
**Planning Agreement
6-16 Atchison St, St Leonards**

**The Minister for Planning
North Sydney Council
Bancor Developments Pty Ltd**

DRAFT

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Draft: 1 July 2010

Ref: 1156973-v1A\AUSJHG

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Date

2010

Parties

The Minister for Planning (ABN 38 755 706 681) of Level 34, Governor Macquarie Tower, 1 Farrer Place, Sydney NSW 2000 (*Minister*)

North Sydney Council (ABN ##) of 200 Miller Street, North Sydney NSW 2060 (*North Sydney Council*)

Bancor Developments Pty Ltd (ABN 22 138 848 914) of Suite 501, 460 Pacific Hwy, St Leonards NSW 2065 (*Developer*)

Recitals

- A The Developer has made an application under Part 3A of the Act for the Minister's approval to carry out the Development on the Land.
- B The Developer has offered to dedicate the Units to North Sydney Council for the purpose of Affordable Housing in accordance with this agreement in the event that the Minister grants approval to carry out the Development on the Land.

Operative provisions

1 Application and Operation of agreement

Planning agreement

- 1.1 The parties agree that this agreement is a planning agreement for the purposes of Division 6 of Part 4 of the Act.

Application

- 1.2 This agreement applies to the Land and the Development.

Operation of agreement

- 1.3 By submitting this agreement with its application for approval to carry out the Development, the Developer irrevocably offers to enter into this agreement if approval is granted to the Development.
- 1.4 Subject to clause 1.5, this agreement operates from the date that it is executed by all parties.
- 1.5 Clause 2 of this agreement will only operate if and when:
 - (a) the Minister grants approval to carry out the Development; and

- (b) that approval is subject to a condition requiring this agreement to be entered into or performed.

Application of sections 94, 94A and 94EF

- 1.6 This agreement does not exclude the application of section 94, 94A or 94EF to the Development.
- 1.7 The Units provided by the Developer under this agreement are not to be taken into consideration when determining a development contribution under section 94 of the Act in its application to the Development.

2 Provision of contributions

Units

- 2.1 The Developer must dedicate and transfer the Units to North Sydney Council free of cost and free of any trusts, estates, interests, covenants and encumbrances.

Standard of construction

- 2.2 The Developer must construct and complete the Units in accordance with the following and, in the event of any inconsistency, in the following order of priority:
 - (a) the requirements of the approval granted to the Development;
 - (b) the Specifications;
 - (c) any Australian Standards applicable to Units of the same nature as each aspect of the Units; and
 - (d) in a proper and workmanlike manner complying with current industry practice and standards.

Inspection and dedication process

- 2.3 The Developer must notify the Minister once it receives the final occupation certificate in relation to the Development (*Completion Notice*).
- 2.4 The Minister may inspect the Units within 14 days of receipt of a Completion Notice.
- 2.5 If the Minister is not satisfied that the Units have been completed in accordance with this agreement, then
 - (a) the Minister must notify the Developer, within 28 days of its receipt of the Completion Notice:
 - (i) what aspects have not been completed satisfactorily; and
 - (ii) what work must be carried out in order to rectify the deficiencies in those aspects(the *Rectification Notice*), and
 - (b) the Developer must then:

- (i) rectify the Unit(s) within three months of the receipt of the Rectification Notice and notify the Minister once the rectification work has been completed; or
 - (ii) notify the Minister that it disputes the matters set out in the Rectification Notice, in which case the dispute resolution process set out in clause 5 of this agreement will apply.
- 2.6 If the Minister does not give the Developer a Rectification Notice within 28 days of the Minister's receipt of the Completion Notice, then the Units will be deemed to have been completed satisfactorily for the purposes of this agreement.
- 2.7 The Minister may inspect the Unit(s) within 14 days of receipt of a notice under clause 2.5(b)(i). If, within 14 days of inspecting the Unit(s), the Minister:
 - (a) notifies the Developer that the Unit(s) have still not been completed satisfactorily in accordance with the terms of this agreement, then the dispute resolution process set out in clause 5 of this agreement will apply; or
 - (b) does not give the Developer such notice, then the Unit(s) will be deemed to have been completed satisfactorily for the purposes of this agreement.
- 2.8 The Units must be transferred to North Sydney Council within 28 days of the date on which the Units are deemed to have been completed satisfactorily for the purposes of this agreement under clause 2.6 or clause 2.7(b), as appropriate.

