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Planning and Development Consultants

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PLANNING AGREEMENT

Woollahra Municipal Council
Customer Service Department

13 OCT 2016

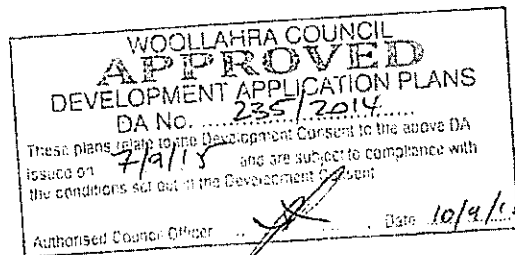
Received

Parties

Woollahra Municipal Council of 536 New South Head Road, New South Wales (Council)

and

New South Head Road Properties Pty Limited of 321 New South Head Road, New South Wales (Developer).



Operative provisions

1 Planning agreement under the Act

The Parties agree that this Agreement is a planning agreement governed by Subdivision 2 of Division 6 of Part 4 of the Act.

2 Application of this Agreement

2.1 This Agreement applies to the land addressed as 321 New South Head Road, Double Bay which is legally described as SP 12463.

2.2 This Agreement applies to the Development DA 235/2014/1 lodged with the Council on 12 June 2014 seeking development consent for a four (4) storey residential flat building comprising thirteen (13) units, two (2) levels of basement parking and landscaping.

3 Operation of this Agreement

This Agreement is to take effect on the granting of development consent and the execution of the Agreement by both Parties.

4 Definitions and interpretation

4.1 In this Agreement the following definitions apply:

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

Construction Certificate has the same meaning as in the Act.

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

Development means development application DA 235/2014/1 lodged with the Council on 12 June 2014.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

Development Contribution means a monetary contribution, the dedication of land free of cost or the provision of a material public benefit.

Explanatory Note means a written statement that is required to accompany a proposed planning agreement under cl. 25E of the Regulation.

GST has the same meaning as in 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 or administration of the GST.

Land means SP 12463, known as 321 New South Head Road, Double Bay.

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

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

4.2 In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:

- (a) Headings are inserted for convenience only and do not affect the interpretation of this Agreement.
- (b) A reference in this Agreement to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in New South Wales.
- (c) If the day on which any act, matter or thing is to be done under this Agreement is not a business day, the act, matter or thing must be done on the next business day.
- (d) A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- (e) A reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- (f) A reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.

- (g) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
- (h) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- (i) Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- (j) A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- (k) References to the word 'include' or 'including' are to be construed without limitation.
- (l) A reference to this Agreement includes the agreement recorded in this Agreement.
- (m) A reference to a party to this Agreement includes a reference to the servants, agents and contractors of the party, and the party's successors and assignees.

5 Development Contributions to be made under this Agreement

The Developer is to pay the Council \$68,764.12. That amount is to be paid prior to the issuing of a Construction Certificate in relation to the Development. Those funds can be transferred electronically or paid by cheque to the Council.

6 Application of the Development Contributions

The funds paid to Council are to be applied for a public purpose at the discretion of Council to fulfill Council's vision to make Double Bay a better place.

7 Nexus

This Agreement is not void for want of nexus with the Development.

8 Application of s94 and s94A of the Act to the Development

This Agreement does not affect any requirement to pay contributions under ss. 94, 94A or 94EF of the EP&A Act.

9 Registration of this Agreement

This Agreement is not required to be registered.

10 Review of this Agreement

This Agreement can be reviewed, modified or amended with the written and signed consent of both parties in accordance with the requirements of the Act.

11 Dispute Resolution

11.1 Dispute Resolution

- (a) This clause applies to any dispute in which one Party gives another Party notice in writing specifying the particulars of the dispute.
- (b) If notice of a dispute is given, the parties are to meet within 14 days of the notice in an attempt to resolve the dispute.
- (c) If the dispute is not resolved within a further 28 days, the Parties may:
 - (i) Mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and are to request the President of the Law Society to select a mediator; or
 - (ii) Refer the dispute to the President of the NSW Law Society to appoint an expert for expert determination where the expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.
- (d) If the Dispute is not resolved by mediation or within a further 28 days, or such longer period as may be necessary to allow

any mediation process which has been commenced to be completed, then the Parties may:

- (i) Exercise their legal rights in relation to the dispute, including by the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.
- (e) Each Party is to share the costs of mediation.
- (f) Each Party must bear its own costs arising from or in connection with litigation.

12 Enforcement

12.1 If one Party (the 'Plaintiff') reasonably considers that the other Party (the 'Defendant') is in breach of any obligation under this Agreement, it may give a written notice to the Defendant.

- (a) specifying the nature and extent of the breach,
- (b) requiring the Defendant to:
 - (i) rectify the breach if it reasonably considers it is capable of rectification, or
 - (ii) pay compensation to the reasonable satisfaction of the Plaintiff in lieu of rectifying the breach if it reasonably considers the breach is not capable of rectification, or
 - (iii) specifying the period within which the breach is to be rectified or compensation paid, being a period that is reasonable in the circumstances.

