

22 December 2023

Mills Oakley
ABN: 51 493 069 734

Commercial in confidence

Your ref:
Our ref: AXGS/AZSS/3731141

Mr Stephen Dunshea
General Manager
Shoalhaven City Council
PO Box 42
NOWRA NSW 2541

All correspondence to:
PO Box H316
AUSTRALIA SQUARE NSW 1215

Contact
Amelia Stojevski +61 2 8289 5802
Email: astojevski@millsOakley.com.au

Partner
Aaron Gadiel +61 2 8035 7858
Email: agadiel@millsOakley.com.au

By email: council@shoalhaven.nsw.gov.au

Attention: Stephen Dunshea

Dear Mr Dunshea

Letter of offer: Proposed planning agreement in relation to 131 St Vincent Street, Ulladulla (Lot 1, Section 26 in DP759018 and Lot 14 in DP1105304)

We act for Ulladulla Precinct Pty Ltd in its capacity as trustee for Ulladulla Precinct Trust (**our client**).

This is an offer to enter into a planning agreement.

Our client is the developer of the following lots:

- Lot 1, Section 26 in DP759018; and
- Lot 14 in DP1105304,

also known as 131 St Vincent Street, Ulladulla (**the site**). The site accounts for the totality of the land subject to this letter of offer.

Our client has entered into a contract for sale to purchase the site. It is expected that our client will become the registered owner of the site upon completion of the contract in May 2024. We anticipate that this date will proceed the execution of the planning agreement, such that our client will enter into the planning agreement as the landowner.

The offer relates to a planning proposal seeking a change to planning controls set out in the *Shoalhaven Local Environmental Plan 2014* (**the LEP**), for the site.

This offer is for the provision of a material public benefit in the form of affordable housing.

Detail

1. Mandatory matters — section 7.4(3) of the EP&A Act

- 1.1 The *Planning agreements: Practice Note — February 2021*, published by the Department of Planning, Industry and Environment (**the practice note**), requires (in section 4.2) that this offer:

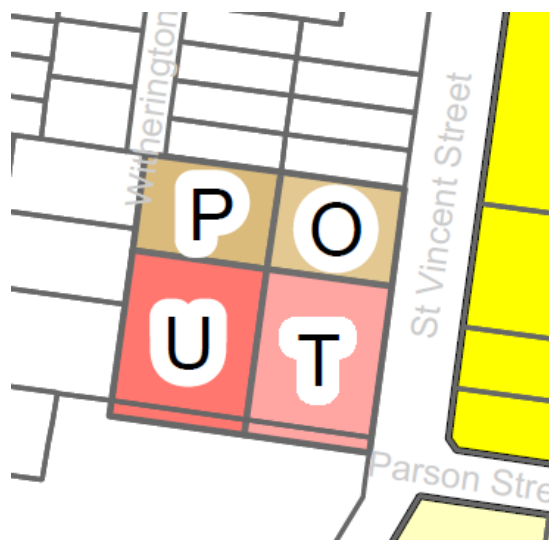
Outline in sufficient detail the matters required to be included in a planning agreement as specified in s7.4(3) of the ... [*Environmental Planning and Assessment Act 1979* (**the EP&A Act**)] to allow proper consideration of the offer by the planning authority.

A description of the land to which the agreement would apply — section 7.4(3)(a)

1.2 The site (that is, Lot 1, Section 26 in DP759018 and Lot 14 in DP1105304).

A description of the change to the environmental planning instrument to which the agreement would apply — section 7.4(3)(b)

- 1.3 Any change to an environmental planning instrument (insofar as it applies to the site) as follows:
- (a) A change in the zoning of the land from 'E4 General Industrial' to 'MU1 Mixed Use'.
 - (b) Without limiting the generality of the above, development for all of the following purposes (within the meaning of the LEP) is permissible with development consent:
 - (i) centre-based childcare facilities;
 - (ii) commercial premises;
 - (iii) multi-dwelling housing;
 - (iv) residential flat buildings; and
 - (v) shop top housing.
 - (c) The imposition of a maximum floor space ratio for the site of 3.5:1 (there is no current maximum floor space ratio control).
 - (d) The maximum height of buildings across the site is increased from the current 11 metres to:
 - (i) 30 metres in the area marked 'U' in the image below;
 - (ii) 27 metres in the area marked 'T' in the image below;
 - (iii) 17 metres in the area marked 'P' in the image below; and
 - (iv) 15 metres in the area marked 'O' in the image below.