Ownership, possession and control

- 2.9 Once a Unit has been transferred to North Sydney Council, North Sydney Council accepts ownership, possession and control of that Unit.

Use of Units by North Sydney Council

- 2.10 North Sydney Council must ensure that the Units are made available as Affordable Housing.

3 Registration of agreement

- 3.1 The parties agree not to register this agreement under section 93H of the Act.

4 Security

Assignment

- 4.1 A party must not assign or transfer any of its rights or obligations under this agreement without the prior written consent of each of the other parties. The consent of the other parties is not to be unreasonably withheld or delayed.

Assignment of Land

- 4.2 The Developer must not assign, sell, transfer or dispose of its interest in the Land (other than a Strata Unit) unless:
 - (a) the Minister consents, which consent will not be unreasonably withheld; and

- (b) the proposed assignee enters into an agreement under which the assignee agrees to be bound by the terms of this agreement.

5 Dispute Resolution

Meeting to attempt to resolve disputes

- 5.1 If a dispute arises under this agreement or concerning its subject matter, either party may at any time give written notice to the other requesting that a meeting take place to seek to resolve the dispute. The nominated senior representatives of both parties must meet within five business days of the notice and try to resolve the dispute in good faith. If such a meeting does not take place or if five business days after the meeting the dispute remains unresolved, either party may pursue its rights at law.

Performance of obligations

- 5.2 Despite the existence of a dispute, each party must continue to perform its obligations under this agreement.

Interlocutory relief and right to terminate

- 5.3 Clauses 5.1 and 5.2 do not restrict or limit the right of either party to obtain interlocutory relief, or to immediately terminate this agreement where this agreement provides such a right.

6 Enforcement

- 6.1 Without limiting any other remedies available to the parties, this agreement may be enforced by either Party in any court of competent jurisdiction.
- 6.2 For the avoidance of doubt, nothing in this agreement prevents:
- (a) a party from bringing proceedings in the Land and Environment Court to enforce any aspect of this agreement or any other matter to which this agreement relates; or
 - (b) the Minister or North Sydney Council from exercising any function under the Act or law relating to the enforcement of any aspect of this agreement or any matter to which this agreement relates.

7 Goods and services tax

Recovery of GST on supplies and adjustments under this agreement

- 7.1 All consideration provided under this agreement is exclusive of GST, unless it is expressed to be GST-inclusive.
- 7.2 Where a party (*Supplier*) makes a taxable supply to another party (*Recipient*) under or in connection with this agreement, the Recipient must pay to the Supplier an additional amount equal to the GST payable on the supply (unless the consideration for that taxable supply is expressed to include GST). The additional amount must be paid by the Recipient at the later of the following:

- (a) The date when any consideration for the taxable supply is first paid or provided.
- (b) The date when the Supplier issues a tax invoice to the Recipient.

7.3 If, under or in connection with this agreement, the Supplier has an adjustment for a supply under the GST law which varies the amount of GST payable by the Supplier, the Supplier will adjust the amount payable by the Recipient to take account of the varied GST amount. The Supplier must issue an adjustment note to the Recipient within 28 days of becoming aware of the adjustment.

