

APPENDIX H

Appendix H

Council resolution (C128/11) - 19th April 2011

(a) Council note the key changes made to the Planning Proposal in response to its previous resolution, namely:

- Additional information submitted in respect of traffic and car parking
- Confirmation that the size of the proposed supermarket and other retail tenancies will not exceed 300m²
- A reduction in the FSR from 1.7:1 to 1.5:1
- Street front buildings of no more than 3 storeys and internal buildings of no more than 6 storeys
- Reduced overshadowing of the Crystal Street properties
- Revised Voluntary Planning Agreement taking into account the reduced FSR and addressing the issue of affordable housing.
- Reduced bulk and scale
- An amount of open space greater than currently proposed
- Leading Environmental Sustainable Design principles in excess of BASIX
- More detailed information in relation to the retail tenancies
- Addressing the issue of privacy in relation to the private open space of adjoining properties.

The revised Planning Proposal also includes an assessment of the need for the New Street.

(b) Council endorse the Planning Proposal (refer Appendix A of the report) subject to:

- A notation being placed on the plan that the new street will not be the subject of compulsory acquisition and will remain as a cul de sac until the adjoining land is developed.
- Investigation of the parking rates as they apply to the site and commence the process to amend Leichhardt Local Environmental Plan 2000, which will:
 - (i) rezone the site known as Lot 3 in DP 119, Lot 2 in DP 234045 and Lot 1 in DP 540118, 118-124 Terry Street, Rozelle from industrial to residential;
 - (ii) establish a Maximum Floor Space Ratio of 1.5:1
 - (iii) provide site-specific height controls for the subject site;
 - (iv) provide for small-scale non-residential uses on specific properties appropriate identified that would otherwise not be permissible in the residential zone.

(c) That prior to the Planning Proposal being forwarded to the Minister for Planning to commence the Gateway process, Anka enter into a legal agreement with Council that

binds Anka to proceed with the VPA should the planning proposal proceed to formal exhibition. After this agreement is entered into, Council notify the Director-General of the Department of Planning of the Planning Proposal in accordance with section 56 of the Environmental Planning and Assessment Act and enclose a copy of Council's Draft 2010 Employment Lands Study.

- (d) In relation to the ongoing assessment of the Planning Proposal, the application be requested to submit a consolidated set of the following documents for endorsement by Council prior to the commencement of the Statutory public exhibition process:
- (i) **Planning Justification Report:** The report is to include a full justification for the rezoning and analysis of planning and land-use choices and issues, particularly as they depart from Council's previous requirements.
 - (ii) **Environmental Performance Report:** This report should demonstrate how the development will incorporate ecologically sustainable development principles in the design, construction and ongoing phases of the development with a view to achieving a minimum 5 star rating.
 - (iii) **Parking, Traffic, Transport and Accessibility Study:** This study to be prepared by a suitably qualified transport consultant, is to provide advice regarding the proposed parking rates, car share, cycle paths, cycle storage facilities, road layout for the site, integration with the existing road network and analysis of any local traffic impacts resulting from redevelopment. In addition, the study should include an analysis of opportunities to integrate the redevelopment of the site with the local public transport networks, new and existing cycle paths and pedestrian networks. The study should also address the issue of parking rates for peer review on behalf of Council by ARUP. Any change to the parking rates must be endorsed by Council prior to the Planning Proposals Statutory exhibition period.
 - (iv) **Heritage Impact Study:** This study would be prepared by a suitably qualified heritage consultant and advise of any heritage impacts on nearby heritage items and conservation areas on the site.
 - (v) **Stormwater Management Plan and Water Sensitive Urban Design Study:** To be prepared by a suitably qualified engineer to analyse the stormwater management of the proposal and any potential flooding issues. This plan would also examine opportunities for water sensitive urban design.
 - (vi) **Contamination Study:** Prepared by a suitably qualified environmental consultant in accordance with the requirements of the NSW EPA Guidelines for Consultants Reporting on Contaminated Sites to determine if the site is suitable for the proposed use in accordance with SEPP 55, or alternatively advise if remediation works are necessary to make the site suitable for the proposed use by way of a Remediation Action Plan.
 - (vii) **Retail, Economic Impact Study:** Prepared by a suitably qualified economic consultant, to confirm the role and function of the proposed non residential aspects of the proposed development.
 - (viii) **Active Transport and Open Space Study:** Prepared by a suitably qualified consultant to provide advice on open space provision and linkages between the site and surrounding recreation, open space and community destinations.
 - (ix) **Social Impact Assessment:** Prepared by a suitably qualified consultant in accordance with Council's Social Impact Assessment Policy.

- (x) **Community Consultation Strategy:** The statutory Local Environmental Plan preparation process incorporates a minimum public exhibition period of twenty-eight (28) days to allow community input into a draft Local Environmental Plan. However, given the history of the site, it is recommended that a comprehensive community consultation program that goes beyond the minimum statutory requirements be prepared with specific reference to the bulk and scale and the issues raised by Wellington Street residents.
- (xi) **Development Control Plan:** The Development Control Plan is to be based on an Urban Design Study. The Urban Design Study should draw on the results of the Allen Jack + Cottier study and the revised concept plans referred to in this report. The study should examine appropriate built form for the site, including proposed building envelopes, open space provision, heights and floor space ratio. The study should also address existing and proposed overshadowing, solar access, acoustic privacy, visual privacy, view loss, include provision for deep rooted street trees within the Crystal Street public domain, and environmental and residential amenity of the site and adjoining properties.

The Development Control Plan is to be drafted and endorsed by Council prior to the Planning Proposals Statutory exhibition period. The Development Control Plan will be placed on exhibition concurrently with the Planning Proposal during the Statutory exhibition period.
- (xii) **Voluntary Planning Agreement:** A Voluntary Planning Agreement is to be drafted and endorsed by Council prior to the Planning Proposals Statutory exhibition period. The Voluntary Planning Agreement will be placed on exhibition concurrently with the Planning Proposal during the Statutory exhibition period.

APPENDIX I

1. The first part of the document is a list of the names of the persons who have been named in the document.

2. The second part of the document is a list of the names of the persons who have been named in the document.

3. The third part of the document is a list of the names of the persons who have been named in the document.

4. The fourth part of the document is a list of the names of the persons who have been named in the document.

5. The fifth part of the document is a list of the names of the persons who have been named in the document.



lindsaytaylorlawyers

118-124 Terry Street, Rozelle
Planning Agreement

Under s93F of the *Environmental Planning and Assessment Act 1979*

Leichhardt Municipal Council
Anka Constructions Pty. Ltd.

Date:

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118-124 Terry Street, Rozelle

Planning Agreement

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Leichhardt Municipal Council
Anka Constructions Pty. Ltd.



118-124 Terry Street, Rozelle Planning Agreement

Summary Sheet

Council:

Name: Leichhardt Municipal Council
Address: 7-15 Wetherill Street, Leichhardt NSW 2040
Telephone: 9367 9222
Facsimile: 9367 9111
Email: leichhardt@lmc.nsw.gov.au
Representative: David Marshall

Developer:

Name: Anka Constructions Pty. Ltd.
Address: 179-191 New South Head Road, Edgecliffe NSW 2027
Telephone: 9302 3000
Facsimile: 9302 3030
Email: andrewb@ankaproperty.com
Representative: Andrew Boyarsky

Land:

See definition of *Land* in clause 1.1.

Development:

See definition of *Development* in clause 1.1.

Development Contributions:

See Part 2 and Schedule 1.

Application of s94, s94A and s94EF of the Act:

See clause 7.

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Security:

See clause 23.

Dispute Resolution:

Mediation. See clause 25.

Registration:

See clause 26.

Restriction on dealings:

See clause 27.



118-124 Terry Street, Rozelle Planning Agreement

Under s93F of the *Environmental Planning and Assessment Act 1979*

Parties

Leichhardt Municipal Council ABN 92 379 942 845 of 7-15 Wetherill Street
Leichhardt NSW 2040 (**Council**)

and

Anka Constructions Pty. Ltd. ABN 12 008 749 013 of 179-191 New South
Head Road, Edgecliff, NSW 2027 (**Developer**)

Background

- A The Developer is the owner of the Land.
- B The Council is a council constituted under the *Local Government Act 1993*.
- C The Developer has requested that the Council submit the Planning Proposal to the Minister for the making of the LEP.
- D The Developer wishes to carry out the Development if the LEP occurs.
- E The Developer has agreed to make Development Contributions in connection with the carrying out of the Development in accordance with this Agreement.

Operative provisions

Part 1 - Preliminary

1 Definitions & Interpretation

- 1.1 In this Agreement the following definitions apply:

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

Agreement means this Agreement and includes any schedules, annexures and appendices to this Agreement.

Bank Guarantee means an irrevocable and unconditional undertaking without any expiry or end date in favour of the Council to pay an amount or amounts of money to the Council on demand issued by:

- (a) one of the following trading banks:
 - (i) Australia and New Zealand Banking Group Limited,
 - (ii) Commonwealth Bank of Australia,

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- (iii) Macquarie Bank,
 - (iv) National Australia Bank Limited,
 - (v) St George Bank Limited,
 - (vi) Westpac Banking Corporation, or
- (b) any other financial institution approved by the Council in its absolute discretion.

Compliance Certificate has the same meaning as in the Act.

Construction Certificate has the same meaning as in the Act.

Contributions Plan means:

- (a) *Developer Contributions Plan No 2 - Community Facilities and Services (2005)*, effective as of 23 August 2005;
- (b) *Developer Contributions Plan No 1 - Open Space and Recreation*, effective as of 18 January 2005; and
- (c) *Environmental Planning and Assessment Act 1979 - Leichhardt Developer Contributions Plan - Transport and Access* - made 26 October 1999, operational on 3 November 1999.

