

North Sydney Council

Legal Document

LD 7429_ Attached

Voluntary Planning Agreement
27-57 Falcon Street, CROWS NEST PP 6/19

Please ensure that this coversheet remains attached to this Legal Doc

Voluntary Planning Agreement

North Sydney Council
ABN 32 353 260 317

CN Land Pty Limited
ACN 630 395 961



Newcastle

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Agreement

Date

Parties

First party

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

Second party

Name	CN Land Pty Limited (Developer)
ACN	630 395 961
Contact	Leigh Manser
Telephone	0438 741 077

Background

- A. The Developer owns the Land.
- B. The Developer proposes to carry out the Development which will include a high density residential development, retail premises, associated landscaping and basement parking.
- C. To facilitate the Development, the Developer has lodged a Planning Proposal seeking an amendment to LEP 2013 as follows:
 - a. amending the Land Zoning Map by rezoning the site from B4 Mixed Use to R4 High Density Residential;
 - b. amending the Height of Buildings Map to allow a maximum part building height limit of 14.5m and a maximum part building height limit of 21m;
 - c. amending the Floor Space Ratio Map to allow a maximum FSR for the Land of 1.85:1;
 - d. amending the Non-Residential Floor Space Ratio Map by deleting the minimum non-residential FSR of 0.5:1;
 - e. amend Schedule 1— Additional permitted uses of LEP 2013 to permit the use of retail premises on the Land with development consent; and
 - f. include a site-specific provision under Part 6 Division 3 of LEP 2013 to allow minor exceedances to the Height of Building control to facilitate a roof/lift overrun.
- D. The Planning Proposal is supported by a draft site specific DCP to help guide future detailed design and assessment of the Development.

- E. The Developer has made an offer to enter into this agreement in connection with the Planning Proposal and Development to provide the following public benefits at the Developer's cost:
- a. provision of the Monetary Contribution; and
 - b. Dedication of Land to Council including embellishment works.
- F. Council has accepted the offer to enter into this agreement. The parties wish to formalise that offer by entering into this agreement in accordance with section 7.4 of the Act.

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;

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 an insurance bond provided by an insurer licensed by the Australian Prudential Regulatory Authority (APRA) to operate in Australia or has an investment grade rating from an industry recognised rating agency such as Moody's, Standard & Poors or Bests;

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

Certificate of Practical Completion means the written certificate confirming the Works, or part of the Works, have been completed in accordance with the requirements of this agreement (including the Construction Terms), issued under **clause 8.1(b)** of the Construction Terms;

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;

Construction Terms means the terms set out in Schedule 2;

Contributions means the monetary contributions, dedication of land and works to be delivered by the Developer in accordance with this agreement;

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;

DCP means the site-specific Development Control Plan sought by the Developer and more particularly described in Schedule 4;

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

Dedication Land means that part of the Land to be dedicated to Council in accordance with this agreement, being 129 sqm of land adjacent to Alexander Lane and 245 sqm of land adjacent to Hayberry Lane as shown on the plan at Annexure A;

Development means the future development of the Land consisting of high density residential development, retail premises, associated landscaping and basement parking as anticipated by the Planning Proposal;

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;

FSR means floor spaced ratio as defined in the LEP 2013;

GFA means gross floor area as defined 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;

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 (b) above occurs in relation to a Party, including the court appointment of a receiver.

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

Land means Lot 33 Section 3 DP 1720, Lot 32 Section 3 DP 1720, Lot X DP 407774, Lot Y DP 407774, Lot A DP 377050, Lot 26 Section 3 DP 1720, and Lot 25 Section 3 DP 1720 known as 27-57 Falcon Street, Crows Nest;

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*;

Monetary Contribution means \$800,000 payable by the Developer under **clause 6.1** of this agreement;

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 a partial Occupation Certificate;

Permitted Encumbrances means easements in favour of utility service providers or required by any Authority or as otherwise agreed in writing by Council;

Planning Proposal means Planning Proposal 6/19 seeking to amend LEP 2013 by amending:

- (a) the Land Zoning Map to rezone the Land to R4 High Density Residential;
- (b) the Height of Buildings Map to allow a maximum building height limit of 14.5m on part of the Land and a maximum building height limit of 21m on part of the Land;
- (c) the Floor Space Ratio Map to allow a maximum FSR for the Land of 1.85:1;
- (d) the Non-Residential Floor Space Ratio Map by deleting the minimum non-residential FSR of 0.5:1 for the Land;
- (e) Schedule 1 Additional permitted uses of LEP 2013 to permit the use of retail premises on the Land with development consent; and
- (f) Part 6 Division 3 of LEP 2013 by including a site-specific provision to allow minor exceedances to the Height of Building control applying to the Land to facilitate a roof/lift overrun.

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

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

Security means a Bank Guarantee or Bond;

- (a) until the part payment of the Monetary Contribution is paid under clause 6.1(b)(i), in the amount of \$1,130,000.00; and
- (b) thereafter, in the amount of \$730,000.00; and

Works means the works required to embellish the Dedication Land, including but not limited to design, survey, planning, obtaining approvals, engineering and construction generally in accordance with the scope of works set out in Schedule 1 and the concept plan at Annexure A.

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 City or State, 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 3 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 Instrument Change,
- (b) the Development, and
- (c) the Land.

5 Operation of this agreement

- (a) This agreement commences on and from the date it is executed by all parties.
- (b) For the avoidance of doubt, the obligations to deliver contributions under clause 6 of this agreement do not take effect until the Instrument Change is made and the DCP (generally in accordance with the draft document at Schedule 4) is adopted.

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) The Monetary Contribution must be paid to Council as follows:
 - (i) prior to the issue of a Construction Certificate for any above-ground works forming part of the Development, 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, 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) 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.
- (d) The Monetary Contribution will be taken to have been made when the Council notifies the Developers in writing as soon as reasonably practicable that the bank cheque has been received and cleared funds or electronic funds have been deposited in the Council's bank account.
- (e) 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.
- (f) In the event the Council determines not to acquire the land for the purposes of establishing the 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.
- (g) 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 Works

- (a) Prior to the dedication of the Dedication Land in accordance with **clause 6.3**, the Developer must carry out the Works, in accordance with the Construction Terms.
- (b) The Works or any part of the Works required under this agreement will be taken to have been completed for the purposes of this agreement when a Certificate of Practical Completion has been issued for those Works.

- (c) The Works required under this agreement will be taken to have been delivered to Council when the land on which those Works are located is dedicated to Council.

6.3 *Dedication of Land*

- (a) The Dedication Land must be dedicated or transferred to Council prior to the issue of an Occupation Certificate for the Development or any part of the Development.
- (b) The dedication of the Dedication Land is made for the purposes of this agreement when:
 - (i) a deposited plan is registered in the register of plans held with the Registrar-General that dedicates the Dedication Land as public road under the *Roads Act 1993 (NSW)* and Council must, provided a subdivision certificate has been issued, without delay do all things reasonably necessary including signing documents and providing all such consents to allow for the plan to be registered; or
 - (ii) the Council is given:
 - (A) an instrument in registrable form under the *Real Property Act 1900 (NSW)* duly executed by the Developer as transferor that is effective to transfer the title to the Dedication Land to the Council when executed by the Council as transferee and registered;
 - (B) the written consent to the registration of the transfer of any person whose consent is required to that registration; and
 - (C) a written undertaking from any person holding the certificate of title to the production of the certificate of title or the CoRD Holder consent eForm lodged through PEXA (as applicable) for the purposes of registration of the transfer.
- (c) The Developer is to ensure that the Dedication Land is dedicated or transferred to the Council under this agreement, at no cost to Council, is free of all encumbrances and affectations (including any charge or liability for rates, taxes and charges) except for the Permitted Encumbrances.
- (d) If, having used all reasonable endeavours, the Developer cannot ensure that land to be dedicated to the Council under this agreement is free from all encumbrances and affectations except for the Permitted Encumbrances, the Developer may request that Council agree to accept the land subject to those encumbrances and affectations, but the Council may withhold its agreement in its absolute discretion.
- (e) The parties agree and acknowledge that the Works and dedication of the Dedication Land serve the public purpose of upgrading and improving pedestrian access and amenity in the vicinity of the Development.

