

PLANNING AGREEMENT
2-4 Burbank Place, Norwest

THE HILLS SHIRE COUNCIL
GU CUSTODIAN PTY LIMITED "DEVELOPER"

www.thehills.nsw.gov.au



The Hills Shire Council

3 Columbia Court, Norwest NSW 2153
PO Box 7064, Norwest BC 2153 Phone (02) 9843 0555

[INSERT DATE]

[Signature]
[Signature]
R Damay

**Planning Agreement
Summary Sheet**

Council	Name	The Hills Shire Council
	Address	3 Columbia Court Norwest, NSW 2153
	Telephone	(02) 9843 0555
	Email	council@thehills.nsw.gov.au
	Representative	Mr Michael Edgar – General Manager
Developer	Name	GU Custodian Pty Limited ACN 092 406 892
	Address	Level 1, 1 Jamison Street, Sydney, NSW 2000
	Telephone	02 90554589
	Email	rdecarvalho@capcorp.com.au
	Representative	Richard de Carvalho
Land		Lot 4054 in DP 1070487 known as 2-4 Burbank Place, Norwest
Instrument Change		Amendment to The Hills Local Environmental Plan 2019 as it relates to the Land.
Planning Proposal		Planning Proposal 18/2018/PLP
Dedication Land		Not applicable
Works		Not applicable
Monetary Contributions		See Schedule 1
Security Amount		nil

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Planning Agreement

Dated

Parties

The Hills Shire Council ABN 25 034 494 656 of 3 Columbia Court, Norwest, NSW 2153 (**Council**)

G U Custodian Pty Limited ACN 092 406 892 of Level 1, 1 Jamison Street, Sydney New South Wales 2000 (**Developer**)

Background

- A. Council is the consent authority pursuant to the *Environmental Planning and Assessment Act 1979* (NSW) (**Act**) for the Proposed Development.
- B. The Developer is the registered proprietor of the Land.
- C. The Developer has lodged a Planning Proposal with Council in respect of the Land seeking the Instrument Change so as to enable application(s) to be made for Development Consent.
- D. Upon approval of the Planning Proposal, the Developer proposes to lodge Development Application(s) in respect of the Land.
- E. The Developer has offered to make Development Contributions in the nature of Monetary Contributions if the Instrument Change occurs on the terms set out in this Agreement.

Operative provisions

1. Defined meanings

Words used in this document and the rules of interpretation that apply are set out and explained in the definitions and interpretation clause at the back of this Agreement.

2. Planning agreement under the Act

The Parties agree that this document is a planning agreement within the meaning of **subdivision 2, Division 7.1, Part 7** of the Act.

3. Application of this document

This document is made in respect of the Proposed Development and applies to the Land.

4. No restriction on Council's Powers

This Agreement or anything done under this Agreement:

- (a) is not to be taken as approval or consent by Council as a regulatory authority; and
- (b) does not in any way inhibit, deter or prejudice Council in the proper exercise of its functions, duties or powers,

pursuant to any legislation including the Act, the *Roads Act 1993* (NSW) and the *Local Government Act 1993* (NSW).

5. Operation of this Agreement

5.1 This Agreement operates from the date it is executed by both parties.

5.2 When this Agreement operates it is a binding contract between the parties.

6. Monetary Contributions

6.1 Payment

- (a) The Developer must pay the Monetary Contributions in accordance with Schedule 1 of this Agreement and any other provision of this Agreement relating to Monetary Contributions on or before the date for payment specified in Column 2 of Schedule 1 of this Agreement.
- (b) Payment of the Monetary Contributions may be made by bank cheque in favour of Council or electronic funds bank transfer to Council's nominated bank account.
- (c) A Monetary Contribution will be taken to have been made when Council notifies the Developer in writing that the bank cheque has been received and cleared funds have been deposited in Council's nominated bank account.

