

**DECISION OF 3613th COUNCIL MEETING  
HELD ON 22 OCTOBER 2012**

**629. PDS03: Planning Proposal - 545-553 Pacific Highway, St Leonards**

Report of Alex Williams, Senior Strategic Planner

The post-exhibition report preceding this item regarding the exhibition of the draft St Leonards/Crows Nest Planning Study - Precinct 1 (addendum) recommended the following:

**THAT** the draft St Leonards/Crows Nest Planning Study - Precinct 1 (addendum) be formally adopted.

Council has received a Planning Proposal and draft Voluntary Planning Agreement relating to the site at 545-553 Pacific Highway, St Leonards, which is located within Precinct 1.

The Planning Proposal and draft Voluntary Planning Agreement have been assessed against the implementation recommendations contained within the draft St Leonards/Crows Nest Planning Study - Precinct 1 (addendum) and are considered to implement the Built Form Masterplan and Open Space and Pedestrian Masterplan for Precinct 1 to the fullest possible extent.

**Recommending:**

**1. THAT** Council forward the Planning Proposal to the Minister for Planning in order to receive a Gateway Determination in accordance with Section 56 of the Environmental Planning and Assessment Act, 1979.

**2. THAT** the draft Voluntary Planning Agreement between North Sydney Council and Ralan St Leonards Pty Ltd be exhibited concurrently with the subject Planning Proposal conditioned on it receiving a Gateway Determination.

Councillors Reymond and Robertson declared an interest in this item and left the Chamber, taking no part in debate or voting.

**RESOLVED:**

**1. THAT** Council forward the Planning Proposal to the Minister for Planning in order to receive a Gateway Determination in accordance with Section 56 of the Environmental Planning and Assessment Act, 1979.

**2. THAT** the draft Voluntary Planning Agreement between North Sydney Council and Ralan St Leonards Pty Ltd be exhibited concurrently with the subject Planning Proposal conditioned on it receiving a Gateway Determination.

The Motion was moved by Councillor Baker and seconded by Councillor Morris **and carried.**

Voting was as follows:

Unanimous

Councillor	Yes	No	Councillor	Yes	No
Gibson	Y		Morris	Y	
Reymond	DoI		Clare	Y	
Carr	Y		Baker	Y	
Bevan	Y		Robertson	DoI	
Butcher	Y		Marchandean	Y	
Burke	Y		Beregi	Y	
Barbour	Y				

Councillors Reymond and Robertson returned to the meeting at 8.14pm.



**Report to General Manager**

Attachments:

1. Planning Proposal - 545-553 Pacific Highway, St Leonards
  2. Draft Voluntary Planning Agreement - North Sydney Council & Ralan St Leonards Pty Ltd
- 

**SUBJECT:** Planning Proposal - 545-553 Pacific Highway, St Leonards

**AUTHOR:** Alex Williams, Senior Strategic Planner

**EXECUTIVE SUMMARY:**

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- **THAT** the draft St Leonards/Crows Nest Planning Study - Precinct 1 (addendum) be formally adopted.

Council has received a Planning Proposal and draft Voluntary Planning Agreement relating to the site at 545-553 Pacific Highway, St Leonards, which is located within Precinct 1.

The Planning Proposal and draft Voluntary Planning Agreement have been assessed against the implementation recommendations contained within the draft St Leonards/Crows Nest Planning Study - Precinct 1 (addendum) and are considered to implement the Built Form Masterplan and Open Space and Pedestrian Masterplan for Precinct 1 to the fullest possible extent.

**RECOMMENDATION:**

1. **THAT** Council forward the Planning Proposal to the Minister for Planning in order to receive a Gateway Determination in accordance with Section 56 of the Environmental Planning and Assessment Act, 1979.
2. **THAT** the draft Voluntary Planning Agreement between North Sydney Council and Ralan St Leonards Pty Ltd be exhibited concurrently with the subject Planning Proposal conditioned on it receiving a Gateway Determination.

Signed: \_\_\_\_\_

Endorsed by: \_\_\_\_\_  
Manager Strategic Planning

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## **LINK TO DELIVERY PROGRAM**

The relationship with the Delivery Program is as follows:

Direction: 2. Our Built Environment

Goal: 2.2 Improve mix of land use and quality development

## **BACKGROUND**

The St Leonards / Crows Nest Planning Study - Precinct 1 was formally adopted by Council in December 2011. The study presents a preferred option for the precinct which includes the following:

- An expanded Hume Street Park with a pedestrian link to Willoughby Road;
- Ground level setbacks along the Pacific Highway and side streets; and
- High amenity towers above podium elements along the Pacific Highway.

The study noted that further planning study work would be required to facilitate the expansion of Hume Street Park and the link to Willoughby Road. It also recommended that changes to LEP2001 be pursued so as to facilitate the endorsed built form outcomes along the Pacific Highway from Albany Street to Hume Street. A Planning Proposal was sent to the Department of Planning and Infrastructure seeking changes to LEP2001 including a proposed bonus mechanism whereby development sites on the Pacific Highway could be awarded additional development capacity should predetermined public benefits, such as new open space within the precinct, be provided.

While undertaking the above mentioned additional planning study work, Council received notice from the Department of Planning and Infrastructure that the Planning Proposal would not be forwarded for a Gateway Determination. In the Department's opinion, the proposed bonus mechanism was not an appropriate statutory mechanism to levy contributions towards the provision of new open space. The Department identified the use of Voluntary Planning Agreements as an appropriate means of raising development contributions.

The additional planning study work and the necessary reconsideration of the planning study's implementation mechanism resulted in the drafting of an addendum to the original planning study. The draft St Leonards/Crows Nest Planning Study - Precinct 1 (addendum) study presents a vision for Precinct 1 expressed through an Open Space and Pedestrian Masterplan as well as a Built Form Masterplan. While built form considerations in the original planning study focused primarily on land along the Pacific Highway, the Masterplans in the addendum study aim to provide a holistic approach to the future planning and development outcomes for the entire precinct. The Masterplans build on, and supersede, the outcomes of the original planning study.

The main element of the Open Space and Pedestrian Masterplan is the expanded Hume Street Park with a link to Willoughby Road. Ground level setbacks and widened verges aim to improve key pedestrian routes through the precinct. The Built Form Masterplan contains revised building heights for many sites within the precinct, reflecting careful analysis of impacts on views and solar access and taking into consideration the recent non-compliant Joint Regional Planning Panel (JRPP) and Planning and Assessment Commission (PAC) decisions.

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The planning study and its addendum do not form the basis for the assessment of development applications. That remains the clear and legislated function of Councils environmental planning instruments. The draft addendum study recommends that implementation occurs via site specific Planning Proposals that are consistent with, and implement, both the Built Form and Open Space and Pedestrian Masterplans. This allows for the public benefits outlined in the planning study to be realised from redevelopment within the precinct without relying on a bonus mechanism being inserted into LEP2001.

The draft St Leonards/Crows Nest Planning Study - Precinct 1 (addendum) was placed on public exhibition from 9 August 2012 to 5 September 2012. A total of 33 submissions were received and considered as part of the post-exhibition report preceding this item.

