

Voluntary Planning Agreement

DRAFT FOR EXHIBITION

North Sydney Council

ABN 32 353 260 317

TWT Development Pty Ltd

ACN 121 505 824

75 Chandos Street Pty Ltd

ACN 163 005 678

Newcastle

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Agreement

Date

Parties

First party

Name North Sydney Council (**Council**)
ABN 32 353 260 317
Contact General Manager
Telephone

Second party

Name TWT Development Pty Ltd (**TWT**)
ACN 121 505 824
Contact Gavin Zhang
Telephone

Third party

Name 75 Chandos Street Pty Ltd (**75CS**)
ACN 163 005 678
Contact Gavin Zhang
Telephone

Background

- A. The Developer owns the Land.
- B. The Developer proposes to carry out the Development on the Land.
- C. To facilitate the Development, the Developer has lodged a Planning Proposal seeking to amend NSLEP 2013 as it relates to land at 71-89 Chandos Street, St Leonards as follows:
 - a. Increase the maximum building height for the Land to 43m;
 - b. Include a site-specific provision that allows the maximum building height to be exceeded by no more than 2m for the purposes of a lift overrun and providing inclusive access to communal open space at the rooftop level, where the lift overrun is not to be visible from the public domain at street level;
 - c. Impose a maximum FSR of 4:1; and
 - d. Increase the minimum non-residential FSR from 0.6:1 to 1:1.
- D. The Developer has made an offer to enter into this Agreement to provide public benefits at the Developer's cost in connection with the Planning Proposal and Development.

- E. 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.

Agreed terms

1 Definitions and Interpretation

1.1 Definitions

Terms used in this Agreement which are defined in **Schedule 1 (Interpretation)** shall have the same meaning as ascribed to them by that Schedule and such meanings apply unless the contrary intention appears.

1.2 General

In this Agreement the following definitions apply:

- (a) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (b) the singular includes the plural and vice versa;
- (c) the word "person" includes a firm, a body corporate, an unincorporated association or an authority;
- (d) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and assigns;
- (e) a reference to anything (including, without limitation, any amount) is a reference to the whole and each part of it and a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually;
- (f) "include" or "including" when introducing a list of items does not limit the meaning of the words to which the list relates to those items or to items of a similar kind;
- (g) if a Party is required to do something, that includes a requirement to cause that thing to be done, and if a Party is prohibited from doing anything, it is also prohibited from doing or omitting to do anything which allows or causes that thing to be done;
- (h) a reference to a statute, ordinance, code or law includes a State ordinance code or law of the Commonwealth of Australia;
- (i) a reference to a body, whether statutory or not 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 powers or functions;
- (j) no rule of construction applies to the disadvantage of a Party because that Party was responsible for the preparation of this Agreement;
- (k) any capitalised term used, but not defined in this Agreement, will have the meaning ascribed to it under, and by virtue of, the Act;
- (l) headings are inserted for convenience only and do not affect the interpretation of this Agreement;

- (m) a reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars;
- (n) a reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced;
- (o) a reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement;
- (p) a reference to this Agreement includes the agreement recorded in this Agreement; and
- (q) any schedules and attachments form part of this Agreement.

2 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 5 of this Agreement summarises the requirements for planning agreements under section 7.4 of the Act and the way this Agreement addresses those requirements.

3 Application of this Agreement

This Agreement applies to:

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

4 Operation of this Agreement

This Agreement commences on and from the date it is executed by all Parties.

5 Contributions to be made under this Agreement

5.1 Works

- (a) Prior to the dedication of the Dedication Land in accordance with **clause 5.2**, the Developer must carry out the Works, in accordance with the Construction Terms in **Schedule 2**.
- (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 or any part of the Works required under this Agreement will be taken to have been delivered to Council when the land or interest in land on which those Works are located is dedicated to Council.
- (d) The Works must be delivered to the Council prior to the issue of an Occupation Certificate for the Development or any part of the Development.

- (e) The Parties agree and acknowledge that the Works serve the public purpose of providing public open space and pedestrian amenity in the vicinity of the Development.

5.2 *Dedication of Land*

- (a) The Developer must dedicate to the Council, at no cost to the Council, the Dedication Land freed and discharged from all estates, interests, trusts, restrictions, dedications, reservations, easements, rights, charges, rates and contracts in, over or in connection with the Dedication Land, including but not limited to, municipal rates and charges, water rates and land tax.
- (b) The obligation to dedicate the Dedication Land will be taken to have been satisfied when:
 - (i) a deposited plan is registered in the register of plans held with the Registrar-General that creates a public reserve under the *Local Government 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 Dedication Land has been transferred to Council in accordance with the *Real Property Act 1900* and the *Electronic Conveyancing National Law*.
- (c) 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.
- (d) The Parties agree and acknowledge that the Dedication Land will serve the public purpose of providing public open space and pedestrian amenity in the vicinity of the Development.

