

**PLANNING AGREEMENT**  
**Mackillop Drive, Norwest NSW 2153**  
**5/2018/PLP**  
**THE HILLS SHIRE COUNCIL**  
**Aqualand Baulkham Hills Development Pty Ltd**

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**THE  
HILLS**  
Sydney's Garden Shire





# **The Hills Shire Council**

3 Columbia Court, Norwest, NSW 2153

PO Box 7064, Norwest BC 2153 Phone (02) 9843 0555

## Summary Sheet

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<b>Council</b>	Name	<b>The Hills Shire Council</b>
	Address	3 Columbia Court Norwest, NSW 2153
	Telephone	(02) 9843 0555
	Facsimile	(02) 9843 0258
	Email	<a href="mailto:council@thehills.nsw.gov.au">council@thehills.nsw.gov.au</a>
	Representative	Mr Michael Edgar – General Manager
<b>Developer</b>	Name	<b>Aqualand Baulkham Hills Development Pty Ltd</b> as trustee for the Aqualand Baulkham Hills Development Trust
	Address	Level 47, Tower 1, 100 Barangaroo Ave, Barangaroo NSW 2000
	Telephone	(02) 9228 1888
	Facsimile	N/A
	Email	<a href="mailto:david.hore@aqualand.com.au">david.hore@aqualand.com.au</a>
	Representative	David Hore
<b>Land</b>	Lots 215, 216, 217 and 218 in DP1239622 and Lot 574 in DP713531 and any future lots resulting from subdivision of this land – refer to Schedule 1	
<b>Planning Proposal and Development Applications</b>	5/2018/PLP, 805/2019/HA and 826/2019/HA	
<b>Dedication Land</b>	See Schedule 3	
<b>Works</b>	See Schedule 4	
<b>Monetary Contributions</b>	See Schedule 5	
<b>Security Amount</b>	\$150,000	

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Dated 21 February 2022

## Parties

1. **The Hills Shire Council** ABN 25 034 494 656 of 3 Columbia Court, Norwest , NSW 2153 (**Council**)
2. **Aqualand Baulkham Hills Development Pty Ltd** (ACN 619 300 873) as trustee for the Aqualand Baulkham Hills Development Trust of Level 47, Tower 1, 100 Barangaroo Avenue, Barangaroo 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 has lodged Planning Proposal No. 5/2018/PLP (**Planning Proposal**) in respect of the Land.
- C. The Land, along with adjoining land, has the benefit of a Concept and Stage 1 Development Consent (**DA 6/2012/JP**) for a mixed density residential development of a total of 195 dwellings comprising 78 low density residential dwellings, 75 medium density/small lot dwellings, 42 apartments, associated roads, and a public park.
- D. Of the 195 dwellings approved by DA 6/2012/JP, a total of 118 dwellings were approved for development on the Land.
- E. The Developer has also lodged four Development Applications 1683/2019/HA, 826/2019/HA, 805/2019/HA and 803/2019/ZA in respect of the Land. These Development Applications do not rely on the Planning Proposal for their permissibility. In total, the Development Applications relate to 4 low density residential dwellings, 40 town houses and associated community title subdivision, and adaptive reuse of a heritage building for health consulting suites and an extension for a community club house. These Development Applications have been approved and require, as a condition of consent, the payment of section 7.12 development contributions.
- F. The Land therefore already has an existing concept approval for 118 dwellings, and recent development consents (described in E above) for 44 dwellings. This leaves a further 74 dwellings that would currently be permitted on the Land under DA 6/2012/JP, without the Planning Proposal.
- G. The Planning Proposal would increase the residential density permitted to be developed on the Land above that approved by DA 6/2012/JP by an anticipated 196 dwellings and the Developer has offered to make Development Contributions in the form of land dedication, monetary contributions and works as described in Schedules 3, 4, 5 and 6 of this Agreement with respect to that increased density.

## 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 document becomes operative on the last to occur of:

- (a) the commencement of an amendment to *The Hills Local Environmental Plan 2019* to give effect to the Planning Proposal; and
- (b) both parties executing this document.

5.2 This document provides for Development Contributions to be made with respect to the Proposed Development.

5.3 This document ceases to apply to any part of the Land when:

- (a) the Developer has paid the Total Monetary Contributions required to be paid with respect to any Dwellings approved or erected on the relevant part of the Land; and
- (b) the Developer has completed any Works required to be completed with respect to that part of the Land.