Other GST matters

- 7.4 If a party is entitled to be reimbursed or indemnified under this agreement, the amount to be reimbursed or indemnified is reduced by the amount of GST for which there is an entitlement to claim an input tax credit on an acquisition associated with the reimbursement or indemnity. The reduction is to be made before any increase under clause 7.2. An entity is assumed to be entitled to a full input tax credit on an acquisition associated with the reimbursement or indemnity unless it demonstrates otherwise before the date the reimbursement or indemnity is made.
- 7.5 This clause will not merge on completion and will survive the termination of this agreement by any party.
- 7.6 Terms used in this clause that are not otherwise defined in this agreement have the meanings given to them in the GST Act.

8 Notices

Giving notices

- 8.1 Any notice or communication given to a party under this agreement is only given if it is in writing and sent in one of the following ways:
- (a) Delivered or posted to that party at its address and marked for the attention of the relevant department or officer (if any) set out below.
 - (b) Faxed to that party at its fax number and marked for the attention of the relevant department or officer (if any) set out below.

Developer

Name: Bancor Developments Pty Ltd
Address: Suite 501, 460 Pacific Hwy, St Leonards NSW 2065
Fax number: 02 9906 8935
Attention: Sungki Lee

Minister

Name: The Minister for Planning
Address: Level 34, Governor Macquarie Tower, 1 Farrer Place, Sydney NSW 2000
Fax number: [Drafting note - to be provided by the Minister]

Attention: [Drafting note - to be provided by the Minister]

North Sydney Council

Name: North Sydney Council

Address: 200 Miller Street, North Sydney NSW 2060

Fax number: [Drafting note – to be provided by North Sydney Council]

Attention: [Drafting note – to be provided by North Sydney Council]

Change of address or fax number

8.2 If a party gives the other party three business days notice of a change of its address or fax number, any notice or communication is only given by that other party if it is delivered, posted or faxed to the latest address or fax number.

Time notice is given

8.3 Any notice or communication is to be treated as given 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 (or, in the case of a notice or communication posted to another country, nine) 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.

8.4 However, if any notice or communication is given, on a day that is not a business day or after 5pm on a business day, in the place of the party to whom it is sent it is to be treated as having been given at the beginning of the next business day.

9 Miscellaneous

Approvals and consents

9.1 Unless this agreement expressly provides otherwise, a party may give or withhold an approval or consent 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 a consent or approval or for giving a consent or approval subject to conditions.

9.2 Where this agreement refers to a matter being to the 'satisfaction' of a party, this means to the satisfaction of that party in its absolute discretion.

Costs

9.3 Except as otherwise set out in this agreement, each party must pay its own costs and expenses for preparing, negotiating, executing and completing this agreement and any document related to this agreement.

Entire agreement

- 9.4 This agreement contains everything the parties have agreed in relation to the subject matter it deals with. No party can rely on an earlier written document or anything said or done by or on behalf of another party before this agreement was executed.

Further acts

- 9.5 Each party must at its own expense promptly execute all documents and do or use reasonable endeavours to cause a third party to do all things that another party from time to time may reasonably request in order to give effect to, perfect or complete this agreement and all transactions incidental to it.

Governing law and jurisdiction

- 9.6 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.

Joint and individual liability and benefits

- 9.7 Except as otherwise set out in this agreement, any covenant, agreement, representation or warranty under this agreement by two or more persons binds them 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.

Severability

- 9.8 Each provision of this agreement is individually severable. If any provision is or becomes illegal, unenforceable or invalid in any jurisdiction it is to be treated as being severed from this agreement in the relevant jurisdiction, but the rest of this agreement will not be affected. The legality, validity and enforceability of the provision in any other jurisdiction will not be affected.

Variation

- 9.9 No variation of this agreement will be of any force or effect unless it is in writing and signed by each party to this agreement.

Waivers

- 9.10 A waiver of any right, power or remedy under this agreement must be in writing signed by the party granting it. A waiver only affects the particular obligation or breach for which it is given. It is not an implied waiver of any other obligation or breach or an implied waiver of that obligation or breach on any other occasion.
- 9.11 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.

No fetter

- 9.12 Nothing in this agreement shall be construed as requiring the Minister or North Sydney 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.