Defects Liability Period means the period commencing on the day after Works Completion and ending 12 months after that day.

Development means any development of the Land that is only permissible by reason of the LEP and includes demolition of the existing structures on the Land for the development, the remediation of the Land for the development and the preparation of the Land for the development.

Development Application has the same meaning as in the Act and includes a project application under Part 3A of the Act or any other process or procedure for the obtaining of development consent or approval for the carrying out of development.

Development Consent has the same meaning as in the Act and includes a project approval under Part 3A of the Act or other replacement form of consent or approval for the carrying out of development.

Development Contribution means a monetary contribution, the dedication of land free of cost, the carrying out of work, or the provision of any other material public benefit, or any combination of them required to be made under this Agreement, to be used for, or applied towards, the provision of public amenities or services or another public purpose as required by this Agreement.

Final Lot means a lot created by a strata subdivision of the built form of the Development for separate occupation and disposition as a dwelling.

Floor space ratio has the same meaning as in *Leichhardt Local Environmental 2000* as it was on 17 May 2011.

Gross floor area has the same meaning as in *Leichhardt Local Environmental 2000* as it was on 17 May 2011.

GST has the same meaning as in the GST Law.

GST Law has the same meaning as in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition or administration of the GST.

Land means 118-124 Terry Street Rozelle being Lot 3/D in DP119, Lot 2 in DP 234045 and Lot 1 in DP 540118.

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Anka Constructions Pty. Ltd.



LEP means an amendment of *Leichhardt Local Environmental Plan 2000* which makes development including residential development of the Land having a floor space ratio of not less than 1.5:1 (as defined in *Leichhardt Local Environmental Plan 2000* on 17 May 2011) permissible with consent.

Modification Application means an application under s96 or s96AA of the Act or a modification application under s75W of the Act or any other process or procedure for obtaining a modification of a Development Consent.

New Street means the new road to be constructed on the Land and dedicated by the Developer generally as described in the Planning Proposal (including any necessary or incidental drainage, services and lighting) in accordance with AUSTROADS, all relevant Australian Standards and any Development Consent.

Occupation Certificate has the same meaning as in the Act.

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

Planning Proposal means the document entitled *Planning Proposal, 118-124 Terry Street, Rozelle* prepared by Ingham Planning Pty Limited and dated April 2011.

Rectification Notice means a notice in writing that identifies a defect in a work and requires rectification of the defect within a specified period of time.

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

Security means an amount of \$1,200,000 (or such other amount as the Developer and the Council agree in writing) as a Bank Guarantee or such other kind of security as is agreed to by the Council in its absolute discretion.

Stage means a stage of the Development as approved in a Development Consent for the Development.

Subdivision Certificate has the same meaning as in the Act.

Work means the physical result of any building, engineering or construction work in, on, over or under land for the construction of the New Street as required to be carried out by the Developer under this Agreement.

Works Completion means the date on which the Work is completed as provided by clause 18 of this Agreement.

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

- 1.2.1 Headings are inserted for convenience only and do not affect the interpretation of this Agreement.
- 1.2.2 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.
- 1.2.3 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.
- 1.2.4 A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- 1.2.5 A reference in this Agreement to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST.



- 1.2.6 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.
- 1.2.7 A reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- 1.2.8 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
- 1.2.9 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- 1.2.10 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.
- 1.2.11 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.
- 1.2.12 References to the word 'include' or 'including' are to be construed without limitation.
- 1.2.13 A reference to this Agreement includes the agreement recorded in this Agreement.
- 1.2.14 A reference to a party to this Agreement includes a reference to the servants, agents and contractors of the party, and the party's successors and assigns.
- 1.2.15 Any schedules, appendices and attachments form part of this Agreement.
- 1.2.16 Notes appearing in this Agreement are operative provisions of this Agreement.

2 Application of this Agreement

- 2.1 This Agreement applies to the Land and to the Development.

3 Commencement of this Agreement

- 3.1 This Agreement commences when it has been executed by all of the Parties.
- 3.2 The Party who executes this Agreement last is to notify the other Parties once it has done so and promptly provide them with a copy of the fully executed version of this Agreement.
- 3.3 This agreement may be executed in counterparts and if so the counterparts together constitute the Agreement.

4 Commencement of Development Contributions obligations

- 4.1 The Developer is under no obligation to make the Development Contributions to the Council in accordance with this Agreement unless the LEP takes effect.



5 Further Agreements Relating to this Agreement

- 5.1 The Parties may, at any time, enter into such other agreements or arrangements relating to the subject-matter of this Agreement that they consider are necessary or desirable in order to give effect to this Agreement.
- 5.2 An agreement or arrangement referred to in clause 5.1 is not to be inconsistent with this Agreement.

6 Surrender of right of appeal, etc.

- 6.1 The Developer is not to commence or maintain, or cause to be commenced or maintained, any proceedings in a court involving an appeal against, or questioning the validity of, a Development Consent relating to the Development or an approval of a Modification Application in relation to a Development Consent for the Development to the extent that it relates to the validity of this Agreement or a condition of the Development Consent that requires this Agreement to be entered into and/or performed according to the terms of this Agreement.

7 Application of s94, s94A and s94EF of the Act to the Development

- 7.1 This Agreement excludes the application of s94 of the Act to the Development, the subject of Development Applications referred to in clauses 9.1, 9.2.1 and 9.2.2.
- 7.2 This Agreement excludes the application of s94A of the Act to the Development, the subject of Development Applications referred to in clauses 9.1, 9.2.1 and 9.2.2.
- 7.3 The Agreement does not exclude the application of s94 or s94A to development the subject of a Development Application referred to in clause 9.2.3, and, the benefits of this Agreement are not to be taken into account in determining a development contribution under s94 of the Act in relation to that development.
- 7.4 This Agreement does not exclude the application of s94EF of the Act to the Development.

Part 2 –Development Contributions

8 Provision of Development Contributions

- 8.1 The Developer is to make the Development Contributions in accordance with this clause and schedule 1 of this Agreement and otherwise to the satisfaction of the Council.
- 8.2 The Developer and the Council may agree in writing to vary the Developer's obligations to make Development Contributions under this Agreement if the Council considers that the public interest would be better served by making the variation having regard to town planning conditions prevailing at the time of the variation.



- 8.3 The Council is to accept and apply each Development Contribution made by the Developer under this Agreement towards the public purpose for which it is made and otherwise in accordance with this Agreement.

Part 3 – Other Obligations of the Developer

9 Development application

- 9.1 Subject to this clause, the Developer is not to submit more than one Development Application for the Development.
- 9.2 Nothing in clause 9.1 prevents the Developer submitting a new Development Application for the Development:
- 9.2.1 if the Development Application for the Development is refused;
- 9.2.2 if the Development Consent for the Development:
- (a) lapses; or
- (b) is surrendered prior to physical commencement; or
- 9.2.3 once the Developer has complied with its obligations to make the Development Contributions.

Part 4 – Provisions relating to Development Contributions

10 Procedures relating to payment of monetary Development Contributions

- 10.1 A monetary Development Contribution is made for the purposes of this Agreement when the Council receives the full amount of the contribution payable under this Agreement by a cleared unendorsed bank cheque or by the deposit by means of electronic funds transfer of cleared funds into a bank account nominated by the Council.
- 10.2 The Developer is to give the Council written notice of any application made for a construction certificate for the Development which triggers an obligation to pay a monetary development contribution.
- 10.3 The Developer is not required to pay a monetary Development Contribution under this Agreement unless the Council, after having received the Developer's notice under clause 10.2, has given to the Developer a tax invoice for the amount of the Development Contribution.
- 10.4 The Developer is not in breach of this Agreement if it fails to pay a monetary Development Contribution at the time required by this Agreement by reason only of the Council's failure to give to the Developer a tax invoice in relation to the amount proposed to be paid by it.



11 Procedures relating to the dedication of land

- 11.1 A Development Contribution comprising the dedication of land is made for the purposes of this Agreement when:
 - 11.1.1 a deposited plan is registered in the register maintained by the Registrar-General under the *Real Property Act 1900* that dedicates land as a public road (including a temporary public road) under the *Roads Act 1993* or creates a public reserve or drainage reserve under the *Local Government Act 1993*, or
 - 11.1.2 the Council is given an instrument in registrable form under the *Real Property Act 1900* that is effective to transfer the title to the land to the Council when registered.
- 11.2 For the purposes of clause 11.1.2:
 - 11.2.1 the Developer is to give the Council, for execution by the Council as transferee, an instrument of transfer under the *Real Property Act 1900* relating to the land to be dedicated,
 - 11.2.2 the Council is to execute the instrument of transfer and return it to Developer within 14 days of receiving it from the Developer,
 - 11.2.3 the Developer is to lodge the instrument of transfer for registration with the Registrar General within 14 days of receiving it from the Council duly executed,
 - 11.2.4 the Developer and the Council are to do all things reasonably necessary to enable registration of the instrument of transfer to occur.

12 Carrying out of the Work

- 12.1 The Development Contribution comprising the carrying out of the Work is made for the purposes of this Agreement on Works Completion.
- 12.2 The Work that is required to be carried out by the Developer under this Agreement is to be carried out in accordance with:
 - 12.2.1 the requirements of this agreement,
 - 12.2.2 any relevant Development Consent and associated Construction Certificate,
 - 12.2.3 any other applicable law, and
 - 12.2.4 otherwise to the reasonable satisfaction of the Council.

13 Access to the Land

- 13.1 The Developer is to take such steps as are necessary to enable the Council, its officers, employees, agents and contractors to enter the Land or any other land owned or controlled by the Developer at any time, upon giving reasonable prior notice, in order to inspect, examine or test any of the Work or to remedy any breach of the Developer relating to the carrying out of the Work.
- 13.2 The Council is to take such steps as are necessary to enable the Developer to enter and occupy any land owned or controlled by the Council for the purpose of enabling the Developer to carry out the Work under this



Agreement on such land or to perform any other obligation imposed on the Developer by or under this Agreement.