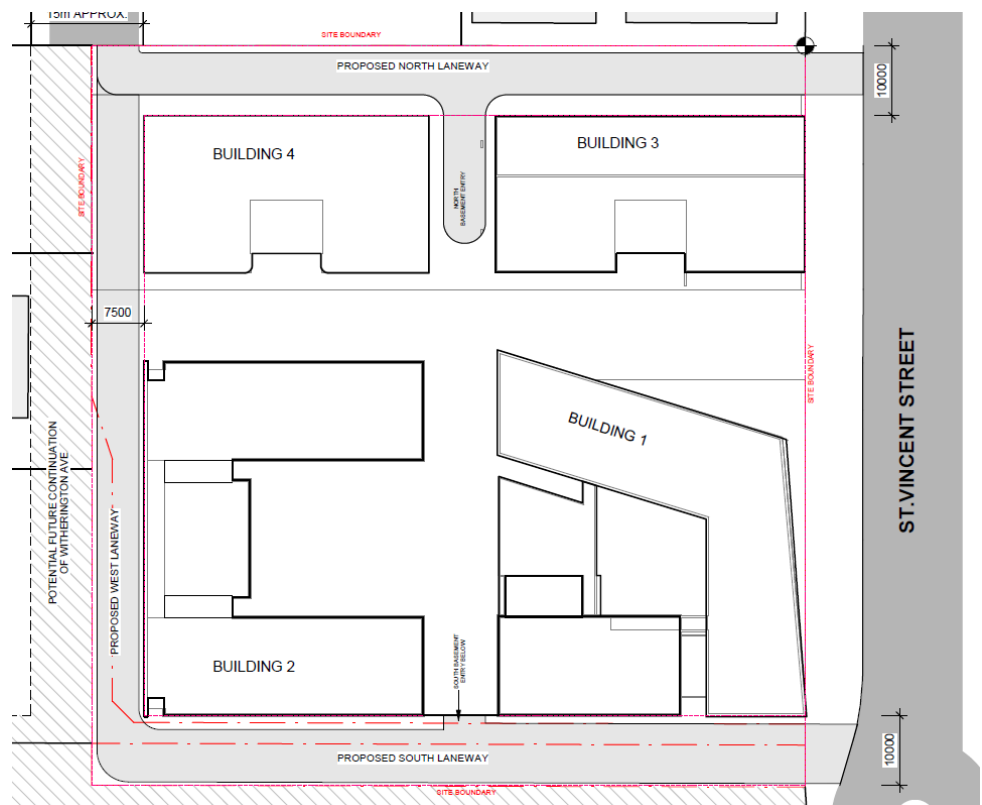


- (e) There are no other new or amended provisions of the local environment plan (when compared with that which was in place on the date of this letter) that would have the practical effect of preventing the realisation of a development:
- (i) for any one or more of the purposes nominated in paragraph 1.3(b) above; and
 - (ii) with the height, bulk and scale anticipated by the numerical constraints set out in paragraphs 1.3(c)-(d) above.

A description of the development to which the agreement applies — section 7.4(3)(b)

1.4 The development to which the agreement applies is a development that meets the following criteria:

- (a) The development is for any one or more of the purposes nominated in paragraph 1.3(b) above.
- (b) The development is generally consistent with the building envelopes shown below:



- (c) The development generally has the height, bulk and scale anticipated by the numerical constraints set out in paragraphs 1.3(c)-(d) above.

The nature and extent of the provision to be made by the developer under the agreement, the time or times by which the provision is to be made and the manner by which the provision is to be made — section 7.4(3)(c)

- 1.5 The purpose of the development contribution would be the provision of affordable housing (a public purpose as per section 7.4(2)(b) of the EP&A Act).
- 1.6 The affordable housing contribution would be the registration of a restrictive covenant, in accordance with section 88E of the *Conveyancing Act 1919*, against the title of 50 completed apartments to be constructed within 'building 4', as depicted in the sketch that appears in paragraph 1.4(b) above.

- 1.7 The restrictive covenant must provide that, in the relevant period:
- (a) the affordable housing component must be used for affordable housing within the meaning of the EP&A Act;
 - (b) the affordable housing component must be managed by a registered community housing provider; and
 - (c) occupation of five apartments (to be nominated by our client) would be limited to households in which at least one member is a key worker.
- 1.8 For the purposes of paragraph 1.7:
- (a) the 'relevant period' is a period of 15 years commencing on the day on which an occupation certificate is issued for all parts of 'building 4'; and
 - (b) a 'key worker' is defined to be any of the following:
 - (i) an education or childcare worker;
 - (ii) a health services worker; or
 - (iii) an emergency services (including police, ambulance, paramedic, fire and rescue) worker.
- 1.9 The timing for the delivery of the contribution is to be prior to the issue of an occupation certificate for the development.
- 1.10 The key preconditions **before** there is any requirement to provide the contribution would be all of the following:
- (a) the making and commencement of the change to an environmental planning instrument referred to in paragraph 1.3 above;
 - (b) the grant of a development consent for the development referred to in paragraph 1.4 above; and
 - (c) the issue of a construction certificate under that development consent.