12.2 Any costs incurred by the Plaintiff in successfully remedying a breach in accordance with clause 12.1 may be recovered as a debt due in a court of competent jurisdiction.

13 Notices

13.1 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:

- (a) Delivered or posted to that Party at its address set out below.
- (b) Faxed to that Party at its fax number set out below.
- (c) Emailed to that Party at its email address set out below.

Council

Attention: The General Manager

Post: Woollahra Municipal Council PO Box 61 1360

Address: 536 New South Head Road, Double Bay NSW 2028

Fax Number: (02) 9391 7000

Email: records@woollahra.nsw.gov.au

Developer

Attention: Casey McCollum

Address: PO Box A2626 Sydney South NSW 1235

Fax Number: (02) 8007 6029

Email: caseymccollum8@gmail.com

13.2 If a Party gives the other Party three (3) business days notice of a change of its address or fax number, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or faxed to the latest address or fax number.

13.3 Any notice, consent, information, application or request is to be treated as given or made at the following time:

- (a) If it is delivered, when it is left at the relevant address.
- (b) If it is sent by post, two (2) business days after it is posted.
- (c) If it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.

13.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that 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.

14 Approvals and consent

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 obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

15 Assignment and Dealings

This Agreement does not affect the Developer's rights to deal with the land.

16 Costs

- 16.1 The cost of preparing, executing, stamping and registering the Agreement are to be borne by the Developer.
- 16.2 The Council is responsible for its own costs incurred in negotiating or entering into the Agreement.

17 Entire agreement

- 17.1 This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with. No Party can rely on an earlier document, or anything said or

done by another Party, or by a director, officer, agent or employee of that Party, before this Agreement was executed, except as permitted by law.

17.2 The Explanatory note that accompanies the Agreement does not form part of the Agreement.

18 Further acts

Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to affect, perfect or complete this Agreement and all transactions incidental to it.

19 Governing law and jurisdiction

This Agreement is governed by the law of New South Wales. The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The Parties will not object to the exercise of jurisdiction by those courts on any basis.

20 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 (2) or more persons binds them jointly and each of them individually, and any benefit in favour of two (2) or more persons is for the benefit of them jointly and each of them individually.

21 No fetter

Nothing in this Agreement shall be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

22 Representations and warranties

The Parties represent and warrant that they have power 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.

23 Severability

If a clause or part of a clause of this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement, but the rest of this Agreement is not affected.

24 Waiver

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.

25 GST

If any Party reasonably decides that it is liable to pay GST on a supply made to the other Party under this Agreement and the supply was not priced to include GST, then recipient of the supply must pay an additional amount equal to the GST on that supply.

Execution

Name: Casey McCollum Position: Dev. Manager
Signature: C. McCollum Date: 21/7/16

Name: N. Egan Position: Manager Development Control
Signature: ~~N. Egan~~ Date: 8/2/17

Name: Position:
Signature: Date:

Name: Position:
Signature: Date:

Attachment A

Environmental Planning and Assessment Regulation 2000 (Clause 25E)

Explanatory Note

Draft Planning Agreement

Under s93F of the Environmental Planning and Assessment Act 1979

1. Parties

Woollahra Municipal Council (Planning Authority)

New South Head Road Properties Pty Limited (Developer)

2. Description of Subject Land

Lot SP 12463, known as 321 New South Head Road, Double Bay.

3. Description of Development Application

Development Application 235/2014/1 lodged with the Council on 12 June 2014 that seeks development consent to construct a four (4) storey residential flat building comprising thirteen (13) units, two (2) levels of basement parking and landscaping.

4. Summary of Objectives, Nature and Effect of the Draft Planning Agreement

The objective of the Agreement is to provide funding to the Council to fulfill Council's vision to make Double Bay a better place.

5. Assessment of the Merits of the Draft Planning Agreement

5.1 The Planning Purposes Served by the Draft Planning Agreement

The Agreement will assist the Council in meeting the financial costs of undertaking civic improvements to the Double Bay area in which the Land is located.

5.2 How the Draft Planning Agreement Promotes the Objects of the Environmental Planning and Assessment Act 1979

The Draft Planning Agreement promotes the Objects of the Act by encouraging the provision of land for public purposes, community services and facilities by encouraging the upgrading and on-going maintenance of such facilities, such as Steyne Park, footpaths, fencing, street lighting, landscaping and street furniture in Double Bay.

5.3 How the Draft Planning Agreement Promotes the Public Interest

The Draft Planning Agreement promotes the public interest by promoting the objects of the Act.

5.4 How the Draft planning Agreement Promotes the Elements of the Council's Charter

The Draft Planning Agreement promotes the Council's Charter by providing services and facilities for the community and provision of civic improvements for the benefit of the public.

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

The Draft Planning Agreement conforms to the Council's Capital Works Program as detailed in the Double Bay Centre Public Domain Improvements Plan dated 9 September 2002 and Council's Section 94 Contribution Plan 2002.

5.5 The Impact of the Draft Planning Agreement on the Public or Any Section of the Public

No impact.

6. Restriction of Completion of Development under the Agreement

The Agreement must be satisfied prior to the issuing of an Occupation Certificate for the Development.