14 Protection of people and property

- 14.1 The Developer is to ensure to the fullest extent reasonably practicable in relation to the carrying out of any Work that:
 - 14.1.1 all necessary measures are taken to protect people and property, and
 - 14.1.2 unnecessary interference with the passage of people and vehicles is avoided, and
 - 14.1.3 nuisances and unreasonable noise and disturbances are prevented.

15 Protection of public utilities & services

- 15.1 Except as authorised in writing by the Council, the Developer is not to obstruct or damage any road, footpath, drain or watercourse or other public utility or service on or near land on which Work is or is to be carried out and is to remove immediately and at its own cost any such obstruction and make good any damage caused as a consequence of the obstruction.

16 Damage and repairs to Work

- 16.1 The Developer, at its own cost, is to repair and make good to the reasonable satisfaction of the Council any loss or damage to the Work from any cause whatsoever which occurs before Works Completion or before the final occupation certificate for the Development, whichever is later.

17 Variation of the Work

- 17.1 The Work is not to be varied by the Developer, unless:
 - 17.1.1 the Parties agree in writing to the variation, and
 - 17.1.2 any consent, approval or process required under the Act or any other law to the variation is first obtained or carried out.
- 17.2 For the purposes of clause 17.1, a variation may relate to any matter in relation to the Works that is dealt with by this Agreement.

18 Works Completion

- 18.1 The Work is completed for the purposes of this Agreement when:-
 - 18.1.1 work is completed in accordance with the requirements of clause 12.2, and
 - 18.1.2 either:
 - (a) the Council has advised that the Work, as shown in the full works-as-executed plans required to be submitted to the Council by the Developer in accordance with clause 21, is in accordance with the requirements for the Work in clause 12.2; or



- (b) the Developer has given the Council a Compliance Certificate to that effect.

19 Procedures relating to the rectification of defects

- 19.1 During the Defects Liability Period, the Council may give the Developer a Rectification Notice.
- 19.2 Subject to the resolution of a dispute in accordance with this Agreement, the Developer is to comply with a Rectification Notice at its own cost and to the reasonable satisfaction of the Council.
- 19.3 If the Developer breaches clause 19.2, the Council may have the relevant defect rectified and may recover its costs of so doing at the discretion of the Council either as a debt due in a court of competent jurisdiction or from the Security subject to clause 23.9.

20 Failure to carry out Work

- 20.1 If the Council reasonably considers that the Developer is in breach of any obligation under this Agreement relating to the Work, the Council may give the Developer a notice requiring the breach to be rectified to the Council's reasonable satisfaction.
- 20.2 A notice given under clause 20.1 is to allow the Developer a period of not less than 28 days to rectify the breach or such further period as the Council considers reasonable in the circumstances.
- 20.3 The Council may carry out and complete the Work the subject of a notice under clause 20.1 if the Developer fails to comply with the notice to the Council's reasonable satisfaction. The Council may recover its costs of so doing at the discretion of the Council either as a debt due in a Court of competent jurisdiction or from the Security subject to clause 23.9.
- 20.4 The Developer is to do all things reasonably necessary to enable the Council to exercise its rights under clause 20.3.

21 Works-As-Executed-Plan

- 21.1 The Developer must submit to the Council full works-as-executed plans for the Work for the purposes of clause 18.

Part 3 – Other Provisions

22 Indemnity and Insurance

- 22.1 The Developer indemnifies the Council, its employees, officers, agents, contractors and workmen from and against all losses, damages, costs (including legal costs on a full indemnity basis), charges, expenses, actions, claims and demands whatsoever which may be sustained, suffered, recovered or made arising in connection with a negligent act or omission of the Developer in carrying out any Work and the performance of any other obligation under this Agreement.



- 22.2 The Developer is to take out and keep current to the satisfaction of the Council the following insurances in relation to Work required to be carried out by the Developer under this Agreement up until the time that Work is taken to have been completed in accordance with this Agreement:
- 22.2.1 contract works insurance, noting the Council as an interested party, for the full replacement value of a Work (including the cost of demolition and removal of debris, consultants' fees and authorities' fees), to cover the Developer's liability in respect of damage to or destruction of the Work,
 - 22.2.2 public liability insurance for at least \$20,000,000.00 for a single occurrence, which covers the Council, the Developer and any subcontractor of the Developer, for liability to any third party,
 - 22.2.3 workers compensation insurance as required by law, and
 - 22.2.4 any other insurance required by law.
- 22.3 If the Developer fails to comply with clause 22.2, the Council may effect and keep in force such insurances and pay such premiums as may be necessary for that purpose and the amount so paid shall be a debt due from the Developer to the Council and may be recovered by the Council as it deems appropriate including:
- 22.3.1 by calling upon the Security provided by the Developer to the Council under this Agreement in relation to the Work, or
 - 22.3.2 recovery as a debt due in a court of competent jurisdiction.
- 22.4 Prior to commencing the carrying out of any Work and whenever requested in writing by the Council, the Developer is to provide to the Council satisfactory written evidence of all of the insurances specified in clause 22.2.

23 Provision of Security

- 23.1 The Security relates to the Developer's obligation to construct and dedicate the New Street in accordance with this Agreement.
- 23.2 The Developer is to provide the Council with a Security prior to the issuing of the first Construction Certificate for the first Stage of the built form of the Development.
- 23.3 The amount of a Security is to be indexed annually in accordance with the *Consumer Price Index (All Groups - Sydney)* published by the Australian Bureau of Statistics.
- 23.4 The Developer is to ensure that a Security held by the Council at all times equals the amount of the Security so indexed.
- 23.5 The Developer may at any time provide the Council with a replacement Security and, in such case, the Council is to release and return to the Developer, as directed, the Security it holds that has been replaced.
- 23.6 The Council is to release and return 75% of the Security or any unused part of it to the Developer within 14 days of compliance by the Developer with its Development Contribution obligations to which the Security relates.
- 23.7 The Council is to release and return the remainder of the Security upon the expiration of the Defects Liability Period or within 30 days of the issuing of the final Occupation Certificate for the final Stage of the built form of the Development, whichever occurs last.



- 23.8 The Council may call-up a Security if it considers, acting reasonably, that the Developer has not complied with its obligations under this Agreement to which the Security relates.
- 23.9 However, the Council is not to call-up a Security unless it has given the Developer not less than 28 days notice of its intention to do so and the Developer has not rectified the non-compliance to the Council's reasonable satisfaction before that period has expired and any dispute resolution process commenced by the Developer under clauses 25 or 26 has been concluded.
- 23.10 If the Council calls-up a Security, it may use the amount paid to it in satisfaction of any costs incurred by it in remedying the non-compliance including but not limited to:
 - 23.10.1 the reasonable costs of the Council's servants, agents and contractors reasonably incurred for that purpose,
 - 23.10.2 all fees and charges necessarily or reasonably incurred by the Council in order to have the Work carried out, completed or rectified, and
 - 23.10.3 all legal costs and expenses reasonably incurred by the Council, by reason of the Developer's non-compliance.
- 23.11 If the Council calls-up a Security, it may, by notice in writing to the Developer, require the Developer to provide a further or replacement Security in an amount that, when added to any unused portion of any existing Security, does not exceed the amount of the Security the Council is entitled to hold under this Agreement relating to the relevant Development Contribution obligation.

24 Enforcement in a court of competent jurisdiction

- 24.1 Without limiting any other provision of this Agreement, the Parties may enforce this Agreement in any court of competent jurisdiction.
- 24.2 For the avoidance of doubt, nothing in this Agreement prevents:
 - 24.2.1 a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Agreement or any matter to which this Agreement relates,
 - 24.2.2 the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Agreement or any matter to which this Agreement relates.

25 Dispute Resolution - mediation

- 25.1 This clause applies to any dispute under this Agreement. Such a dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the dispute.
- 25.2 If a notice is given under clause 25.1, the Parties are to meet within 14 days of the notice in an attempt to resolve the dispute.
- 25.3 If the dispute is not resolved within a further 28 days, the Parties must mediate the dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and must request the President of the Law Society, or the President's nominee, to select a mediator.
- 25.4 If the dispute is not resolved by mediation within a further 28 days, or such longer period as may be necessary to allow any mediation process which has



been commenced to be completed, then the Parties may exercise their legal rights in relation to the dispute, including by the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.

26 Registration of this Agreement

- 26.1 The Parties agree to register this Agreement on the title to the Land. The Developer must use its best endeavours to obtain the consent of the persons specified in s93H(1) of the Act (including any mortgagees) to the registration of this Agreement on the Land and to cause this Agreement to be registered on the title to the Land or so much of the Land as is possible having regard to its obligation under this clause.
- 26.2 For the purpose of clause 26.1:
- 26.2.1 the Council:
- (a) acknowledges that prior to this Agreement commencing, it was provided with evidence satisfactory to it evidencing the consent of the persons specified in s93H(1) of the Act to registration of this Agreement; and
 - (b) is to do such things as are reasonably necessary to enable registration to occur;
- 26.2.2 prior to registration being effected, the Developer is not to cause, permit or allow the creation of any new mortgage interest in the Land unless the Council has first been provided with evidence satisfactory to it evidencing the consent of the mortgagee to the registration of this Agreement.
- 26.3 Subject to this clause, prior to the LEP taking effect or such later date as is agreed, the Developer is to provide the Council with the following documents to enable registration of this Agreement:
- 26.3.1 an instrument requesting registration of this Agreement on the title to the Land in registrable form duly executed by the Developer, and
- 26.3.2 the written irrevocable consent of each person referred to in s93H(1) of the Act to that registration.
- 26.4 Provided that the Developer is not in breach of this Agreement at the time, the Council is to do such things as are reasonably necessary as requested by the Developer to facilitate the lodging of a request for the registration of this Agreement to be removed from the title to a Final Lot.
- 26.5 The Council is to promptly agree to a request by the Developer for the lodging of a request for the registration of this Agreement to be removed from the title of any part of the Land once the Developer has made all of the Development Contributions required of it under this Agreement.
- 26.6 The Parties are to agree to the lodging of a request for the registration of this Agreement to be removed from any part of the Land if this Agreement is terminated.
- 26.7 The Developer is not to object to the Council lodging and maintaining a caveat over the Land until such time as this Agreement is registered in accordance with this clause.