Whether the agreement would exclude (wholly or in part) or would not exclude the application of section 7.11, 7.12 or Division 7.1, Subdivision 4 of the EP&A Act to the development — section 7.4(3)(d)

- 1.11 The agreement would partly exclude:
- (a) local infrastructure contributions that are set under a contributions plan (section 7.11); and
 - (b) fixed infrastructure contributions that are set outside of a contributions plan (section 7.12),
- in that such local or fixed infrastructure contributions will be reduced to offset the value of the affordable housing contributions (up to, but not exceeding, the amount of the local or fixed infrastructure contributions that would otherwise be payable).
- 1.12 The agreement would not exclude Division 7.1, Subdivision 4 ('Housing and productivity contributions) of the EP&A Act.

Whether benefits under the agreement would or would not be taken into consideration in determining a development contribution under section 7.11 of the EP&A Act — section 7.4(3)(e)

- 1.13 The benefits under the agreement are to be taken into consideration in determining a development contribution under section 7.11 of the EP&A Act.

A mechanism for the resolution of disputes under the agreement— section 7.4(3)(f)

- 1.14 The parties shall attempt to resolve any dispute by informal dispute resolution techniques, namely mediation, expert evaluation or other techniques as agreed — prior to the commencement of any Court proceedings.
- 1.15 This would not affect the right of our client to commence a merit ('class 1') appeal in the Land and Environment Court.

The enforcement of the agreement by a suitable means— section 7.4(3)(g)

- 1.16 The agreement will provide for the enforcement of the agreement by a suitable means as follows:
 - (a) **Registration:** The agreement would be registered on the titles of the site.
 - (b) **Restriction on issues of certificates:** No occupation certificate could be issued prior to the making of a development contribution.
- 1.17 The practice note (which is a mandatory consideration for the Council) says that tying the performance of the Developer's obligations to the issuing of construction, subdivision or occupation certificates may provide a suitable means of enforcing the planning agreement (page 14).
- 1.18 The practice note does not anticipate that security will need to be provided unless the developer seeks the release of the occupation certificate before the payment of the contribution. No such release is being sought. Accordingly, there is no need in this instance for the provision of any other security (and none is offered).

2. Council's planning agreements policy

- 2.1 The practice note also requires that this offer:

Address in sufficient detail any relevant matters required to be included in an offer as specified in any applicable planning agreements policy published by the planning authority to allow proper consideration by the planning authority.
- 2.2 There are no such matters, beyond those outlined above.

3. Other key terms and conditions

- 3.1 The planning agreement may come into effect on execution, but the obligations of the parties under the planning agreement (other than for the registration of the agreement on the title of the land) will commence operation when:
 - (a) a development consent is granted for the development application; and
 - (b) a construction certificate is issued under that development consent.
- 3.2 A party would be able to terminate the agreement by giving 42 days written notice to the other party if either:
 - (a) the change to the environmental planning instrument has not been commenced within 12 months of the date of the agreement; or
 - (b) after the change to an environmental planning instrument, it is (or becomes):
 - (i) unlawful for a development consent to be granted for the development; or
 - (ii) apparent that a development consent cannot be reasonably obtained for the development.
- 3.3 Your client must, within 20 business days of being requested by the Developer, provide a full release and discharge of the planning agreement if:

- (a) the developer has fully complied with all of its obligations under the planning agreement and with all of its obligations under the development consent; or
 - (b) the development consent is surrendered or otherwise declared invalid by a Court; or
 - (c) the agreement has been terminated.
- 3.4 The agreement would have other reasonable terms that are intended to provide protection for the legitimate interests of all parties.

4. Acceptance of an offer

- 4.1 This offer may only be accepted:
- (a) after the full text of a planning agreement and explanatory note have been negotiated and agreed;
 - (b) after 28 days following the giving of public notice under section 7.5(1) of the EP&A Act; and
 - (c) by means of the formal execution of the formal agreement by all parties.
- 4.2 No legal or equitable rights or obligations arise (for either party) in connection with this offer or the proposed agreement prior to such acceptance being completed.

5. Preparation of the planning agreement

We note that Council's *Planning Agreement Policy* states that Council will ordinarily prepare the first draft of the planning agreement.

If you or any Council staff (other than your legal staff) wish to discuss this offer, please contact Sophie Quinn (sophie.quinn@smec.com) on 02 6234 1976.

If your legal representatives have any queries regarding this offer they may contact Amelia Stojevski on (02) 8289 5802.

Yours sincerely




Aaron Gadiel
Partner

Accredited Specialist—Planning and Environment Law