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) An acceptance of the terms of this agreement and an acknowledgement in writing from any existing mortgagee in relation to the Land that the mortgagee will adhere to the provisions of this agreement if it takes possession of the Land as mortgagee in possession,
 - (iii) The execution of any documents; and
 - (iv) The production of the relevant duplicate certificates of title or the CoRD Holder consent eForm lodged through PEXA (as applicable),
 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 the execution of this agreement, but in any event, no later than 10 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.
- (d) The Council must promptly comply with any requisitions that may be raised with regard to the registration of this agreement that are properly for the Council to satisfy.

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, acting reasonably, that the Developer has duly fulfilled its obligations under 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 Developer's cost, register a withdrawal of any caveat in respect of the Land within five 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 **clause 9.2**:
 - (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 *State Infrastructure Contribution*

- (a) The parties acknowledge that as at the date of this agreement, the NSW State Government has released the St Leonards and Crows Nest 2036 Plan and a Ministerial determination has been made to levy a Special Infrastructure Contribution (**SIC Determination**) under section 7.24 of the Act to help fund infrastructure to support the implementation of that 2036 Plan.
- (b) St Leonards and Crows Nest 2036 Plan notes that a developer may enter into a planning agreement under section 7.4 of the Act to provide State or local infrastructure associated with a change to planning controls or a development application in St Leonards and Crows Nest in lieu of a contribution to the SIC or local contribution schemes.
- (c) As at the date of this agreement, the Land is not identified within the St Leonards and Crows Nest Special Contributions Area in the SIC Determination and consequently the SIC Determination does not apply to the Land.

- (d) The Land may be identified as “intensive residential use land” within the St Leonards and Crows Nest Special Contributions Area in accordance with the SIC Determination following the making of the Instrument Change such that the SIC Determination will apply to the Land.
- (e) 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, and 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 9.2(f)** and **clause 9.2(g)**, using their best endeavours and acting in good faith.
- (f) If a review of the agreement is carried out under **clause 9.2(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.
- (g) For the avoidance of doubt, before seeking to reduce the quantum of Monetary Contribution payable under this agreement, the Developer and the Council must jointly apply for and diligently pursue an offset against any liability to pay any SIC on the basis that the Developer is obliged to pay the Monetary Contribution under this agreement.
- (h) Any agreement reached during a review under this **clause 9.2** 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.
- (i) A failure by a Party to agree to participate in a review under this **clause 9.2** is taken to be a dispute for the purposes of **clause 10**.

- (j) If the Parties cannot agree to the terms of any amendment following a review under **clause 9.2**, either Party may refer the matter to dispute resolution under **clause 10**.
- (k) Nothing in this clause operates as a requirement for Council to pay any money to the Developer (for example if the SIC is greater than the quantum of Monetary Contributions otherwise payable by 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 15 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 15 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 21 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 Bank Guarantee

- (a) Within 5 Business Days after the Instrument Change is made, the Developer is to provide to Council the Security.
- (b) The Council may call on the Security provided under this clause if:
 - (i) the Developer fails to pay the Monetary Contribution and has failed to rectify the breach after having been given reasonable notice (which must not be less than 20 Business Days) in writing to do so; or
 - (ii) fails to carry out the Works as required by this Agreement and has failed to rectify the breach after having been given reasonable notice (which must not be less than 20 Business Days) in writing to do so; or
 - (iii) the Council acquires the Dedication Land in accordance with clause 11.3; or
 - (iv) the Developer becomes Insolvent.
- (c) Subject to this clause, the Council may apply the proceeds of the Security in satisfaction of:
 - (i) any obligation of the Developer to deliver Contributions under this agreement;
 - (ii) any obligation of the Developer to pay Council's costs of acquiring the Dedication Land; and
 - (iii) 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.
- (d) At any time following the provision of any Security, the Developer may provide the Council with one or more replacement Securities totalling the amount of all the Securities required to be provided under this clause for the time being.
- (e) 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 Bank Guarantees or Bonds 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(ies) which it holds that have been replaced as soon as reasonably practicable.
- (f) The Council must promptly return the Security at the request of the Developer, if any of the following circumstances occur:
 - (i) the Developer fulfils the relevant obligations under this Agreement for that Security as set out in this agreement; or
 - (ii) a Court of competent jurisdiction invalidates the Instrument Change and all avenues of appeal from that decision have been exhausted.
- (g) 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 *Compulsory Acquisition*

- (a) If the Developer does not dedicate the Dedication Land to Council as required by this agreement, the Council may compulsorily acquire the relevant land, in which case the Developer consents to the Council compulsorily acquiring that land 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* and may call upon any Security provided under **clause 11.2** to cover any costs, including legal costs, incurred by the Council on acquisition of the land.
- (b) **Clause 11.3(a)** constitutes an agreement for the purposes of section 30 of the *Land Acquisition (Just Terms Compensation) Act 1991*.
- (c) Except as otherwise agreed between the Developer and Council, the Developer must ensure the Dedication Land is freed and discharged from all estates, interests, trusts, restrictions, dedications, reservations, rights, charges, rates, strata levies and contracts, except as may be permitted by this agreement on the date that the Council will acquire the land in accordance with **clause 11.3(a)**.
- (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 land under **clause 11.3(a)**.
- (e) The Developer must pay the Council, promptly on demand, an amount equivalent to all costs, including legal costs, incurred by the Council acquiring the whole or any part of the relevant land under **clause 11.3(a)** that are not or cannot be recovered by calling on a Bank Guarantee.

11.4 *Restriction on the issue of Certificates*

- (a) In accordance with section 6.8 of the Act and clause 146A of the Regulation the following obligations must be satisfied before a Construction Certificate for any above-ground works forming part of the Development can be issued:
 - (i) payment of the first instalment of the Monetary Contribution in accordance with **clause 6.1(b)(i)**;
 - (ii) provision of Security in accordance with **clause 11.2**.
- (b) In accordance with section 6.10 of the Act and clause 154E of the Regulation, the following obligations must be satisfied before an Occupation Certificate can be issued for the Development:
 - (i) payment of the second instalment of the Monetary Contribution in accordance with **clause 6.1(b)(ii)**;
 - (ii) completion of the Works as required by **clause 6.2**; and
 - (iii) dedication or transfer of the Dedication Land as required by **clause 6.3**.

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 *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 proposed Transferee is financially capable of complying with the Developer obligations under this agreement;
 - (ii) The Developer satisfies the Council that the rights of the Council will not be diminished or fettered in any way;
 - (iii) 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;
 - (iv) 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
 - (v) The Developer and the Transferee pay the Council's reasonable costs in relation to the assignment.