6.2 Public Purpose

- (a) The Monetary Contributions are required for the funding of the construction of, or improvements to local infrastructure and the public domain in the vicinity of the Land, as determined by the General Manager of Council from time to time and Council will apply the Monetary Contributions for those purposes.
- (b) Despite the description and location of works specified in Column 1 of Schedule 1 of this Agreement, Council may at its full discretion apply the Monetary Contributions towards another public purpose specified in this Agreement or a public purpose (including but not limited to works or land acquisition) it deems appropriate to service new development within the Precinct if 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 and s7.12 of the Act**

For the purpose of section 7.4(5) of the Act, this document excludes the application of sections 7.11 and section 7.12 of the Act in relation to the Development Application(s) for the Proposed Development.

8. **Termination**

This Agreement will terminate in the event that the Instrument Change as it relates to the Land does not occur.

9. **Consequences**

9.1 On the date of termination or rescission of this Agreement, subject to the following subparagraph each party releases each other from any obligation to perform any term, or any liability arising out of, this document after the date termination.

9.2 Termination or rescission of this Agreement does not release either party from any obligation or liability arising under this Agreement before termination or rescission.

10. **Private Certifiers**

Where Council is not the certifying authority for any aspect of the Proposed Development the Developer must on the appointment of a private certifier provide a copy of this Agreement to the private certifier.

11. **Notices**

11.1 Any notice to or by a party under this Agreement must be in writing and signed by the sender or, if a corporate party, an authorised officer of the sender.

11.2 Any notice may be served by delivery in person or by post or transmission by email to the address or number of the recipient specified in the Summary Sheet or most recently notified by the recipient to the sender.

11.3 Any notice 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, two (2) Business Days after it is posted;
- (c) if it is sent by email, at the time it is sent.

11.4 If any notice is delivered on a day that is not a business day, or if on a business day, after 5.00pm on that day on 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.

12. **Breach Notice and Rectification**

12.1 If the Developer is, in the opinion of Council, in breach of a material obligation under this document, Council may provide written notice of the breach to the Developer and require rectification of that breach within a reasonable period of time (**Breach Notice**).

12.2 Unless there are compelling reasons to extend or abridge the period of time permitted for rectification, a reasonable period of time is taken to be fourteen days from receipt of a Breach Notice.

12.3 If the breach is not rectified within the time specified in the Breach Notice, or otherwise agreed between the Parties, Council may rectify the breach as the agent of the Developer and at the risk of the Developer. The Developer must pay all reasonable costs incurred by Council in remedying the breach.

13. Dispute resolution

13.1 Disputes

If a party claims that a dispute has arisen under this document (Claimant), it must give written notice to the other party (Respondent) stating the matters in dispute and designating as its representative a person to negotiate the dispute (Claim Notice). No party may start court proceedings (except for proceedings seeking interlocutory relief) in respect of a dispute unless it has first complied with this clause 13.1.

13.2 Response to Notice

Within 10 business days of receiving the Claim Notice, the Respondent must notify the Claimant of its representative to negotiate the dispute.

13.3 Negotiation

The nominated representative must:

- a) meet to discuss the matter in good faith within 5 business days after service by the Respondent of notice of its representative; and
- b) use reasonable endeavours to settle or resolve the dispute within 15 business days after they have met.

13.4 Further Notice if Not Settled

If the dispute is not resolved within 15 business days after the nominated representatives have met, either party may give to the other a written notice calling for determination of the dispute (**Dispute Notice**) by mediation under clause 13.5.

13.5 Mediation

If a party gives a Dispute Notice calling for the dispute to be mediated:

- a) the parties must agree to the terms of reference of the mediation within 3 business days of the receipt of the Dispute Notice (the terms will include a requirement that the mediation rules of the Institute of Arbitrators and Mediators Australia (NSW Chapter) apply);
- b) the Mediator will be agreed between the parties, or failing agreement within 3 business days of receipt of the Dispute Notice, either party may request the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter) to appoint a mediator;
- c) the Mediator appointed pursuant to this clause 13.5 must:

- i. have reasonable qualifications and practical experience in the area of the dispute; and
 - ii. have no interest or duty which conflicts or may conflict with his function as mediator, he being required to fully disclose any such interest or duty before his appointment;
- d) the Mediator will be required to undertake to keep confidential all matters coming to his knowledge by reason of his appointment and performance of his duties;
- e) the parties must within 5 business days of receipt of the Dispute Notice notify each other of their representatives who will be involved in the mediation;
- f) the parties agree to be bound by a mediation settlement and may only initiate judicial proceedings in respect of a dispute which is the subject of a mediation settlement for the purpose of enforcing that mediation settlement;
- g) the parties must convene and attend the mediation within 21 days of the date of the Dispute Notice;
- h) in relation to costs and expenses:
 - i. each party will bear their own professional and expert costs incurred in connection with the mediation; and
 - ii. the costs of the Mediator will be shared equally by the parties unless the Mediator determines a party has engaged in vexatious or unconscionable behaviour in which case the Mediator may require the full costs of the mediation to be borne by that party.

13.6 Litigation

If the dispute is not finally resolved in accordance with this clause 13, either party is at liberty to litigate the dispute.

13.7 Continual performance

Each Party must continue to perform its obligations under this Agreement while any dispute is being determined under this clause.

14. Enforcement

14.1 Restriction on the issue of Certificates

In accordance with section 6.8 of the Act and clause 146A of the Regulation the obligation to pay Monetary Contributions under this Agreement must be satisfied prior to the issue of any Occupation Certificate for any Development Consent for the Proposed Development or any part of the Proposed Development if such an Occupation Certificate is required.

14.2 General Enforcement

- (a) This Agreement may be otherwise enforced by either Party in any court of competent jurisdiction.

- (b) For the avoidance of doubt, nothing in this Agreement prevents:
 - i. 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
 - ii. the Council from exercising any function under the Act or law relating to the enforcement of any aspect of this Agreement or any matter to which this Agreement relates.

15. Registration of Agreement on Title

15.1 Registration of this Agreement

- (a) The Developer agrees to procure the registration of this Agreement under the *Real Property Act 1900* (NSW) in the relevant folios of the Register of the Land in accordance with section 7.6 of the Act within thirty (30 days) of execution of this Agreement.
- (b) The Developer will promptly after the execution of this Agreement take all practical steps, and otherwise do anything that Council reasonably requires to procure:
 - i. the consent of each person who:
 - (A) has an estate or interest in the Land registered under the *Real Property Act 1900* (NSW); or
 - (B) is seized or possessed of an estate or interest in the Land.
 - ii. an acceptance of the terms of this Agreement and an acknowledgement in writing from an existing mortgagee in relation to the Land that the mortgagee will adhere to the provisions of this Agreement if it takes possession of the Land as mortgagee in possession;
 - iii. the execution of any documents; and
 - iv. the production of the relevant duplicate certificates of title.
- (c) The Developer will take all practical steps, and otherwise do anything that Council reasonably requires:
 - i. to procure the lodgment of this Agreement with the Registrar-General as soon as reasonably practicable after this Agreement comes into operation, but in any event, no later than 10 Business Days after that date; and
 - ii. to procure the registration of this Agreement by the Registrar-General in the relevant folios of the Register for the Land as soon as reasonably practicable after this Agreement is lodged for registration.

15.2 Release from Registration

Council will at the request of the Developer release the Land from registration of this document if it is terminated in accordance with clause 8 or when the Monetary Contributions have been received by Council and no other money is owing to Council

under this Agreement. The obligations of Council are satisfied when Council provides the Developer with a signed Request in registrable form for the release of registration of this Agreement.

15.3 Registration Expenses

The Developer must pay Council's reasonable expenses including registration fees, any stamp duty, legal costs and disbursements, for the registration of this Agreement and the subsequent removal of registration.

16. Costs

The Developer is to pay to Council, the Council's costs associated with the negotiation, preparation, exhibition, legal review, execution and registration of this Agreement within 7 days of a written demand by Council for such payment.

17. GST

If any payment made by one party to any other party under or relating to this document constitutes consideration for a taxable supply for the purposes of GST or any similar tax, the amount to be paid for the supply will be increased so that the net amount retained by the supplier after payment of that GST is the same as if the supplier was not liable to pay GST in respect of that supply. This provision is subject to any other agreement regarding the payment of GST on specific supplies, and includes payments for supplies relating to the breach or termination of, and indemnities arising from, this document.