5.4 At the request of Council at reasonable times throughout the Proposed Development, the Developer must:

- (a) provide to Council a report stating (to the best of the Developer's knowledge) the number of Dwellings developed on the Land at the relevant time; and
- (b) if the Developer has not paid any Monetary Contribution, or Additional Monetary Contribution, with respect to a Dwelling for which such an amount should have been paid, the Developer must pay the relevant Monetary Contribution, or Additional Monetary Contribution, with respect to any such Dwelling within twenty (20) business days of being requested to do so by Council.

5.5 If the Council becomes aware at any time that the Developer has not paid any Monetary Contribution, or Additional Monetary Contribution, with respect to a Dwelling for which such an amount should have been paid:

- (a) the Council will issue a notice to the Developer providing the relevant details of that shortfall; and
- (b) the Developer must pay the relevant Monetary Contribution, or Additional Monetary Contribution, with respect to any such Dwelling within twenty (20) business days of that notice.

**6. Not Used**

**7. Dedication**

- 7.1 The Developer and Landowner must at their cost Dedicate to Council the Dedication Lands in accordance with the times listed in Schedule 3.
- 7.2 The Dedication of any part of the Dedication Lands to Council will be effected for the purpose of this Agreement when Council becomes the registered proprietor of an existing lot being part of the Dedication Lands.
- 7.3 The Developer must not during the term of this planning agreement sell, transfer, mortgage, charge or grant a lease or license or any other right of occupancy to any person over the Dedication Lands without first obtaining Council's consent in writing. Council may, at its absolute discretion, refuse its consent or give consent with conditions.
- 7.4 Where an existing lot forming part of the Dedication Lands is to be transferred to Council:
- (a) the Developer will deliver to Council the following:
    - (i) transfer in registrable form signed by the registered proprietor of the lot;
    - (ii) the Certificate of Title for the lot; and
    - (iii) a discharge of mortgage, surrender of lease or other document to release the lot from any encumbrance.
  - (b) Council will on receipt of these documents arrange for the following:
    - (i) stamping of the transfer; and
    - (ii) lodgement of the transfer and other documents at the office of Land and Property Information for registration.
- 7.5 Council must provide the Developer with a tax invoice for its reasonable legal expenses incurred in relation to the Dedication of the Dedication Land.
- 7.6 The Developer will be entitled to the benefit of any special or discounted rates charged to Council by its consultants and legal advisers and will be entitled to seek assessment of any legal costs, as a third party payer under s 350(2) of the *Legal Profession Act 2004* (NSW).
- 7.7 The Developer must pay to Council the amount invoiced under sub-clause 7.3 within 14 days of receipt of the invoice.
- 7.8 The Developer must pay Council on reasonable notice the stamp duty (if any) on the Dedication of the Dedication Land. The Parties acknowledge that Section 227 *Duties Act 1997* (NSW) provides generally that duty under that Act is not chargeable on dutiable transactions where Council is liable to pay the duty.
- 7.9 After the Dedication Land is transferred to Council, Council will use the land for public purposes in the future as Council may consider appropriate.

**8. Monetary Contributions**

**8.1 Payment**

The Developer must pay the Monetary Contribution and any applicable Additional Monetary Contribution (**Total Monetary Contribution**) in accordance with Schedule 5 and 6



(as applicable). Payment of the Total Monetary Contribution may be made by cheque or electronic bank transfer to Council's nominated bank account.

## 8.2 Annual Increases

On each anniversary of the date of this document the Total Monetary Contribution applicable immediately prior to that anniversary will be increased by the same percentage as the annual percentage increase, if any, in the ABS Producer Price Index (Non-Residential Building Construction for NSW) #3020 most recently published prior to the relevant anniversary. The increased Total Monetary Contribution will be the Total Monetary Contribution in the subsequent 12 months.

## 8.3 Timing of payment

The Monetary Contribution and the Additional Monetary Contribution must be paid at the times determined in accordance with Schedule 7.

## 8.4 Public Purpose

The Total Monetary Contribution is required for the funding of the construction of, or improvements to local infrastructure and the public domain in the vicinity of the Land (including those specified in section 7.4(2) of the Act) as determined by the General Manager of Council from time to time and Council will apply the Total Monetary Contribution for those purposes.

