

# Voluntary Planning Agreement

Section 7.4 of the *Environmental Planning and Assessment Act 1979*

**[Date]**

Woollahra Municipal Council (**ABN 32 218 483 245**) of 536  
New South Head Road, Double Bay (**Council**)

and

Edgecliff Central Pty Ltd (**ABN 41 630 520 517**) of 179-191  
New South Head Rd Edgecliff Sydney , NSW (**Developer**)

# Contents

<b>Parties</b>	<b>4</b>
<b>Background</b>	<b>4</b>
<b>Operative Provisions</b>	<b>4</b>
1 <i>Planning agreement under the Act</i>	4
2 <i>Application of this Agreement</i>	4
3 <i>Operation of this Agreement</i>	4
4 <i>Definitions and interpretation</i>	5
5 <i>Development Contributions to be made under this Agreement</i>	7
6 <i>Application of the Development Contributions</i>	7
7 <i>Application of s7.11, s7.12 or s7.24 of the Act to the Development</i>	7
8 <i>Registration of Agreement</i>	7
9 <i>Dispute Resolution</i>	8
10 <i>Review of Agreement</i>	12
11 <i>Enforcement</i>	12
12 <i>Termination, Rescission or Determination</i>	12
13 <i>Notices</i>	13
14 <i>Approvals and consent</i>	14
15 <i>Assignment and Dealings</i>	14
16 <i>Costs</i>	14
17 <i>Entire agreement</i>	14
18 <i>Further acts</i>	14
19 <i>Governing law and jurisdiction</i>	14
20 <i>Joint and individual liability and benefits</i>	14
21 <i>No fetter</i>	15
22 <i>Representation and warranties</i>	15
23 <i>Severability</i>	15
24 <i>Modification</i>	15
25 <i>Waiver</i>	15
26 <i>GST</i>	15
<i>Schedule 1 – Development Contributions</i>	16
<i>Schedule 2 – Requirements under s7.4</i>	18
<i>Execution of Planning Agreement No. XXXX of 200X</i>	19
<i>Explanatory Note</i>	20

# Agreement

## Date

## Parties

### First party

<b>Name</b>	Woollahra Municipal Council ( <b>Council</b> )
<b>ABN</b>	32 218 483 245
<b>Contact</b>	[REDACTED]
<b>Telephone</b>	[REDACTED]

### Second party

<b>Name</b>	Edgecliff Central Pty Ltd ( <b>Developer</b> )
<b>ABN</b>	41 630 520 517
<b>Contact</b>	[REDACTED]
<b>Telephone</b>	[REDACTED]

## Background

- A. On 13<sup>th</sup> October 2021 the Developer made an application to the Council for the Instrument Change for the purpose of making a Planning Proposal to facilitate the future renewal of the site for a mixed-use residential development with commercial and retail space.
- B. The Instrument Change application was accompanied by an offer by the Developer to enter into this Agreement.
- C. The Developer has offered to make Development Contributions under this Deed if the Instrument Change is made and if development consent is granted to the carrying out of the Development.

## Operative provisions

### 1 Planning agreement under the Act

- 1.1 The Parties agree that this Agreement is a planning agreement governed by Subdivision 2 of Division 7.1 of Part 7 of the Act.

### 2 Application of this Agreement

- 2.1 This Agreement is made in respect of the Development and applies to the Land, the Instrument Change and the Development

### 3 Operation of this Agreement

- 3.1 This Agreement operates from the last to occur of the following:
- a) the Instrument Change being published in the NSW Government Gazette; and
  - a) the date that this Agreement is executed by both parties.

### 4 Definitions and interpretation

- 4.1 In this Agreement the following definitions apply:

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

**Affordable Housing** has the same meaning as in the Act.

**Construction Certificate** has the same meaning as in the Act.

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

**Development** means the proposed future development of the Land for a mixed-use development comprising residential, commercial and retail uses, made permissible by the Instrument Change and as approved by a future Development Consent.

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

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

**Development Contribution** means the Monetary Contributions

**GFA** means Gross Floor Area and has the same meaning as in the *Woollahra Local Environmental Plan 2014*; and

- a) **Residential GFA** means the Gross Floor Area of that part of the Development which is a residential use and is to be calculated upon the grant of Development Consent;

- b) **Non-Residential GFA** means the Gross Floor Area for the part of the Development which consists of a commercial and retail use and is to be calculated upon the grant of Development Consent.