## SUSTAINABILITY STATEMENT

The following table provides a summary of the key sustainability implications:

<b>QBL Pillar</b>	<b>Implications</b>
Environment	<ul style="list-style-type: none"><li>• New green spaces in built up areas reduce heat island effects and reduce the need for artificial cooling.</li><li>• Open space and greening of public domain potentially provides for ecological processes and habitat.</li></ul>
Social	<ul style="list-style-type: none"><li>• Improved street level amenity will make pedestrian journeys more enjoyable.</li><li>• Improved linkages between origins and destinations (train station, Willoughby Road, etc) will improve connectivity and make areas of high amenity more accessible for residents/workers.</li><li>• Rejuvenation and activation of depressed areas, particularly the Pacific Highway corridor, will result in improved night-time safety.</li><li>• New civic and/or open space in areas of high demand will operate as community meeting places.</li><li>• Improved building design will improve residential amenity.</li></ul>
Economic	<ul style="list-style-type: none"><li>• Improved amenity in St Leonards will improve its attractiveness for investment.</li></ul>
Governance	<ul style="list-style-type: none"><li>• The Planning Proposal aims to implement actions contained in higher order policy and strategic documents such as the draft INSS and the St Leonards Strategy.</li><li>• The Planning Proposal is consistent with multiple Directions and Goals contained in Vision 2020 document.</li><li>• The Planning Proposal progresses many of Council's policies – E.g. there is a strong policy framework acknowledging that additional open space and amenity improvements are required in St Leonards/Crows Nest.</li></ul>

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## DETAIL

Council has received a Planning Proposal and draft Voluntary Planning Agreement relating to the site at 545-553 Pacific Highway, St Leonards. The Planning Proposal as submitted is considered to be generally in accordance with the requirements under Section 55(2) of the Environmental Planning and Assessment Act 1979 and the Department of Planning's 2009 'guide to preparing planning proposals'.

The draft St Leonards/Crows Nest Planning Study - Precinct 1 (addendum), as considered by Council in the post-exhibition report preceding this item, recommends that the Built Form Masterplan for Precinct 1 be implemented through developer initiated changes to local planning provisions. It states that in order to gain Council's support site specific Planning Proposals should:

- Relate to a parcel of land with a minimum street frontage of 20 metres;
- Relate to a parcel of land that does not isolate, sterilise or unreasonably restrict the development potential of adjacent parcels of land;
- Propose an amendment to the LEP height control consistent with the Built Form Masterplan for Precinct 1;
- Propose a site specific floor space ratio LEP control determined in a manner consistent with that identified in the Built Form Masterplan for Precinct 1;
- Propose mechanisms that ensure slender tower elements retain, where practicable, views and solar access currently enjoyed by existing residents;
- Include satisfactory arrangements for the provision of new open space within Precinct 1;
- Propose a ground level setback DCP control consistent with the Open Space and Pedestrian Masterplan (if applicable); and
- Propose a 3 storey podium height DCP provision consistent with the Built Form Masterplan (if applicable).

It is considered appropriate to assess the Planning Proposal against the above points and to consider the degree to which it implements the Built Form Masterplan and Open Space and Pedestrian Masterplan for Precinct 1.

***Does the Planning Proposal relate to a parcel of land with a minimum street frontage of 20 metres?***

Yes. The subject site has a frontage of 47 metres to the Pacific Highway and 34 metres to Oxley Street.

***Does the Planning Proposal relate to a parcel of land that does not isolate, sterilise or unreasonably restrict the development potential of adjacent parcels of land?***

Yes. Redevelopment of the subject site will not isolate, sterilize or restrict the development potential of other sites in the area.

***Does the Planning Proposal propose an amendment to the LEP height control consistent with the Built Form Masterplan for Precinct 1?***

Yes. The Planning Proposal seeks to amend the LEP2001 height control, as it applies to the site, from 26 metres to 50 metres. This is consistent with the recommended height for the subject site identified in the Built Form Masterplan for Precinct 1.

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***Does the Planning Proposal propose a site specific floor space ratio LEP control determined in a manner consistent with that identified in the Built Form Masterplan for Precinct 1?***

Yes. The Planning Proposal seeks to introduce a site specific floor space ratio control of 6.6:1. On 4 August 2010, the JRPP gave consent to a mixed-use development at 545-553 Pacific Highway, St Leonards, (DA153/10) which had a floor space ratio of 5.26:1. It is noted that this approval provided little in the way of public benefit. The proponent has argued that the additional floor space should be permitted due to the public benefits that will arise from the Planning Proposal and associated draft VPA.

Given the significant open space and public domain improvements proposed by the Planning Proposal and associated draft VPA, the additional floor space is considered to be reasonable and worthy of support. It is noted that the FSR represents an absolute maximum that may not be wholly achievable due to urban design considerations at development application stage.

***Does the Planning Proposal propose mechanisms that ensure slender tower elements retain, where practicable, views and solar access currently enjoyed by existing residents?***

Yes. The draft VPA submitted with the subject Planning Proposal includes a requirement to register a covenant against the title of the land prohibiting any building above RL105.06 on the northern portion of the site as shown at Appendix A of the VPA. An excerpt of Appendix A is shown at Figure 1.

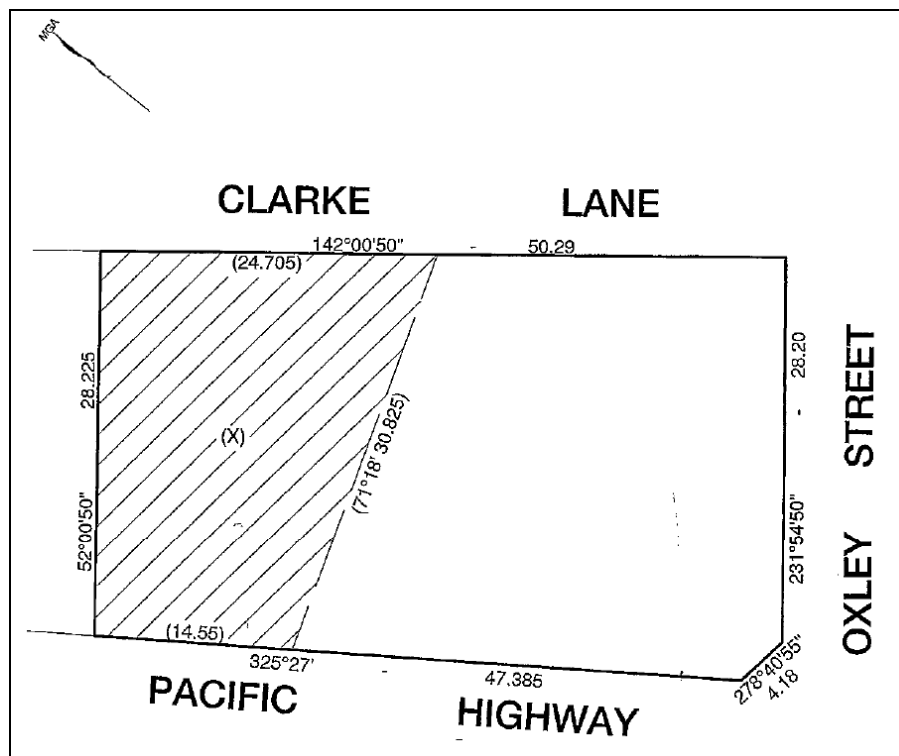


Figure 1 – Excerpt of Appendix A of the subject VPA

An RL of 105.06 equates to a building height of approximately 14 metres on the subject site. Compared to a form of development built to a compliant height of 26m across the site, the proposed reduction in the height below the maximum currently permissible across the northern portion of the site would result in less impact on views from some of the units within the Precision building at No.34-36 Clarke Lane (located on the eastern side of Clarke Lane).

The Planning Proposal will not be finalised unless the subject VPA has been executed. This provides the necessary certainty that the proposed mechanism will ensure a slender tower element retains, where practicable, view and solar access currently enjoyed by existing residents.

***Does the Planning Proposal include satisfactory arrangements for the provision of new open space within Precinct 1?***

Yes. The draft VPA submitted with the Planning Proposal provides for a monetary contribution of \$1,527,500.00 to be paid to Council for the purposes of providing new open space within the precinct. Taking into consideration expected land acquisition costs as well as the overall residential capacity envisaged for Precinct 1, the proposed contribution is considered fair and reasonable. These funds will contribute towards the realisation of the expansion of Hume Street Park as outlined within the Open Space and Pedestrian Masterplan for Precinct 1.