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 absolute discretion 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 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, Sydney NSW 2060
Email: council@northsydney.nsw.gov.au
Attention: General Manager
 - (ii) to CN Land Pty Limited: Ground Floor, 21 Solent Circuit
Baulkham Hills, NSW 2153
Email: leigh@bennelong.com
Attention: Leigh Manser
- (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) in the case of an email, when it is sent provided the sender does not receive any notification that the email was unable to be delivered to the recipient; 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 *No assignment*

A party cannot assign or otherwise transfer its rights under this agreement without the prior written consent of the other party.

16.6 *Counterparts*

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

16.7 *Legal expenses and stamp duty*

The Developer agrees to pay or reimburse Council all reasonable costs incurred with:

- (a) the negotiation, preparation and execution of this agreement, including the reasonable costs of any legal advice Council has received in connection with this agreement;
- (b) any other costs required to be paid by the Developer under this agreement,

within 10 Business Days after receipt of a notice from the Council as to the amount of those costs.

16.8 *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.

16.9 *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.

16.10 *Severability*

- (a) The parties acknowledge and agree that under and by virtue of section 7.4(4) of the Act, any provision of this agreement is not invalid by reason only that there is no connection between the Planning Proposal or the Development and the object of the expenditure of any money required to be paid under this agreement.
- (b) 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.
- (c) 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.

16.11 *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 16.11(b) applies.

16.12 *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.

16.13 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) The parties agree, in accordance with Class Ruling CR2013/13, that the contributions required to be made under this agreement are exempt from GST.
- (d) 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 provided the Developer first receives a tax invoice in respect of the taxable supply.

16.14 *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 Scope of works

The Works consists of the following:

- Widen Eastern side of Alexander Lane between Falcon Street and Hayberry Lane by approx. 1200mm including new concrete kerb and gutter to Eastern side of road and any required associated re-surfacing works arising.
- Construction of kerb buildouts of approx. 5740mm wide x 7050mm long to the Southern side of proposed new driveway location along Alexander Lane. Build outs to be designed so as to provide kerb and gutter around perimeter with low height shrubs/plantings of a species to be determined by Council.
- Installation of appropriate directional and street signage as required and determined by Council.
- Install new concrete footpath approx. 2000mm wide to Eastern side of Alexander Lane between Falcon Street and Hayberry Lane. Footpath will include vehicle crossover for proposed new driveway
- Install new concrete footpath approx. 1500mm wide to Northern side of Hayberry Lane (within existing boundary) that will link up with the new footpath on Alexander Lane and run to the eastern extent of the subject property boundary on Hayberry Lane.
- Construct landscaped zone approx. 1600mm wide to the southern side of new footpath including new concrete kerb and gutter along length of boundary on Northern side of Hayberry Lane. Landscaped strip to include turfing and a minimum of 4 appropriate size street trees with species to be determined with Council prior to planting.
- Adjust any existing stormwater pits along the Northern side of Hayberry Lane that are adjoining the property boundary to suit new footpath and kerb and gutter.
- With respect to Hayberry Lane works the developer will not be responsible for changing kerb and gutter levels or adjusting any services including stormwater inlets and/or services on the southern side of Hayberry Lane.

All works will be constructed in accordance with the North Sydney Infrastructure Specification Manual for Roadworks, Drainage and Miscellaneous Works and the footpath will be constructed in accordance with the North Sydney Public Domain Style Manual and Design Codes. Consistent with Council's established policy Council will act reasonably with respect to determining the extent of civil works surrounding the side.

Schedule 2 Construction terms

1 Interpretation

For the purposes of this Schedule 2, the defined terms in **clause 1** of this agreement and the Interpretation principles in **clause 2** of this agreement will apply and, unless context indicates a contrary intention:

Builder means any entity contracted under the Construction Contract to carry out the Works.

Construction Contract means the contract to carry out the Works (whether or not that is a contract for the Works only or forms part of a contract for the building of other components of the Development).

Defects Liability Period means in respect of each item of building works which together comprise the Works the period of 12 months from the date on which the Works are delivered to Council in accordance with this agreement.

Detailed Design means the final specifications and finishes for the Works prepared in accordance with **clause 5.2** of this Schedule 2 and will include the design of the Works, the location for the Works, installation specifications and estimated costs of construction and/or installation.

Services means all water, gas, electricity, television, drainage, sewerage, cable TV, data communications, telecommunications and other services which are required under a development consent within the meaning of the Act or an Approval and which are necessary or desirable for the construction or operation of the Development.

Superintendent means the Superintendent appointed under any Construction Contract.

2 Requirements of Authorities and Approvals

2.1 These Construction Terms must be read and construed subject to:

- (a) any requirements or conditions of any Development Consent;
- (b) the requirements of and conditions imposed by all relevant Authorities and all Laws relating to the Development and the construction of the Development.

2.2 If the Developer requires any Approvals in order to carry out the obligations under this agreement, then the Developer will acquire all Approvals necessary to carry out the Works at its own cost.

2.3 The Developer must ensure that the Works carried out under this agreement are carried out:

- (a) in accordance with the relevant Development Consent for the Works and all Approvals and the requirements of all Laws, including without limitation, work health and safety legislation; and
- (b) in a good and workmanlike manner and so that they are diligently progressed until completion;

AND it is acknowledged that to the extent that there is any inconsistency between this agreement and any Approval the terms of the Approval shall take precedence.

3 Costs of Works

All costs of the Works must be borne by the Developer.

4 Project Management and Contractor Engagement

- 4.1 The Developer will be responsible for managing the Works.
- 4.2 The Developer will ensure that any contractor it engages to carry out the Works agrees to carry out the Developer's obligations in these Construction Terms as part of any Construction Contract.

5 Design Development and Approvals

5.1 Works Design

- (a) Prior to submitting a Development Application for the Development, the Developer must prepare a draft concept design for the Works in accordance with:
- (i) the scope of works at **Schedule 1**;
 - (ii) the concept plan at **Annexure A**;
 - (iii) the North Sydney Public Domain Style Manual and Design Codes; and
 - (iv) any other standards or specifications provided to the Developer by the Council.
- (b) The Developer and Council must work in consultation with each other to prepare and agree the concept design and must both act reasonably and with due expedition in their consultations with each other.
- (c) The Developer must incorporate into the final concept design any amendments required by Council that are consistent with clause 5.1(a).

5.2 Detailed Design

- (a) Prior to submitting an application for a Construction Certificate for the Development, the Developer must provide a copy of the draft Detailed Design to the Council for approval.
- (b) The draft Detailed Design must be consistent with the scope of works in **Schedule 1** and the concept plan at **Annexure A**, the standards and specifications referred to in **clause 5.1** of this Schedule and the concept design agreed in accordance with **clause 5.1** of this Schedule.
- (c) Within 15 Business Days of receiving the draft Detailed Design, Council will respond to the Developer with any suggested amendments to the Detailed Design that are consistent with clause 5.2(b).
- (d) Council and the Developer must work in consultation with each other to prepare and agree the Detailed Design and must both act reasonably and with due expedition in their consultations with each other.
- (e) If the Detailed Design is not completed and agreed within 15 Business Days of Council providing its suggested amendments in accordance with **clause 5.2(c)** of this Schedule 2, to avoid possible delays to the issue of a Certificate of Practical Completion, the Council will, in its sole discretion, be entitled to decide on any outstanding or undecided matter or item relating to areas that are to be accessible to the public, provided that any decision made by Council under this clause:
- (i) is consistent with the obligation to carry out the Works and dedicate the Dedication Land under this agreement; and

- (ii) is consistent with the Development Consent; and
- (iii) does not materially and adversely affect the Development; and
- (iv) is not unreasonable.