**GST** has the same meaning as in the GST Law.

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

**Instrument Change** means a change to *Woollahra Local Environmental Plan 2014* brought about by way of Planning Proposal PP-2022-1646, to:

- Introduce alternative floor space ratio provisions if certain incentive requirements are met; and
- Introduce alternative height provisions; if certain incentive requirements are met; and
- Introduce other site specific provisions for the Land.

**Land** means Lot 1 Deposited Plan (DP) 663465 (No. 136), Lot 1 DP 1092694 (No. 138-140), Lot 2 DP 983678 (No. 138-140), Lots A and B DP443992 (No. 142-144 and 146-148), known as 136-148 New South Head Road.

**Monetary Contributions** means the monetary contributions specified or described in Schedule 1.

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

**Planning Proposal** means the Planning Proposal PP-2022-1646.

**Register** means the Torrens title register maintained under the *Real Property Act 1900* (NSW).

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

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

- (a) Headings are inserted for convenience only and do not affect the interpretation of this Agreement.
- (b) A reference in this Agreement to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
- (c) If the day on which any act, matter or thing is to be done under this Agreement is not a business day, the act, matter or thing must be done on the next business day.
- (d) A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- (e) A reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- (f) A reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- (g) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.

- (h) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- (i) Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- (j) A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- (k) References to the word 'include' or 'including' are to be construed without limitation.
- (l) A reference to this Agreement includes the agreement recorded in this Agreement.
- (m) A reference to a party to this Agreement includes a reference to the servants, agents and contractors of the party, and the party's successors and assigns.
- (n) Any schedules and attachments form part of this Agreement.

## 5 Development Contributions to be made under this Agreement

- 5.1 The Developer must make the Monetary Contributions in the manner and at the times as set out in **Schedule 1** of this Agreement.
- 5.2 The Monetary Contributions are the only public benefits the Developer is required to provide under this Agreement.
- 5.3 The Monetary Contributions are to be adjusted in accordance with quarterly movements in the *Building Construction NSW Index*, which forms part of the *Producer Price Index*, both published by the Australian Bureau of Statistics, between the date the Instrument Change is published in the NSW Government Gazette and the date the Monetary Contributions are paid to the Council in accordance with this Agreement.

## 6 Application of the Development Contributions

- 6.1 The Council is to apply the Monetary Contributions made by the Developer under this Agreement towards the public purpose for which they are required and otherwise in accordance with this Agreement.
- 6.2 Despite clause 6.1, the Council may apply the Monetary Contributions made under this Agreement towards a public purpose other than the public purpose specified in this Agreement if the Council reasonably considers that the public interest would be better

served by applying the Monetary Contributions towards that other purpose rather than the purpose so specified.

## **7 Application of s7.11, s7.12 or s7.24 of the Act to the Development**

- 7.1 This Agreement does not exclude the application of section 7.11, section 7.12 or section 7.24 of the Act to the Development.
- 7.2 The benefits under this Agreement are not to be taken into consideration when determining a development contribution under s7.11 or s7.12 of the Act in relation to the Development.

## **8 Registration of Agreement**

### **8.1 Registration**

The Developer acknowledges and agrees that:

- (1) this Agreement must be registered on the title to the Land pursuant to section 7.6 of the Act; and
- (2) subject to clause 8.2, Council will undertake that registration at the cost of the Developer.

### **8.2 Obligations on Developer**

- (1) The Developer, at its own expense, will promptly after this Agreement comes into operation, take all practical steps to procure:

- a) the consent of each person who:
  - (i) has an estate or interest in the Land; or
  - (ii) is seized or possessed of an estate or interest in the Land;
- b) the execution of any Agreements; and
- c) the production of the relevant duplicate certificates of title,

to enable the registration of this Agreement in accordance with clause 8.1

- (2) The Developer, at its own expense, will take all practical steps, and otherwise do anything that the Council reasonably requires:

- a) to allow the lodgement of this Agreement with the Registrar-General as soon as reasonably practicable after this Agreement comes into operation but in any event, no later than sixty (60) business days after that date; and
- b) to allow the registration of this Agreement by the Registrar-General in the relevant folios of the Register for the Land as soon as reasonably practicable after this Agreement is lodged for registration

### 8.3 Discharge from the Register

The Council will provide a release and discharge of this Agreement so that it may be removed from the folios of the Register for the Land (or any part of it) when:

- a) the obligations under this Agreement have been satisfied; or
- b) if this Agreement is terminated or rescinded.