27 Assignment, Sale of Land, etc

- 27.1 Unless the matters specified in clause 27.2 are satisfied, the Developer is not to do any of the following:
 - 27.1.1 sell or transfer any part of the Land (other than a Final Lot) to any person, or
 - 27.1.2 assign the Developer's rights or obligations under this Agreement, or novate this Agreement, to any person.
- 27.2 The matters required to be satisfied for the purposes of clause 27.1 are as follows:
 - 27.2.1 the Developer has, at no cost to the Council, first procured, to the reasonable satisfaction of the Council, the execution by the person of an agreement in favour of the Council under which the person assumes the Developer's obligations under this Agreement, and
 - 27.2.2 the Developer is not in breach of this Agreement.
- 27.3 This clause ceases to apply once the Developer has complied with its obligations to make the Development Contributions.

28 Review of this Agreement

- 28.1 The Parties are to review this Agreement if the Developer notifies the Council or the Council notifies the Developer that any change of circumstance has occurred, or is imminent, that materially affects the operation of this Agreement, or the Council notifies the Developer that it considers that circumstances exist that justify the review.
- 28.2 For the purposes of clause 28.1, the relevant changes include (but are not limited to) any change to a law that restricts or prohibits or enables the Council or any other planning authority to restrict or prohibit any aspect of the Development.
- 28.3 For the purposes of addressing any matter arising from a review of this Agreement referred to in clause 28.1, the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Agreement.
- 28.4 If this Agreement becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties agree to do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Agreement is entered into.
- 28.5 A failure by a Party to agree to take action requested by the other Party as a consequence of a review referred to in clause 28.1 is not a dispute for the purposes of clause 25 and is not a breach of this Agreement.

29 Notices

- 29.1 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:
 - 29.1.1 delivered or posted to that Party at its address set out in the Summary Sheet,



- 29.1.2 faxed to that Party at its fax number set out in the Summary Sheet, or
- 29.1.3 emailed to that Party at its email address set out in the Summary Sheet.
- 29.2 If a Party gives the other Party 3 business days notice of a change of its address, fax number or email address, 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, fax number or email address.
- 29.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
 - 29.3.1 delivered, when it is left at the relevant address,
 - 29.3.2 sent by post, 2 business days after it is posted,
 - 29.3.3 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, or
 - 29.3.4 sent by email and the sender does not receive a delivery failure message from the sender's internet service provider within a period of 24 hours of the email being sent.
- 29.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, or the period referred to in clause 29.3.4 expires, on a day that is not a business day or after 5pm on a business day, it is to be treated as having been given or made at 9am on the next business day.

30 Approvals and Consent

- 30.1 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.
- 30.2 A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

31 Costs

- 31.1 The Developer is to pay to the Council the Council's reasonable legal and other costs incurred relating to this Agreement not exceeding \$32,000.00 within 7 days of written demand by the Council identifying the expenditures.

32 Entire Agreement

- 32.1 This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with.
- 32.2 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.



33 Further Acts

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

34 Governing Law and Jurisdiction

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

35 No Fetter

- 35.1 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.
- 35.2 If, contrary to the operation of this clause, any provision of this planning agreement is held by a Court of competent jurisdiction to constitute an unlawful fetter on any discretion, power or duty, the parties agree:-
- 35.2.1 they will take all practical steps, including the execution of any further documents to ensure the objective of this clause is substantially satisfied; and
- 35.2.2 to endeavour to satisfy the common objectives of the parties in relation to the provision of this Agreement which is held to be an unlawful fetter to the extent that it is possible having regard to the relevant court judgment.

36 Representations and Warranties

- 36.1 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.

37 Severability

- 37.1 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.
- 37.2 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.



38 Modification

- 38.1 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.

39 Waiver

- 39.1 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.
- 39.2 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.
- 39.3 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.

40 GST

- 40.1 In this clause:

Adjustment Note, Consideration, GST, GST Group, Margin Scheme, Money, Supply and Tax Invoice have the meaning given by the GST Law.

GST Amount means in relation to a Taxable Supply the amount of GST payable in respect of the Taxable Supply.

GST Law has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Input Tax Credit has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a party includes an Input Tax Credit for an acquisition made by that party but to which another member of the same GST Group is entitled under the GST Law.

Taxable Supply has the meaning given by the GST Law excluding (except where expressly agreed otherwise) a supply in respect of which the supplier chooses to apply the Margin Scheme in working out the amount of GST on that supply.

- 40.2 Subject to clause 40.4, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Agreement, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- 40.3 Clause 40.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Agreement to be GST inclusive.
- 40.4 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Agreement by one Party to the other Party that are not subject to Division 82 of the *A New Tax System (Goods and Services Tax) Act 1999*, the Parties agree:
- 40.4.1 to negotiate in good faith to agree on the GST including the market value of those Supplies prior to issuing Tax Invoices in respect of those Supplies;

118-124 Terry Street, Rozelle Planning Agreement

Leichhardt Municipal Council

Anka Constructions Pty. Ltd.



- 40.4.2 that any amounts payable by the Parties in accordance with clause 40.2 (as limited by clause 41.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 40.5 No payment of any amount pursuant to this clause 40, and no payment of the GST Amount where the Consideration for the Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided a Tax Invoice or Adjustment Note as the case may be to the recipient.
- 40.6 Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability.
- 40.7 This clause continues to apply after expiration or termination of this Agreement.



Schedule 1

(Clause 8.1)

Development Contributions

Column 1	Column 2	Column 3	Column 4
Item	Public Purpose	Manner & Extent	Timing
Monetary Contributions			
Monetary contributions	A: For amounts equivalent to amounts calculated up to the current legislative capping as at 17 May 2011:- Towards public purposes in Council's area including but not limited to those purposes described in the Contributions Plan CP. B: For amounts greater than amounts in A:- Affordable housing in the Council's area.	In amounts calculated in accordance with the amounts that would be payable if the Contributions Plan applied to the Development (estimated to be approximately \$4,160,000, on the Planning Proposal) but disregarding any Ministerial direction under s94E of the Act capping the amount of any such contribution and disregarding any future change to legislation, Ministerial directions or anything else that may reduce the contributions otherwise payable under that plan in respect of the Development and subject to indexation only of any contributions that have not been paid within two (2) years from the date that the LEP is in accordance with the CPI (Sydney All Groups) on and from that date until the date of payment.	The amount for each Stage of the built form of the Development is to be paid prior to the issuing of the first Construction Certificate for that Stage.

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Column 1	Column 2	Column 3	Column 4
Item	Public Purpose	Manner & Extent	Timing
Additional Floor Space	Towards public purposes in the Council's area at the discretion of the Council.	\$3,000.00 per square metre for any extra square metre of Gross floor area of the Development above a Floor space ratio of 1.5:1 The amount to be paid for each Stage is calculated by determining the proportion of the number of dwellings in each stage compared to the total number of dwellings for the whole of the Development.	The amount for each Stage of the built form is to be paid prior to the issuing of the first Construction Certificate for that Stage.
Affordable Housing Fund	Affordable housing in the Council's area	\$270,000 The amount to be paid for each Stage is calculated by determining the proportion of the number of dwellings in each stage compared to the total number of dwellings for the whole of the Development.	The amount for each Stage of the built form is to be paid prior to the issuing of the first Construction Certificate for that Stage.
Dedication of land			
New Street	Public road	That part of the Land on which New Street has been constructed.	The land is to be dedicated at the time of Works Completion of the New Street.
Carrying out of Work			
New Street	Public road	Construction of the New Street in the location generally described in the Planning Proposal. In accordance with this Agreement.	The Work is to be completed prior to the issuing of an Occupation Certificate for the first Stage of the built form.

118-124 Terry Street, Rozelle Planning Agreement
Leichhardt Municipal Council
Anka Constructions Pty. Ltd.



Execution

Executed as an Agreement

Dated:

Executed on behalf of the Council

General Manager

Witness/Name/Position

Executed on behalf of the Developer in accordance with s127(1) of the
Corporations Act (Cth) 2001

Name/Position

Andrew Boyarsky / Managing Director

Name/Position

LARISA GOLDGUBER

company secretary

APPENDIX H

Appendix H

Council resolution (C128/11) - 19th April 2011

(a) Council note the key changes made to the Planning Proposal in response to its previous resolution, namely:

- Additional information submitted in respect of traffic and car parking
- Confirmation that the size of the proposed supermarket and other retail tenancies will not exceed 300m²
- A reduction in the FSR from 1.7:1 to 1.5:1
- Street front buildings of no more than 3 storeys and internal buildings of no more than 6 storeys
- Reduced overshadowing of the Crystal Street properties
- Revised Voluntary Planning Agreement taking into account the reduced FSR and addressing the issue of affordable housing
- Reduced bulk and scale
- An amount of open space greater than currently proposed
- Leading Environmental Sustainable Design principles in excess of BASIX
- More detailed information in relation to the retail tenancies
- Addressing the issue of privacy in relation to the private open space of adjoining properties.

The revised Planning Proposal also includes an assessment of the need for the New Street.