Representations and warranties

- 9.13 The parties represent and warrant that they have the power to enter into this agreement and comply with their obligations under this agreement and that entry into this agreement will not result in the breach of any law.

10 Definitions and interpretation

Definitions

- 10.1 In this agreement the following definitions apply:

Act means the Environmental Planning and Assessment Act 1979.

Affordable Housing means housing for very low income households, low income households or moderate income households.

Development means the construction of a building on the Land that is a minimum of 109 metres tall, with a Gross Floor Area of at least 24,900 square metres and containing a minimum of 228 residential apartments and 38 hotel rooms and the subsequent use of that building for residential, hotel and other purposes.

Gross Floor Area means the sum of the areas of each floor of a building where the area of each floor is taken to be the area within the outer face of the external enclosing walls as measured at a height of 1,400 millimetres above each floor level, excluding:

- (a) columns, fin walls, sun control devices, and any elements, projections or works outside the general line of the outer face of the external wall, and
- (b) lift towers, cooling towers, machinery and plant rooms and ancillary storage space and vertical air-conditioning ducts, and
- (c) car parking and any internal access thereto, and
- (d) space for the loading and unloading of goods.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Land means Lot 1 DP 716374, Lot 6 DP 703275 and Sec 13, Lot 5 DP 2872, which is known as 6-16 Atchison Street, St Leonards.

Specifications means the specifications for the Units as set out in annexure 'B' to this agreement. [DRAFTING NOTE - Specifications will need to be attached to this agreement that describe the fit out of the Units to be dedicated under this agreement.]

Strata Unit means a single strata titled unit in the completed Development.

Units means the units marked 'Key Worker Units' on the plans forming annexure 'A' to this agreement.

Interpretation

- 10.2 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 Sydney, 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 document or agreement is to that document or agreement 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 indicates the singular also indicates the plural, a word which indicates the plural also indicates the singular, and a reference to any gender also indicates the other genders.
- (k) A reference to the word 'include' or 'including' is to be interpreted without limitation.
- (l) Any schedules and attachments form part of this agreement.

Execution

Executed as an agreement.

"Double Click here to insert appropriate execution clause for each party"

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Annexure A

Plans showing location of Units

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LEVEL 7
2 X STUDIOS
1 X BED

FJMT
8.07.10

Key Water Unit

Typical Residential Type 1D Plan

Proposed Mixed Use Redevelopment - 6-16 Atchison St, St Leonards

1:200 @ A3
JULY 2010
PA-100-09



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= Key Worker units

LEVEL 8
1 X STUDIO
1 X 1 BED

FJMT
8. 7. 10

1:200 @ A3
JULY 2010
PA-100-09

Typical Residential Type 1D Plan
Proposed Mixed Use Redevelopment - 6-16 Atchison St, St Leonards



Annexure B
Specifications

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Atchison St – Finishes Schedule

Residential		
General	Partition Walls	Painted Plasterboard, 100mm
	Intertenancy Walls	Painted Gyprock Strata Wall
	Skirting	Integrated MDF Flush Skirting
	Ceilings	Painted Acoustic Rated Plasterboard
	Blinds	Roller Blind - "Silent Gliss" or similar Double Sided Fabric
	Facade	Glass Curtain Wall
	Sun Shading	Aluminium Shade Screens
	Columns	Off Form Concrete Finish
Living Spaces	Flooring	Carpet Type 1
	Doors	Hollow Core with Paint Finish
Kitchen	Flooring	Ceramic Tiling Type 1
Bedroom	Flooring	Carpet Type 1
	Doors	Hollow Core with Paint Finish
Bathroom	Flooring	Ceramic Tiling Type 2
	Doors	Hollow Core with Paint Finish
Laundry	Flooring	Ceramic Tiling Type 2
	Doors	Bifold with Paint Finish
	Splashback	Ceramic Tiling Type 2
Wintergarden	Doors	Aluminium Frame Sliding
	Flooring	Stone Paving Type 1
	Ceiling	Painted Plasterboard