5.3 Any acceptance by the Council of the Detailed Design under this **clause 5** of Schedule 2 is not to be taken as approval of or to any Construction Certificate for the Works.

5.4 **Good faith**

The parties must act promptly and in good faith to consult in relation to the Detailed Design.

6 **Carrying out of Works**

6.1 **Communication**

The Developer must keep Council reasonably informed of progress of the Works and provide to Council such information about the Works as Council reasonably requests.

6.2 **Standard of Works**

- (a) Unless otherwise provided, the Developer shall, and must cause the Builder to, use suitable new materials and proper and tradesmanlike workmanship when carrying out the Works.
- (b) The qualitative standard of the design and finishes for the Works must be no less than those described in the following documents:
 - (i) Any relevant Australian Standard;
 - (ii) Any relevant design standards or guidelines and any other requirements or policies applied by the Council from time to time in assessing the adequacy of any works or improvements proposed for the public domain or to be accessible to the public in accordance with this agreement.
- (c) The Developer will obtain any relevant standards (including design standards), specifications, or guidelines and any other requirements or policies referred to in **clause 6.2(b)(ii)** of this Schedule 2 from Council if the Council fails to deliver them to the Developer.
- (d) The Developer may but is not obliged to reinstate any Works where damage or destruction is as a result of:
 - (i) Any act or omission of the Council or its employees, consultants or agents relating to any part of the Works under this agreement; or
 - (ii) The use or occupation by the Council or its employees, consultants or agents, Council's representatives or other contractor of the Council of any part of the Works.

7 **Inspection**

- (a) On completion of the Detailed Design, the Council will provide a reasonable schedule of inspections to be undertaken by Council (**Inspection Schedule**) to occur at specified stages of the construction of the Works (**Inspection Stage**). If the Council does not provide the Inspection Schedule, the Developer must

request the Inspection Schedule from the Council prior to the Works commencing.

- (b) Five Business Days prior to reaching an Inspection Stage as set out in the Inspection Schedule, the Developer must notify the Council of the proposed inspection date (**Inspection Date**).
- (c) On the Inspection Date, or other agreed date, the Developer must ensure that any employees, contractors, agents or representatives of Council have access to and may enter the Land to inspect the Works.
- (d) In addition to carrying out inspections in accordance with the Inspection Schedule, the Council may enter the Land or any part of the Land on which the Works are located to inspect the progress of the Works, subject to:
 - (i) the terms of the Construction Contract (save for any clause of the Construction Contract which prevents the Council from accessing the Land);
 - (ii) giving reasonable notice to the Developer;
 - (iii) complying with all reasonable directions of the Developer; and
 - (iv) being accompanied by the Developer or a nominee, or as otherwise agreed.
- (e) The Council may, acting reasonably, within 5 Business Days of carrying out an inspection (either under **clause 7(c)** or **7(d)** of this **Schedule 2**), notify the Developer of any defect or non-compliance in the Works and direct the Developer to carry out work to rectify that defect or non-compliance within a reasonable period of time. Such work may include, but is not limited to:
 - (i) removal of defective or non-complying material;
 - (ii) demolishing defective or non-complying work;
 - (iii) reconstructing, replacing or correcting any defective or non-complying work; and
 - (iv) not delivering any defective or non-complying material to the site of the Works.
- (f) If the Developer is issued a direction to carry out further work under **clause 7(e)** of this **Schedule 2**, the Developer must, at their cost, rectify the defect or non-compliance specified in the Notice within the time period specified in the Notice, provided that it is reasonable having regard to the nature of the works.
- (g) If the Developer fails to comply with a direction to carry out work given under **clause 7(e)** of this **Schedule 2**, the Council will be entitled to refuse to accept that the Works (or the relevant part of the Works) meet the Council's standards and specifications and may refuse to issue a Certificate of Practical Completion, until the required Works have been completed to the Council's satisfaction, acting reasonably.
- (h) For the avoidance of doubt, any acceptance by the Council that the Developer have rectified a defect or non-compliance identified in a notice issued under **7(e)** of this **Schedule 2** does not constitute:

- (i) acceptance by the Council that the Works comply with all Approvals and Laws; or
- (ii) an Approval by the Council in respect of the Works; or
- (iii) an agreement or acknowledgment by the Council that the Works or the relevant part of the Works are complete and may be delivered to the Council in accordance with this agreement.

8 Completion

8.1 Practical Completion

- (a) When the Developer considers that the Works, or any part of the Works, are complete, the Developer must send a Notice to the Council accompanied by complete works as executed plans, any relevant certificates or consents of any public utility authority and a request for written certification from the Council that the Works are complete.
- (b) Within 10 Business Days of receipt of the notice under **clause 8.1(a)** of this Schedule 2, the Council will carry out an inspection of the Works and will, acting reasonably, either:
 - (i) provide written certification to the Developer that the Works have been completed; or
 - (ii) notify the Developer of any additional information required or matters which must be addressed by the Developer prior to the certification being issued.
- (c) If the Developer is required to provide additional information or address any matters under **clause 8.1(b)(ii)** of this Schedule 2, the Developer will provide that information to Council or address those matters within 10 Business Days of receiving the notice or within a reasonable period of time and make a further request under **clause 8.1(a)** of this Schedule 2 for written certification that the Works have been completed.
- (d) Practical completion will be achieved in relation to the Works or any part of the Works when a Certificate of Practical Completion has been issued for those Works.

8.2 Delivery of documents

- (a) The Developer must as soon as practicable, and no later than 20 Business Days after the date on which the Certificate of Practical Completion is issued in respect of the Works or any part of the Works deliver to the Council, complete and legible copies of:
 - (i) all "as built" full-sized drawings, specifications and relevant operation and service manuals;
 - (ii) all necessary certificates including the certificates of any consultants of the Developer that the Council may reasonably require, and Approvals of any public utility authority (where relevant); and
 - (iii) copies of all Approvals required for use of the land subject to the Works.
- (b) The Developer must as soon as practicable, and no later than 20 Business Days after the date on which the Certificate of Practical Completion is issued in respect of the Works or any part of the Works, provide the Council with a tour of the land

subject to the Works and provide reasonable instructions on the operation and use of the Services on that land.

8.3 Assignment of Warranties and Causes of Action

- (a) The Developer must assign (as beneficial owner) or cause to be assigned to Council the benefit of any warranties and guarantees obtained by the Developer and the Builder (and capable of assignment) with respect to any material or goods incorporated in or forming part of the Works.
- (b) To the extent that any such warranties or guarantees cannot be assigned, the Developer must at the request of Council do anything reasonably required by Council to enforce such warranties or guarantees for the benefit of Council.

