days) in writing to do so in accordance with **clause 11.1** of this agreement; or
 - (ii) the Developer becomes Insolvent.
- (d) Within 20 Business Days of each anniversary of the provision of a Security under **clause 11.2(a)**, the Developer must provide Council with one or more replacement or additional Securities (**Replacement Security**) so that the total amount of Security or Securities held by Council is equivalent to the amount calculated in accordance with the following:

$$A = \frac{B \times D}{C}$$

Where:

A is the amount of the total Security or Securities,

B is the amount of the Security to be replaced,

C is the CPI for the quarter ending immediately before the date of the Security to be replaced,

D is the CPI for the quarter ending immediately before the date of the Replacement Security,

provided A is greater than B.

- (e) On receipt of a Replacement Security provided under **clause 11.2(d)**, the Council must release and return to the Developer, as directed, the Security that has been replaced as soon as reasonably practicable.
- (f) At any time following the provision of a Security under this clause, the Developer may provide the Council with one or more replacement Securities totalling the amount of all Securities required to be provided under this clause for the time being. On receipt of such replacement Security, the Council must release and return to the Developer, as directed, the Security or Securities which it holds that have been replaced as soon as reasonably practicable.
- (g) Subject to this clause and the provisions of this agreement, the Council may apply the proceeds of the Monetary Contribution Security in satisfaction of:
- (i) any obligation of the Developer under this agreement to pay the Monetary Contribution; and

- (ii) any associated liability, loss, cost, charge or expense directly or indirectly incurred by the Council because of the failure by the Developer to comply with this agreement.
- (h) Subject to this clause and the provisions of this agreement, the Council may apply the proceeds of the Easement Security in satisfaction of:
 - (i) any obligation of the Developer under this agreement to grant easements or register covenants against the title to the Land, including any costs incurred in acquiring relevant interests in the Land in accordance with clause 11.4; and
 - (ii) any associated liability, loss, cost, charge or expense directly or indirectly incurred by the Council because of the failure by the Developer to comply with this agreement.
- (i) The Council must promptly return a Security provided under this clause if requested by the Developer and the Council is satisfied that the Developer has met all obligations under this agreement to which the Security relates.
- (j) Nothing in this **clause 11.2** prevents or restricts the Council from taking any enforcement action in relation to:
 - (i) any obligation of the Developer under this agreement; or
 - (ii) any associated liability, loss, cost, charge or expense directly or indirectly incurred by the Council because of the failure by the Developer to comply with this agreement,

that is not or cannot be satisfied by calling on a Security.

11.3 *Restriction on the issue of Certificates*

- (a) Unless otherwise agreed by Council in writing, in accordance with section 6.8 of the Act and clause 146A of the Regulation:
 - (i) the following obligations must be satisfied prior to the issue of the first Construction Certificate for any above-ground works approved under a Development Consent:
 - (A) payment of the first instalment of the Monetary Contribution in accordance with **clause 6.1(b)(i)**;
 - (B) registration of the restrictive covenant for the Setback Area as required by **clause 6.3(d)**; and
 - (ii) the obligations to provide Security as required under **clause 11.2** must be satisfied prior to the issue of a Construction Certificate for any building comprising any residential component.
- (b) Unless otherwise agreed by Council in writing, in accordance with section 6.10 of the Act and clause 154E of the Regulation, the following obligations must be satisfied prior to the issue of the first Occupation Certificate for the Development:
 - (i) Lodgement of the Public Access Area Easement with NSW Land and Registry Service for registration as required by **clause 6.2(d)**;
 - (ii) Lodgement of the Setback Area Easement with the NSW Land and Registry Service for registration as required by **clause 6.3(e)**; and

(iii) payment of the full amount of the Monetary Contribution in accordance with **clause 6.1(b)**.

(c) A Construction Certificate or Occupation Certificate must not be issued for any part of the Development if the Developer has failed to comply with this agreement by paying money, completing works or registering interests in the Land at the time required under this agreement, including any revised time as agreed between the parties in accordance with this agreement.