18. General

18.1 Assignment

- (a) A party must not transfer any right or liability under this document without the prior consent of each other party, except where this document provides otherwise.
- (b) In the event that the Developer enters into a contract for the sale of the Land the subject of the Proposed Development, the Developer (as vendor) shall disclose to the purchaser the existence of this Agreement.

18.2 Governing law and jurisdiction

- (a) This document is governed by and construed under the law in the State of New South Wales.
- (b) Any legal action in relation to this document against any party or its property may be brought in any court of competent jurisdiction in the State of New South Wales.
- (c) Each party by execution of this document irrevocably, generally and unconditionally submits to the non-exclusive jurisdiction of any court specified in this provision in relation to both itself and its property.

18.3 Amendments

Any amendment to this document has no force or effect, unless effected by a document executed by the parties.

18.4 Third parties

This document confers rights only upon a person expressed to be a party, and not upon any other person.

18.5 Pre-contractual negotiation

This document:

- (a) expresses and incorporates the entire agreement between the parties in relation to its subject matter, and all the terms of that agreement; and
- (b) supersedes and excludes any prior or collateral negotiation, understanding, communication or agreement by or between the parties in relation to that subject matter or any term of that agreement.

18.6 Further assurance

Each party must execute any document and perform any action necessary to give full effect to this document, whether before or after performance of this document.

18.7 Continuing performance

- (a) The provisions of this document do not merge with any action performed or document executed by any party for the purposes of performance of this document.
- (b) Any representation in this document survives the execution of any document for the purposes of, and continues after, performance of this document.
- (c) Any indemnity agreed by any party under this document:
 - (i) constitutes a liability of that party separate and independent from any other liability of that party under this document or any other agreement; and
 - (ii) survives and continues after performance of this document.

18.8 Waivers

Any failure by any party to exercise any right under this document does not operate as a waiver and the single or partial exercise of any right by that party does not preclude any other or further exercise of that or any other right by that party.

18.9 Remedies

The rights of a party under this document are cumulative and not exclusive of any rights provided by law.

18.10 Counterparts

This document may be executed in any number of counterparts, all of which taken together are deemed to constitute one and the same document.

18.11 Party acting as trustee

If a party enters into this document as trustee of a trust, that party and its successors as trustee of the trust will be liable under this document in its own right and as trustee

of the trust. Nothing releases the party from any liability in its personal capacity. The party warrants that at the date of this document:

- (a) all the powers and discretions conferred by the deed establishing the trust are capable of being validly exercised by the party as trustee and have not been varied or revoked and the trust is a valid and subsisting trust;
- (b) the party is the sole trustee of the trust and has full and unfettered power under the terms of the deed establishing the trust to enter into and be bound by this document on behalf of the trust and that this document is being executed and entered into as part of the due and proper administration of the trust and for the benefit of the beneficiaries of the trust;
- (c) no restriction on the party's right of indemnity out of or lien over the trust's assets exists or will be created or permitted to exist and that right will have priority over the right of the beneficiaries to the trust's assets.

18.12 Representations and warranties

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

18.13 Severability

If a clause or part of a clause of this document 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 document, but the rest of this document is not affected.

19. Definitions and interpretation

In this document unless the context otherwise requires:

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

Agreement means this Planning Agreement.

Business Day means a day that is not a Saturday, Sunday, public holiday or bank holiday in New South Wales.

Development Application means any development application made under Part 4 of the Act for the Proposed Development.

Development Consent means any development consent granted by the Council under section 4.16 of the Act for the Proposed Development.

Development Contributions means the Monetary Contributions.

GST means any tax, levy, charge or impost implemented under the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (**GST Act**) or an Act of the Parliament of the Commonwealth of Australia substantially in the form of, or which has a similar effect to, the GST Act.

Instrument Change means amendment to The Hills Local Environmental Plan 2019 as it relates to the Land as a result of the Planning Proposal application number 18/2018/PLP.