8.4 Defects Liability Period

- (a) During the Defects Liability Period not more than 3 times, the Council (acting reasonably) may give to the Developer a notice (**Rectification Notice**) in writing that identifies a defect in the Works and specifies:
 - (i) action required to be undertaken by the Developer to rectify that defect (**Rectification Works**); and
 - (ii) the date on which the defect must be rectified being a date that, having regard to the nature of the Rectification Works and the surrounding circumstances, allows a reasonable time for those works to be carried out (**Rectification Date**).
- (b) The Developer must comply with the Rectification Notice by:
 - (i) procuring the performance of the Rectification Works by the Rectification Date, or such other date as agreed between the parties;
 - (ii) keeping the Council reasonably informed of the action to be taken to rectify the defect; and
 - (iii) carrying out the Rectification Works.
- (c) The Council must give the Developer and its contractors any access required to carry out the Rectification Works.
- (d) When the Developer considers that the Rectification Works are complete, either the Developer must notify the Council and provide documentation, plans or invoices which establish that the Rectification Works were carried out.
- (e) The Council may inspect the Rectification Works within 15 Business Days of receiving a Notice from the Developer under **clause 8.1(d)** of this Schedule 2 and, acting reasonably:
 - (i) issue a further Rectification Notice if it is not reasonably satisfied that the Rectification Works are complete; or
 - (ii) notify the Developer in writing that it is satisfied the Rectification Works are complete.
- (f) The Developer must meet all costs of and incidental to rectification of defects under this **clause 8.4**.
- (g) If the Developer fail to comply with a Rectification Notice, then the Council may do such things or take such action as is necessary to carry out the Rectification

Works, including accessing and occupying any part of the Land without further notice to the Developer, and may:

- (i) call upon any Bond or Bank Guarantee provided to the Council under **clause 8.5** of this Schedule 2 to meet its costs of carrying out Rectification Works; and
 - (ii) recover as a debt due to the Council by the Developer in a court of competent jurisdiction, any difference between the amount of the security deposit and the costs incurred by the Council in carrying out Rectification Works.
- (h) The Developer must request that Council inspect the Works 28 days prior to the end of the Defects Liability Period. The Council must inspect the Works at any time after receiving the request from the Developer and before the end of the Defects Liability Period.
- (i) If, prior to the end of the Defects Liability Period:
- (i) the Developer fails to request the inspection, or
 - (ii) the Council does not carry out the inspection,
- the Council may extend the Defects Liability Period so that the inspection may be carried out.

8.5 Security for Defects Liability

- (a) Prior to the issue of a Certificate of Practical Completion for each item of the Works the Developer must deliver to the Council Bonds or Bank Guarantees in an amount equivalent to 2.5% of the construction costs for the particular item of Works.
- (b) The Developer advises and the Council acknowledges its awareness that the Bonds or Bank Guarantees may be supplied by the Builder and form a part of the security held by the Developer from the Builder under the terms of the Construction Contract, provided that:
 - (i) any Bond or Bank Guarantee provided by the Builder benefits the Council and satisfies the requirements of this agreement; and
 - (ii) the Developer procure an agreement from the Builder that the Council will be entitled to call on any Bond or Bank Guarantee provided by the Builder, in accordance with the terms of this agreement and the terms of any Construction Contract.
- (c) Within 10 Business Days after the Defects Liability Period for a particular item of Works has expired Council must (if it has not called on it) return the Bond or Bank Guarantee referred to in **clause 8.5(a)** of this Schedule 2 for that item of Works (or any remaining balance of it) to the Developer.
- (d) Notwithstanding **clause 8.5(c)** of this Schedule 2, if during the Defects Liability Period for a particular item of Works, the Council issues a Rectification Notice and the Rectification Notice is not complied with, then the Council need not deliver the balance of any Bonds or Bank Guarantees provided to it until that defect has been rectified.

- (e) The Council must deliver the balance of any Bond or Bank Guarantee for the Defects Liability Period to the Developer within 14 days after the Defects Liability Period has ended.

9 Risk

The Developer undertakes the Works entirely at its own risk.

10 Insurance

- (a) Prior to the commencement of the construction of any of the Works, the Developer must ensure the Builder effects and the Developer must produce evidence to the Council of the following insurances issued by an insurer approved by the Council (acting reasonably) in a form approved by the Council (acting reasonably):
 - (i) construction works insurance for the value of the Works;
 - (ii) public risk insurance for at least \$20 million;
 - (iii) workers compensation insurance as required by Law.
- (b) The Developer must provide evidence of currency of insurance required by **clause 10(a)** of this Schedule 2 upon request by the Council, acting reasonably, throughout the term of this agreement.

11 Indemnities

The Developer indemnifies the Council, its employees, officers, agents and contractors from and against all Claims in connection with the carrying out by the Developer of the Works except to the extent such Claim arises either directly or indirectly as a result of the Council or its employees, officers, agents, contractors or workmen's negligence, default, act or omission.

12 Intellectual Property Rights

The Council acknowledges that the Developer or its contractors holds all rights to copyright and any intellectual property which may exist in the Works. To the extent the Developer has or receives intellectual property rights for the Works, the Developer shall assign those intellectual property rights to Council or permit use thereof.

13 Risk of contamination

The Developer acknowledges and agrees:

- (a) that it is responsible for the management and remediation of any contamination present upon or under the land on which the Works are to be carried out;
- (b) it will attend to any necessary remediation at their own costs; and
- (c) to the fullest extent permitted by Law indemnify and release the Council from any Claim which might arise from any contamination with respect to the land on which the Works are to be carried out.

14 Plans

The parties acknowledge and agree that further detail and refinement of plans and documents in connection with this agreement may be necessary having regard to the following matters:

- (a) matters affecting Works not capable of identification on or before the date of this agreement; or
- (b) by agreement between the parties.

Schedule 3 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>(a) Sought a change to an environmental planning instrument</p> <p>(b) Made, or propose to make a Development Application</p> <p>(c) 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 33 Section 3 DP 1720, Lot 32 Section 3 DP 1720, Lot X DP 407774, Lot Y DP 407774, Lot A DP 377050, Lot 26 Section 3 DP 1720, and Lot 25 Section 3 DP 1720, known as 27-57 Falcon Street, Crows Nest.</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)</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 (no fetter).</p>

Schedule 4 DCP

3.2.5 – 27-57 Falcon Street, Crows Nest

3.2.5.1 – Desired Future Character, Design Objectives and Key Principles

- P1. Development is to respond to the scale and character of the existing development and desired future character of the surrounding area.
- P2. Built form, scale and massing is to transition in scale across the site from a mixed use, higher density typology in the western portion reflective of the Crows Nest Strategic Centre to a lower to medium density residential typology on the eastern portion.
- P3. Development should balance the provision of new residential apartment buildings within a Strategic Centre, while maintaining a reasonable level of amenity, privacy and solar access for low density neighbouring residents on Alexander Lane, Falcon Street and in the Hayberry Conservation Area.
- P4. A mixed-use typology with medium rise residential apartment buildings built to the boundary with commercial on ground level at the corner of Falcon Street and Alexander Lane. A residential typology to the eastern part of the site along Falcon Street setback from the street, with townhouses fronting Hayberry Lane to respond to the existing scale of the Hayberry Conservation Area.
- P5. Built form to transition to the existing lower scale development in the Hayberry Conservation Area
- P6. Road widening along Alexander Lane with pedestrian amenity and road widening with a landscaped response and pedestrian amenity to Hayberry Lane,
- P7. Vehicular access from Alexander Lane with two-way access from / to Falcon Street.
- P8. A Secure pedestrian through site link between Falcon Street and Hayberry Lane.

3.2.5.2 Desired Built Form

Objectives

- To provide for increased opportunity for height and density in the growing Crows Nest Local Centre, close to public transport and services,
- Building envelopes are to respond to the site's surrounding context which transitions in character from the Crows Nest Strategic Centre to the lower scale Heritage Conservation Area on Hayberry Street,
- To achieve appropriate separation distances between existing and proposed buildings and ensure reasonable privacy and solar access is maintained to surrounding dwellings, mindful of the need for renewal at the site.
- To ensure appropriate building lengths, a variety of building facades and a 'fine-grain' response to the public domain.