11.4 Acquisition of Easements

(a) If the Developer does not transfer or dedicate the Public Access Easement or the Setback Easement as required by this agreement, the Council may compulsorily acquire the relevant easement, in which case the Developer consents to the Council compulsorily acquiring the relevant interest for compensation in the amount of \$1.00 without having to follow the pre-acquisition procedures in the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW).

(b) This clause constitutes an agreement for the purposes of section 30 of the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW).

(c) Except as otherwise agreed between the Developer and the Council, the Developer must ensure that the land subject to the Public Access Area and Setback Area is not encumbered to any extent that would prevent the future use of that land for the public purposes identified in this agreement.

(d) The Developer indemnifies and keeps indemnified the Council against all Claims made against the Council as a result of any acquisition by the Council of the whole or any part of the relevant interest in land under this clause.

(e) The Council may call on the Security provided under **clause 11.2(a)** for the purposes of reimbursing the Council's reasonable costs and legal costs incurred by the Council in acquiring any interest in the Land under this clause, and the Developer must pay the Council, promptly on demand, any amount that is not or cannot be satisfied by calling on a Security.

11.5 General 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 Assignment and Dealings

12.1 Assignment

(a) The Developer is not to settle on the sale or assignment or novation of its interest under this agreement to another party (**Incoming Party**) unless before settlement the Developer:

- (i) procures the execution by the Incoming Party of an agreement in favour of the Council on the same terms as this agreement;
 - (ii) delivers any replacement Securities provided by the Incoming Party as required under this agreement; and
 - (iii) satisfies the Council that the Developer is not in breach of this agreement at the time of settlement of the sale, assignment or novation.
- (b) Any purported dealing in breach of this clause is of no effect.

12.2 *Transfer of Land*

- (a) The Developer may not transfer, assign or dispose of the whole or any part of its right, title or interest in the Land (present or future) or in the Development to another person (**Transferee**) unless before it sells, transfers or disposes of that right, title or interest:
- (i) The Developer satisfies the Council that the rights of the Council will not be diminished or fettered in any way;
 - (ii) The Transferee delivers to the Council a novation deed signed by the Transferee in a form and of such substance as is acceptable to the Council containing provisions under which the Transferee agrees to comply with all the outstanding obligations of the Developer under this agreement;
 - (iii) Any default under any provisions of this agreement has been remedied or waived by the Council, on such conditions as the Council may determine, and
 - (iv) The Developer and the Transferee pay the Council's reasonable costs in relation to the assignment.
- (b) **Clause 12.2(a)** does not apply to an assignment or novation of the Developer's interest in the Land:
- (i) if the Developer has satisfied Council that all obligations of the Developer under this agreement have been met;
 - (ii) if the Council has released or discharged the Developer from any obligations under this agreement in connection with the part of the Land to be transferred;
 - (iii) that is a mortgage of or charge on the Land, provided that this agreement is registered on title; and
 - (iv) that is an off-the-plan sale, transfer assignment to a third party acquiring an interest in the Land as a purchaser of one or more lots in the strata scheme (whether or not the plan has, at the date of exchange been registered) provided that this agreement is and remains registered on the title to any such lot in accordance with **clause 8**.

12.3 *Further Acts*

- (a) Provided that this agreement is registered on the title to the Land in accordance with **clause 8**, the Developer may, while continuing to be bound to perform this agreement do any of the following that are not inconsistent with or contrary to the obligations under this agreement to register the Public Access Easement and the

Setback Easement or the terms of the Public Access Easement and the Setback Easement :

- (i) Subdivide, mortgage, charge or encumber the Land or any part of it.
- (ii) Sub-contract or delegate the performance of any obligation under this agreement to any person.
- (iii) Subject to subclause (vi) below, enter into any lease or licence arrangements in relation to the Land or register any type of interest or right on the title to the Land, other than a transfer, assignment or disposal of any right, title or interest in the Land in which case clauses 12.1 and 12.2 apply.
- (iv) Enter into any joint venture or similar type of arrangement in respect of the Development and / or the Land, provided it does not involve the transfer, assignment or disposal of any right, title or interest under this agreement or in the Land contrary to **clause 12.1** or **clause 12.2** of this agreement.

but must not without the Council's written consent:

- (v) Grant any easements over the Public Access Easement and the Setback Easement; or
- (vi) Enter into any lease or licence arrangements in relation to the Public Access Easement and the Setback Easement.