The Planning Proposal will not be finalised unless the subject VPA has been executed. This provides the necessary certainty that satisfactory arrangements are in place for the provision of new open space.

***Does the Planning Proposal propose a ground level setback DCP control consistent with the Open Space and Pedestrian Masterplan (if applicable)?***

The draft VPA contains a clause requiring that any future building be setback 3 metres from the Pacific Highway and Oxley Street frontages. The VPA will ensure that the setbacks function and are maintained as an extension of the existing footpath. All design, maintenance and liability issues have been dealt with via the subject VPA.

It is intended that, upon formal adopted of the St Leonards/Crows Nest Planning Study – Precinct 1 (addendum), the ground level setback requirements for all of Precinct 1 will be pursued via an amendment to DCP2002. The draft VPA provides the necessary certainty that the Planning Proposal contains satisfactory arrangements for the provision of the ground level setbacks on the subject site. A site specific DCP control is therefore not required in this instance.

***Does the Planning Proposal propose a 3 storey podium height DCP provision consistent with the Built Form Masterplan (if applicable)?***

The 3 storey podium height is not applicable to the subject site. A 4 storey podium height control will continue to apply as per existing provisions within DCP2002.

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In conclusion, the Planning Proposal and associated draft VPA are consistent with the implementation recommendations of the draft St Leonards/Crows Nest Planning Study – Precinct 1 (addendum) and are considered to implement the Built Form Masterplan and Open Space and Pedestrian Masterplan for Precinct 1 to the fullest possible extent.

The Planning Proposal and draft VPA should be exhibited concurrently so as to allow the community a full appreciation of what is being proposed. Council will have the opportunity to execute the draft VPA when the post-exhibition report is reported to Council.

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## **Planning Proposal**

Amendment to Building Height Map and inclusion of Floor Space Ratio

North Sydney Local Environmental Plan 2001

545 – 553 Pacific Highway, St Leonards

October 2012

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### **Disclaimer:**

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## 1.0 Introduction

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This Planning Proposal has been prepared by Textor Crosby Pty Ltd on behalf of Steve Nolan Constructions to seek an amendment to the height provisions of North Sydney Local Environmental Plan 2001 (the LEP) as they relate to a specific site at 545-553 Pacific Highway, St Leonards.

This Planning Proposal explains the intended effect of the amendment to the LEP and the justification for amending the LEP in accordance with the provisions of section 55 of the Environmental Planning and Assessment Act 1979. This Planning Proposal has also been prepared having consideration to the relevant Department of Planning guidelines including *A Guide to Preparing Local Environmental Plans* and *A Guide to Preparing Planning Proposals*.

This planning proposal provides the following information:

- Description of the subject site and its context.
- Photographs of the site.
- Overview of the key elements of the planning proposal.
- Statement of the objectives and intended outcomes of the proposal.
- Explanation of the provisions of the proposal.
- Summary of the justification for the proposal.
- Details of the substantial public benefit that will result from the proposal.
- Consideration of the relevant local and state planning provisions and s117 directions.

## 2.0 Site Analysis and Context

### 2.1 Regional and Local Context

The site, identified in Figure 1, is located on the corner of Pacific Highway and Oxley Street within the St Leonards Town Centre.

The site is within a 'Mixed Use' zone pursuant to North Sydney Local Environmental Plan 2001. Adjacent sites to the north, south and east are zoned 'Mixed Use'. Sites to the west of the site, located on the opposite side of the Pacific Highway, are within the boundaries of Lane Cove Council and are zoned for commercial development.

The area along Pacific Highway is characterised by commercial development up to 4/5 storey in height. Slightly taller commercial buildings are located along Oxley Street immediately to the east of the subject site.

The heritage listed St. Leonards Centre is located directly to the east of this site.

Figure 1. Context



## 2.2 Site Analysis

The site, outlined in red in **Figure 2**, is rectangular in shape and has a frontage to the Pacific Highway of 47.33 metres, a frontage of 32.42 metres to Oxley Street and a frontage of 50.28 metres to Clarke Lane. The total site area is 1492m<sup>2</sup>. The land slopes towards the rear (Clarke Lane) at a gradient of around 7%.

The subject site contained two commercial buildings, one of which was formerly occupied by a motor showroom located on the corner of Pacific Highway and Oxley Street. The building that housed the former motor showroom has been demolished and the adjoining building to the northwest is currently being demolished (refer **Figure 3**).

Figure 2. Aerial View of Site



Figure 3. Current view of the site (from southern cnr. of Pacific Hwy & Oxley St)



Figure 4. View of Clarke Lane (from Oxley Street)



Figure 5. View of adjoin buildings immediately north west of the subject site



Figure 6. View of mixed use building - cnr of Pacific Hwy and Albany St (north west of the site)





**Figure 7.** View of site immediately south east of the subject site (opp. corner)



## 2.3 Development History

In April 2010, a development application (DA 153/10) was lodged with North Sydney Council to demolish the existing buildings on the subject site at 545-553 Pacific Highway, St. Leonards and construct a new mixed-use development with basement car parking.

In August 2010 the Sydney East Joint Regional Planning Panel approved the application subject to the deletion of the top two floors and a consequent reduction in car parking.

Amended plans were subsequently lodged with Council and approval was granted for demolition of the existing buildings on the subject site and the construction of a new mixed-use development that is approximately 32.9 metres in height and comprising the following:

- Fifty-three (53) residential units comprising 2 x 3-bedroom (+ study), 33 x 2-bedroom, 16 x 1-bedroom and 2 x studios;
- 2-storey restaurant with outdoor terrace;
- Café;
- Motor Showroom;
- Recreational Use; and,
- Car parking for 74 vehicles.

The overall Floor Space Ratio (FSR) approved for the site is 5.26:1 comprising of a residential FSR of 3.7:1 and a non-residential FSR of 1.56:1.

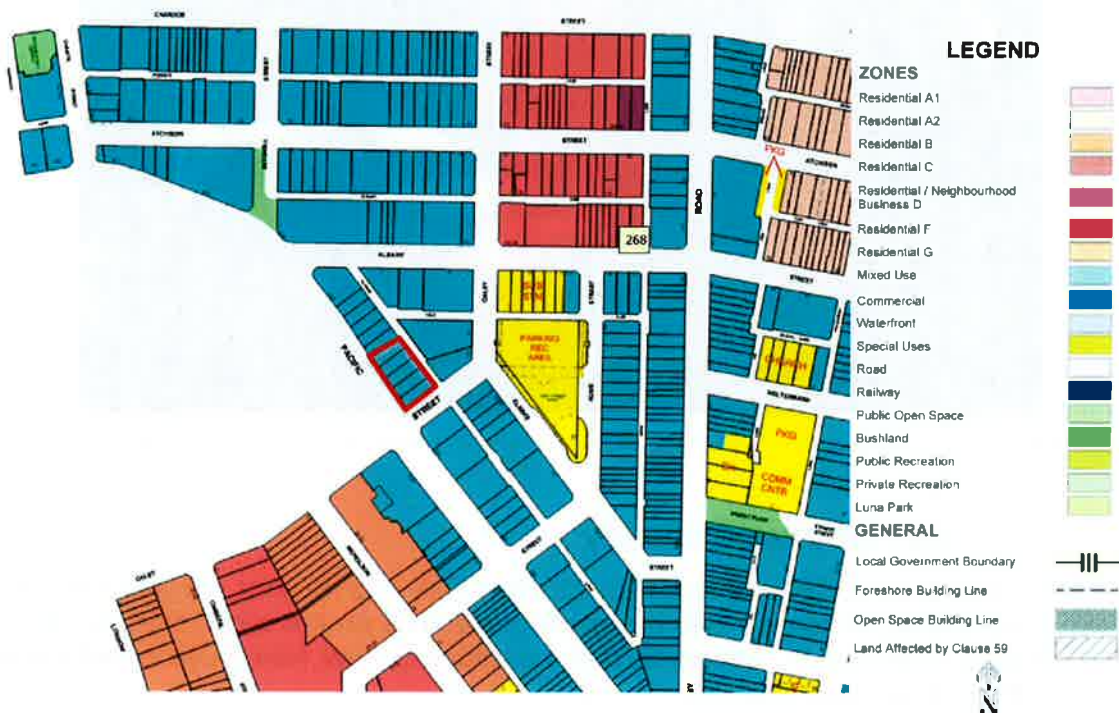
Demolition of the site as part of the approval notice has begun.