5.3 *Through-site Link*

- (a) The Developer agrees and acknowledges that:
 - (i) any Development Consent or Modification Application relating to a building on the Land may require development of the Through-site Link so it is consistent with any standards and specifications provided by the Council, and suitable for public use as a pedestrian thoroughfare; and
 - (ii) prior to the issue of any Occupation Certificate for the Development, it will design and construct the Through-site Link in accordance with any technical requirements in the DCP and Council's Public Domain Style Manual and Design Code, unless otherwise specified by the Council, and any Development Consent.
- (b) Prior to the issue of the first Occupation Certificate for the Development, the Developer must register the Easement in Gross.
- (c) The Easement in Gross will require the owner of the Through-site Link to:
 - (i) maintain and repair the Through-site Link to the satisfaction of the Council;
 - (ii) maintain sufficient public liability insurance;
 - (iii) ensure that no buildings or structures are erected on the Through-site Link other than structures:

- (A) consented to by the Council; or
- (B) for the purposes of enhancing public domain areas as approved by the Consent Authority; or
- (C) that are required for services, drainage or as required by the Development Consent, Authority or building code requirement; and
- (iv) ensure that any rules made by an owner's corporation relating to the Through-site Link are approved by the Council, provided that:
 - (A) if the Council does not respond to any request for approval within 25 Business Days of receiving the request, the Council will be deemed to have approved the rules; and
 - (B) if Council requests an amendment that is unlawful, then the relevant amendment is not required to be incorporated into the rules.
- (d) The Parties agree and acknowledge that the Through-site Link will serve the public purpose of improving pedestrian safety and amenity in the vicinity of the Development.

6 Application of s 7.11, s 7.12 and s 7.24 of the Act to the Development

- (a) Sections 7.11, 7.12 and 7.24 of the Act are not excluded as they apply to the Land and the Development.
- (b) The benefits under this Agreement are not to be taken into consideration in determining a development contribution under section 7.11(6) of the Act.

7 Registration of this Agreement

7.1 Registration

- (a) TWT and 75CS each represent and warrant to the Council that, on the date of this Agreement, each is the registered proprietor of those parts of the Land as set out in Schedule 4.
- (b) 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.
- (c) The Developer will, at its own expense and 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 has an estate or interest in the Land registered under the *Real Property Act 1900* (NSW);
 - (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 electronic equivalents,

to enable the registration of this Agreement in accordance with **clause 7.1(b)**.

- (d) The Developer, at its own expense, will take all practical steps, and otherwise do anything that the Council reasonably requires:
 - (i) to procure the lodgement of this Agreement with the Registrar-General as soon as reasonably practicable after this Agreement comes into operation, but in any event, no later than 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.

7.2 *Removal from register*

The Council will, promptly after receipt of a request from the Developer, provide a release and discharge of this Agreement so that it may be removed from the folios of the Register for the Land (or any part of it) provided the Council is satisfied the Developer has duly fulfilled its obligations under this Agreement, and is not otherwise in default of any of the obligations under this Agreement.

7.3 *Caveat*

- (a) The Developer acknowledges and agrees that:
 - (i) when this Agreement is executed, the Council will have acquired and the Developer will 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 of that interest; and
 - (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) Council must, at the Developer's cost, lodge a withdrawal of any caveat in respect of the Land on the earlier of:
 - (i) the date that the Developer registers this Agreement under **clause 7.1**; or
 - (ii) the date upon which the Developer would otherwise be entitled to a release under **clause 7.2**.
- (c) If the Land is transferred in accordance with **clause 13**, Council must, within 10 Business Days of the Developer giving notice to Council, provide to the Developer either a consent to register a transfer to the third party or, if the caveat can be withdrawn in accordance with this **clause 7.3**, a withdrawal of the caveat to permit registration of the transfer.

8 *Review of this Agreement*

- (a) This Agreement may be reviewed or modified. Any review or modification of this Agreement will be conducted in the circumstances and in the manner determined by the Parties.

- (b) 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.
- (c) 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 Dispute Resolution

9.1 *Reference to dispute*

If a dispute arises between the Parties in relation to this Agreement, then the Parties must seek to resolve that dispute in accordance with this **clause 9**, prior to commencing any Court or arbitration proceedings.

9.2 *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 intent to invoke this **clause 9**;
- (b) the nature or subject matter of the dispute, including a summary of any efforts made to resolve the dispute other than by way of this **clause 9**; and
- (c) the position which the Party issuing the Notice of Dispute believes is correct.

9.3 *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 provided in accordance with **clause 9.2**) 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, expert opinion 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.

9.4 *No Party may constrain*

If:

- (a) at least one meeting has been held in accordance with **clause 9.3**; and
- (b) the Parties have been unable to reach an outcome identified in **clause 9.3(b)**; and
- (c) one of the Parties, acting in good faith, forms the view that the dispute is reasonably unlikely to be resolved in accordance with a process agreed under **clause 9.3**,

then that Party may, by 15 Business Days written notice to the other Parties, terminate the dispute resolution process in respect of that dispute and may then commence Court

or arbitration proceedings in relation to the dispute. The termination of the process set out in this clause does not of itself amount to a breach of this Agreement.

9.5 *Urgent relief*

The provisions of this **clause 9** do not prejudice the right of a Party to institute Court proceedings for urgent injunctive or declaratory relief in relation to any matter arising out of or relating to this Agreement.