13 Approvals and consents

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 discretion, acting reasonably, and subject to any conditions determined by the party. A party is not obligated to give its reasons for giving or withholding consent or for giving consent subject to conditions.

14 No fetter

14.1 Discretion

This agreement is not intended to operate to fetter, in any manner, the exercise of any statutory power or discretion of the Council, including, but not limited to, any statutory power or discretion of the Council relating to the Planning Proposal, Development Application or any other application for Development Consent (all referred to in this agreement as a "**Discretion**").

14.2 No fetter

No provision of this agreement is intended to constitute any fetter on the exercise of any Discretion. If, contrary to the operation of this clause, any provision of this agreement is held by a court of competent jurisdiction to constitute a fetter on any Discretion, the parties agree:

- (a) They will take all practical steps, including the execution of any further documents, to ensure the objective of this clause is substantially satisfied,
- (b) In the event that (a) cannot be achieved without giving rise to a fetter on the exercise of a Discretion, the relevant provision is to be severed and the remainder of this agreement has full force and effect, and

- (c) To endeavour to satisfy the common objectives of the parties in relation to the provision of this agreement which is to be held to be a fetter on the extent that is possible having regard to the relevant court judgment.

15 Notices

15.1 Notices

Any notice given under or in connection with this agreement (**Notice**):

- (a) must be in writing and signed by a person duly authorised by the sender;
- (b) must be addressed as follows and delivered to the intended recipient by hand, by prepaid post or by email at the address below, or at the address last notified by the intended recipient to the sender after the date of this agreement:
 - (i) to North Sydney Council: 200 Miller Street, North Sydney 2060
Email: council@northsydney.nsw.gov.au
Attention: General Manager
 - (ii) to Epic Leisure Pty Ltd: Suite 104, 52 Atchison Street, St Leonards 2065
Email: edwin.chew@epiltd.com.au
Attention: Edwin Chew
- (c) is taken to be given or made:
 - (i) in the case of hand delivery, when delivered;
 - (ii) in the case of delivery by post, three Business Days after the date of posting (if posted to an address in the same country) or seven Business Days after the date of posting (if posted to an address in another country); and
 - (iii) when the sender receives an email acknowledgement from the recipient's information system showing the Notice has been delivered to the email address stated above or when the Notice is first opened or read by the recipient, whichever occurs first; and
- (d) if under clause (c) a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent, or later than 4.00 pm (local time), it is taken to have been given or made at the start of business on the next Business Day in that place.

16 General

16.1 Relationship between parties

- (a) Nothing in this agreement:
 - (i) constitutes a partnership between the parties; or
 - (ii) except as expressly provided, makes a party an agent of another party for any purpose.
- (b) A party cannot in any way or for any purpose:
 - (i) bind another party; or
 - (ii) contract in the name of another party.

- (c) If a party must fulfil an obligation and that party is dependent on another party, then that other party must do each thing reasonably within its power to assist the other in the performance of that obligation.

16.2 Time for doing acts

- (a) If the time for doing any act or thing required to be done or a notice period specified in this agreement expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.
- (b) If any act or thing required to be done is done after 5.00 pm on the specified day, it is taken to have been done on the following Business Day.

16.3 Further assurances

Each party must promptly execute all documents and do all other things reasonably necessary or desirable to give effect to the arrangements recorded in this agreement.