(b) Council endorse the Planning Proposal (refer Appendix A of the report) subject to:

- A notation being placed on the plan that the new street will not be the subject of compulsory acquisition and will remain as a cul de sac until the adjoining land is developed.
- Investigation of the parking rates as they apply to the site and commence the process to amend Leichhardt Local Environmental Plan 2000, which will:
 - (i) rezone the site known as Lot 3 in DP 119, Lot 2 in DP 234045 and Lot 1 in DP 540118, 118-124 Terry Street, Rozelle from industrial to residential;
 - (ii) establish a Maximum Floor Space Ratio of 1.5:1
 - (iii) provide site-specific height controls for the subject site;
 - (iv) provide for small-scale non-residential uses on specific properties appropriate identified that would otherwise not be permissible in the residential zone.

(c) That prior to the Planning Proposal being forwarded to the Minister for Planning to commence the Gateway process, Anka enter into a legal agreement with Council that

binds Anka to proceed with the VPA should the planning proposal proceed to formal exhibition. After this agreement is entered into, Council notify the Director-General of the Department of Planning of the Planning Proposal in accordance with section 56 of the Environmental Planning and Assessment Act and enclose a copy of Council's Draft 2010 Employment Lands Study.

- (d) In relation to the ongoing assessment of the Planning Proposal, the application be requested to submit a consolidated set of the following documents for endorsement by Council prior to the commencement of the Statutory public exhibition process:
- (i) **Planning Justification Report:** The report is to include a full justification for the rezoning and analysis of planning and land-use choices and issues, particularly as they depart from Council's previous requirements.
 - (ii) **Environmental Performance Report:** This report should demonstrate how the development will incorporate ecologically sustainable development principles in the design, construction and ongoing phases of the development with a view to achieving a minimum 5 star rating.
 - (iii) **Parking, Traffic, Transport and Accessibility Study:** This study to be prepared by a suitably qualified transport consultant, is to provide advice regarding the proposed parking rates, car share, cycle paths, cycle storage facilities, road layout for the site, integration with the existing road network and analysis of any local traffic impacts resulting from redevelopment. In addition, the study should include an analysis of opportunities to integrate the redevelopment of the site with the local public transport networks, new and existing cycle paths and pedestrian networks. The study should also address the issue of parking rates for peer review on behalf of Council by ARUP. Any change to the parking rates must be endorsed by Council prior to the Planning Proposals Statutory exhibition period.
 - (iv) **Heritage Impact Study:** This study would be prepared by a suitably qualified heritage consultant and advise of any heritage impacts on nearby heritage items and conservation areas on the site.
 - (v) **Stormwater Management Plan and Water Sensitive Urban Design Study:** To be prepared by a suitably qualified engineer to analyse the stormwater management of the proposal and any potential flooding issues. This plan would also examine opportunities for water sensitive urban design.
 - (vi) **Contamination Study:** Prepared by a suitably qualified environmental consultant in accordance with the requirements of the NSW EPA Guidelines for Consultants Reporting on Contaminated Sites to determine if the site is suitable for the proposed use in accordance with SEPP 55, or alternatively advise if remediation works are necessary to make the site suitable for the proposed use by way of a Remediation Action Plan.
 - (vii) **Retail, Economic Impact Study:** Prepared by a suitably qualified economic consultant, to confirm the role and function of the proposed non residential aspects of the proposed development.
 - (viii) **Active Transport and Open Space Study:** Prepared by a suitably qualified consultant to provide advice on open space provision and linkages between the site and surrounding recreation, open space and community destinations.
 - (ix) **Social Impact Assessment:** Prepared by a suitably qualified consultant in accordance with Council's Social Impact Assessment Policy.

(x) **Community Consultation Strategy:** The statutory Local Environmental Plan preparation process incorporates a minimum public exhibition period of twenty-eight (28) days to allow community input into a draft Local Environmental Plan. However, given the history of the site, it is recommended that a comprehensive community consultation program that goes beyond the minimum statutory requirements be prepared with specific reference to the bulk and scale and the issues raised by Wellington Street residents.

(xi) **Development Control Plan:** The Development Control Plan is to be based on an Urban Design Study. The Urban Design Study should draw on the results of the Allen Jack + Cottier study and the revised concept plans referred to in this report. The study should examine appropriate built form for the site, including proposed building envelopes, open space provision, heights and floor space ratio. The study should also address existing and proposed overshadowing, solar access, acoustic privacy, visual privacy, view loss, include provision for deep rooted street trees within the Crystal Street public domain, and environmental and residential amenity of the site and adjoining properties.

The Development Control Plan is to be drafted and endorsed by Council prior to the Planning Proposals Statutory exhibition period. The Development Control Plan will be placed on exhibition concurrently with the Planning Proposal during the Statutory exhibition period.

(xii) **Voluntary Planning Agreement:** A Voluntary Planning Agreement is to be drafted and endorsed by Council prior to the Planning Proposals Statutory exhibition period. The Voluntary Planning Agreement will be placed on exhibition concurrently with the Planning Proposal during the Statutory exhibition period.

APPENDIX I

1. The first part of the report is a summary of the findings of the study.

2. The second part of the report is a detailed description of the methodology used.

3. The third part of the report is a discussion of the results and their implications.

4. The fourth part of the report is a conclusion and recommendations.

5. The fifth part of the report is a list of references.



Lindsay Taylor lawyers

118-124 Terry Street, Rozelle

Planning Agreement

Under s93F of the *Environmental Planning and Assessment Act 1979*

Leichhardt Municipal Council

Anka Constructions Pty. Ltd.

Date:

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lawyers

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Planning Agreement

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Leichhardt Municipal Council
Anka Constructions Pty. Ltd.



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Summary Sheet

Council:

Name: Leichhardt Municipal Council
Address: 7-15 Wetherill Street, Leichhardt NSW 2040
Telephone: 9367 9222
Facsimile: 9367 9111
Email: leichhardt@lmc.nsw.gov.au
Representative: David Marshall

Developer:

Name: Anka Constructions Pty. Ltd.
Address: 179-191 New South Head Road, Edgecliffe NSW 2027
Telephone: 9302 3000
Facsimile: 9302 3030
Email: andrewb@ankaproperty.com
Representative: Andrew Boyarsky

Land:

See definition of *Land* in clause 1.1.

Development:

See definition of *Development* in clause 1.1.

Development Contributions:

See Part 2 and Schedule 1.

Application of s94, s94A and s94EF of the Act:

See clause 7.

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Leichhardt Municipal Council
Anka Constructions Pty. Ltd.



Security:

See clause 23.

Dispute Resolution:

Mediation. See clause 25.

Registration:

See clause 26.

Restriction on dealings:

See clause 27.



118-124 Terry Street, Rozelle Planning Agreement

Under s93F of the *Environmental Planning and Assessment Act 1979*

Parties

Leichhardt Municipal Council ABN 92 379 942 845 of 7-15 Wetherill Street
Leichhardt NSW 2040 (**Council**)

and

Anka Constructions Pty. Ltd. ABN 12 008 749 013 of 179-191 New South
Head Road, Edgecliff, NSW 2027 (**Developer**)

Background

- A The Developer is the owner of the Land.
- B The Council is a council constituted under the *Local Government Act 1993*.
- C The Developer has requested that the Council submit the Planning Proposal to the Minister for the making of the LEP.
- D The Developer wishes to carry out the Development if the LEP occurs.
- E The Developer has agreed to make Development Contributions in connection with the carrying out of the Development in accordance with this Agreement.

Operative provisions

Part 1 - Preliminary

1 Definitions & Interpretation

- 1.1 In this Agreement the following definitions apply:

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

Agreement means this Agreement and includes any schedules, annexures and appendices to this Agreement.

Bank Guarantee means an irrevocable and unconditional undertaking without any expiry or end date in favour of the Council to pay an amount or amounts of money to the Council on demand issued by:

- (a) one of the following trading banks:
 - (i) Australia and New Zealand Banking Group Limited,
 - (ii) Commonwealth Bank of Australia,



- (iii) Macquarie Bank,
- (iv) National Australia Bank Limited,
- (v) St George Bank Limited,
- (vi) Westpac Banking Corporation, or
- (b) any other financial institution approved by the Council in its absolute discretion.

Compliance Certificate has the same meaning as in the Act.

Construction Certificate has the same meaning as in the Act.

Contributions Plan means:

- (a) *Developer Contributions Plan No 2 - Community Facilities and Services (2005)*, effective as of 23 August 2005;
- (b) *Developer Contributions Plan No 1 - Open Space and Recreation*, effective as of 18 January 2005; and
- (c) *Environmental Planning and Assessment Act 1979 – Leichardt Developer Contributions Plan – Transport and Access* - made 26 October 1999, operational on 3 November 1999.

Defects Liability Period means the period commencing on the day after Works Completion and ending 12 months after that day.

Development means any development of the Land that is only permissible by reason of the LEP and includes demolition of the existing structures on the Land for the development, the remediation of the Land for the development and the preparation of the Land for the development.

Development Application has the same meaning as in the Act and includes a project application under Part 3A of the Act or any other process or procedure for the obtaining of development consent or approval for the carrying out of development.

Development Consent has the same meaning as in the Act and includes a project approval under Part 3A of the Act or other replacement form of consent or approval for the carrying out of development.

Development Contribution means a monetary contribution, the dedication of land free of cost, the carrying out of work, or the provision of any other material public benefit, or any combination of them required to be made under this Agreement, to be used for, or applied towards, the provision of public amenities or services or another public purpose as required by this Agreement.

Final Lot means a lot created by a strata subdivision of the built form of the Development for separate occupation and disposition as a dwelling.

Floor space ratio has the same meaning as in *Leichhardt Local Environmental 2000* as it was on 17 May 2011.

Gross floor area has the same meaning as in *Leichhardt Local Environmental 2000* as it was on 17 May 2011.

GST has the same meaning as in the GST Law.