# 9. Works

## 9.1 Obligation to Carry Out Works

- (a) The Developer is to carry out and complete the Works on the Land at the locations shown on the Location Plan.
- (b) The Developer's obligation under clause 9 exists irrespective of whether the Developer:
  - (a) carries out the Works itself, or
  - (b) enters into an agreement with another person under which the other person carries out the Works on the Developer's behalf.
- (c) Before the Developer commences the Works, the Developer, at its own cost, is to prepare and submit to the Council or a person specified by the Council, detailed plans and specifications in relation to the item.
- (d) The Developer is not to commence the Works unless the Council or the person specified by the Council has given the Developer written approval of the plans and specifications relating to the item.
- (e) The Developer is to carry out and complete the Works in a good and workmanlike manner, in accordance with:
  - (a) the Development Consent, and
  - (b) all applicable laws, including those relating to occupational health and safety, and
  - (c) this Agreement to the extent that it is not inconsistent with the Development Consent or an applicable law, and
  - (d) the written approval given under clause 9.1.4.

- (f) In the event of an inconsistency between this Agreement and the Development Consent or any applicable law, the Development Consent or the law prevails to the extent of the inconsistency.
- (g) It is the Developer's responsibility to ensure that everything necessary for the proper performance of its obligations under this Agreement is supplied or made available.
- (h) The Works are to be Handed-Over to the Council:
  - (a) by not later than the Hand-Over Date for the Works, and
  - (b) otherwise in accordance with this Agreement.

## **10. Ownership of Works**

- 10.1 Ownership of the Works is transferred to Council on Hand Over and nothing in, or done under, this Agreement gives the Developer, after Hand-Over any right, title or interest in the Works.
- 10.2 On Hand Over the Developer must cause the legal title in the Works and all materials and component of the Works to pass to Council free of any charge or other interest. The Developer warrants that after Hand Over the Works are not subject to any security interest (as defined in the *Personal Property Securities Act 2009 (Cth)* (**PPSA**)) and any security interest noted in the Personal Property Securities Register has been discharged. The Developer indemnifies Council for all claims, costs, losses and expense Council may suffer arising from any breach of this warranty or any claim or action taken by any person in respect of any security interest (as defined in the PPSA) in the Works.

## **11. Determination of Value**

- 11.1 For the purposes of this Agreement, the Parties acknowledge that the Contribution Value in relation to each Item of the Works is the amount specified in Schedule 4.
- 11.2 If the Developer's actual cost of carrying out the Works, including any costs incurred pursuant to this Agreement, determined at the date on which the Works is Handed-Over to the Council, is in excess to the Contribution Value, then no party to this Agreement shall be entitled to reimbursement, as the case may be, for the difference.
- 11.3 If the Developer's actual cost of carrying out the Works, including any costs incurred pursuant to this Agreement, determined at the date on which the Works is Handed-Over to the Council, is less than the Contribution Value, then the Developer must pay the difference between the cost and the Contribution Value to Council within 28 days of Council providing the Developer with an invoice for that amount.

## **12. Access to the land and location of Works**

- 12.1 Subject to Council complying with the reasonable directions of the Developer or its third party contractors, including any site induction or safety requirements, the Developer is to permit the Council, its officers, employees, agents and contractors to enter the Land at any time, upon giving reasonable prior notice, in order to inspect, examine or test any of the Works.
- 12.2 The Developer must enable Council, its officers, employees, agents and contractors access to the location of the Works where this is not the Land, Council land or a public road.

## **13. Protection of People, Property and the Environment**

- 13.1 The Developer is to ensure in relation to the carrying out of the Works that:



- (a) all necessary measures are taken to protect people, property and the Environment,
- (b) unnecessary interference with the passage of people and vehicles is avoided;
- (c) nuisances and unreasonable noise and disturbances are prevented; and
- (d) **It complies with** all relevant laws and regulations with respect to water, air, noise and land pollution (including 'pollution incidents') as defined under the *Protection of the Environment Operations Act 1997* (NSW).

#### **14. Damage and Repairs to the Works**

- 14.1 The Developer, at its own cost, is to repair and make good to the satisfaction of the Council any loss or damage to the Works from any cause whatsoever which occurs prior to the date on which the Works is Handed-Over to the Council.

#### **15. Variation of Works**

- 15.1 The Works are not to be varied by the Developer, unless:
- (a) the Parties agree in writing to the variation, and
  - (b) any consent or approval required under the Act or any other law to the variation is first obtained, and
  - (c) the Developer bears all of the Council's costs of and incidental to agreeing to and approving the variation.
- 15.2 For the purposes of clause 15.1.1 a variation may relate to any matter in relation to the Works that is dealt with by this Agreement.
- 15.3 If Council requests a variation to the Works after Council has given its written approval under clause 9, then the Council shall be liable to pay to the Developer an amount equal to the increase in the costs of completing the Works, which results from the variation requested by the Council.
- 15.4 Council shall repay the amount referred to in clause 15.3 to the Developer after the Works are complete, and within 28 days of receipt of:
- (a) a tax invoice for the amount claimed by the Developer; and
  - (b) documentation which demonstrates to Council's satisfaction the increase in costs as a result of the variation requested by the Council.