## 9 Dispute Resolution

### 9.1 Notice of Dispute

If a dispute or lack of certainty between the parties arises in connection with this Agreement (**Dispute**), then either party may give to the other party a notice which:

- a) adequately identifies and provides details of the Dispute;
- b) stipulates what the First Party believes will resolve the Dispute; and
- c) designates its representative (**Representative**) to negotiate the Dispute.

The party who receives the notice of dispute must, within five (5) Business Days of receipt of the notice, give a notice to the other party designating as its representative a person to negotiate the Dispute (the representatives designated by the parties being together, **the Representatives**).

### 9.2 Further steps required before proceedings

The Representatives must endeavour to resolve the dispute within five (5) Business Days of the date a notice under clause 9.1 is served.

### 9.3 Referral of Dispute for mediation or expert determination

If the Representatives have not been able to resolve the Dispute within the period specified in clause 9.2, the parties must refer the matter to mediation under clause 9.5 unless the dispute relates to a technical matter which is appropriately dealt with by a suitably qualified expert, in which case the Dispute must be referred for expert determination under clause 9.6.

### 9.4 Referral for mediation

If the Dispute is referred under clause 9.3 for mediation, the mediation must be conducted by a mediator agreed by the parties and, if the parties cannot agree within five (5) Business Days, then by a mediator appointed by the President of the Law Society of New South Wales for the time being.

### 9.5 Failure of mediation to resolve Dispute

Either party may bring proceedings in relation to the Dispute in a court, tribunal or other body of competent jurisdiction if mediation of the Dispute under this clause 9 does not resolve the Dispute.

### 9.6 Referral for expert determination

If the Dispute is referred under clause 9.3 for expert determination, it must be determined by a suitably qualified independent expert:

- a) agreed between and appointed jointly by the parties; or



- b) in the absence of such agreement within five (5) Business Days after the date that the matter is referred under clause 9.3 for expert determination, appointed by the President of the Law Society of New South Wales for the time being.

#### **9.7 Procedures for expert determination**

The parties must comply with all reasonable procedures and directions required or given by the expert in relation to the determination of the Dispute.

#### **9.8 Final determination of expert**

The parties agree that the final determination by an expert of a Dispute referred under this clause 9 will be final and binding upon them except in the case of fraud or misfeasance by the expert.

#### **9.9 Costs**

The parties are to share equally the costs of a mediator or expert appointed to whom a Dispute is referred under this clause 9.

#### **9.10 Remedies available under the Act**

This clause 9 does not operate to limit the availability of any remedies available to Council under the Act.

#### **9.11 Urgent relief**

This clause 9 does not prevent a party from seeking urgent injunctive or declaratory relief concerning any matter the subject of a Dispute under this clause 9.

### **10 Review of Agreement**

10.1 This agreement may be reviewed or modified. Any review or modification of this Agreement will be conducted in the circumstances and in the manner determined by the parties.

10.2 No modification or review of this Agreement will be of any force or effect unless it is in writing and signed by the parties to this Agreement.

10.3 A party is not in breach of this agreement if it does not agree to an amendment to this Agreement requested by a party in, or as a consequence of, a review.

### **11 Enforcement**

#### **11.1 Default**

In the event a party considers another party has failed to perform and fulfil an obligation under this Agreement, it may give notice in writing to the other party (**Default Notice**) giving all particulars of the matters in respect of which it considers default has occurred and by such notice require the default to be remedied within a reasonable time not being less than 21 days.

In determining a reasonable time, regard must be had to both the nature of the default and the work or other action required to remedy it and whether or not the continuation of the default constitutes a public nuisance or raises other circumstances of urgency or emergency.

If a party disputes the Default Notice it may refer the dispute to dispute resolution under clause 9 of this agreement.