GST Law has the same meaning as in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition or administration of the GST.

Land means 118-124 Terry Street Rozelle being Lot 3/D in DP119, Lot 2 in DP 234045 and Lot 1 in DP 540118.

118-124 Terry Street, Rozelle Planning Agreement

Leichhardt Municipal Council

Anka Constructions Pty. Ltd.



LEP means an amendment of *Leichhardt Local Environmental Plan 2000* which makes development including residential development of the Land having a floor space ratio of not less than 1.5:1 (as defined in *Leichhardt Local Environmental Plan 2000* on 17 May 2011) permissible with consent.

Modification Application means an application under s96 or s96AA of the Act or a modification application under s75W of the Act or any other process or procedure for obtaining a modification of a Development Consent.

New Street means the new road to be constructed on the Land and dedicated by the Developer generally as described in the Planning Proposal (including any necessary or incidental drainage, services and lighting) in accordance with AUSTROADS, all relevant Australian Standards and any Development Consent.

Occupation Certificate has the same meaning as in the Act.

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

Planning Proposal means the document entitled *Planning Proposal, 118-124 Terry Street, Rozelle* prepared by Ingham Planning Pty Limited and dated April 2011.

Rectification Notice means a notice in writing that identifies a defect in a work and requires rectification of the defect within a specified period of time.

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

Security means an amount of \$1,200,000 (or such other amount as the Developer and the Council agree in writing) as a Bank Guarantee or such other kind of security as is agreed to by the Council in its absolute discretion.

Stage means a stage of the Development as approved in a Development Consent for the Development.

Subdivision Certificate has the same meaning as in the Act.

Work means the physical result of any building, engineering or construction work in, on, over or under land for the construction of the New Street as required to be carried out by the Developer under this Agreement.

Works Completion means the date on which the Work is completed as provided by clause 18 of this Agreement.

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

- 1.2.1 Headings are inserted for convenience only and do not affect the interpretation of this Agreement.
- 1.2.2 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.
- 1.2.3 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.
- 1.2.4 A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- 1.2.5 A reference in this Agreement to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST.



- 1.2.6 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.
- 1.2.7 A reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- 1.2.8 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
- 1.2.9 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- 1.2.10 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.
- 1.2.11 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.
- 1.2.12 References to the word 'include' or 'including' are to be construed without limitation.
- 1.2.13 A reference to this Agreement includes the agreement recorded in this Agreement.
- 1.2.14 A reference to a party to this Agreement includes a reference to the servants, agents and contractors of the party, and the party's successors and assigns.
- 1.2.15 Any schedules, appendices and attachments form part of this Agreement.
- 1.2.16 Notes appearing in this Agreement are operative provisions of this Agreement.

2 Application of this Agreement

- 2.1 This Agreement applies to the Land and to the Development.

3 Commencement of this Agreement

- 3.1 This Agreement commences when it has been executed by all of the Parties.
- 3.2 The Party who executes this Agreement last is to notify the other Parties once it has done so and promptly provide them with a copy of the fully executed version of this Agreement.
- 3.3 This agreement may be executed in counterparts and if so the counterparts together constitute the Agreement.

4 Commencement of Development Contributions obligations

- 4.1 The Developer is under no obligation to make the Development Contributions to the Council in accordance with this Agreement unless the LEP takes effect.



5 Further Agreements Relating to this Agreement

- 5.1 The Parties may, at any time, enter into such other agreements or arrangements relating to the subject-matter of this Agreement that they consider are necessary or desirable in order to give effect to this Agreement.
- 5.2 An agreement or arrangement referred to in clause 5.1 is not to be inconsistent with this Agreement.

6 Surrender of right of appeal, etc.

- 6.1 The Developer is not to commence or maintain, or cause to be commenced or maintained, any proceedings in a court involving an appeal against, or questioning the validity of, a Development Consent relating to the Development or an approval of a Modification Application in relation to a Development Consent for the Development to the extent that it relates to the validity of this Agreement or a condition of the Development Consent that requires this Agreement to be entered into and/or performed according to the terms of this Agreement.

7 Application of s94, s94A and s94EF of the Act to the Development

- 7.1 This Agreement excludes the application of s94 of the Act to the Development, the subject of Development Applications referred to in clauses 9.1, 9.2.1 and 9.2.2.
- 7.2 This Agreement excludes the application of s94A of the Act to the Development, the subject of Development Applications referred to in clauses 9.1, 9.2.1 and 9.2.2.
- 7.3 The Agreement does not exclude the application of s94 or s94A to development the subject of a Development Application referred to in clause 9.2.3, and, the benefits of this Agreement are not to be taken into account in determining a development contribution under s94 of the Act in relation to that development.
- 7.4 This Agreement does not exclude the application of s94EF of the Act to the Development.

Part 2 –Development Contributions

8 Provision of Development Contributions

- 8.1 The Developer is to make the Development Contributions in accordance with this clause and schedule 1 of this Agreement and otherwise to the satisfaction of the Council,
- 8.2 The Developer and the Council may agree in writing to vary the Developer's obligations to make Development Contributions under this Agreement if the Council considers that the public interest would be better served by making the variation having regard to town planning conditions prevailing at the time of the variation.



- 8.3 The Council is to accept and apply each Development Contribution made by the Developer under this Agreement towards the public purpose for which it is made and otherwise in accordance with this Agreement.

Part 3 – Other Obligations of the Developer

9 Development application

- 9.1 Subject to this clause, the Developer is not to submit more than one Development Application for the Development.
- 9.2 Nothing in clause 9.1 prevents the Developer submitting a new Development Application for the Development:
- 9.2.1 if the Development Application for the Development is refused;
- 9.2.2 if the Development Consent for the Development:
- (a) lapses; or
- (b) is surrendered prior to physical commencement; or
- 9.2.3 once the Developer has complied with its obligations to make the Development Contributions.

Part 4 – Provisions relating to Development Contributions

10 Procedures relating to payment of monetary Development Contributions

- 10.1 A monetary Development Contribution is made for the purposes of this Agreement when the Council receives the full amount of the contribution payable under this Agreement by a cleared unendorsed bank cheque or by the deposit by means of electronic funds transfer of cleared funds into a bank account nominated by the Council.
- 10.2 The Developer is to give the Council written notice of any application made for a construction certificate for the Development which triggers an obligation to pay a monetary development contribution.
- 10.3 The Developer is not required to pay a monetary Development Contribution under this Agreement unless the Council, after having received the Developer's notice under clause 10.2, has given to the Developer a tax invoice for the amount of the Development Contribution.
- 10.4 The Developer is not in breach of this Agreement if it fails to pay a monetary Development Contribution at the time required by this Agreement by reason only of the Council's failure to give to the Developer a tax invoice in relation to the amount proposed to be paid by it.



11 Procedures relating to the dedication of land

- 11.1 A Development Contribution comprising the dedication of land is made for the purposes of this Agreement when:
 - 11.1.1 a deposited plan is registered in the register maintained by the Registrar-General under the *Real Property Act 1900* that dedicates land as a public road (including a temporary public road) under the *Roads Act 1993* or creates a public reserve or drainage reserve under the *Local Government Act 1993*, or
 - 11.1.2 the Council is given an instrument in registrable form under the *Real Property Act 1900* that is effective to transfer the title to the land to the Council when registered.
- 11.2 For the purposes of clause 11.1.2:
 - 11.2.1 the Developer is to give the Council, for execution by the Council as transferee, an instrument of transfer under the *Real Property Act 1900* relating to the land to be dedicated,
 - 11.2.2 the Council is to execute the instrument of transfer and return it to Developer within 14 days of receiving it from the Developer,
 - 11.2.3 the Developer is to lodge the instrument of transfer for registration with the Registrar General within 14 days of receiving it from the Council duly executed,
 - 11.2.4 the Developer and the Council are to do all things reasonably necessary to enable registration of the instrument of transfer to occur.

12 Carrying out of the Work

- 12.1 The Development Contribution comprising the carrying out of the Work is made for the purposes of this Agreement on Works Completion.
- 12.2 The Work that is required to be carried out by the Developer under this Agreement is to be carried out in accordance with:
 - 12.2.1 the requirements of this agreement,
 - 12.2.2 any relevant Development Consent and associated Construction Certificate,
 - 12.2.3 any other applicable law, and
 - 12.2.4 otherwise to the reasonable satisfaction of the Council.

13 Access to the Land

- 13.1 The Developer is to take such steps as are necessary to enable the Council, its officers, employees, agents and contractors to enter the Land or any other land owned or controlled by the Developer at any time, upon giving reasonable prior notice, in order to inspect, examine or test any of the Work or to remedy any breach of the Developer relating to the carrying out of the Work.
- 13.2 The Council is to take such steps as are necessary to enable the Developer to enter and occupy any land owned or controlled by the Council for the purpose of enabling the Developer to carry out the Work under this



Agreement on such land or to perform any other obligation imposed on the Developer by or under this Agreement.

14 Protection of people and property

- 14.1 The Developer is to ensure to the fullest extent reasonably practicable in relation to the carrying out of any Work that:
 - 14.1.1 all necessary measures are taken to protect people and property, and
 - 14.1.2 unnecessary interference with the passage of people and vehicles is avoided, and
 - 14.1.3 nuisances and unreasonable noise and disturbances are prevented.

15 Protection of public utilities & services

- 15.1 Except as authorised in writing by the Council, the Developer is not to obstruct or damage any road, footpath, drain or watercourse or other public utility or service on or near land on which Work is or is to be carried out and is to remove immediately and at its own cost any such obstruction and make good any damage caused as a consequence of the obstruction.

16 Damage and repairs to Work

- 16.1 The Developer, at its own cost, is to repair and make good to the reasonable satisfaction of the Council any loss or damage to the Work from any cause whatsoever which occurs before Works Completion or before the final occupation certificate for the Development, whichever is later.