## 3.0 Statutory Context

### 3.1 Zoning

Pursuant to North Sydney Local Environmental Plan 2001 (the LEP) the site is zoned Mixed Use (outlined in red in **Figure 8**).

Figure 8. Zoning Map



Source: North Sydney LEP 2001 Land Use Zoning map

The particular objectives of the Mixed Use zone are to:

- (a) encourage a diverse range of living, employment, recreational and social opportunities, which do not adversely affect the amenity of residential areas, and
- (b) create interesting and vibrant neighbourhood centres with safe, high quality urban environments with residential amenity, and
- (c) maintain existing commercial space and allow for residential development in mixed use buildings with non-residential uses at the lower levels and residential above, and
- (d) promote affordable housing.

Development that can be carried out in this zone with the consent of Council includes apartment buildings; commercial premises; community facilities; recreational facilities; refreshment rooms; shops; showrooms; take-away food shops; taverns.

### 3.2 Key Objectives and Development Control Standards

The key objectives and development control standards that relate to the subject site are contained in *Division 5 Mixed Use Zone* of the NSLEP 2001 and summarised in **Table 1** below.

Table 1. Key Objectives and Development Control Standards

Relevant Clause	Comments
<b>Clause 29 Building height</b>	Includes objectives of the building height controls for the mixed-use zone.  A building cannot be erected on the subject site in excess of 26m.
<b>Clause 31 Floor space</b>	Includes objectives of the floor space ratio controls for the mixed-use zone.  Includes Floor Space Ratio controls for that part of the building to be used for non-residential purposes.
<b>32 Design of Development</b>	Includes objectives and design controls for design of development for the mixed-use zone.

### 3.3 Strategic Context

#### St Leonards/Crows Nest Planning Study – Precinct 1

The subject site is located within the St Leonards/Crows Nest Planning Study – Precinct 1 (the Study).

Council's web site provides the following information regarding the Study:

*On 29 November 2010 Council resolved to undertake a planning study of the St Leonards / Crows Nest area with the following objectives:*

- *New open space in St Leonards / Crows Nest;*
- *Increased investment in St Leonards and decreased commercial vacancy rates, with particular focus on the rejuvenation of the Pacific Highway between St Leonards train station and the intersection of Pacific Highway and Willoughby Road;*
- *Improved connectivity, particularly between St Leonards / Pacific Highway and Willoughby Road;*
- *Improved urban design and street level amenity particularly in St Leonards and along the Pacific Highway; and*
- *Improved building design and residential amenity in St Leonards.*

*The St Leonards / Crows Nest Planning Study - Precinct 1 provides a focused analysis and specific recommendations relating to a planning study precinct (Precinct 1) which lies within the broader study area.*

*The study contains a study area analysis, strategy review and consideration of opportunities and constraints which are used to establish principles and priorities of the study relevant to Precinct 1. Those principles and priorities inform options for open space, pedestrian circulation and amenity, and built form. The study presents a preferred option, which meets the study objectives, with recommendations regarding its implementation.*

*The study was placed on public exhibition from Thursday 27 October 2011 to Friday 18 November 2011 and was formally adopted by Council on 5 December 2011. Further planning study work in Precinct 1 and amendment of statutory planning documents are being pursued to ensure implementation of the preferred option.*

In addition, the planning study identified a preferred built form option for the subject site and the potential locations for new open space as a component of the preferred option.

#### **Draft Local Environmental Plan 2009**

Council's website provides the following information in relation to the draft LEP 2009

*"Public exhibition of the Draft Local Environmental Plan (LEP) ended on 31 March 2011. At its meeting of 4 July 2011, Council resolved to adopt the Draft LEP (with amendments) and send it to the Department of Planning and Infrastructure (DPI) with a request that the Minister for Planning make the plan. The Draft LEP was sent to the DPI on 21 July 2011 and is under consideration by that Department."*

The Study identified overall objectives and development control standards of the draft LEP remain relatively unchanged from the existing LEP as it relates to the subject site.

#### **North Sydney Residential Development Strategy 2009**

The North Sydney Residential Development Strategy was adopted by Council on 20 June 2011 and informed the preparation of the draft LEP 2009. The RDS concludes that the DLEP 2009 will meet housing targets through the following:

- Contain sufficient capacity to accommodate over 6,000 additional dwellings by 2031 in addition to the 1,300 dwellings already approved since 2004. The DLEP 2009 achieves the NSW Government's draft housing target without having to make significant policy changes, upzonings or increases in development potential;
- Concentrate the bulk of new dwellings in Mixed Use centres in close proximity to retail, office, health, education, transport, leisure, entertainment facilities and community and personal services;
- Deliver housing choice for a range of socio\_economic groups throughout North Sydney to meet the needs of existing and future residents; and
- Minimise the impact of new development on local character, amenity, environment and heritage.

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**Sydney over the Next 20 Years – A Discussion Paper (May 2012)**

This Discussion Paper that is currently on public exhibition is the first step in the State Government's development of a new Metropolitan Strategy for Sydney.

One of the major challenges identified in the Discussion Paper is the projected rise in Sydney's population by more than 1.3 million persons by 2031 requiring an estimated 570,000 more new homes.

These estimates are far higher than anticipated in the 2005 Metropolitan Strategy and are likely to have a flow on effect in terms of the contribution individual Council's will need to make towards housing supply.

## 4.0 The Planning Proposal

The Planning Proposal is prepared in accordance with the document "A Guide to Preparing Planning Proposals" prepared by the then NSW Department of Planning.

The Planning Proposal is comprised of the following four (4) parts:

- Part 1 A statement of the Objectives or Intended Outcomes of the proposed LEP;
- Part 2 An Explanation of the Provisions that are to be included in the proposed LEP;
- Part 3 The Justification for those objectives, outcomes and provisions and the process for their implementation;
- Part 4 Details of the Community Consultation that is to be undertaken on the planning proposal.

### 4.1 Objectives and Intended Outcomes

The objective of this Planning Proposal is to amend the NSLEP 2001 as follows:

1. Increase the maximum height limit for the subject site from the present 26 metres to 50 metres consistent with the St Leonards/Crows Nest Planning Study; and,
2. Include a Floor Space Ratio for the subject site of 6.6:1 (that includes a 'bonus' FSR of 1.6:1).

**Figure 10** provides a comparison of indicative visualisations for the approved development on the subject site and what the development outcome would be pursuant to the LEP amendment proposed in this Planning Proposal.

**Figure 9.** Indicative visualisation of approved and modified development



DA 153/10 545-553 PACIFIC HIGHWAY ST LEONARDS



PLANNING PROPOSAL TO MODIFY HEIGHT FROM 32.9m TO 50m

In addition to the amended height control and inclusion of a FSR control, the intended outcome for the subject site is a building that has a built form consistent with the ground level setback controls identified in the St Leonards/Crows Nest Planning Study – Precinct 1.

To provide greater certainty and clarity in regard to the outcomes of the Planning Proposal it is proposed to lodge a development application for the site so that it can be placed on public exhibition with the Planning Proposal (subject to the Gateway determination).

## 4.2 Explanation of Amended Provisions

Table 2 provides a summary of how the amending LEP impacts on the relevant provisions of the NSLEP 2001.