10 **Enforcement and security**

10.1 *Security*

- (a) Prior to the issue of a Construction Certificate for any Works that are above-ground approved under a Development Consent, the Developer is to provide to Council a Security in an amount that is equivalent to the estimated cost of those Works determined by a qualified quantity surveyor and approved by Council.
- (b) Council may call on the Security provided under this clause if:
 - (i) the Developer is in material or substantial breach of this Agreement by failing 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
 - (ii) Council acquires the Dedication Land or the Easement in Gross in accordance with **clause 10.3**; or
 - (iii) the Developer becomes Insolvent.
- (c) Subject to this clause, the Council may apply the proceeds of a Security in satisfaction of:
 - (i) any obligation of the Developer to carry out the Works;
 - (ii) any obligation of the Developer to pay for the costs of Council acquiring the Dedication Land or the Easement in Gross; 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) Nothing in this **clause 10.1** 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 the Security.

10.2 *Replacement Security*

- (a) At any time following the provision of the 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.
- (b) Within 20 Business Days of each anniversary of any Security provided under this Agreement, the Developer must provide Council with one or more replacement

Securities (**Replacement Security**) in an amount calculated in accordance with the following:

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

Where:

A is the amount of the Replacement Security;

B is the amount of the Security to be replaced;

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

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

provided A is greater than B.

- (c) On receipt of any Replacement Security, Council must immediately release and return to the Developer, as directed, the Securities it holds that have been replaced.
- (d) Council must promptly return the Security at the request of the Developer if any of the following occurs:
 - (i) the Developer fulfills the relevant obligations under this Agreement;
 - (ii) the Minister refuses to make the Instrument Change and the Developer withdraws the Planning Proposal seeking the Instrument Change; or
 - (iii) a Court of competent jurisdiction invalidates the Instrument Change and all avenues of appeal from that decision have been exhausted.

10.3 Acquisition of Dedication Land and Easement in Gross

- (a) This clause constitutes an agreement for the purposes of section 30 of the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW).
- (b) If the Developer does not transfer or dedicate the Dedication Land to Council as required by this Agreement, or create the Easement in Gross as required by **clause 5.3**, the Council may compulsorily acquire the Dedication Land or Easement in Gross as required, in which case the Developer consents to the Council compulsorily acquiring those interests for compensation in the amount of \$1.00, without having to follow the pre-acquisition procedures in the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW), and Council may call upon any Security provided under **clause 10.1** to cover any costs, including legal costs, incurred by the Council on acquisition of the land.
- (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 this **clause 10.3**.
- (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 this **clause 10.3**.

- (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 interest in land under this clause and, if the Developer fails to do so, the Council may call on the Security provided under **clause 10.1** for the purposes of reimbursing those costs.

10.4 Restriction on the issue of Certificates

- (a) In accordance with section 6.8 of the Act and section 21 of the Certification Regulation, the obligation to provide a Security under **clause 10.1** must be satisfied prior to the issue of a Construction Certificate for the Development or any part of the Development.
- (b) In accordance with section 6.10(2) of the Act and section 48 of the Certification Regulation, the obligations to:
 - (i) complete the Works;
 - (ii) dedicate the Dedication Land; and
 - (iii) provide Security for any item of the Works for defects liability under the Construction Terms,

must be satisfied prior to the issue of an Occupation Certificate for the Development or any part of the Development.

10.5 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.

10.6 Acknowledgement regarding security

The Parties acknowledge and agree that the Security provided under this **clause 10**, together with the requirements under **clause 7** to register this Agreement, and the restrictions on assignment of this Agreement under **clause 13** will provide sufficient security for the performance of the Developer's obligations under this Agreement.

11 Notices

- (a) Any notice, consent, information, application or request that must or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:
 - (i) delivered or posted to that Party at its address set out below; or
 - (ii) emailed to that Party at its email address set out below.

to North Sydney Council:	200 Miller Street, Sydney NSW 2060 Email: council@northsydney.nsw.gov.au Attention: General Manager
to TWT Development Pty Ltd:	Level 5, 55 Chandos Street, St Leonards NSW 2065 Email: gavin.zhang@twtgloba.com.au Attention: Gavin Zhang
to 75 Chandos Street Pty Ltd:	Suite 501, 55 Chandos Street, St Leonards NSW 2065 Email: gavin.zhang@twtgloba.com.au Attention: Gavin Zhang

- (b) If a Party gives the other Party three Business Days' notice of a change of its address or email address, any notice, consent, information, application or request is only given or made by that Party if it is delivered, posted or emailed to the latest address or email address.
- (c) Any notice, consent, information, application or request is to be treated as given or made at the following time:
 - (i) if it is delivered, when it is left at the relevant address;
 - (ii) if it is sent by email, if an "undelivered receipt" is not received; or
 - (iii) if it is sent by post, five Business Days after it is posted.
- (d) If any notice, consent, information, application, or request is given or made on a day that is not a Business Day, or if it is given or made after 5:00pm on a Business Day in the place of the party to whom it is sent, it is to be treated as having been given or made at the beginning of the next Business Day.

12 Approvals and consents

The Parties acknowledge that:

- (a) 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;
- (b) a Party is not obligated to give its reasons for giving or withholding consent or for giving consent subject to conditions; and
- (c) this Agreement does not impose any obligation on a Consent Authority to:
 - (i) grant development consent; or
 - (ii) exercise any function under the Act in relation to a change in an environmental planning instrument.

13 Assignment and Dealings

The Developer may not sell, transfer, assign, novate, or similarly deal with its right, title, or interest in the Land or rights or obligations under the terms of this Agreement, or allow any interest in them to arise or be varied, in each case, without Council's consent

and unless, prior to any such sale, transfer, assignment, charge, encumbrance or novation, the Developer:

- (a) at no cost to Council, first procures the execution by that person of all necessary documents in favour of Council by which that person agrees to be bound by the Agreement as if they were a party to the original Agreement; and
- (b) satisfies the Council that the Developer is not in material breach of this Agreement.