16.4 Variation

A provision of this agreement can only be varied by a later written document executed by or on behalf of all parties and in accordance with the provisions of the Act.

16.5 Counterparts

This agreement may be executed in any number of counterparts. All counterparts taken together constitute one instrument.

16.6 Legal expenses, valuation costs and stamp duty

The Developer must pay:

- (a) the Council's reasonable valuation costs in connection with the calculation of the land value uplift as a consequence of the Instrument Change and the appropriate value of contributions under this agreement; and
- (b) Council's reasonable legal costs incurred with the negotiation, preparation, execution, stamping and registering of this agreement, including the costs of obtaining any legal advice in connection with this agreement.

16.7 Entire agreement

The contents of this agreement constitute the entire agreement between the parties and supersede any prior negotiations, representations, understandings or arrangements made between the parties regarding the subject matter of this agreement, whether orally or in writing.

16.8 Representations and warranties

The parties represent and warrant that they have the 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.

16.9 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.

16.10 *Invalidity*

- (a) A word or provision must be read down if:
 - (i) this agreement is void, voidable, or unenforceable if it is not read down;
 - (ii) this agreement will not be void, voidable or unenforceable if it is read down; and
 - (iii) the provision is capable of being read down.
- (b) A word or provision must be severed if:
 - (i) despite the operation of **clause (a)**, the provision is void, voidable or unenforceable if it is not severed; and
 - (ii) this agreement will be void, voidable or unenforceable if it is not severed.
- (c) The remainder of this agreement has full effect even if **clause 16.10(b)** applies.

16.11 *Waiver*

- (a) A right or remedy created by this agreement cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right or remedy does not constitute a waiver of that right or remedy, nor does a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.
- (b) 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.

16.12 *GST*

- (a) Words and expressions which are not defined in this agreement but which have a defined meaning in GST Law have the same meaning as in the GST Law.
- (b) Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this agreement are exclusive of GST.
- (c) If GST is imposed on any supply made under or in accordance with this agreement, the Developer must pay the GST or pay to the Council an amount equal to the GST payable on or for the taxable supply, whichever is appropriate in the circumstances.

16.13 *Governing law and jurisdiction*

- (a) The laws applicable in New South Wales govern this agreement.
- (b) The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.

Schedule 1 Summary of requirements (section 7.4)

Subject and subsection of the Act	Planning Agreement
<p>Planning instrument and/or Development Application – Section 7.4(1)</p> <p>The Developer has:</p> <p>Sought a change to an environmental planning instrument</p> <p>Made, or propose to make a Development Application</p> <p>Entered into an agreement with, or are otherwise associated with, a person to whom paragraph (a) or (b) applies</p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>
<p>Description of the land to which the planning Agreement applies – Section 7.4(3)(a)</p>	<p>Lot 5, Section 11, DP 2872; Lot 6, Section 11, DP 2872 and Lot 7, Section 11, DP 2872 also known as and situated at 50-56 Atchison Street, St Leonards.</p>
<p>The scope, timing and manner of delivery of contribution required by the Planning Agreement – Section 7.4(3)(b)</p>	<p>See clauses 6.1, 6.2 and 6.3.</p>
<p>Applicability of section 7.11 of the Act – Section 7.4(3)(d)</p>	<p>The application of section 7.11 of the Act is not excluded in respect of the Development.</p>
<p>Applicability of section 7.12 of the Act – Section 7.4(3)(d)</p>	<p>The application of section 7.12 of the Act is not excluded in respect of the Development.</p>
<p>Applicability of section 7.24 of the Act – Section 7.4(3)(d)</p>	<p>The application of section 7.24 of the Act is not excluded in respect of the Development.</p>
<p>Mechanism for dispute resolution – Section 7.4(3)(f)</p>	<p>See clause 10.</p>
<p>Enforcement of the Planning Agreement – Section 7.4(3)(g)</p>	<p>See clause 11.</p>
<p>Registration of the Planning Agreement – Section 7.4(3)(g) and section 7.6</p>	<p>See clause 8.2.</p>
<p>No obligation to grant consent or exercise functions – Section 7.4(9)</p>	<p>See clause 14.</p>