17 Variation of the Work

- 17.1 The Work is not to be varied by the Developer, unless:
 - 17.1.1 the Parties agree in writing to the variation, and
 - 17.1.2 any consent, approval or process required under the Act or any other law to the variation is first obtained or carried out.
- 17.2 For the purposes of clause 17.1, a variation may relate to any matter in relation to the Works that is dealt with by this Agreement.

18 Works Completion

- 18.1 The Work is completed for the purposes of this Agreement when:-
 - 18.1.1 work is completed in accordance with the requirements of clause 12.2, and
 - 18.1.2 either:
 - (a) the Council has advised that the Work, as shown in the full works-as-executed plans required to be submitted to the Council by the Developer in accordance with clause 21, is in accordance with the requirements for the Work in clause 12.2; or



- (b) the Developer has given the Council a Compliance Certificate to that effect.

19 Procedures relating to the rectification of defects

- 19.1 During the Defects Liability Period, the Council may give the Developer a Rectification Notice.
- 19.2 Subject to the resolution of a dispute in accordance with this Agreement, the Developer is to comply with a Rectification Notice at its own cost and to the reasonable satisfaction of the Council.
- 19.3 If the Developer breaches clause 19.2, the Council may have the relevant defect rectified and may recover its costs of so doing at the discretion of the Council either as a debt due in a court of competent jurisdiction or from the Security subject to clause 23.9.

20 Failure to carry out Work

- 20.1 If the Council reasonably considers that the Developer is in breach of any obligation under this Agreement relating to the Work, the Council may give the Developer a notice requiring the breach to be rectified to the Council's reasonable satisfaction.
- 20.2 A notice given under clause 20.1 is to allow the Developer a period of not less than 28 days to rectify the breach or such further period as the Council considers reasonable in the circumstances.
- 20.3 The Council may carry out and complete the Work the subject of a notice under clause 20.1 if the Developer fails to comply with the notice to the Council's reasonable satisfaction. The Council may recover its costs of so doing at the discretion of the Council either as a debt due in a Court of competent jurisdiction or from the Security subject to clause 23.9.
- 20.4 The Developer is to do all things reasonably necessary to enable the Council to exercise its rights under clause 20.3.

21 Works-As-Executed-Plan

- 21.1 The Developer must submit to the Council full works-as-executed plans for the Work for the purposes of clause 18.

Part 3 – Other Provisions

22 Indemnity and Insurance

- 22.1 The Developer indemnifies the Council, its employees, officers, agents, contractors and workmen from and against all losses, damages, costs (including legal costs on a full indemnity basis), charges, expenses, actions, claims and demands whatsoever which may be sustained, suffered, recovered or made arising in connection with a negligent act or omission of the Developer in carrying out any Work and the performance of any other obligation under this Agreement.



- 22.2 The Developer is to take out and keep current to the satisfaction of the Council the following insurances in relation to Work required to be carried out by the Developer under this Agreement up until the time that Work is taken to have been completed in accordance with this Agreement:
- 22.2.1 contract works insurance, noting the Council as an interested party, for the full replacement value of a Work (including the cost of demolition and removal of debris, consultants' fees and authorities' fees), to cover the Developer's liability in respect of damage to or destruction of the Work,
 - 22.2.2 public liability insurance for at least \$20,000,000.00 for a single occurrence, which covers the Council, the Developer and any subcontractor of the Developer, for liability to any third party,
 - 22.2.3 workers compensation insurance as required by law, and
 - 22.2.4 any other insurance required by law.
- 22.3 If the Developer fails to comply with clause 22.2, the Council may effect and keep in force such insurances and pay such premiums as may be necessary for that purpose and the amount so paid shall be a debt due from the Developer to the Council and may be recovered by the Council as it deems appropriate including:
- 22.3.1 by calling upon the Security provided by the Developer to the Council under this Agreement in relation to the Work, or
 - 22.3.2 recovery as a debt due in a court of competent jurisdiction.
- 22.4 Prior to commencing the carrying out of any Work and whenever requested in writing by the Council, the Developer is to provide to the Council satisfactory written evidence of all of the insurances specified in clause 22.2.

23 Provision of Security

- 23.1 The Security relates to the Developer's obligation to construct and dedicate the New Street in accordance with this Agreement.
- 23.2 The Developer is to provide the Council with a Security prior to the issuing of the first Construction Certificate for the first Stage of the built form of the Development.
- 23.3 The amount of a Security is to be indexed annually in accordance with the *Consumer Price Index (All Groups - Sydney)* published by the Australian Bureau of Statistics.
- 23.4 The Developer is to ensure that a Security held by the Council at all times equals the amount of the Security so indexed.
- 23.5 The Developer may at any time provide the Council with a replacement Security and, in such case, the Council is to release and return to the Developer, as directed, the Security it holds that has been replaced.
- 23.6 The Council is to release and return 75% of the Security or any unused part of it to the Developer within 14 days of compliance by the Developer with its Development Contribution obligations to which the Security relates.
- 23.7 The Council is to release and return the remainder of the Security upon the expiration of the Defects Liability Period or within 30 days of the issuing of the final Occupation Certificate for the final Stage of the built form of the Development, whichever occurs last.



- 23.8 The Council may call-up a Security if it considers, acting reasonably, that the Developer has not complied with its obligations under this Agreement to which the Security relates.
- 23.9 However, the Council is not to call-up a Security unless it has given the Developer not less than 28 days notice of its intention to do so and the Developer has not rectified the non-compliance to the Council's reasonable satisfaction before that period has expired and any dispute resolution process commenced by the Developer under clauses 25 or 26 has been concluded.
- 23.10 If the Council calls-up a Security, it may use the amount paid to it in satisfaction of any costs incurred by it in remedying the non-compliance including but not limited to:
 - 23.10.1 the reasonable costs of the Council's servants, agents and contractors reasonably incurred for that purpose,
 - 23.10.2 all fees and charges necessarily or reasonably incurred by the Council in order to have the Work carried out, completed or rectified, and
 - 23.10.3 all legal costs and expenses reasonably incurred by the Council, by reason of the Developer's non-compliance.
- 23.11 If the Council calls-up a Security, it may, by notice in writing to the Developer, require the Developer to provide a further or replacement Security in an amount that, when added to any unused portion of any existing Security, does not exceed the amount of the Security the Council is entitled to hold under this Agreement relating to the relevant Development Contribution obligation.

24 Enforcement in a court of competent jurisdiction

- 24.1 Without limiting any other provision of this Agreement, the Parties may enforce this Agreement in any court of competent jurisdiction.
- 24.2 For the avoidance of doubt, nothing in this Agreement prevents:
 - 24.2.1 a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Agreement or any matter to which this Agreement relates,
 - 24.2.2 the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Agreement or any matter to which this Agreement relates.

25 Dispute Resolution - mediation

- 25.1 This clause applies to any dispute under this Agreement. Such a dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the dispute.
- 25.2 If a notice is given under clause 25.1, the Parties are to meet within 14 days of the notice in an attempt to resolve the dispute.
- 25.3 If the dispute is not resolved within a further 28 days, the Parties must mediate the dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and must request the President of the Law Society, or the President's nominee, to select a mediator.
- 25.4 If the dispute is not resolved by mediation within a further 28 days, or such longer period as may be necessary to allow any mediation process which has



been commenced to be completed, then the Parties may exercise their legal rights in relation to the dispute, including by the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.

26 Registration of this Agreement

- 26.1 The Parties agree to register this Agreement on the title to the Land. The Developer must use its best endeavours to obtain the consent of the persons specified in s93H(1) of the Act (including any mortgagees) to the registration of this Agreement on the Land and to cause this Agreement to be registered on the title to the Land or so much of the Land as is possible having regard to its obligation under this clause.
- 26.2 For the purpose of clause 26.1:
- 26.2.1 the Council:
- (a) acknowledges that prior to this Agreement commencing, it was provided with evidence satisfactory to it evidencing the consent of the persons specified in s93H(1) of the Act to registration of this Agreement; and
 - (b) is to do such things as are reasonably necessary to enable registration to occur;
- 26.2.2 prior to registration being effected, the Developer is not to cause, permit or allow the creation of any new mortgage interest in the Land unless the Council has first been provided with evidence satisfactory to it evidencing the consent of the mortgagee to the registration of this Agreement.
- 26.3 Subject to this clause, prior to the LEP taking effect or such later date as is agreed, the Developer is to provide the Council with the following documents to enable registration of this Agreement:
- 26.3.1 an instrument requesting registration of this Agreement on the title to the Land in registrable form duly executed by the Developer, and
- 26.3.2 the written irrevocable consent of each person referred to in s93H(1) of the Act to that registration.
- 26.4 Provided that the Developer is not in breach of this Agreement at the time, the Council is to do such things as are reasonably necessary as requested by the Developer to facilitate the lodging of a request for the registration of this Agreement to be removed from the title to a Final Lot.
- 26.5 The Council is to promptly agree to a request by the Developer for the lodging of a request for the registration of this Agreement to be removed from the title of any part of the Land once the Developer has made all of the Development Contributions required of it under this Agreement.
- 26.6 The Parties are to agree to the lodging of a request for the registration of this Agreement to be removed from any part of the Land if this Agreement is terminated.
- 26.7 The Developer is not to object to the Council lodging and maintaining a caveat over the Land until such time as this Agreement is registered in accordance with this clause.