14 Costs

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

- (a) the negotiation, preparation, execution, stamping, registering, release and discharge of this Agreement, including the reasonable costs of any legal advice Council has received in connection with this Agreement; and
- (b) any administrative fees as required by Council acting reasonably, in connection with the administration of this Agreement,

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

15 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 Further acts

- (a) Each Party must promptly execute all documents and do all other things that another Party from time to time reasonably requests to effect, perfect or complete this Agreement and all transactions incidental to it.
- (b) 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.
- (c) 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.

17 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. The Parties will not object to the exercise of jurisdiction by those Courts on any basis.
- (c) Without preventing any other method of service, any document in an action may be served on a Party by being delivered or left at that Party's address set out in **clause 11(a)**.

18 Joint and individual liability and benefits

Except as otherwise set out in this Agreement, any agreement, covenant, representation or warranty under this Agreement by two or more persons binds those persons jointly and each of them individually, and any benefit in favour of two or more persons is for the benefit of them jointly and each of them individually.

19 No fetter

19.1 *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**').

19.2 *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.

20 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.

21 Severability

- (a) The Parties acknowledge 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 by that provision.
- (b) The Parties agree that to the extent permitted by law, this Agreement prevails to the extent of its inconsistency with any law.
- (c) 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.
- (d) 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,

22 Modification

No modification of this Agreement will be of any force or effect unless it is in writing and signed by the Parties to this Agreement and is in accordance with the provisions of the Act.

23 Waiver

- (a) 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.
- (b) A waiver by a Party is only effective if it is in writing.
- (c) 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.

24 GST

24.1 Construction

In this **clause 24**, unless there is a contrary indication, words and expressions which are not defined in this Agreement but which have a defined meaning in the GST Law have the same meaning as in the GST Law.

24.2 GST not payable

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this Agreement are exclusive of GST.

24.3 Additional amount of GST payable

- (a) The Parties agree, in accordance with Class Ruling 2013/13, that the contributions required to be made under this Agreement are exempt from GST.
- (b) 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.

25 Discharge of Developer's obligations

The Developer's obligations under this Agreement shall be discharged on the occurrence of any of the following:

- (a) the Developer's obligations have been fully carried out in accordance with this Agreement; or
- (b) Council and the Developer otherwise agree to the modification or discharge of this Agreement.

26 Explanatory Note

The Explanatory Note annexed at **Annexure D** prepared in connection with this Agreement pursuant to the Regulation is not to be used to interpret this Agreement.

27 Counterparts

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

28 Relationship between the 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.

Schedule 1 Interpretation

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

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

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

Bank Guarantee means an irrevocable and unconditional undertaking that is not limited in time and does not expire by one of the following trading banks: (a) Australia and New Zealand Banking Group Limited, (b) Commonwealth Bank of Australia, (c) Macquarie Bank, (d) National Australia Bank, (e) St George Bank Limited, (f) Westpac Banking Corporation, or (g) Other financial institution approved by the Council, to pay an amount or amounts of money to the Council on demand and containing terms and conditions reasonably acceptable to the Council;

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

Business Day means any day except for Saturday or Sunday or a day which is a public holiday in Sydney;

Certificate of Practical Completion means the written certificate confirming the Works, or part of the Works, have been completed to the Council's satisfaction issued under clause 8.1(b)(i) of the Construction Terms;

Certification Regulation means the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*;

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

Consent Authority has the same meaning as in the Act;

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**;

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

DCP means the *North Sydney Development Control Plan 2013*;

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

Dedication Land means the five (5) metre wide strip of land adjacent to Oxley Street with an area of 179 square metres (sqm), as shown on the plan at Annexure B, to be dedicated in accordance with **clause 5.2** of this Agreement, the Dedication Land may be limited in depth to no less than three (3) metres below the ground floor finished floor level;

Developer means TWT and 75CS jointly and severally;

Development Application has the same meaning as in the Act;

Development Consent has the same meaning as in the Act;

Development means the proposed development of the Land for the purposes of a multi-storey mixed-use development, a Through-site Link connecting Chandos Street to Atchison Lane, basement carparking;

Easement in Gross means an easement in gross limited in depth equal to the ground floor finished floor level and limited in height to no less than one (1) storey above ground floor finished floor level granted in favour of Council that permits public access via the Through-site Link as detailed in the Easement Terms;

Easement Terms means the terms of an Easement in Gross set out in **Schedule 3**;

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 GST;

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) of this definition, above, occurs in relation to a Party, including the Court appointment of a receiver;

Instrument Change means an amendment to the *North Sydney Local Environmental Plan 2013* in response to the Planning Proposal;

Land means the land comprising of six separate allotments of land, being: (a) Lot 1, DP 900998, known as 71-73 Chandos Street; (b) Lot 1, DP 115581, known as 75 Chandos Street; (c) Lot 28 and 29, DP 455939, known as 79-81 Chandos Street; (d) Lot A and B, DP 443166, known as 83-85 Chandos Street; (e) Lot 31, Section 11, DP 2872, known as 87 Chandos Street; and (f) Lot 32, Section 11, DP 2872, known as 89 Chandos Street, as shown on the plan at **Annexure A**;