Table 2. Impact of Amending LEP on NSLEP 2001

Division 5 Mixed Use Zone	Impact of Amending LEP
<p><b>Clause 29(1) Building height objectives</b></p>	<p>No changes are proposed to the objectives of the building height controls for the mixed-use zone.</p> <p>The amending LEP will maintain the relevance of the objectives in relation to building height.</p>
<p><b>Clause 29(2) Building height controls</b></p>	<p>The height shown on the map for the subject site is 26m. This Planning Proposal proposes to amend Map 2 – ‘Floor Space Ratios, Heights and Reservations’ to show a height for the subject site of 50 metres.</p>
<p><b>Clause 31 Floor space</b></p>	<p>No changes are proposed to the objectives of the floor space ratio controls for the mixed-use zone.</p> <p>The amending LEP will provide for a Floor Space Ratio for the subject site of 6.6:1 (comprising ‘base’ FSR of 5.0:1 and a ‘bonus’ FSR of 1.6:1). The bonus FSR will be considered as a trade-off for public benefits.</p>
<p><b>Clause 32 Design of development</b></p>	<p>The amending LEP will maintain the relevance of the objectives and design controls in relation to the design of development.</p>

## 4.3 Justification

### 4.3.1 Section A – Need for a Planning Proposal

#### 1. Is the Planning Proposal a result of any strategic Study or Report

Yes. The Planning Proposal is a direct result of the St Leonards/Crows Nest Planning Study – Precinct 1. Details of the Study are provided in Section 3.3 of this proposal.

In relation to the subject site, the planning study identified the following preferred built form option:

- FSR – 5:1 (6:1 with bonus);
- Height – 50 metres;
- Ground level setbacks – 3m on Pacific Highway and Oxley Street frontages; and,
- 4-storey podium.

To achieve the Council's preferred built form option for the subject site, it is necessary to amend the LEP through a Planning Proposal.

The Planning Proposal provides for a 'base' FSR of 5:1 that is permitted by current controls. A 'bonus' FSR of 1.6:1 is proposed to allow for appropriate trade-offs between development feasibility and public benefit. The justification for the 'bonus' FSR is the following commensurate public benefit being provided:

#### 1. Open Space

A Voluntary Planning Agreement is being entered into that will deliver open space outcomes on the eastern side of Hume Street. This new space will:-

- effectively increase Hume Street Park;
- provide improved pedestrian access to the park; and
- form part of an important link within the broader pedestrian network that links St Leonards town centre and Willoughby Road.

#### 2. Pedestrian Circulation/Amenity

Increased ground level setbacks are provided along Pacific Highway and Oxley Street with glazed awnings. These setbacks will:

- improve pedestrian amenity;
- encourage 'active' street frontages at ground level; and,
- generally improve the public domain.

It should be noted that these benefits are in addition to what would be normally required by a new development. They are also public benefits that have been identified by Council as being desperately needed in St Leonards.

#### 2. Is the Planning Proposal a better means of achieving the objectives or intended outcomes, or is there a better way

Yes. The Planning Proposal is seen as the best means of achieving the objectives or intended outcomes because:



- It will expediate implementation of the preferred built form option that North Sydney Council has adopted for the subject site following a focused analysis of the planning study precinct (Precinct 1) which lies within the broader St Leonards/Crows Nest study area; and
- Construction has already commenced on the subject site in accordance with the approved development application detailed in Section 2.3 of this proposal. This approved development has a height of 32.9 metres and does not provide for any new open space in the St Leonards/Crows nest precinct.

### 3. Is there a net community benefit

A net community benefit arises where the sum of all the benefits of a development or rezoning outweighs the sum of all costs. The justification to proceed with the amending LEP has taken into consideration the public interest and the consequence of not proceeding with the necessary changes to the planning controls.

**Table 3** provides an evaluation of the Planning Proposal against the key criteria for a Net Community Benefit Test set out in the Department of Planning's Draft Centres Policy. Although not located in a recognised centre it is considered appropriate to use the evaluation criteria as part of a net community benefit test for the amending LEP. The level of detail and analysis is proportionate to the size and likely impact of the proposed LEP amendment.

Based on the assessment of the key evaluation criteria in **Table 3**, it is considered that the proposed changes to the North Sydney LEP 2001 will produce a net community benefit.

**Table 3.** Net Community Benefit

Evaluation Criteria	Assessment	✓/x
Will the LEP be compatible with agreed State and regional strategic direction for development in the area?	<p>The LEP is compatible with the following State and regional strategic directions;</p> <ul style="list-style-type: none"> <li>▪ To contain the urban footprint and achieve a balance between greenfields growth and renewal in existing areas;</li> <li>▪ To focus activity in accessible centres;</li> <li>▪ Aim to locate new housing within the walking catchments of existing and planned centres of all sizes with good public transport;</li> <li>▪ To produce housing that suits our expected future needs; and,</li> <li>▪ To improve the quality of new housing development and urban renewal</li> </ul>	✓
Is the LEP located in a global/regional city, strategic centre or corridor nominated within the Metropolitan Strategy or other regional or subregional strategy?	The LEP is located in the Global Economic Corridor as identified in the Metropolitan Strategy.	✓

Evaluation Criteria	Assessment	✓/x
Is the LEP likely to create a precedent or create or change the expectations of the landowner or other landholders?	The LEP responds to a detailed study area analysis for the St Leonards/Crows Nest precinct. The expectations of the landowner or other landowners in the precinct will be informed by the findings of the study.	✓
Have the cumulative effects of other spot rezoning proposals in the locality been considered?  What was the outcome of these considerations?	There are no identified cumulative effects from spot rezoning in the locality that needs to be considered.	✓
Will the LEP facilitate a permanent employment generating activity or result in a loss of employment lands?	Permanent employment activity will be generated with the strata management of the site, provision of commercial office suites and restaurant.	✓
Will the LEP impact upon the supply of residential land and therefore housing supply and affordability?	The amending LEP will increase the residential yield from the site and therefore housing supply.	✓
Is the existing public infrastructure (roads, rail, utilities) capable of servicing the proposed site?  Is there good pedestrian and cycling access?  Is public transport currently available or is there infrastructure capacity to support future public transport.	Preliminary analysis indicates that existing public infrastructure such as road and rail is capable of servicing the proposed development of the site.  There is good pedestrian access in the locality of the subject site.  The subject site is within 600 metres of the St Leonards train station. Site is also very well located in relation to bus	✓  ✓  ✓
Will the proposal result in changes to the car distances travelled by customers, employees and suppliers?  If so, what are the likely impacts in terms of greenhouse gas emissions, operating costs and road safety?	The proposal will reduce car distances travelled by tenants who will be located close to shops, services and existing public transport and rail station.  Impact of less distance traveled by tenants will result in a decrease in greenhouse gas emissions and operating costs for vehicles etc. The fewer kilometers traveled will also result in improved road safety.	✓  ✓
Are there significant Government investments in infrastructure or services in the area whose patronage will be affected by the proposal?  If so, what is the expected impact?	Yes. The Government has significant investment in the existing rail network.  The patronage on the rail network will increase.	✓  ✓
Will the proposal impact on land that the Government has identified a need to protect (e.g. land with high biodiversity values) or have other	No.	✓

Evaluation Criteria	Assessment	✓/x
environmental impacts? Is the land constrained by environmental factors such as flooding.	No	✓
Will the LEP be compatible or complementary with surrounding land uses? What is the impact on amenity in the location and wider community? Will the public domain improve?	The LEP will be compatible with existing mix use residential/commercial development in the area. The proposal will provide for improved streetscape and contribute to the revitalisation of this precinct. In particular, the proponent will enter into a Voluntary Planning Agreement (VPA) that will contribute to the provision of new open space in the precinct. Yes. The VPA will contribute to the provision of more public open space in the precinct.	✓ ✓ ✓
Will the proposal increase choice and competition by increasing the number of retail and commercial premises operating in the area?	The proposal will increase the number of restaurants operating in the area and will provide a mix of commercial space.	✓
If a stand-alone proposal and not a centre, does the proposal have the potential to develop into a centre in the future?	No.	✓
What are the public interest reasons for preparing the draft plan? What are the implications of not proceeding at this time?	The public interest for preparing the draft plan will be a number of economic and social benefits including: <ul style="list-style-type: none"> <li>▪ Improved streetscape;</li> <li>▪ Provision of public open space;</li> <li>▪ Meet the strong demand for quality units in the area;</li> <li>▪ Improved sustainability due to sites proximity to public transport and services.</li> </ul> Most importantly, the opportunity for redevelopment with the current developer will be lost due to the commencement of existing approval on the site. This will lead to uncertainty in the council preferred future built form of the precinct.	✓ ✓

### 4.3.2 Section B – Relationship to Strategic Planning Framework

#### 4. Is the Planning Proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies

The Planning Proposal is consistent with the following objectives of the *Metropolitan Plan for Sydney 2036*:

- To focus activity in accessible centres; and,
- To locate 80% of new dwellings within walking catchments of centres.