Land means Lot 4054 in DP 1070487 known as 2-4 Burbank Place Norwest

Monetary Contributions means a monetary contribution to be made by the Developer pursuant to clause 6 of this Agreement and identified as payable to Council in Schedule 1 of this Agreement.

Occupation Certificate means the same thing as in the Act.

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

Planning Proposal means planning proposal 18/2018/PLP

Precinct means:

- a) upon the adoption of a Contributions Plan under the Act for the area within which the Land is located, the area to which that Plan applies and any area of land in the general vicinity of such area;
- b) prior to the adoption of any Contribution Plan of the nature referred to in (a) above, the area in the general vicinity of the Land but within the Norwest Business Park and within which Council proposes to provide public amenities and/or public services.

Proposed Development means any redevelopment of the Land, including but not limited to, the outcomes sought to be facilitated by the Planning Proposal and the Instrument Change.

Regulation means the *Environmental Planning and Assessment Regulation 2000* (NSW).

19.1 Interpretation

In this document unless the context otherwise requires:

- (a) clause and subclause headings are for reference purposes only;
- (b) the singular includes the plural and vice versa;
- (c) words denoting any gender include all genders;
- (d) reference to a person includes any other entity recognised by law and vice versa;
- (e) where a word or phrase is defined its other grammatical forms have a corresponding meaning;
- (f) any reference to a party to this document includes its successors and permitted assigns;
- (g) any reference to a provision of an Act or Regulation is a reference to that provision as at the date of this document;


- (h) any reference to any agreement or document includes that agreement or document as amended at any time;
- (i) the use of the word **includes** or **including** is not to be taken as limiting the meaning of the words preceding it;
- (j) the expression **at any time** includes reference to past, present and future time and the performance of any action from time to time;
- (k) an agreement, representation or warranty on the part of two or more persons binds them jointly and severally;
- (l) an agreement, representation or warranty on the part of two or more persons is for the benefit of them jointly and severally;
- (m) reference to an exhibit, annexure, attachment or schedule is a reference to the corresponding exhibit, annexure, attachment or schedule in this document;
- (n) reference to a provision described, prefaced or qualified by the name, heading or caption of a clause, subclause, paragraph, schedule, item, annexure, exhibit or attachment in this document means a cross reference to that clause, subclause, paragraph, schedule, item, annexure, exhibit or attachment;
- (o) when a thing is required to be done or money required to be paid under this document on a day which is not a Business Day, the thing must be done and the money paid on the immediately following Business Day; and
- (p) reference to a statute includes all regulations and amendments to that statute and any statute passed in substitution for that statute or incorporating any of its provisions to the extent that they are incorporated.

Schedule 1 – Monetary Contributions

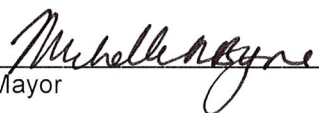
Column 1	Column 2	Column 3
Public Purpose	Timing of Payment	Amount of Payment
Local infrastructure and public domain improvements within the Precinct and its vicinity.	Prior to grant of an Occupation Certificate for each Development Consent for the Proposed Development	2% of the estimated construction cost of the Proposed Development as stated in the corresponding Development Application for the Development Consent
Infrastructure and improvements within the immediate proximity to the Land including (in order of preference): a) Public domain improvements to Strangers Lake including boardwalks; walking tracks; viewing platforms; lighting; landscaping; b) New cycle ways connecting to Burbank Place; and c) Public domain and streetscape improvements to Burbank Place.	Prior to grant of an Occupation Certificate for each Development Consent for the Proposed Development	1% of the estimated construction cost of the Proposed Development as stated in the corresponding Development Application for the Development Consent

Execution Page


The common seal of **The Hills Shire Council** was affixed under a resolution passed by council on 27 July 2021 in the presence of:


General Manager

Michelle Dwyer
Print Name


Mayor

MICHELLE DWYER
Print Name


Witness


Rachael Damary
Print Name



Executed by GU Custodian Pty Limited ACN 092 406 892 in accordance with s127 of the Corporations Act 2001 (Cth):


Secretary/Director

Richard de Carvalho
Print name


Director

Jim Hunter
Print name

Almacy *Michael Bynne*