## **11.2 General Enforcement**

Without limiting any other remedies available to the parties, this Agreement may be enforced by any party in any Court of competent jurisdiction.

Nothing in this Agreement prevents:

- a) a party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Agreement or any matter to which this Agreement relates; and
- b) 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

## **12 Termination, Rescission or Determination**

12.1 This Agreement terminates if:

- a) the parties agree in writing to terminate the operation of the Agreement at any time; or
- b) the Instrument Change sought by the Planning Proposal is not gazetted.

12.2 Upon termination of this Agreement:

- a) all future rights and obligations of the parties are discharged; and
- b) all pre-existing rights and obligations of the parties continue to subsist.

12.3 The decision by a party not to agree to terminate this Agreement under clause 12.1(a) is at the party's absolute discretion and is not subject to Dispute Resolution under clause 9.

## **13 Notices**

13.1 Any notice, consent, information, application or request that must or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:

- (a) Delivered or posted to that Party at its address set out below.
- (b) Emailed to that Party at its email address set out below.

### **Council**

Attention

██████████

Address

PO Box 61 Double Bay NSW 1360

Email

██

**Developer**

Attention



Address

PO Box 727 Edgecliff NSW 2027

Email

[admin@ankaproperty.com](mailto:admin@ankaproperty.com)

- 13.2 If a Party gives the other Party 3 business days notice of a change of its address, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, or posted to the latest address.
- 13.3 Any notice, consent, information, application or request is to be treated as given or made at the following time:
- (a) If it is delivered, when it is left at the relevant address.
  - (b) If it is sent by post, 2 business days after it is posted
- 13.4 If any notice, consent, information, application or request is delivered, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day

## 14 Approvals and consent

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

## 15 Assignment and Dealings

A party must not assign or deal with any right under this Agreement without the prior written consent of the other party, not to be unreasonably withheld. This clause will not operate in the event that the Developer enters into a contract of the sale of the Land the subject of this Agreement, and this Agreement has been registered on title in accordance with clause 8 of this Agreement.

## 16 Costs

The Developer agrees to pay or reimburse the reasonable legal costs and disbursements of Council of the negotiation, preparation, execution, and stamping of this Agreement.

## 17 Entire agreement

This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with. No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Agreement was executed, except as permitted by law.

## 18 Further acts

Each Party must promptly execute all Agreements and do all things that another Party from time to time reasonably requests to affect, perfect or complete this Agreement and all transactions incidental to it.

## 19 Governing law and jurisdiction

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

## 20 Joint and individual liability and benefits

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

## 21 No fetter

Nothing in this Agreement shall be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

## 22 Representations and warranties

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

## 23 Severability

If a clause or part of a clause of this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement, but the rest of this Agreement is not affected.

## 24 Modification

No modification of this Agreement will be of any force or effect unless it is in writing and signed by the Parties to this Agreement.

## 25 Waiver

The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another Party. A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any

other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

## 26 GST

If any Party reasonably decides that it is liable to pay GST on a supply made to the other Party under this Agreement and the supply was not priced to include GST, then recipient of the supply must pay an additional amount equal to the GST on that supply.

## Schedule 1 - Development Contributions

Form of Contribution	Public Purpose	Timing	Amount
Monetary contribution	Affordable Housing. Increasing the supply of affordable housing in the Woollahra Municipal Council Area	Prior to the issue of a Construction Certificate for the Development	Contribution to be calculated as follows:  $5\% \times (\text{Residential GFA of the Development less } 740\text{m}^2) \times \$10,588/\text{m}^2$  The exact value of this monetary contribution will be calculated upon the grant of Development Consent for the Development.
Monetary contribution	Public purposes consistent with the Planning Proposal including the provision (or recoupment of the cost of provision) of community infrastructure such as (but not limited to) community facilities, public domain works and transport infrastructure in the Edgecliff Precinct identified as the 'Study Area: <i>Edgecliff Commercial Centre</i> ' in Figure 1 in the draft Edgecliff Commercial Centre Planning and Urban Design Strategy dated April 2021.	Prior to the issue of a Construction Certificate for the Development	Contribution to be calculated as follows:  $\text{Residential GFA of the Development} \times \$289.55/\text{m}^2$  The exact value of this monetary contribution will be calculated upon the grant of Development Consent for the Development.
Monetary contribution	Public purposes consistent with the	Prior to the issue of a Construction	Contribution to be calculated as follows:

	<p>Planning Proposal including the provision (or recoupment of the cost of provision) of community infrastructure such as (but not limited to) community facilities, public domain works and transport infrastructure in the Edgecliff Precinct identified as the 'Study Area: <i>Edgecliff Commercial Centre</i>' in Figure 1 in the draft Edgecliff Commercial Centre Planning and Urban Design Strategy dated April 2021.</p>	<p>Certificate for the Development</p>	<p><i>Non-residential GFA of the Development x \$210.58/m2</i></p> <p>The exact value of this monetary contribution will be calculated upon the grant of Development Consent for the Development.</p>
--	--	--	---

## Schedule 2 – Requirements under s7.4

REQUIREMENT UNDER THE ACT	THIS PLANNING AGREEMENT
<b>Planning instrument and/or development application – (Section 7.4(1))</b> The Developer has: <p>(a) sought a change to an environmental planning instrument.</p> <p>(b) made, or proposes to make, a Development Application,</p> <p>(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.</p>	<p>(a) Yes</p> <p>(b) Yes</p> <p>(c) Not applicable</p>
<b>Description of land to which this agreement applies – (Section 7.4(3)(a))</b>	Lot 1 Deposited Plan (DP) 663465, Lot 1 DP 1092694, Lot 2 DP 983678, Lots A and B DP443992, otherwise known as 136-148 New South Head Road.
<b>Description of change to the environmental planning instrument to which this agreement applies – (Section 7.4(3)(b))</b>	An amendment to the Woollahra <i>Local Environmental Plan</i> 2013 to include a local provision for the land which: <ul style="list-style-type: none"> <li>allows for increased FSR on the Land;</li> <li>allows for increase in building heights on the Land;</li> <li>provides for other site specific provisions.</li> </ul>
<b>Application of section 7.11 of the Act – (Section 7.4(3)(d))</b>	Does apply
<b>Applicability of section 7.12 of the Act – (Section 7.4(3)(d))</b>	Does apply
<b>Consideration of benefits under this agreement if section 7.11 applies – (Section 7.4(3)(e))</b>	See clause 7.
<b>Mechanism for Dispute resolution – (Section 7.4(3)(f))</b>	See clause 9.
<b>Enforcement of this agreement (Section 7.4(3)(g))</b>	See clause 11.
<b>No obligation to grant consent or exercise functions – (Section 7.4(3)(9))</b>	There is no obligation on Council to grant consent or exercise functions.



Execution of Planning Agreement No. XXXX of 200X

Dated: xxx

Signed, sealed and delivered by Woollahra Council by its General Manager and Mayor by the affixing of the Common Seal of Council in accordance with resolution dated

General Manager (Signature)

Mayor (Signature)

Name of General Manager (Print Name)

Name of Mayor (Print Name)

Signed, sealed and delivered by Edgecliff Central Pty Ltd in accordance with section 127(1) of the Corporations Act 2001 (Cth) by authority of its directors.

Director/Secretary (Signature)

Director (Signature)

Name of Director/Secretary (Print Name)

Name of Director (Print Name)

---

# Explanatory Note

(Section 205 of the *Environmental Planning and Assessment Regulation 2021*)

## Draft Planning Agreement

Under s7.4 of the *Environmental Planning and Assessment Act 1979*

### 1 Introduction

The purpose of this Explanatory Note is to help the community to simply and clearly understand what the draft planning agreement (**Draft Planning Agreement**) is proposing, how it delivers public benefits, and why it is acceptable and in the public interest.

This Explanatory note supports the public notification and exhibition of the Draft Planning Agreement as required by section 7.5(2) of the *Environmental Planning and Assessment Act 1979* (NSW) (**Act**) and section 204(1) of *Environmental Planning and Assessment Regulation 2021* (**Regulation**).

This Explanatory Note has been prepared jointly between the parties as required by section 205 of the Regulation.

