

The Randwick City Council ABN 77 362 844 121 of 30 Frances Street
Randwick 2031

(“Council”)

and

The University of New South Wales ABN 57 195 873 179 of Level 28
320 Pitt St Sydney NSW 2000

(“Developer”)

Planning Agreement

Environmental Planning and Assessment Act 1979

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THIS Agreement is dated

2020

PARTIES:

The Randwick City Council ABN 77 362 844 121 of 130 Frances Street Randwick 2031,

and

The University of New South Wales ABN 57 195 873 179 of High Street Kensington, NSW 2052.

BACKGROUND

- A. The Developer has been granted development consent to build student accommodation at 1 Cowper Street Randwick, pursuant to a decision of The Sydney Eastern Planning Panel on 30 July 2019.
- D. The Developer has made an offer to the Council to enter into a planning agreement under section 7.4 of the Act for the provision of monetary contributions to be used for a public purpose.
- E. The Council is agreeable to the terms proposed by the Developer.
- F. This agreement reflects the agreed terms of the Parties, and sets out the parties' respective rights and obligations.

OPERATIVE PROVISIONS

1 Planning agreement under the Act

The parties agree that this Agreement is a planning agreement governed by section 7.4 of the Act.

2 Application of this Agreement

The parties agree that this Agreement applies to the Development.

3 Operation of this Agreement

- 3.1 This Agreement will be publicly exhibited in accordance with the requirements of the Act and Regulation. If following the public exhibition the Council determines to enter into this Agreement, the parties will use best endeavours to execute this Agreement as soon as reasonably practicable but no later than 10 Business Days following that determination.
- 3.2 This Agreement will operate from and become legally binding on the date this Agreement is executed by the parties, and ends on the earlier of:
 - (a) the date the Developer has made the Development Contribution in accordance with this Agreement and

(b) the Sunset Date.

IT IS AGREED:

4 Definitions and Interpretation

4.1 In this Agreement the following definitions apply:

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

Dealing, means selling, transferring, assigning, mortgaging, charging, encumbering or otherwise dealing with the Land.

Agreement means this agreement between the Parties.

Business Day has the meaning given in clause 4.2(b).

Crown Construction Certificate means a certificate under section 6.28(2) of the Act

Development means the development authorised by the Development Consent.

Development Application means the development application lodged by the Developer with reference DA/183/2018, as amended.

Development Consent means the development consent granted pursuant to the determination of The Sydney Eastern Planning Panel on 30 July 2019 in respect of the Development Application for:

construction of 4 storey student housing development with reduction of size of top level, containing 152 beds (reduced by 8), communal areas, laundry and open space, reconfiguration of undercroft carparking area including reduction in car park from 58 to 33 spaces, addition of bicycle spaces and associated works (variation to height control, motor cycle parking and on-site manager),

and includes all modifications made under the Act to that consent from time to time.

Development Contribution means the monetary contribution in the amount of \$126,903.20.

Dispute means a dispute or difference between the Parties under or in relation to this Agreement.

GST has the same meaning as in the GST Law.

GST Law means the *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 Lot 4 of Section 21 in DP 758867 and Lot 7 of Section 21 in DP 758867, known as 1 Cowper Avenue, Randwick.

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

Public Purpose means the recoupment of the cost of providing footpaths and/or bike lanes in the area in the immediate vicinity of the University of New South Wales.

Regulation means the Environmental Planning and Assessment Regulation 2000 (NSW).

Sunset Date means the date that the Development Consent lapses or is surrendered.

4.2 Interpretation

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.
- (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 includes a reference to the servants, agents and contractors of the Party, and the Party's successors and assigns.
- (n) Any schedules and attachments form part of this Agreement.

5 Development Contribution to be made under this Agreement

- 5.1** The Developer is required to make the Development Contribution to the Council.
- 5.2** The Development Contribution is required to be paid to the Council prior to any Crown Construction Certificate being issued for the Development.

6 Application of the Development Contribution

The Development Contribution is to be used by the Council within a reasonable time for the Public Purpose.

7 Application of section 7.11 and section 7.12 of the Act to the Development

This Agreement excludes the application of section 7.11 and section 7.12 of the Act to the Development on the Land.

8 Registration of this Agreement

The parties agree that this Agreement does not include the registration of this Agreement on the title to the Land under section 7.6 of the Act.

9 Dispute Resolution

9.1 Reference to Dispute

If a Dispute arises between the parties in relation to this Agreement, then either party may seek to resolve the Dispute in accordance with this clause 9.

9.2 Notice of dispute

The party wishing to commence dispute resolution processes must notify the other in writing of:

- (a) the nature, or subject matter, of the Dispute, including a summary of any efforts made to resolve latter than by way of this clause 9;
- (b) the intent to invoke this clause 9;
- (c) (if practicable) the outcomes which the notifying party wishes to achieve;
- (d) any material impact which the Dispute has upon the completion of the Development.