As indicated previously in Section 3.3 of this proposal, a key component of the strategic context for housing supply in Sydney is the projected rise in Sydney's population by more than 1.3 million persons by 2031 requiring an estimated 570,000 more new homes.

These estimates are far higher than previously anticipated in the Draft Inner North Subregional Strategy and it provides a greater imperative to roll out additional housing that is well located in relation to public transport, employment and services.

#### 5. Is the Planning Proposal consistent with the local council's Community Strategic Plan, or other local strategic plan

North Sydney Council has a number of local strategic plans that are relevant to the Planning Proposal. The following provides a summary of how the Planning Proposal is consistent with the objectives of the local strategic plans.

##### **North Sydney Residential Development Strategy 2009**

The Planning Proposal is consistent with the North Sydney Residential Strategy because it will:

- Provide additional housing to meet the revised projected demand from the increasing population projections.
- Concentrate the bulk of new dwellings in Mixed Use zone in close proximity to retail, office, health, education, transport, leisure, entertainment facilities and community and personal services;
- Deliver housing choice for a range of socio economic groups; and
- Minimise the impact of new development on local character, amenity, environment and heritage.

##### **North Sydney Local Development Strategy 2009**

This Strategy is identified by Council as "*a translation of the strategic vision for North Sydney Council as identified in the Metropolitan and Subregional Strategies*".

The Planning Proposal is consistent with this Strategy because it:

- Maintains both commercial and residential uses in the mixed use zone;
- Maintains employment generating uses on the site; and,
- Responds to the changing market demands for more housing choice in close proximity to public transport, retail and services.

## 2020 Vision Strategic Plan

The 2020 Vision "sets a strategic direction for where the community of North Sydney wants to be in the year 2020.

The Planning Proposal is consistent with this Plan because it:

- Improves the mix of land use by providing commercial, retail and residential uses;
- Contributes to ensuring a vibrant, strong, and sustainable local economy by providing a mix of employment opportunities;
- Provides a mix of housing units in close proximity to public transport and jobs; and,
- Contributes to the provision of private open space through a Voluntary Planning Agreement.

## 6. Is the Planning Proposal consistent with applicable State Environmental Planning Policies

There are a number of State Environmental Planning Policies that will apply to any proposed development of the site but are not applicable to the assessment of this Planning Proposal

## 7. Is the Planning Proposal consistent with applicable Ministerial Directions (s 117 directions)

Table 4 provides an assessment of the Planning Proposal against the applicable Ministerial Directions. The Planning Proposal is assessed as being generally consistent with the identified applicable Ministerial Directions.

Table 4. Ministerial Directions

Ministerial Direction	Comment	✓/X
<b>1. Employment and Resources</b>		
1.1 Business and Industrial Zones	The planning proposal is consistent with the objectives of the direction because it will continue to provide for employment growth with the provision of commercial and retail facilities on the ground levels.	✓
<b>3. Housing, Infrastructure and Urban Development</b>		
3.1 Residential Zones	The planning proposal is consistent with the objectives of the direction because it will improve the choice, accessibility and distribution of housing stock. It will also help reduce the consumption of land on the urban fringe.	✓
3.4 Integrating Land Use and Transport	The planning proposal is consistent with the objectives of the direction because it	

	provides for housing in close walking distance to major public transport in the form of trains and buses. This will reduce travel demand and have a direct impact on the environment.	✓
<b>5. Regional Planning</b> 5.2 Sydney Drinking Water Catchments	The planning proposal is prepared in accordance with the general principle that water quality within the Sydney drinking water catchment will be protected. The Planning proposal is consistent with SEPP (Sydney Drinking Water Catchment) 2011 and development will have a neutral or beneficial effect on water quality.	✓
<b>6. Local Plan Making</b> 6.3 Site Specific Provisions	The objective of the planning proposal will amend North Sydney Local Environmental Plan 2001 in order to allow the particular development proposal to proceed in the existing zone.	✓
<b>7. Metropolitan Planning</b> 7.1 Implementation of the Metropolitan Strategy	The Planning Proposal is shown to be consistent with the NSW Government's Metropolitan Plan for Sydney 2036. (refer Section 4.3.2 of this proposal)	✓

#### 4.3.3 Section C – Environmental, Social and Economic Impact

**8. is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?**

No. There has been no critical habitat or threatened species, populations or ecological communities, or their habitats, identified on this site.

**9. Are there any other likely environmental impacts as a result of the Planning Proposal (and if so), how are they to be managed?**

There are no likely environmental impacts as a result of this Planning Proposal. The proposed change to the maximum permissible height limit is not likely to give rise to any particular environmental impact given the location of the subject site and the nature of existing built form in the area. Any future development of the site will be assessed against the environmental provisions of the applicable planning instruments.

**10. Has the Planning Proposal adequately addressed any social and economic effects?**

The Planning Proposal is unlikely to deliver any detrimental economic effects and will deliver a number of positive social benefits, including

- A mix of housing well located to public transport, shops and amenities;
- Greater dwelling choice;

- Improved public domain; and,
- A more vibrant interface with the street and lane to the rear.

#### **4.3.4 Section D – State and Commonwealth Interests**

##### **11. Is there adequate public infrastructure for the planning proposal?**

The locality of the Planning Proposal is very well served by existing public transport and road infrastructure. It is expected that the roads and public transport will continue to be able to adequately serve the area.

##### **12. What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?**

Consultation with other public authorities has not occurred at this stage of the gateway process. It is expected that any consultation will be identified following the gateway determination.

#### **4.4 Community Consultation**

Community consultation will be undertaken in accordance with the requirements of the gateway determination.

The Planning Proposal is considered to be a 'low impact' proposal because:

- It is consistent with the recommendations of the St Leonards / Crows Nest Planning Study - Precinct 1; and
- The study was adopted by Council following a public exhibition of the study.

## 5.0 Summary

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In summary, the Planning Proposal should receive favourable consideration because;

1. It is consistent with both Local and State Government strategies on the provision of additional new housing and the opportunity should not be lost.
2. The subject site is ideally located within walking distance of public transport, shops and services.
3. New challenges have emerged placing greater pressure on the provision of well-located housing. Sydney's population is growing faster than previously expected.
4. There are demonstrated social benefits resulting from the proposed amendment that include the provision of a range and diversity of housing types, the provision of growth within close proximity to a centre and public transport corridor and the provision of public open space through a VPA.
5. A Net Community Benefit Test demonstrates a net community benefit arises from the Planning Proposal.