### 2 Parties

**Woollahra Municipal Council** (ABN 32 218 483 245) of 536 New South Head Road, Double Bay (**Council**)

**Edgecliff Central Pty Ltd** (ABN 41 630 520 517) of 179-191 New South Head Rd Edgecliff Sydney , NSW (**Developer**)

### 3 Description of Subject Land

The land to which the Draft Planning Agreement applies is Lot 1 Deposited Plan (DP) 663465, Lot 1 DP 1092694, Lot 2 DP 983678, Lots A and B DP443992, otherwise known as 136-148 New South Head Road (**Land**).

### 4 Description of Development

The development to which the Draft Planning Agreement applies is proposed development on the Land for a mixed-use development comprising residential, commercial and retail uses (**Development**).

### 5 Description of Proposed Change to Environmental Planning Instrument/Development Application

The Draft Planning Agreement relates to Planning Proposal PP-2022-1646 made by the Developer to the Council.

The planning proposal proposes changes to *Woollahra Local Environmental Plan 2014 (LEP)* to make the Development permissible on the Land with development consent under the Act.

The changes to the LEP sought by the planning proposal are to:

- introduce alternative floor space ratio provisions relating to the development of the Land if certain incentive requirements are met, and
- introduce alternative height provisions relating to the development of the Land if certain incentive requirements are met, and
- introduce other site specific provisions relating to the development of the Land.

## 6 Summary of Objectives, Nature and Effect of the Draft Planning Agreement

The Draft Planning Agreement provides for the provision of the following public benefits in connection with the Development:

- Monetary Contribution – to be used towards the provision of affordable housing, calculated as  $5\% \times (\text{Residential GFA (Gross Floor Area) of the Development less } 740\text{m}^2) \times \$10,588/\text{m}^2$ , and
- Monetary Contribution – to be used towards the provision (or recoupment of the cost of provision) of community infrastructure such as (but not limited to) community facilities, public domain works and transport infrastructure in the Edgecliff Precinct identified as the 'Study Area: Edgecliff Commercial Centre' in Figure 1 in the draft Edgecliff Commercial Centre Planning and Urban Design Strategy dated April 2021 (see diagram below) calculated at a rate of \$289.55 per m<sup>2</sup> of approved residential GFA of the Development, and
- Monetary Contribution – to be used towards the provision (or recoupment of the cost of provision) of community infrastructure such as (but not limited to) community facilities, public domain works and transport infrastructure in the Edgecliff Precinct identified as the 'Study Area: Edgecliff Commercial Centre' in Figure 1 in the draft Edgecliff Commercial Centre Planning and Urban Design Strategy dated April 2021 (see diagram below) calculated at a rate of \$210.58 per m<sup>2</sup> of approved non-residential GFA of the Development.



The final amount of each of these monetary contributions will be determined once Development Consent for the Development is granted (and GFA is known).

The Draft Planning Agreement does not exclude the application of section 7.11, section 7.12 (local infrastructure contributions) or section 7.24 of the Act (special infrastructure contributions) to the Development.

The benefits under the Draft Planning Agreement are not to be taken into consideration when determining a development contribution under s7.11 or s7.12 of the Act in relation to the Development.

The Draft Planning Agreement provided for registration of the agreement on the title to the Land.

The Draft Planning Agreement provides for the resolution of disputes arising under the agreement through independent mediation or expert determination, as appropriate to the nature of the particular dispute.

## 7 Timing of the Provision of Public Benefits

The Draft Planning Agreement requires the Developer to provide the public benefits set out in section 6 of this Explanatory Note to the Council prior to the issuing of a Construction Certificate under the Act for the Development.

## 8 Assessment of the Merits of the Draft Planning Agreement

The Planning Agreement promotes the public interest and benefits the community by requiring the Developer to pay monetary contributions to the Council toward affordable housing and community infrastructure as summarised in section 6 of this Explanatory Note in addition to any local infrastructure contributions that the Developer is required to make pursuant to *Woollahra Section 7.12 Development Contributions Plan 2022* as a condition of the grant of development consent for the Development.

The Draft Planning Agreement does not cause any negative impacts on the community and is not adverse to the public interest.

## 9 Conformance with Council's Capital works Program

The Draft Planning Agreement does not conform to the Council's capital works program.

---