Schedule 2 Easement in Gross (Public Access Area)

Definitions

For the purpose of this Schedule 2 of this agreement, the following words have the following meanings:

Council means North Sydney Council and its successors;

Easement means the Easement created in accordance with this Schedule 2 of this agreement;

Easement Site means the location of the Public Access Area as defined in **Clause 1** of this agreement, limited in depth to the finished floor level of the ground floor of the Development and limited in height not less than 7.0m above ground floor level;

Lot Burdened means the lot or lots subject to the Public Access Area;

Owner of the Lot Burdened means the registered proprietor of the Lot Burdened from time to time;

Easement Terms

1. The Owner of the Lot Burdened grants to the Council and members of the public full and free right to go, pass and repass over the Lot Burdened within the Easement Site between the hours of 6am to 11pm:
 - (a) with or without companion animals (as defined in the *Companion Animals Act 1998*) or other small pet animals; and
 - (b) on foot without vehicles (other than prams, strollers, wheelchairs or other disabled access aids), unless vehicles are being used to access the building on the Land via clearly identified entry and exit points;for all lawful purposes.
2. The owner of the Lot Burdened must, to the satisfaction of Council, acting reasonably:
 - (a) keep the Easement Site (including any services in, on or under the Lot Burdened) in good repair and condition;
 - (b) maintain and repair the Easement Site and all improvements on it;
 - (c) keep the Easement Site clean and free from rubbish; and
 - (d) maintain sufficient public liability insurance covering the use of the Easement Site in accordance with the terms of this Easement.
3. The owner of the Lot Burdened must ensure that any rules made by an Owners Corporation relating to the Easement Site have been approved by the Council, whose approval shall not be unreasonably withheld.
4. If any member or members of the public loiter or congregate, for any purpose which the owner of the Lot Burdened, acting reasonably, considers to be a nuisance or a safety risk, the owner may either remove those members of the public, or arrange for their removal by an appropriate authority.
5. The owner of the Lot Burdened may erect safety signage and any other appropriate signage and may erect CCTV cameras on the Lot Burdened.
6. The owner of the Lot Burdened may engage security personnel to monitor and control the behaviour of the public including but not limited to prohibiting smoking, consumption of alcohol (except within licensed areas), passage of animals apart from those referred to in 1(a), riding bicycles and skateboards and the like in accordance with any rules made by an Owners Corporation relating to the Lot Burdened.
7. The owner of the Lot Burdened may, with the written approval of Council acting reasonably (except in the case of an emergency, in which case the Council's prior written approval is not required), temporarily close or temporarily restrict access through all or part of the Lot Burdened including the Easement Site for the time and to the extent necessary but only on reasonable grounds for the purposes of:

- (a) maintenance and repairs; the installation and maintenance of services; or the installation of furniture or other public domain improvements; or
 - (b) security, public safety or evacuation of the Lot Burdened and adjoining buildings.
8. Subject to paragraph 9 below, the Owner of the Lot Burdened must not erect any building or structure within the Easement Site, unless approved by Council, acting reasonably;
9. Subject to ensuring the provision of access in accordance with **clause 1** of this Easement, which must be a clear pathway being at least 3m wide, the owner of the Lot Burdened may, with the consent of Council:
- (a) carry out works in the Easement Site for the purposes of enhancing the Lot Burdened;
 - (b) install or erect works of art, street furniture, tables and seating associated with ground floor retail and commercial premises, signage (including but not limited to rules of behaviour), security, lighting, planter boxes or any other public domain improvements within the Easement Site; and
 - (c) use the Easement Site.

Release and Variation of Easement

10. The Council is solely empowered to release the Easement.
11. The Easement may only be varied by written agreement between the Council and the Owner of the Lot Burdened.