## VOLUNTARY PLANNING AGREEMENT

**PARTIES**

**North Sydney Council**

**ABN 32 353 260 317**

*(Council)*

**AND**

**Ralan St Leonards Pty Ltd**

**ACN 147 661 345**

*(Developer)*

**July 2012**

**Storey & Gough Lawyers  
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Ref : CCG:TE:120313

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**VOLUNTARY PLANNING AGREEMENT No. \_\_\_\_\_ of 2012****Planning Agreement made at \_\_\_\_\_ on \_\_\_\_\_****Parties:** **North Sydney Council ABN 32 353 260 317** of 200 Miller Street, North Sydney NSW 2060 ("Council")**Ralan St Leonards Pty Ltd ACN 147 661 345** of \_\_\_\_\_ ("Developer")**BACKGROUND**

- A. The Developer owns the Land.
- B. The Developer proposes to carry out the Development on the Land. To this extent the Developer proposed to make a development application to Council for the Development.
- C. Clause 29(2) of North Sydney Local Environmental Plan 2001 ("LEP 2001") provides that a building must not be erected in the mixed use zone in excess of the height shown on the map. The map relating to clause 29(2) provides a height limit of 26 metres for the Land, which is located within a mixed use zone.
- D. Council has adopted the St Leonards / Crows Nest Planning Study - Precinct 1 which makes provision for an increase in building height to 50m. The Land is located within the area the subject of the Planning Study.
- E. The Developer has sought a change to clause 29(2) of LEP 2011 to allow a height limit of 50 metres for the Land.
- F. The Developer has made an offer to enter into a planning agreement with Council and the Council has accepted the offer. The Parties wish to formalise that arrangement by entering into this Agreement in accordance with section 93F of the Act.

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## **OPERATIVE PROVISIONS**

### **1. Planning agreement under the Act**

The Parties agree that this Agreement is a planning agreement within the meaning of section 93F of the Act.

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### **2. Application of this Agreement**

This Agreement applies to:

- (a) the Land, and
  - (b) the Development.
- 

### **3. Operation of this Agreement**

The parties each agree that this Agreement operates on and from the date of this Agreement.

---

### **4. Definitions and interpretation**

#### **4.1 Definitions**

Terms used in this planning 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.

#### **4.2 General**

In this Agreement the following definitions apply:

- (a) A reference to this Agreement or another instrument includes any variation or replacement of any of them;

- (b) 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;
- (c) The singular includes the plural and vice versa;
- (d) The word "person" includes a firm, a body corporate, an unincorporated association or an authority;
- (e) 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;
- (f) 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;
- (g) "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;
- (h) If a party is required to do something, that includes a requirement to cause that thing to be done. 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;
- (i) A reference to a statute, ordinance, code or law includes a state ordinance code or law of the Commonwealth of Australia;
- (j) 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;
- (k) No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Agreement;
- (l) Any capitalized term used, but not defining in this Agreement, will have the meaning ascribed to it under, and by virtue of, the Act;
- (m) Headings are inserted for convenience only and do not affect the interpretation of this Agreement;
- (n) 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;
- (o) 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;

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

## 5. Contributions to be made under this Agreement

- (a) The Developer will for the purpose of increasing the amount of Public Open Space in the North Sydney Local Government Area provide a monetary contribution in the amount of \$1,527,500.00 by way of a bank cheque in favour of North Sydney Council upon execution of this Agreement.
- (b) The Developer agrees and acknowledges that:
  - (i) any future building on the Land will be set back 3 metres from both the Pacific Highway and Oxley Street frontages of the Land;
  - (ii) any future Development Consent for, or Modification relating to, a building on the Land may require development of the Setback Areas so that they are consistent with the public domain and they are at grade flush with the adjacent public footpath;
  - (iii) any development of the Setback Areas will be designed and constructed in accordance with the technical requirements for footpaths in *North Sydney Development Control Plan 2002* and Council's Infrastructure Specifications Manual;
  - (iv) an easement in gross in favour of the Council permitting public access to the Setback Areas will be registered against the title to the Land at no cost to the Council; and
  - (v) the easement in gross referred to in clause 5(b)(iv) will require the owner of the Setback Areas to maintain and repair the land to the satisfaction of the Council, to maintain sufficient public liability

insurance and to ensure that any rules made by an Owner's Corporation relating to the Setback Areas are approved by the Council.

- (c) The Developer agrees and acknowledges that:
    - (i) any future Development Application or Modification Application for a building on the Land will not include building or any development (other than landscaping or fencing) above RL 105.06 on the hatched portion of the Land shown in Appendix A, consistent with the limitation expressed in condition C41 of Development Consent DA153/10 granted on 29 September 2010; and
    - (ii) a covenant will be registered against the title to the Land prohibiting any building or development (other than landscaping or fencing) above RL 105.06 on the hatched portion of the Land shown in Appendix A.
  
  - (d) The Developer agrees and acknowledges that the obligations under this Agreement at clause 5(b) and clause 5(c) are relevant considerations for the Council or any other consent authority when determining any future Development Application or Modification Application and that a failure to comply with those obligations or any inconsistency with the requirements in those clauses may constitute a reason for refusal of any such application.
- 

## **6. Application of s94, s94A and s94EF of the Act to the Development**

- (a) Sections 94, 94A and 94EF of the Act will apply to any future development of the Land.
  
- (b) Benefits under this planning agreement are excluded from being taken into consideration under s94(6) of the Act and its application to any future development of the Land.



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## 7. Application of the Contributions

- (a) The Council must upon receipt of the monetary contribution paid by the Developer in accordance with clause 5 of this Agreement and within a reasonable time after the date of this Agreement use that contribution as it sees fit to:
  - (i) Acquire land for the provision of Public Open Space;
  - (ii) Attend to the embellishment of the land so acquired for open space; or
  - (iii) Care for and maintain the said open space.
  
- (b) In the event the Council determines not to acquire land for the purposes of establishing new open space areas, the Council agrees that the contributions made under this Agreement will be applied towards the embellishment and maintenance of other land for the purposes of public open space and recreation with the North Sydney Local Government Area.
  
- (c) For the avoidance of doubt, nothing in this Agreement requires the Council to:
  - (i) Spend the contributions made under this Agreement by a particular date; or
  - (ii) Refund to the Developer any contributions made under this Agreement.
  
- (d) The parties acknowledge and agree that the setback of buildings referred to in clause 5(b) will provide more space for pedestrian use and increase the amenity of that area for pedestrian users.

---

## 8 Registration of this Agreement

- (a) The Developer represents and warrants that it is the registered proprietor of the Land.
- (b) The Developer agrees that it will procure the registration of this Agreement, under the *Real Property Act 1900* (NSW) in the relevant folios of the Register for the Land in accordance with s93H of the Act.
- (c) The Developer at its own expense will, promptly after this Agreement comes into operation, take all practical steps, and otherwise do anything that the Council reasonably requires, to procure:
  - (i) the consent of each person who:
    - (A) has an estate or interest in the Land; or
    - (B) is seized or possessed of an estate or interest in the Land; and
  - (ii) the execution of any documents; and
  - (iii) the production of the relevant duplicate certificates of title,to enable the registration of this Agreement in accordance with clause 8(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 lodgment 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 90 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.

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

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## **9 Review of this Agreement**

This Agreement may be reviewed or modified by the agreement of the parties using their best endeavors and acting in good faith.

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## **10 Dispute Resolution**

### **10.1 Dispute**

If any dispute arises out of this Agreement (*Dispute*) a party to the agreement must not commence any court or arbitration proceedings unless the parties to the Dispute have complied with the following paragraphs of this clause except where a party seeks urgent interlocutory relief.

### **10.2. Notice of Dispute**

A party to this Agreement claiming that a dispute has arisen out of or in relation to this Agreement must give written notice (*Notice*) to the other party to this Agreement specifying the nature of the dispute.

### **10.3 Dispute resolution**

If the parties do not agree within 7 days of receipt of the Notice (or such further period as agreed in writing by them) as to:

10.3.1 the dispute resolution technique (eg expert determination) and procedures to be adopted.