Building Height Provisions

- P1. The maximum height in storeys of any building must comply with the heights in storeys shown on the Site Layout Plan at Figure 1.
- P2. Building A is to be a maximum height of 6 storeys and step down in height to a maximum of 3 storeys at the Hayberry Lane frontage.
- P3. Building B is to be a maximum of 6 storeys and step down in height to a maximum of 2-3 storeys at the Hayberry Lane frontage.
- P4. A site-specific LEP clause will allow minor exceedances of the LEP Height of Building control for plant and lift overruns only.
- P5. Building C is to be a maximum of 4 storeys.
- P6. Building D is to be a maximum of 3 storeys with a 2 storey street frontage height to Hayberry Lane. The third storey is to be generally accommodated within the roof form.

Street and Side Setbacks Provisions

- P1. Building setbacks must, at a minimum, comply with the setbacks shown on the Site Layout Plan at Figure 1.
- P2. The following minimum setbacks are required to Falcon Street:
 - a. Building A is to be setback zero metres,
 - b. Building B is to be setback zero metres,
 - c. Building C is to be setback 2 metres.
- P3. The following minimum setbacks are required from Hayberry Lane:
 - a. Buildings A and B are to be setback from Hayberry Lane by 3 metres.
 - b. Building D is to be setback by 1.5 metres.
- P4. The following minimum side setbacks are required to 56-63 Falcon Street:
 - a. Building C is to be setback 4.5 metres,
 - b. Building D is to be setback 1.5 metres.
- P5. Building A is to be setback a minimum of 6 metres from the existing centreline of Alexander Lane.

3.2.5.3 Residential Apartment Building Design

Objectives

- Ensure that the residential apartment buildings consider and are consistent with the nine design quality principles within *State Environmental Planning Policy 65 – Design Quality of Residential Flat Development*.

Provisions

- P1. The residential apartment building design is subject to the requirements of State Environmental Planning Policy 65 – Design Quality of Residential Flat Development including the Design Quality Principles and the Apartment Design Guide.

3.2.5.4 Site Coverage

Objectives

- To ensure that development is balanced and in keeping with the optimum capacity of the site acknowledging its unique size and location within the Crows Nest Strategic Centre at the interface between business and residential zones that accommodates a mix of building typologies.
- To achieve appropriate building envelopes that ensure the development responds to its surrounding context and provides appropriate open space and landscaped area for residents and visitors.

Site Coverage Provisions

P1, The maximum site coverage for this site is 65%.

3.2.5.5 Communal Open Space

Objectives

- To provide high quality communal open space at ground level and on buildings with a reasonable level of outdoor amenity without reducing privacy to neighbouring dwellings.
- To provide a level of communal open space commensurate with Apartment Design Guidelines that is mindful of the site's unique location and building typologies.
- To ensure communal open space is useable.

Communal Open Space Provisions

P1, Communal open space is provided in the locations shown on the Site Layout Plan at Figure 1.

P2, Communal open space can be provided on the Building B rooftop only if the space is designed such that there is no potential for overlooking into private open space and its location will not create any noise issues for surrounding dwellings.

3.2.5.6 Landscaped Area

Objectives

- To ensure that landscaping is used to provide appropriate amenity for development and soften the appearance of buildings and their interface with the neighbouring dwellings and the public domain.
- To provide a level of landscaped area commensurate with Apartment Design Guidelines that is mindful of the site's unique location and building typologies.

Landscaped Area Provisions

P1, The minimum landscaped area for the site is 20%

3.2.5.7 Traffic, Access and Parking

Objectives

- To regulate traffic movements and reduce congestion on Falcon Street.
- To ensure that vehicular access is safe for motorists and pedestrians.
- To facilitate road widening along Alexander Lane.
- To facilitate road widening and the provision of a shared way along Hayberry Street.
- To create a safe, accessible and shared laneway network.
- To provide appropriate amount of basement parking spaces for residents, visitors and staff.

Traffic, Access and Parking Provisions

- P1. Vehicular access to the site must be from Alexander Lane and be located as far as practicable from Falcon Street.
- P2. To facilitate vehicular access from Hayberry Lane, Alexander Lane is to be widened to allow for the provision of two-way traffic between Falcon Street and Hayberry Lane.
- P3. Provide on-site parking, including visitor parking at the maximum rates stated in the table below.

Development Type	Maximum Parking Rate
Studio/1 bedroom	0,5 space/dwg
2 or more bedroom	1,0 space/dwg
Visitor	0,25 space/dwg
Non – Residential use	1 space/60sqm non-residential GFA

- P4. On-site car parking provision significantly below maximum rates specified in the table above will only be considered if the proposed development has good access to public transport due to the impact that unmet on-site parking demand may have on surrounding residential streets, if viable alternative transport modes are not available.

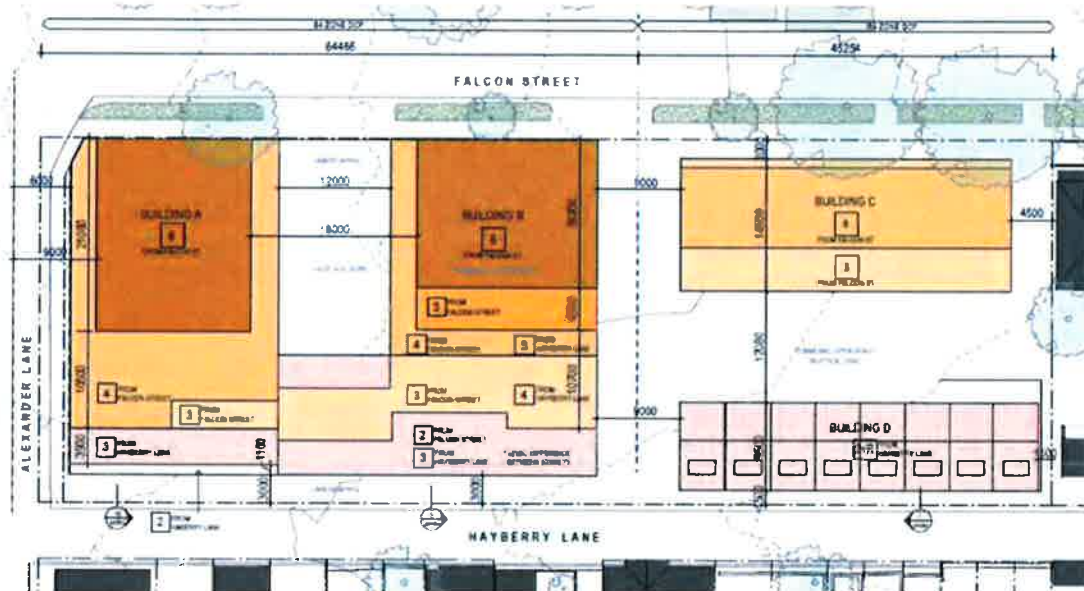
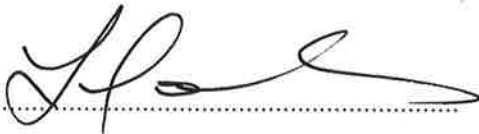


Figure 1 Site Layout Plan

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 [insert date]: 11/08/2021

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Witness



Signature of Authorised Representative

LINDA FORBES

Name of Witness

KM Gouldthorp
General Manager

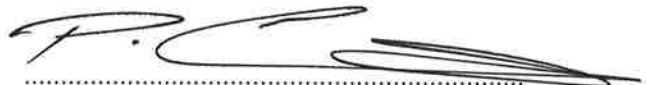
Name of Authorised Delegate

Executed by **CN Land Pty Limited** ACN 630 395 961 in accordance with section 127 of the *Corporations Act 2001* (Cth) by:

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Signature of Director

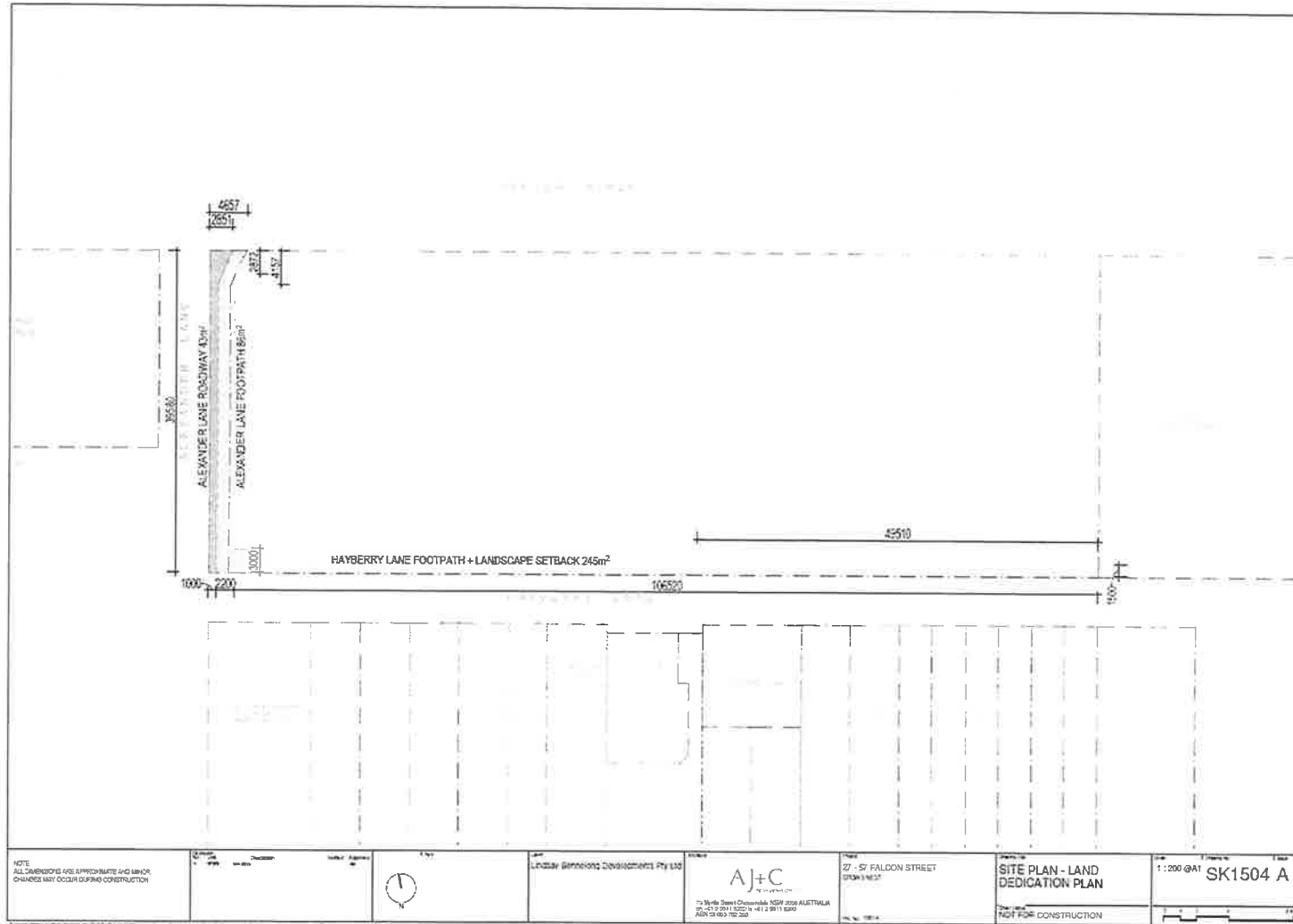


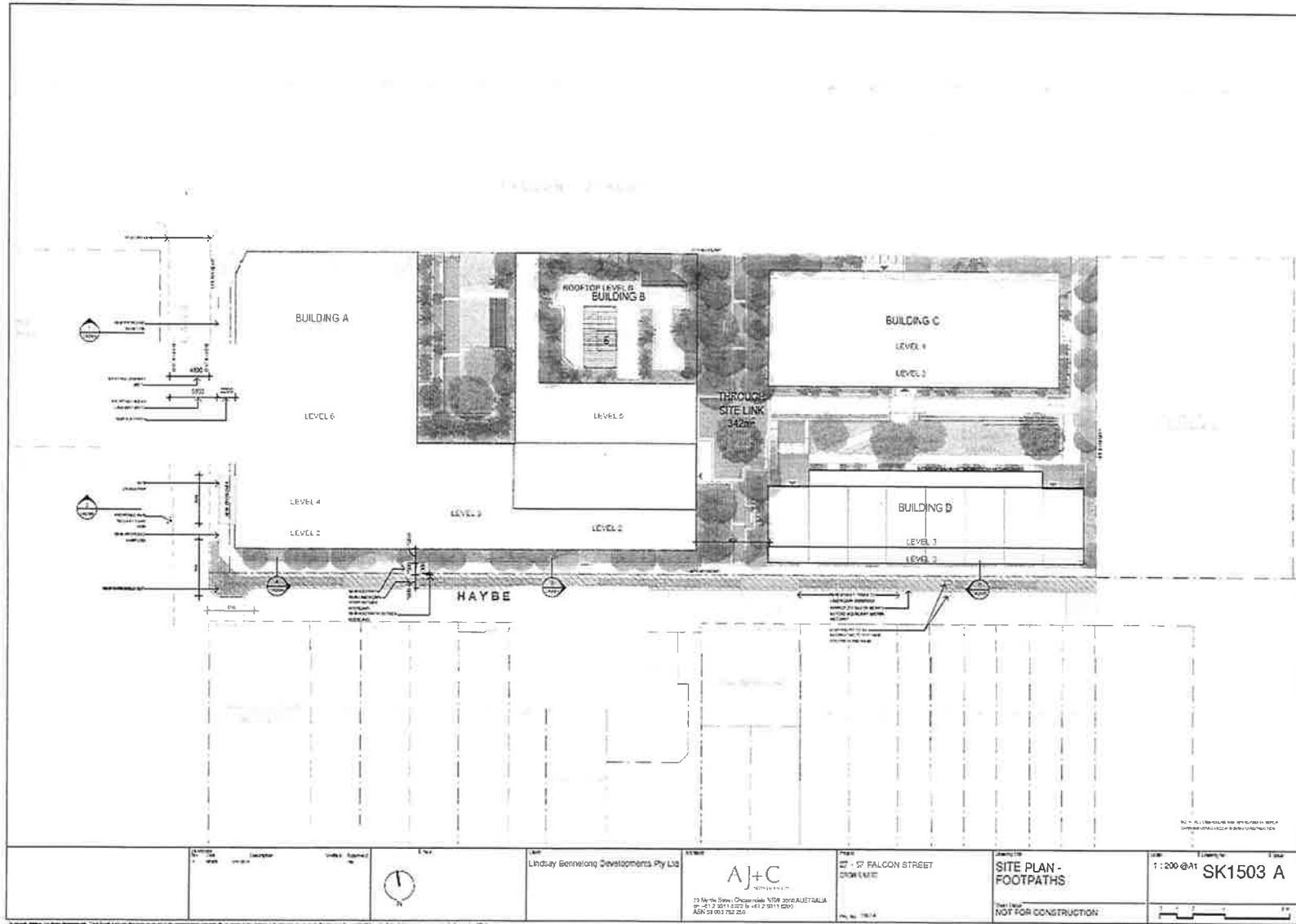
Signature of Director/Secretary

.....
Print name of Director

PETER DAVID CAMPBELL
Print name of Director/Secretary

Annexure A Plan showing Land and Works





Annexure B Draft Explanatory note

Explanatory Note

Exhibition of draft Voluntary Planning Agreement

Lot 33 Section 3 DP 1720, Lot 32 Section 3 DP 1720, Lot X DP 407774, Lot Y DP 407774, Lot A DP 377050, Lot 26 Section 3 DP 1720, and Lot 25 Section 3 DP 1720, known as 27-57 Falcon Street, Crows Nest. *Environmental Planning & Assessment Regulation 2000 (clause 25E)*

Planning Agreement

The purpose of this Explanatory Note is to provide a plain English summary to support the notification of a draft voluntary Planning Agreement (**the Planning Agreement**) under Section 7.4 of the *Environmental Planning and Assessment Act 1979 (the Act)*.