Schedule 3 Easement in Gross (Setback Area)

Definitions

For the purpose of this Schedule 3 of this agreement, the following words have the following meanings:

Council means North Sydney Council and its successors;

Easement means the Easement created in accordance with this Schedule 3 of this agreement;

Easement Site means the location of the Setback Area as defined in **Clause 1** of this agreement, limited in depth to the finished floor level of the ground floor of the Setback Area;

Lot Burdened means the lot or lots subject to the Setback Area;

Owner of the Lot Burdened means the registered proprietor of the Lot Burdened from time to time;

Easement Terms

1. The owner of the Lot Burdened grants to the Council and members of the public full and free right to go, pass and repass over the Lot Burdened at all times (but only within the Easement Site):
 - (a) with or without companion animals (as defined in the *Companion Animals Act 1998*) or other small pet animals; and
 - (b) on foot without vehicles (other than prams, strollers, wheelchairs or other disabled access aids), unless vehicles are being used to access the building on the Land via clearly identified entry and exit points;for all lawful purposes.
2. The owner of the Lot Burdened must, to the satisfaction of Council, acting reasonably:
 - (a) keep the Easement Site (including any services in, on or under the Lot Burdened) in good repair and condition;
 - (b) maintain and repair the Easement Site and all improvements on it;
 - (c) keep the Easement Site clean and free from rubbish; and
 - (d) maintain sufficient public liability insurance covering the use of the Easement Site in accordance with the terms of this Easement.
3. The owner of the Lot Burdened must ensure that any rules made by an Owner's Corporation relating to the Easement Site have been approved by the Council, whose approval shall not be unreasonably withheld.
4. If any member or members of the public loiter or congregate, for any purpose which the owner of the Lot Burdened, acting reasonably, considers to be a nuisance or a safety risk, the owner may either remove those members of the public, or arrange for their removal by an appropriate authority.
5. The owner of the Lot Burdened may erect safety signage and any other appropriate signage and may erect CCTV cameras on the Lot Burdened.
6. The owner of the Lot Burdened may engage security personnel to monitor and control the behaviour of the public including but not limited to prohibiting smoking, consumption of alcohol (except within licensed areas), passage of animals apart from those referred to in 1(a), riding bicycles and skateboards and the like in accordance with any rules made by an Owner's Corporation relating to the Lot Burdened.
7. The owner of the Lot Burdened may, with the written approval of Council (such approval not to be unreasonably withheld (except in the case of an emergency, in which case the Council's prior written approval is not required) temporarily close or temporarily restrict access through all or part of the Lot Burdened including the Easement Site for the time and to the extent necessary but only on reasonable grounds for the purposes of:

- (a) maintenance and repairs; the installation and maintenance of services; or the installation of furniture or other public domain improvements, with the approval of Council; or
 - (b) security, public safety or evacuation of the Lot Burdened and adjoining buildings.
8. Subject to ensuring the provision of public access in accordance with clause 1 of this Easement the owner of the Lot Burdened may, with the consent of Council:
- (a) carry out works in the Easement Site for the purposes of enhancing the Lot Burdened; and
 - (b) install or erect works of art, street furniture, tables and chairs associated with ground floor retail and commercial premises, signage (including but not limited to rules of behaviour), lighting, planter boxes or any other public domain improvements within the Easement Site; and
 - (c) use the Easement Site,
- in a manner consistent with any outdoor or footway dining policy of the Council, where relevant.

Release and Variation of Easement

- 9. The Council is solely empowered to release the Easement.
- 10. The Easement may only be varied by written agreement between the Council and the Owner of the Lot Burdened.