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);

Modification Application means any application to modify a Development Consent under section 4.55 of the Act;

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

Occupation Certificate means an occupation certificate as defined under section 6.4 of the Act and includes an Occupation Certificate for part of a building;

Party means a party to this Agreement, including their successors and assigns;

Planning Proposal means PP5/22 seeking to amend NSLEP 2013 by: (a) increasing the maximum building height for the Land to 43m; (b) including a site-specific provision that allows the maximum building height for the Land to be exceeded by no more than 2m for the purposes of a lift overrun and providing inclusive access to communal open space at the rooftop level, where the lift overrun is not to be visible from the public domain at street level; (c) imposing a maximum floor space ratio (**FSR**) of 4:1; and (d) increasing the minimum non-residential FSR from 0.6:1 to 1:1;

Public Domain Works means the public domain improvement works including footpaths, kerb and guttering and other public facilities;

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

Regulation means the *Environmental Planning and Assessment Regulation 2021*;

Security means a Bank Guarantee or Bond;

Through-site Link means a pedestrian thoroughfare approximately seven (7) metres wide and open-to-sky that connects Chandos Street to Atchison Lane subject to the Easement in Gross for public access 24 hours per day, 7 days a week, in accordance with **clause 5.3** of this Agreement, with a total size of approximately 250 square metres (sqm), as generally identified in the location on the plan in **Annexure C**; and

Works means the works required to embellish the Dedication Land (approximately 179 sqm) and any adjoining land (approximately 236 sqm) as a public park, and the Through-site Link (approximately 250 sqm), including but not limited to design, survey, planning, obtaining approvals, engineering and construction generally in accordance with the plans in **Annexure C**.

Schedule 2 Construction terms

1 Interpretation

For the purposes of this **Schedule 2**, the defined terms in **Schedule 1** and the interpretation principles in **clause 1** 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 between the Developer and its Builder 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:
- (a) carry out the Developer's obligations in these Construction Terms as part of any Construction Contract; and
 - (b) request a Council representative to be present at each on-site meeting attended by the Superintendent and to ensure the Council representative is present at the meeting.

5 Design Development and Approvals

5.1 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 plans for the Works set out in **Annexure C**;
 - (ii) the St Leonards East Public Domain Upgrade Report (or draft version of that report, whichever is applicable at the time the concept design is prepared);
 - (iii) the North Sydney Public Domain Style Manual and Design Codes;
 - (iv) the North Sydney Infrastructure Specification Manual for Roadworks, Drainage and Miscellaneous Works; and
 - (v) any other standards or specifications provided to the Developer by the Council.
- (b) The Developer and the Council must work in consultation with each other to prepare and agree on 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 for any Development Application amendments required by Council, acting reasonably.

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 concept plan for the Works in **Annexure C**, the standards and specifications referred to in **clause 5.1(a)** 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.
- (d) 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, 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 of the Developer 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.
- (e) Any acceptance by the Council of the Detailed Design under this **clause 5** of this Schedule is not to be taken as approval of or to any Construction Certificate for the Works.

5.3 **Good faith**

The Parties must act promptly and in good faith to consult in relation to the concept design and the Detailed Design of the Works.

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 tradesmanlike workmanship when carrying out the Works.
- (b) The qualitative standard of the design and finishes for the Works must be in accordance with Council's specifications for the Works as provided during the preparation of the concept design and Detailed Design.
- (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** of this Schedule 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 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 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), 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, the Developer must, at its 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, 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 has rectified a defect or non-compliance identified in a notice issued under **clause 7(e)** of this Schedule 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, 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 (**Certificate of Practical Completion**); 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, 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 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, 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 (**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, 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 8.14(d)** of this Schedule 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 fails 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 Security provided to the Council under **clause 8.5** of this Schedule 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 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, the Developer fails to request 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 Security 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 procures an agreement from the Builder and the Builder's bank 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 for that item of Works (or any remaining balance of it) to the Developer.
- (d) Notwithstanding **clause 8.4(c)** of this Schedule, 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 hold 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 its own cost; 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 Easement Terms

Definitions

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

Council means North Sydney Council and its successors;

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

Easement Site means the location of the Through-site Link as defined in Schedule 1 of this Agreement;

Lot Burdened means the Land;

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

Easement Terms

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

accordance with any rules made by an Owner's Corporation relating to the Lot Burdened.

7. The Owner of the Lot Burdened may, with the Council's prior written consent (except in the case of an emergency, in which case the Council's prior written consent is not required) temporarily close or temporarily restrict access through all or part of the Lot Burdened for the time and to the extent necessary but only on reasonable grounds for the purposes of:
 - a. construction, construction access, repairs, maintenance, replacement and alteration to the Lot Burdened or any improvements in, on or under the Lot Burdened; or
 - b. security, public safety or evacuation of the Lot Burdened and adjoining buildings.
8. Subject to ensuring the provision of access in accordance with clause 1 of the Easement Terms, the Owner of the Lot Burdened may, with the consent of Council:
 - a. carry out works in the Lot Burdened for the purposes of enhancing the Lot Burdened;
 - b. install or erect works of art, street furniture, awnings, tables and chairs associated with the ground floor commercial premises, notice boards or any other similar improvements at ground level within the Lot Burdened; and
 - c. use the Lot Burdened;in a manner consistent with any outdoor or footway dining policy of the Council.