The Planning Agreement will require the provision of both monetary and in-kind contributions to community infrastructure in the St Leonards / Crows Nest precinct in connection with a proposed change to provisions of the *North Sydney Local Environmental Plan 2013 (NSLEP 2013)*. The contributions include:

- (a) The dedication of the Dedication Land to Council for pedestrian pathways, including embellishment of that land; and
- (b) \$800,000 in monetary contributions towards the upgrade of Hume Street Park or public open space within the North Sydney Local Government Area.

The total value of the public benefit to be provided under the Planning Agreement has been calculated at \$1,130,000.00, including apportionment of 35% of the embellishment works cost as providing a public benefit.

This Explanatory Note has been prepared jointly between the parties as required by clause 25E of the *Environmental Planning and Assessment Regulation 2000 (the Regulation)*.

This Explanatory Note is not to be used to assist in construing the Planning Agreement.

Parties

CN Land Pty Limited (**the Developer**) made an offer to North Sydney Council (**Council**) to enter into a voluntary Planning Agreement, in connection with Planning Proposal 6/19 relating to the subject land.

Description of subject land

The land to which the Planning Agreement applies is described as Lot 33 Section 3 DP 1720, Lot 32 Section 3 DP 1720, Lot X DP 407774, Lot Y DP 407774, Lot A DP 377050, Lot 26 Section 3 DP 1720, and Lot 25 Section 3 SP 1720, known as 27-57 Falcon Street, Crows Nest (**the Land**).

Description of the Planning Proposal to which the Planning Agreement applies

The Planning Proposal seeks to amend the NSLEP 2013 to:

- (a) change the Land Zoning Map by rezoning the Land to be R4 High Density Residential;
- (b) increase the maximum building height limit to 14.5m for part of the Land and to 21m for part of the Land;

- (c) increase the maximum FSR for the Land to 1.85:1;
- (d) delete the minimum non-residential FSR of 0.5:1 applying to the Land;
- (e) amend Schedule 1 Additional permitted uses of LEP 2013 to permit the use of retail premises on the Land with development consent; and
- (f) include a site specific provision in Part 6 Division 3 of LEP 2013 to allow minor exceedances to the Height of Building control to facilitate access to roof/lift overrun.

Summary of Objectives, Nature and Effect of the Planning Agreement

Monetary Contribution

The Planning Agreement requires a monetary contribution in the amount of \$800,000 to be applied towards increased space opportunities

Land

The Planning Agreement requires dedication of 129 sqm of land adjacent to Alexander Lane and 245 sqm of land adjacent to Hayberry Lane (**the Dedication Land**) to create a new public pedestrian footpath as well as associated public domain, landscaping and traffic calming measures.

Works

The Planning Agreement requires embellishment works on the Dedication Land to upgrade and improve pedestrian access and amenity.

Sections 7.11, 7.12 and 7.24 of the Act

The Planning Agreement does not exclude the application of sections 7.11, 7.12 or 7.24 of the Act to the Development. This means that contributions will continue to be payable for the Development under those provisions. The Planning Agreement does provide that a review of the contributions to be made under the agreement will occur if a Special Infrastructure Contribution is payable for the development under section 7.24 of the Act. Any change required to the Planning Agreement as a consequence of that review will be exhibited in accordance with the provisions of the Regulation.

Assessment of the Merits of the Planning Agreement

How the Planning Agreement Promotes the Objects of the Act and the public interest

The draft Planning Agreement promotes the following objectives of the *Environmental Planning and Assessment Act 1979*:

- Promotes the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources (section 1.3(a)).
- Promotes the orderly and economic use and development of land (section 1.3(c)).
- Promotes good design and amenity of the built environment (section 1.3(g)).

The draft Planning Agreement promotes the public interest by requiring the provision of public domain improvements that will benefit existing and future residents and workers of the St Leonards / Crows Nest Area.

The Planning Purposes served by the Planning Agreement

The Planning Agreement provides for monetary contributions that will enable the Council to provide adequate public amenities for new development in the area as well as increased space opportunities.

The Planning Agreement will require the developer to provide funds for the acquisition, embellishment and maintenance of public open space. The proposed amendments to NSLEP 2013 are consistent with the St Leonards / Crows Nest Planning Study and other strategic plans applying to the Land. The proposed development anticipated by the Planning Proposal will;

- Contribute to housing demand and targets identified,
- Provide housing in close proximity to public transport,
- Deliver significant public domain improvements including active street frontages and high quality public domain, and
- Contribute to the rejuvenation of Crows Nest by encouraging and supporting development activity.

How the Planning Agreement promotes the objectives of the *Local Government Act 1993* and the elements of the Council's Charter

The Planning Agreement is consistent with the following purposes of the *Local Government Act 1993*:

- to facilitate engagement with the local community by councils, councillors and other persons and bodies that constitute the system of local government; and
- to provide for a system of local government that is accountable to the community and that is sustainable, flexible and effective.

The provision of public benefits under the Planning Agreement, consistent with the St Leonards / Crows Nest Planning Study and the exhibition of the Planning Agreement are consistent with the following guiding principles for councils set out in section 8A of the *Local Government Act 1993* (which has replaced the Council's Charter):

- Councils should provide strong and effective representation, leadership, planning and decision making.
- Councils should carry out functions in a way that provides the best possible value for residents and ratepayers.
- 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.
- Councils should manage lands and other assets so that current and future local community needs can be met in an affordable way.
- Councils should work with others to secure appropriate services for local community needs.
- Councils should act fairly, ethically and without bias in the interests of the local community.
- Councils should consider the long term and cumulative effects of actions on future generations.

- Council decision-making should be transparent and decision-makers are to be accountable for decisions and omissions.
- Councils should actively engage with their local communities, through the use of the integrated planning and reporting framework and other measures.

Whether the Planning Agreement Conforms with the Council’s Capital Works Program

The Planning Agreement offers contributions that will enable the Council to provide and embellish new public open space areas, the need for which will be created by the Development, and will improve pedestrian amenity in the vicinity of the Development. The Planning Agreement will enable Council to provide for the current and future open space needs of the local community.

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

The Planning Agreement requires:

Contribution	Timing
50% of the monetary contribution to be paid to Council	Prior to the issue of a Construction Certificate for above-ground works
50% of the remaining monetary contribution to be paid to Council	Prior to the issue of an Occupation Certificate for the Development
Completion of embellishment works and dedication of the Dedication Land	Prior to the issue of an Occupation Certificate for the Development

Handwritten signatures and initials, including a large signature and a set of initials below it.