Executed as an agreement

Executed for and on behalf of North Sydney Council by its authorised delegate in accordance with a resolution of the Council dated 27 September 2021:

[Handwritten signature of witness]

Witness

[Handwritten signature of authorised delegate]

Authorised Delegate

LINDA FORBES

Name of Witness

KM Gouldthorp
General Manager

Name of Authorised Delegate

Executed by Epic Leisure Pty Ltd ACN 115 707 527 in accordance with section 127 of the Corporations Act 2001 (Cth) by:

[Handwritten signature of company secretary/director]

Company Secretary/ ~~Director~~

[Handwritten signature of director]

Director

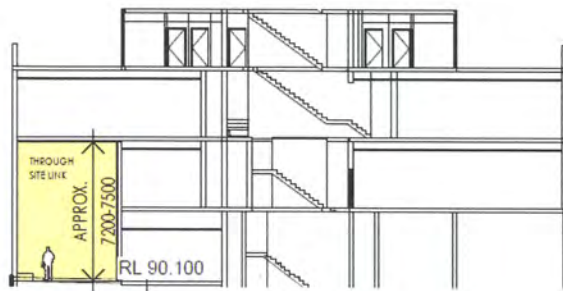
YIJUN WANG

Name of Company Secretary/ ~~Director~~ (print)

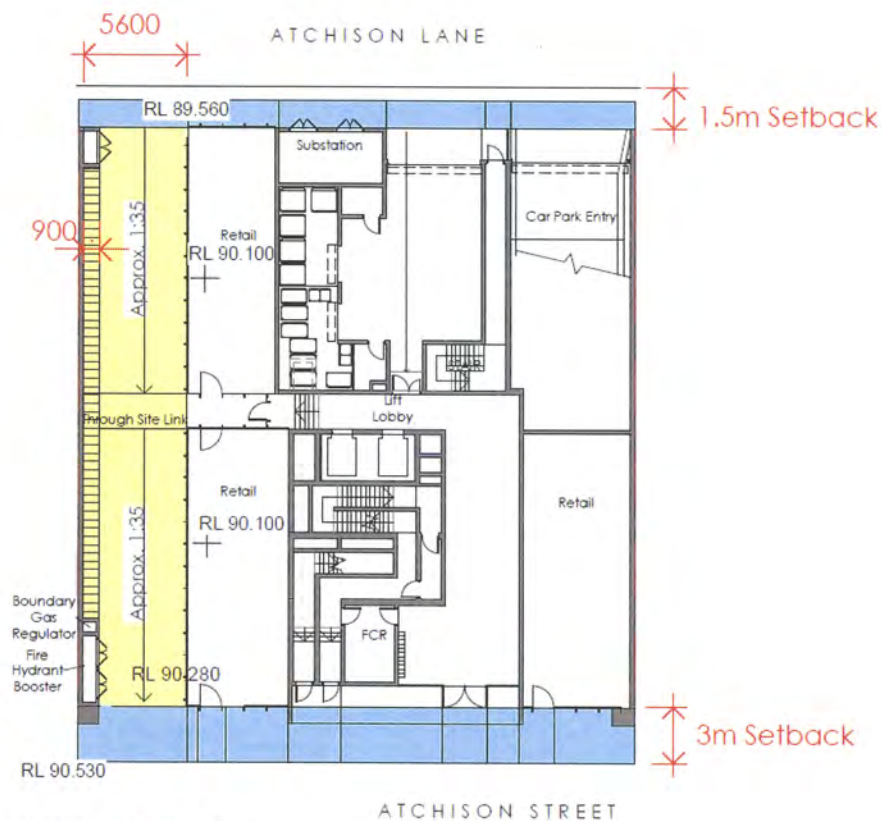
CHENG LEONG CHEW

Name of Director (print)

Annexure A Plan showing Public Access Area and Setback Area



THROUGH SITE LINK SECTION



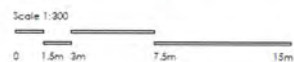
THROUGH SITE LINK PLAN



KANNFINCH 50 - 56 ATCHISON ST. ST LEONARDS
 Kann Finch Group Pty Ltd www.kannfinch.com

THROUGH SITE LINK

SK01



Project No. 6309

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