Release and variation of Easement

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

Schedule 4 Land Ownership

Lot	Address	Land Owner
Lot 1 DP 900998	71-73 Chandos Street	TWT Development Pty Ltd
Lot 1 DP 115581	75 Chandos Street	75 Chandos Street Pty Ltd
Lot 28 DP 455939 Lot 29 DP 455939 (Auto Consol 8493-37)	79-81 Chandos Street	TWT Development Pty Ltd
Lot A DP 443166 Lot B DP 443166	83-85 Chandos Street	TWT Development Pty Ltd
Lot 31 Section 11 DP 2872	87 Chandos Street	TWT Development Pty Ltd
Lot 32 Section 11 DP 2872	89 Chandos Street	TWT Development Pty Ltd

Schedule 5 Summary of requirements (section 7.4)

Subject and subsection of the Act	Planning Agreement
Planning instrument and/or Development Application – Section 7.4(1) The Developer has: <ul style="list-style-type: none"> (a) Sought a change to an environmental planning instrument <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No (b) Made, or propose to make a Development Application <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No (c) Entered into an agreement with, or are otherwise associated with, a person to whom paragraph (a) or (b) applies <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No 	
Description of the land to which the planning Agreement applies – Section 7.4(3)(a)	See the definition of “Land” in Schedule 1 , and the table to Schedule 4 .
Description of the change to the environmental planning instrument to which the agreement applies – Section 7.4(3)(b)	See the definition of “Instrument Change” and “Planning Proposal” in Schedule 1 .
The scope, timing and manner of delivery of contribution required by the Planning Agreement – Section 7.4(3)(c)	See clause 5
Applicability of section 7.11 of the Act – Section 7.4(3)(d)	Not excluded - see clause 6
Applicability of section 7.12 of the Act – Section 7.4(3)(d)	Not excluded - see clause 6
Applicability of section 7.24 of the Act – Section 7.4(3)(d)	Not excluded - see clause 6
Whether benefits are to be taken into consideration under section 7.11 – Section 7.4(3)(e)	Not taken into account - see clause 6
Mechanism for dispute resolution – Section 7.4(3)(f)	See clause 9
Enforcement of the Planning Agreement – Section 7.4(3)(g)	See clause 10
Registration of the Planning Agreement – Section 7.4(3)(g), section 7.6	See clause 7
No obligation to grant consent or exercise functions – Section 7.4(9)	See clause 19

Executed as deed

Executed for and on behalf of **North**)
Sydney Council ABN 32 353 260 317 by)
its authorised delegate in accordance with)
a resolution of the Council dated [...])
)
)

.....
Signature of witness

.....
Signature of Authorised Delegate

.....
Print name of witness

.....
Print name and position of Authorised
Delegate

Executed by **TWT Development Pty Ltd**)
ACN 121 505 824 in accordance with)
section 127 of the *Corporations Act 2001*)
(Cth) by:)
)
)

.....
Signature of Director

.....
Signature of Director/Secretary

.....
Print name of Director

.....
Print name of Director/Secretary

Executed by 75 Chandos Street Pty Ltd)
ACN 163 005 678 in accordance with)
section 127 of the *Corporations Act 2001*)
(Cth) by:)
)
)

.....
Signature of Director

.....
Signature of Director/Secretary

.....
Print name of Director

.....
Print name of Director/Secretary

Annexure A Plan showing Land

CHRISTIE STREET
PARK UPGRADE

CHANDOS STREET
PUBLIC DOMAIN UPGRADE WORKS

55-69 CHANDOS ST
LEV & DA APPROVALS

THROUGH
SITE LINK

PROPOSED SITE
71- 89 CHANDOS ST

Public Domain Upgrade Works in
accordance with Councils' Public
Domain Manual & Design Codes

ATCHISON LANE

40 - 48
ATCHISON ST

50 -56 ATCHISON ST
POTENTIAL FUTURE
ENVELOPE

58- 64 ATCHISON ST
POTENTIAL FUTURE
ENVELOPE

THROUGH
SITE LINK

OXLEY STREET

ST LEONARDS
GATEWAY
STATEMENT &
HILLTOP PLAZA

ATCHISON STREET

PUBLIC DOMAIN UPGRADE WORKS

THROUGH
SITE LINK

25 ATCHISON ST
APPROVED DA

GROUND INK
LANDSCAPE ARCHITECTS

©GROUND INK Pty Ltd | ABN 55 163 025 456
Registered Landscape Architect: Rob Loughman # 7813
Suite 201, 75 Archer Street Chatswood, NSW 2067
Ph. (02) 9411 3279 | www.groundink.com.au