10.3.2 the timetable for all steps in those procedures; and

10.3.3 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 New South Wales as published by the Law Society of New South Wales from time to time, and, the President of the Law Society of New South Wales or the President's nominee will select the mediator and determine the mediator's remuneration.

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## **11 Enforcement and Security**

- (a) This Agreement may be enforced by any party in any Court of competent jurisdiction.
- (b) The parties acknowledge and agree that the timing of requirements to pay contributions, the agreements and acknowledgements under clause 5, the requirements under clause 7 for registration of this Agreement and the restrictions on assignment of this Agreement under clause 14 will provide sufficient security for the performance of the Developer's obligations under this Agreement.

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## **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 North Sydney Council  
Attention: General Manager  
Address: 200 Miller Street, Sydney NSW 2060  
Phone: 02 9936 8100  
Fax Number: 02 9936 8177  
Email: council@northsydney.nsw.gov.au

Developer **Ralan St Leonards Pty Ltd ACN 147 661 345**  
Attention: Robert Severino  
Address: c/- Steve Nolan Constructions Pty Limited  
PO Box 435, South Hurstville, NSW 2221  
Ph: 0421 865 830

- 12.2 If a party gives the other party 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 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, 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.
- 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.

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## 13 Approvals and Consent

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 obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.
- (c) this planning 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.

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## 14 Assignment and Dealings

The Developer may not sell, transfer, assign or novate or similarly deal with its right, title or interest in the Land (if any) 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 consents and unless, prior to any such sale, transfer, assignment, charge, encumbrance or novation, the Developer:

- (i) 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
- (ii) satisfies the Council that the Developer is not in breach of this Agreement.

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## 15 Costs

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

- (a) the negotiation, preparation and execution of this Agreement; and
- (b) advertising and exhibition of this Agreement in accordance with the Act, within 3 business days after receipt of a tax invoice from Council.

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**16 Entire Agreement**

This Agreement constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter.

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**17 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.

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**18 Governing Law and Jurisdiction**

This Agreement is governed by the law of New South Wales. The Parties submit to the nonexclusive 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.

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 in the Details.

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**19 Joint and individual liability and benefits**

Except as otherwise set out in this Agreement, any agreement, covenant, representation or warranty under this Agreement by 2 or more persons binds them jointly and each of them individually, and any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

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**20 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.

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**21 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.

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**22 Severability**

- (a) The parties acknowledge that under and by virtue of Section 93F(4) of the Act, any provision of this Agreement is not invalid by reason only that there is no connection between the Development 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.
- 

**23 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.

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**24 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.
- 

## **25 Goods and Services Tax**

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.

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## **26 Discharge of Developers 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. The performance of this Agreement has been frustrated by an event or events beyond the reasonable control of the Parties; or
  - c. The Developer has fully and completely assigned the Developer's interest under this Agreement in accordance with its terms; or
  - d. Council and the Developer otherwise agree to the modification or discharge of this Agreement.
- 

## **27 Counterparts**

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

**EXECUTED AS AN AGREEMENT**

**ON BEHALF OF** \_\_\_\_\_

The Seal of \_\_\_\_\_ was affixed in accordance with a resolution passed at a duly convened meeting held on \_\_\_\_\_ in the presence of:

.....  
General Manager

.....  
Mayor

**SIGNED by**  
**Ralan St Leonards Pty Ltd ACN 147 661 345**  
(Developer) in the present of:

.....  
Signature of witness

.....

.....  
Name of Witness

## **Schedule 1 - Interpretation (clause 4)**

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

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

**Development** means the addition to a mixed use development upon the Land at 545-553 Pacific Highway, St Leonards to create a building having a height up to 50 metres, adopting the definition of 'height' contained in North Sydney Local Environmental Plan 2001.

**Development Application** has the same meaning as in the Act.

**Development Consent** has the same meaning as in the Act.

**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 or administration of the GST.

**Instrument Change** means a change to clause 29(2) of North Sydney Local Environmental Plan 2001 to provide a height limit of 50m for the Land.

**Land** means the property located at No. 545-553 Pacific Highway, St Leonards (Lot 1 & 2 in Deposited Plan 1081379, Part Lots 3 & 4, Section 9 in Deposited Plan 2872 and Lot 1 in Deposited Plan 432019)

**Modification** means the grant of any Modification Application under s96 of the Act.

**Modification Application** means an application to modify a Development Consent under s96 of the Act.

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

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

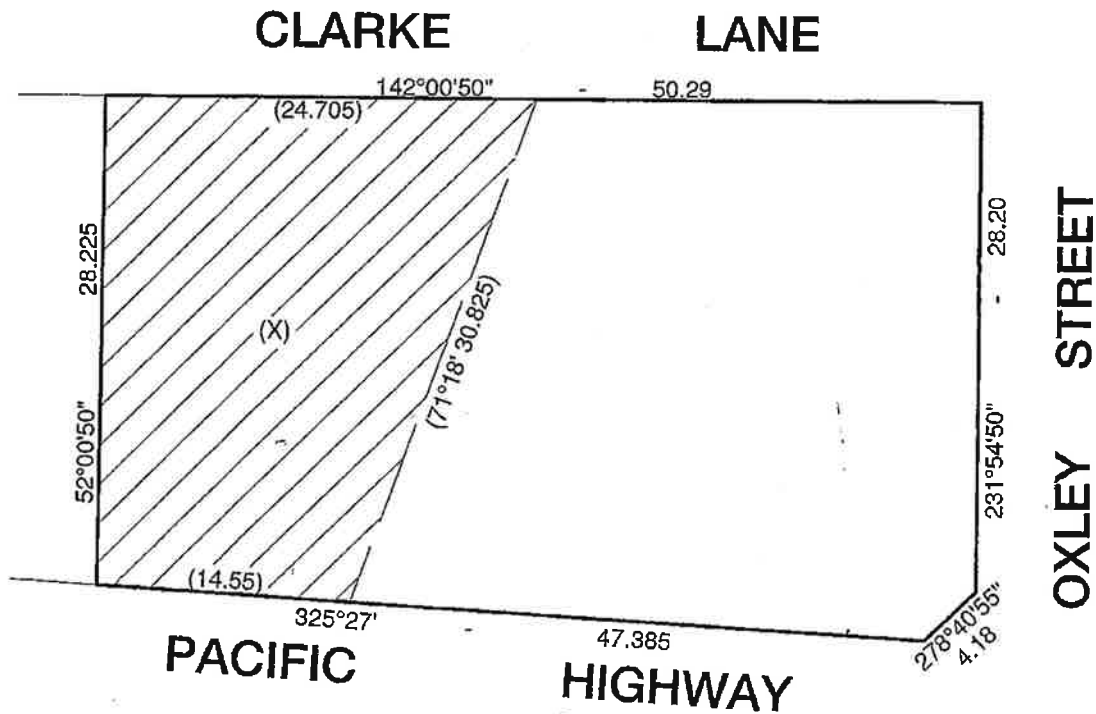
**Setback Areas** means the area of the Land created by the set back of any future building at least 3 metres from the Pacific Highway and Oxley Street, as required by clause 5(b)(i) of this Agreement.

**Appendix A – Land subject to Height Limitation (clause 5(c))**

LGA: NORTH SYDNEY  
PARISH: WILLOUGHBY

LOCALITY: ST LEONARDS  
COUNTY: CUMBERLAND

SCALE: 1:400  
DATE: 10-10-2012



(X) LAND SUBJECT TO HEIGHT LIMITATION

VICTORIA TESTER  
REGISTERED SURVEYOR

**SIGNATURES AND SEALS**

THIS IS THE PLAN MARKED 'A' REFERRED TO IN AGREEMENT DATED  
BETWEEN RALAN ST LEONARDS PTY. LTD. AND NORTH SYDNEY COUNCIL