

Schedule 5

Explanatory Note

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Explanatory Note

Draft Planning Agreement

Under section 7.4 of the *Environmental Planning and Assessment Act 1979* (NSW)

1 Parties

The Minister for Planning and Public Spaces of the NSW Department of Planning, Industry and Environment, 320 Pitt Street, Sydney NSW 2000
(Minister)

Australia YMCI Pty Ltd ACN 607 884 711 of Suite 36.01, Level 36, 201 Elizabeth Street, Sydney NSW 2000 **(Developer)**

2 Description of subject land

The Land comprises the following lots:

- (a) Lot 301 in DP541070;
- (b) Lot 26 in DP225350;
- (c) Lot 27 in DP225350;
- (d) Lot 28 in DP225350;
- (e) Lot 12 in DP1217641; and
- (f) Lot 13 in DP1217641.

3 Description of proposed development

Subdivision and development of the Land for residential, retail and commercial purposes.

4 Summary of objectives, nature and effect of the draft planning agreement

4.1 Objectives of Planning Agreement

The objective of the Planning Agreement is to facilitate the development and improvement of public facilities within the Carter Street Priority Precinct and specifically to allow for the:

- (a) provision of monetary contribution amounts to the Minister at a rate of \$109.41 per square metre of GFA, subject to indexation;
- (b) transfer of Road Works Land to the Minister or the Minister's nominee;
- (c) transfer of the Education Land to the Minister or the Minister's nominee for the purpose of a primary school operated for the benefit of the public; and
- (d) transfer the Open Space Land to the Minister or the Minister's nominee for the purpose of public open space.

4.2 Nature of Planning Agreement

The Planning Agreement constitutes a planning agreement under section 7.4 of the Act. The Planning Agreement will be registered on the title to the Land.

5 Assessment of the merits of the draft planning agreement

5.1 The planning purposes served by the Planning Agreement

The Planning Agreement:

- (a) promotes the orderly and economic use and development of the Land to which the Planning Agreement applies;
- (b) promotes good design and amenity of the build environment by facilitating the development of the Land in accordance with the Planning Agreement;
- (c) promotes the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State; and
- (d) promotes increased opportunity for the public in environmental planning and assessment.

5.2 How the Planning Agreement promotes the public interest

The Planning Agreement will promote the public interest by promoting the objects of the Act as set out in sections 1.3(c), (g), (i) and (j) of the Act.

5.3 For Planning Authorities:

Development Corporations – How the Planning Agreement promotes its statutory responsibilities

Not Applicable

Other Public Authorities – How the Planning Agreement promotes the objects (if any) of the Act under which it is constituted

Not Applicable

Councils – How the Planning Agreement promotes the elements of the Council's Charter

Not Applicable

All Planning Authorities – Whether the Planning Agreement conforms with the Authority's Capital Works Program

Not applicable

5.4 Certain requirements of the Planning Agreement to be complied with before issue of Planning Approval or issue of a Complying Development Certificate, Construction Certificate or Subdivision Certificate

The Developer will be required to:

- (a) pay a monetary contribution prior to the issue of an Occupation Certificate for a building or part of a building on any part of the Land;
- (b) transfer the Road Works Land to the Minister or the Minister's nominee within three months of Registration of the Plan of Subdivision which creates a separate lot for the Road Works Land, with the Developer to apply for development consent and such other approvals as are required for subdivision by no later than one month after the Commencing Date, and use best endeavours to obtain those approvals within 12 months of the Commencing Date;
- (c) transfer the Education Land to the Minister or the Minister's nominee by no later than 31 December 2023 with the Developer to apply for development consent and such other approvals as are required for subdivision by no later than 30 November 2022, and use best endeavours to obtain those approvals by no later than 30 September 2023; and
- (d) transfer the Open Space Land to the Minister or the Minister's nominee by no later than 31 December 2023 with the Developer to apply for development consent and such other approvals as are required for subdivision by no later than 30 November 2022, and use best endeavours to obtain those approvals by no later than 30 September 2023.

The provision of the Development Contributions is secured through the requirement for:

- (a) a Bank Guarantee in respect of the Minister's enforcement costs;

- (b) a charge over the Land until the Planning Agreement is registered on the title to the Land;
- (c) the ability for the Minister to call for Bank Guarantees with a face value equivalent to \$109.41 for every square metre of GFA (or any part thereof) subject to CPI indexation that the application of the relevant floor space ratio under the *Auburn Local Environmental Plan 2010* to the Land allows, where the Planning Agreement is not registered on all folios of the Register comprising the Land within 90 Business Days (in addition to the charge and the caveat) and then by registration of the Planning Agreement on the title to the Land;
- (d) a Bank Guarantee in respect of remediation of the Education Land and the ability for the Minister to call for an additional Bank Guarantee in order to secure the costs of removing any encumbrance noted on title to the Education Land;
- (e) a Bank Guarantee in respect of remediation of the Open Space Land and the ability for the Minister to call for an additional Bank Guarantee in order to secure the costs of removing any encumbrance noted on title to the Open Space Land; and
- (f) the Minister also has the ability to compulsorily acquire the Education Land, the Road Works Land and the Open Space Land in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991 (NSW)* if such land is not dedicated in accordance with the Planning Agreement.