⌚
NOT TO SCALE

SITE PLAN

LDA-02

Rev A | 09-Mar-2023

LANDSCAPE DOCUMENTATION FOR PLANNING PROPOSAL | 71-89 CHANDOS ST, ST LEONARDS NSW

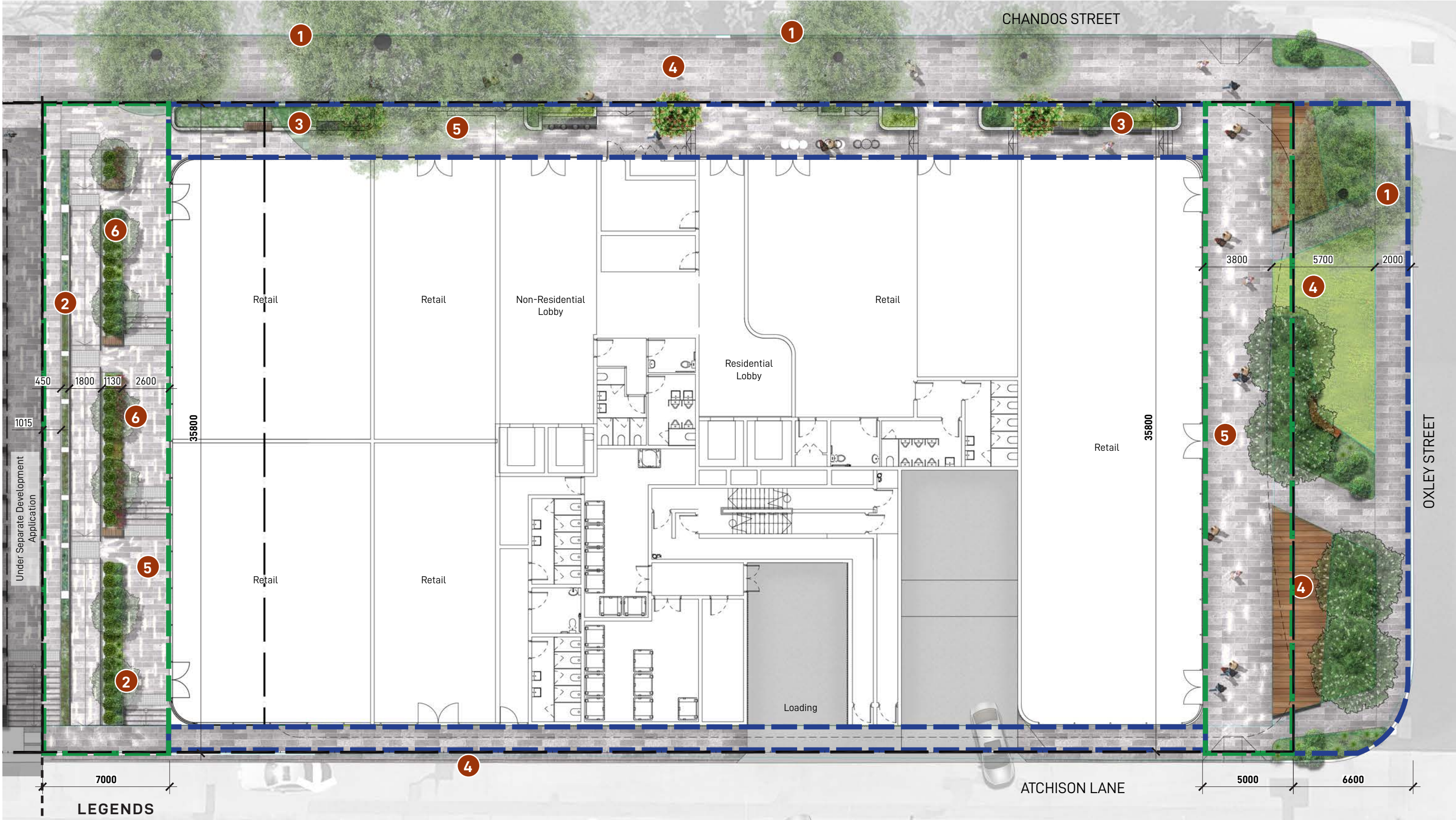
Annexure B Plan showing Dedication Land



Through-Site Link = 250m²
 Oxley Street linear park = 179m²

Annexure C

Concept Plans for the Works



Annexure D

Draft Explanatory Note

Explanatory Note**Exhibition of draft Voluntary Planning Agreement****PP5/22: 71-89 Chandos Street, St Leonards***Environmental Planning and Assessment Regulation 2021 (section 205)***Planning Agreement**

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

Section 205(1) of the *Environmental Planning and Assessment Regulation 2021* (**“the EPA Regulation”**) requires that an Explanatory Note must be prepared to accompany a planning agreement.

The Explanatory Note must address the requirements of section 205(1)(a)-(b) of the EPA Regulation. This Explanatory Note has been prepared to address these requirements.

Additionally, in preparing the Explanatory Note, the planning authority must consider any relevant practice note prepared by the Planning Secretary under clause 203(6). The relevant practice note is *Planning agreements: Practice note – February 2021* published by the former NSW Department of Planning, Industry and Environment (now the Department of Planning and Environment).

This practice note has been considered by the parties in the course of preparing this Explanatory Note.

Parties

TWT Development Pty Ltd and 75 Chandos Street Pty Ltd (**Developer**) made an offer to North Sydney Council (**Council**) to enter into a Planning Agreement in connection with the Planning Proposal for land at 71-89 Chandos Street, St Leonards.

Description of the Land

The land to which the Planning Agreement applies is:

- (a) Lot 1, DP 900998, known as 71-73 Chandos Street;
- (b) Lot 1, DP 115581, known as 75 Chandos Street;
- (c) Lot 28 and 29, DP 455939, known as 79-81 Chandos Street;
- (d) Lot A and B, DP 443166, known as 83-85 Chandos Street;
- (e) Lot 31, Section 11, DP 2872, known as 87 Chandos Street; and
- (f) Lot 32, Section 11, DP 2872, known as 89 Chandos Street,

known as 71-89 Chandos Street, St Leonards (**the Land**).