27 Assignment, Sale of Land, etc

- 27.1 Unless the matters specified in clause 27.2 are satisfied, the Developer is not to do any of the following:
 - 27.1.1 sell or transfer any part of the Land (other than a Final Lot) to any person, or
 - 27.1.2 assign the Developer's rights or obligations under this Agreement, or novate this Agreement, to any person.
- 27.2 The matters required to be satisfied for the purposes of clause 27.1 are as follows:
 - 27.2.1 the Developer has, at no cost to the Council, first procured, to the reasonable satisfaction of the Council, the execution by the person of an agreement in favour of the Council under which the person assumes the Developer's obligations under this Agreement, and
 - 27.2.2 the Developer is not in breach of this Agreement.
- 27.3 This clause ceases to apply once the Developer has complied with its obligations to make the Development Contributions.

28 Review of this Agreement

- 28.1 The Parties are to review this Agreement if the Developer notifies the Council or the Council notifies the Developer that any change of circumstance has occurred, or is imminent, that materially affects the operation of this Agreement, or the Council notifies the Developer that it considers that circumstances exist that justify the review.
- 28.2 For the purposes of clause 28.1, the relevant changes include (but are not limited to) any change to a law that restricts or prohibits or enables the Council or any other planning authority to restrict or prohibit any aspect of the Development.
- 28.3 For the purposes of addressing any matter arising from a review of this Agreement referred to in clause 28.1, the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Agreement.
- 28.4 If this Agreement becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties agree to do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Agreement is entered into.
- 28.5 A failure by a Party to agree to take action requested by the other Party as a consequence of a review referred to in clause 28.1 is not a dispute for the purposes of clause 25 and is not a breach of this Agreement.

29 Notices

- 29.1 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:
 - 29.1.1 delivered or posted to that Party at its address set out in the Summary Sheet,



- 29.1.2 faxed to that Party at its fax number set out in the Summary Sheet, or
- 29.1.3 emailed to that Party at its email address set out in the Summary Sheet.
- 29.2 If a Party gives the other Party 3 business days notice of a change of its address, fax number or email address, 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, fax number or email address.
- 29.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
 - 29.3.1 delivered, when it is left at the relevant address,
 - 29.3.2 sent by post, 2 business days after it is posted,
 - 29.3.3 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, or
 - 29.3.4 sent by email and the sender does not receive a delivery failure message from the sender's internet service provider within a period of 24 hours of the email being sent.
- 29.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, or the period referred to in clause 29.3.4 expires, on a day that is not a business day or after 5pm on a business day, it is to be treated as having been given or made at 9am on the next business day.

30 Approvals and Consent

- 30.1 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.
- 30.2 A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

31 Costs

- 31.1 The Developer is to pay to the Council the Council's reasonable legal and other costs incurred relating to this Agreement not exceeding \$32,000.00 within 7 days of written demand by the Council identifying the expenditures.

32 Entire Agreement

- 32.1 This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with.
- 32.2 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.



33 Further Acts

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

34 Governing Law and Jurisdiction

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

35 No Fetter

- 35.1 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.
- 35.2 If, contrary to the operation of this clause, any provision of this planning agreement is held by a Court of competent jurisdiction to constitute an unlawful fetter on any discretion, power or duty, the parties agree:-
- 35.2.1 they will take all practical steps, including the execution of any further documents to ensure the objective of this clause is substantially satisfied; and
- 35.2.2 to endeavour to satisfy the common objectives of the parties in relation to the provision of this Agreement which is held to be an unlawful fetter to the extent that it is possible having regard to the relevant court judgment.

36 Representations and Warranties

- 36.1 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.

37 Severability

- 37.1 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.
- 37.2 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.



38 Modification

- 38.1 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.

39 Waiver

- 39.1 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.
- 39.2 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.
- 39.3 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.

40 GST

- 40.1 In this clause:

Adjustment Note, Consideration, GST, GST Group, Margin Scheme, Money, Supply and Tax Invoice have the meaning given by the GST Law.

GST Amount means in relation to a Taxable Supply the amount of GST payable in respect of the Taxable Supply.

GST Law has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Input Tax Credit has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a party includes an Input Tax Credit for an acquisition made by that party but to which another member of the same GST Group is entitled under the GST Law.

Taxable Supply has the meaning given by the GST Law excluding (except where expressly agreed otherwise) a supply in respect of which the supplier chooses to apply the Margin Scheme in working out the amount of GST on that supply.

- 40.2 Subject to clause 40.4, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Agreement, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- 40.3 Clause 40.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Agreement to be GST inclusive.
- 40.4 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Agreement by one Party to the other Party that are not subject to Division 82 of the *A New Tax System (Goods and Services Tax) Act 1999*, the Parties agree:
- 40.4.1 to negotiate in good faith to agree on the GST including the market value of those Supplies prior to issuing Tax Invoices in respect of those Supplies;



- 40.4.2 that any amounts payable by the Parties in accordance with clause 40.2 (as limited by clause 41.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 40.5 No payment of any amount pursuant to this clause 40, and no payment of the GST Amount where the Consideration for the Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided a Tax Invoice or Adjustment Note as the case may be to the recipient.
- 40.6 Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability.
- 40.7 This clause continues to apply after expiration or termination of this Agreement.



Schedule 1

(Clause 8.1)

Development Contributions

Column 1	Column 2	Column 3	Column 4
Item	Public Purpose	Manner & Extent	Timing
Monetary Contributions			
Monetary contributions	A: For amounts equivalent to amounts calculated up to the current legislative capping as at 17 May 2011:- Towards public purposes in Council's area including but not limited to those purposes described in the Contributions Plan CP. B: For amounts greater than amounts in A:- Affordable housing in the Council's area.	In amounts calculated in accordance with the amounts that would be payable if the Contributions Plan applied to the Development (estimated to be approximately \$4,160,000, on the Planning Proposal) but disregarding any Ministerial direction under s94E of the Act capping the amount of any such contribution and disregarding any future change to legislation, Ministerial directions or anything else that may reduce the contributions otherwise payable under that plan in respect of the Development and subject to indexation only of any contributions that have not been paid within two (2) years from the date that the LEP is in accordance with the CPI (Sydney All Groups) on and from that date until the date of payment.	The amount for each Stage of the built form of the Development is to be paid prior to the issuing of the first Construction Certificate for that Stage.



Column 1	Column 2	Column 3	Column 4
Item	Public Purpose	Manner & Extent	Timing
Additional Floor Space	Towards public purposes in the Council's area at the discretion of the Council.	\$3,000.00 per square metre for any extra square metre of Gross floor area of the Development above a Floor space ratio of 1.5:1 The amount to be paid for each Stage is calculated by determining the proportion of the number of dwellings in each stage compared to the total number of dwellings for the whole of the Development.	The amount for each Stage of the built form is to be paid prior to the issuing of the first Construction Certificate for that Stage.
Affordable Housing Fund	Affordable housing in the Council's area	\$270,000 The amount to be paid for each Stage is calculated by determining the proportion of the number of dwellings in each stage compared to the total number of dwellings for the whole of the Development.	The amount for each Stage of the built form is to be paid prior to the issuing of the first Construction Certificate for that Stage.
Dedication of land			
New Street	Public road	That part of the Land on which New Street has been constructed.	The land is to be dedicated at the time of Works Completion of the New Street.
Carrying out of Work			
New Street	Public road	Construction of the New Street in the location generally described in the Planning Proposal. In accordance with this Agreement.	The Work is to be completed prior to the issuing of an Occupation Certificate for the first Stage of the built form.

118-124 Terry Street, Rozelle Planning Agreement
Leichhardt Municipal Council
Anka Constructions Pty. Ltd.



Execution

Executed as an Agreement

Dated:

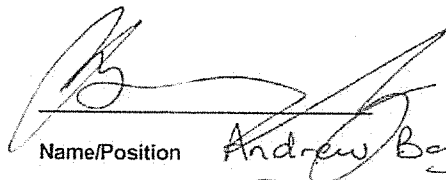
Executed on behalf of the Council

General Manager

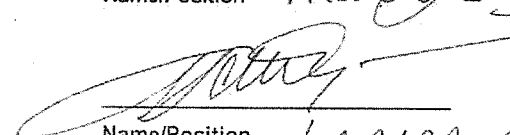
Witness/Name/Position

Executed on behalf of the Developer in accordance with s127(1) of the
Corporations Act (Cth) 2001

Name/Position

 Andrew Bayarsky / Managing Director

Name/Position

 LARISA GOLDGUBER
company secretary

APPENDIX J

ATTACHMENT J

COMMUNITY CONSULTATION STRATEGY

Paragraph d (x) of Council Resolution C128/11 directs Anka Developments P/L to prepare a draft Community Consultation Strategy – as part of a consolidated set of documents to be endorsed by Council prior to the statutory public exhibition process.

The community consultation strategy should incorporate:

- A minimum public exhibition period of fifty six days
- Supporting documentation in relation to issues raised by local residents, for example the bulk and scale issues as raised by Wellington Street residents
- The relevant elements of Council *Community Engagement Framework*, namely:
 - Notification letters advising of proposal and calling for submissions to relevant land owners and occupiers – will include properties located on both sides of Darling Street.
 - Notification advising of proposal and calling for submissions in the Council newsletter
 - Brochures to explain the proposal made available in Council libraries, to local cafes, at the front counter of the Admin Building, at all Council-owned facilities.
 - 3 Drop-in events at the Lilyfield Community Centre; at the Hannaford Centre and at the Balmain Meeting Room. One drop-in event will be daytime weekday, one will be weekend daytime and one will be evening weekday. The drop in events will provide provision for people to make submissions there in writing should they wish to do so
 - A Public Meeting at Balmain Town Hall
 - Group specific meetings – eg Chamber of Commerce
 - A consultation with the local precincts – including Rozelle – Iron Cove and Rozelle - White Bay Precincts.

Note: minutes/comments will be collected at all events, and participants will be invited to make any further submissions they believe to be relevant

 - A consultation with the Planning Committee
 - A consultation session with Councillors

The consultation will be initiated and managed by Leichhardt Council and attended by representatives of Anka Developments P/L to answer any relevant questions.