9.3 Principals of Parties to meet

The principals of the Parties (and in the case of the Council, the principal may include the person acting in the role of General Manager as defined in the *Local Government Act 1993*, or such person as is nominated by that officer in writing) must promptly (and in any event within

14 days of written notice) meet in good faith to attempt to resolve the notified Dispute. The parties may, without limitation:

- (a) resolve the Dispute during the course of that meeting;
- (b) 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
- (c) 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 Termination of dispute resolution process

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(a)-(c); and
- (c) either 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 14 days' notice in writing to the other, terminate the dispute resolution process in respect of that Dispute. The termination of the process set out in this clause 9 does not of itself amount to a breach of the Agreement.

10 Mediation of Dispute

10.1 Mediation

If the Parties do not agree within 21 Business Days of receipt of notice under clause 9.2 (or any further period agreed in writing by them) as to:

- (a) the dispute resolution technique and procedures to be adopted;
- (b) the timetable for all steps in those procedures; or
- (c) the selection and compensation of the independent person required for such technique,

the Parties must mediate the Dispute in accordance with the Mediation Rules of the Law Society of NSW. The Parties must request the president of the Law Society of NSW or the president's nominee to select the mediator and determine the mediator's remuneration.

11 Enforcement

This Agreement does not include the provision of any security bond or guarantee for the payment of the Development Contribution. The requirement for the Development Contribution to be paid prior to the issue of the Crown Construction Certificate provides for sufficient

security that the Development Contribution will be paid before the Development is developed and provides appropriate capacity for the enforcement of this Agreement in a manner which is equivalent to the position that would have existed if a condition of consent has been imposed requiring payment of the Development Contribution.

12 Notices

12.1 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: Louis Coorey, Senior Environmental Planning Officer, Randwick City Council

Address: 30 Frances Street Randwick 2031

Fax number: 02 9093 6524

Email: louis.coorey@randwick.nsw.gov.au

Developer

Attention: Shane McLoughlin

Address: L3 Mathews Building, Estate Management, UNSW, NSW 2052

Fax number: n/a

Email: shane.mcloughlin@unsw.edu.au

12.2 If a Party gives the other Party three 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.

12.3 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 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.

12.4 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.

13 Dealings

13.1 Subject to clause 13.2, the Developer must not conduct any Dealing unless:

- (a) the Developer first informs Council of the proposed dealing/s in writing and obtains Council's written consent to the dealing, such consent not being unreasonably withheld; and
- (b) the Developer procures from (at no cost to Council) the proposed assignee, purchaser or other party (the "**Incoming Party**") of this Agreement, an agreement in writing in favour of Council on terms not less favourable to Council than the terms of this agreement. Any such Agreement with the Incoming Party must bind further successors, purchasers or transferees under that agreement.
- (c) the Developer has provided evidence to the satisfaction of Council (such satisfaction not to be unreasonably withheld) to show that the assignee, transferee or novatee is reasonably capable of performing its obligations under the agreement.

13.2 If the Incoming Party is acquiring an interest in the Land as a purchaser of one or more lots in a strata scheme, (whether or not the plan has, at the date of exchange, been registered at the Land and Property Information), then the Developer may create that interest without requiring that party to enter into an Agreement with the council and the interest so created will not be in breach of this Agreement.

14 Costs

The Parties agree that each Party is to pay its own legal and other costs incurred in relation to this Agreement.

15 Entire Agreement

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.

16 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.

17 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.

18 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.

19 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.

20 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.

21 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.

22 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.

23 GST

- 23.1 In this clause terms used have the meaning given to them by the GST Law.
- 23.2 If a Party to this Agreement (the "Supplier") makes a supply under or in connection with this Agreement and is liable by law to pay GST on that supply, then the consideration otherwise payable to the recipient of the supply will be increased by an amount equal to the GST paid or payable by the Supplier.
- 23.3 If this Agreement requires a Party to pay for, or reimburse any expense, loss or outgoing ("reimbursable expense") suffered or incurred by another Party, the amount required to be

paid, or reimbursed by the first Party is the amount of the reimbursable expense net of any input tax credit or reduced input tax credit to which the other Party is entitled in respect of the reimbursable expense.

- 23.4 Each Party agrees to do all things, including providing tax invoices and other documentation that may be necessary or desirable to enable or assist the other Party to claim any input tax credit, set-off, rebate or refund in relation to any amount of GST paid or payable in respect of any supply under this Agreement.
- 23.5 Subject to the operation of this clause, and unless otherwise stated amounts in this Agreement are GST exclusive.

Executed as an Agreement

Executed as an agreement on behalf of the Randwick City Council by its General Manager pursuant to section 683 of the *Local Government Act 1993* in the presence of:

.....
Signature of witness
Kerry Kyriacos
(Print) Full Name

.....
Signature of General Manager
Therese Manns
(Print) Full Name

Executed as an agreement on behalf of **The University of New South Wales** (ABN) in accordance with section 127 of the *Corporations Act 2001*:

.....
Signature of Director
Jeff Leads

.....
Signature of Director/Secretary