The Development

The Planning Agreement relates to proposed development of the Land to which the Planning Agreement applies for redevelopment of the Land for the purpose of a multi-storey mixed use residential and commercial development with basement parking, through-site link and

communal open space and landscaping, including development generally anticipated in the Planning Proposal.

Description of the Planning Proposal to which the Planning Agreement applies

To facilitate the Development, the Developer has lodged a Planning Proposal. The Planning Proposal (PP5/22 – Council's reference) seeks to amend the *North Sydney Local Environment Plan 2013 (NSLEP)* to:

- (a) Increase the maximum building height for the Land to 43m;
- (b) Include a site-specific provision that allows the maximum building height to be exceeded by no more than 45m for the purposes of a lift overrun and providing inclusive access to communal open space at the rooftop level;
- (c) Impose a maximum floor space ratio (**FSR**) of 4:1; and
- (d) Increase the minimum non-residential FSR from 0.6:1 to 1:1.

Summary of Objectives, Nature and Effect of the Planning Agreement

Objectives

The objective of the Planning Agreement is to provide a mechanism by which contributions towards public purposes can be made in connection with the future development of the Land to benefit the community.

The public benefits include the provision of public open space through the embellishment of a linear park, and pedestrian amenity through the establishment and maintenance of a through-site link.

Nature

A Planning Agreement of this kind may require a developer to dedicate land free of costs, pay a monetary contribution, or provide any other material public benefit to be used for or applied towards a public purpose.

In this case, the Planning Agreement will require the following:

- (a) Dedication and embellishment of approximately 179 m² of private land to Council at a depth no less than 3m below ground level, and embellishment of approximately 271m² of public land for the purposes of a linear park along Oxley Street;
- (b) Establishment of a pedestrian through site-link approximately 7m wide and 38.5m in length (approximately 250m² in total) that is open-to-sky connecting Chandos Street to Atchison Lane with easement for public access for 24 hours a day, 7 days a week;
- (c) Construction of all outdoor lighting for the through-site link;
- (d) Landscaping and improvements to public domain on-site; and
- (e) Providing maintenance and management of the through-site link and Oxley Street linear park.

The contributions, including works, dedication of land and grant of an easement for public access, are to be completed before the issue of an Occupation Certificate for any part of the Development. The Works are also guaranteed by a Security in the form of a Bond or Bank

Guarantee, which will be indexed in accordance with increases in the Consumer Price Index from the date of the Agreement to the date the Works are completed.

Effect

In general terms, delivery of the contributions is timed in a way that is practicable for the Developer and still provides for the enhancement and improvement of public domain and open space to meet the needs of the new residents and the community.

The Planning Agreement provides for the enforcement of the Planning Agreement by a suitable means if there is a breach by the Developer. The contributions are to be delivered prior to the issue of an occupation certificate for the Development or any part of the Development. An occupation certificate cannot be lawfully issued if the required contributions have not been made.

The Planning Agreement is to be registered on the title to the Land.

Where it is relevant to a development application, a consent authority must take into consideration a planning agreement — or any draft planning agreement — that a developer has entered into or offered to enter into (respectively).

A planning agreement cannot impose an obligation on a planning authority to actually grant a development consent. A merit assessment of the proposed development must still be carried out.

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 Act:

- a. 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)).*
- b. Promotes the orderly and economic use and development of land (section 1.3 (c)).*
- c. Promotes good design and amenity of the built environment (section 1.3(g)).*

The Planning Agreement will enable the utilisation of the development potential of the Land, while requiring the Developer to make provision for public purposes. The Planning Agreement promotes the public interest because it will require the provision of open space and public domain improvements that will benefit existing and future residents and workers in the area. These contributions will have a positive impact on the public and will provide for the social welfare of the community.

The contribution required under the Planning Agreement is additional to any normal contribution that will ordinarily need to be made in relation to the development.

The proposed contribution under the Planning Agreement is consistent with the Council's strategic plans and policy documents.

The Planning Purposes served by the Planning Agreement

The Planning Agreement facilitates the implementation of Council's strategic plans and, through the development contributions, provides existing and future residents in the area with improved public open space and pedestrian amenity.

Whether the Planning Agreement conforms with the Council's Capital Works Program

The Planning Agreement will provide for improvement of the public domain and open space areas in the vicinity of the Development. The Planning Agreement will assist the Council to meet the current and future needs of the local community.

The contribution proposed under the Planning Agreement does not conform with the Council's capital works program. This is because the opportunity to obtain the contributions has arisen outside of the Council's capital works program.

The Planning Agreement will not have an adverse effect on this capital works program. Overall, the Planning Agreement is likely to result in more capital works (to the benefit of the community) than would be the case without the Planning Agreement.

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 the works, land dedication and grant of the easement to be completed before the issue of an **occupation certificate** for the Development. The registration of the Planning Agreement and the provision of a Security for the obligations under the Planning Agreement must be provided prior to the issue of a **construction certificate** for the Development.

Status of the Explanatory Note

This Explanatory Note has been prepared jointly between the parties.

The parties have agreed that this Explanatory Note is not to be used to assist in construing the Planning Agreement.