#### **16. Hand-Over of Works**

- 16.1 The Developer is to give the Council not less than 20 days written notice of:
- (a) the date on which it proposes to Hand-Over any Works to the Council, being a date not later than the Hand-Over Date, and
  - (b) the Items of Work the subject of the notice.
- 16.2 The Council may, at any time before the date specified in the notice referred to in clause 16.1.1, direct the Developer in writing:
- (a) to carry out work specified in the notice to complete the Works in accordance with clause 9.1.5 before it is Handed-Over to the Council, and

- (b) to Hand-Over the Works completed in accordance with the Council's direction to the Council by a specified date, irrespective of whether that date is later than the Hand-Over Date.
- 16.3 The Developer is to comply with a direction according to its terms and at the Developer's own cost.
- 16.4 Before the Works are handed-over to the Council, the Developer is to remove from the Land:
  - (a) any rubbish or surplus material, and
  - (b) any temporary works, and
  - (c) any construction plant and equipment, relating to the carrying out of the Works as the case requires.
- 16.5 The Works are taken to be Handed-Over to the Council when the Council gives the Developer written notice to that effect.

## **17. Failure to Carry out and Hand-Over Works**

- 17.1 The parties agree that the Hand-Over Date may be extended due to:
  - (a) any Force Majeure Event,
  - (b) any delays on the part of any government authority (including the Council) in granting any approval, consent, licence or permit necessary for the Works to be completed, or
  - (c) any direction the Council gives extending the Hand-Over Date.
- 17.2 If the Council considers that the Developer is in breach of any obligation under this Agreement relating to the carrying out of the Works, the Council must give the Developer a notice requiring:
  - (a) the breach to be rectified to the Council's satisfaction, or
  - (b) the carrying out of the Works to immediately cease, except in relation to the rectification of the breach, and the breach to be rectified to the Council's satisfaction.
- 17.3 A notice given under clause 17.2 is to allow the Developer a reasonable period (and in any case not less than 28 days) to rectify the breach.
- 17.4 If the Developer fails to rectify the breach the subject of a notice given under clause 17.2, the Council may:
  - (a) call upon the Security, and
  - (b) carry out and complete or make safe the Works.
- 17.5 For the purposes of clause 17.4.2:
  - (a) the Developer must allow the Council, its servants, agents and contractors to enter the Land for the purpose of completing the Works, and
  - (b) any difference between the amount of the Security called upon pursuant to clause 17.4.1, and the costs incurred by the Council in carrying out, completing, or making safe the Works, may be recovered by the Council from the Developer as a debt due in a court of competent jurisdiction.



**18. Works-As-Executed-Plan**

- 18.1 No later than 60 days after a notice is given under clause 16.5, the Developer is to submit to the Council a full Works-As-Executed-Plan in respect of the Works the subject of the notice.
- 18.2 The Developer shall provide with the Work-as-Executed Plan(s) all appropriate certificates to verify that the Works have been carried out in accordance with relevant standards.

**19. Rectification of Defects**

- 19.1 During the Defects Liability Period the Council may give to the Developer a Rectification Notice in relation to the Works specifying:
- (a) the Works requiring rectification,
  - (b) the action required to be undertaken by the Developer to rectify those Works, and
  - (c) the date on which those Works are to be rectified.
- 19.2 The Developer must comply with a Rectification Notice at its own cost according to the terms of the Notice.
- 19.3 When the Developer considers that rectification is complete, the Developer may give to the Council a Rectification Certificate relating to the Works the subject of the relevant Rectification Notice.
- 19.4 A Rectification Certificate discharges the Developer from any further obligation to comply with the relevant Rectification Notice.
- 19.5 If the Developer does not comply with a Rectification Notice, the Council may do such things as are necessary to rectify the defect and may:
- (a) call upon the Security to meet its costs in rectifying the defect, and
  - (b) recover, as a debt due in a court of competent jurisdiction, any difference between the amount of the Security and the costs incurred by the Council in rectifying the defect.

**20. Cost of Works carried out by the Council**

- 20.1 The Parties acknowledge and agree that where the Developer fails to carry out, complete or rectify a defect in the Works in accordance with clause 17 or 19 of this Agreement and the Council exercises its right under clause 17.4 or 19.5 of this Agreement and incurs a cost in carrying out, completing or rectifying a defect in the Works, the Council may recover from the Developer in a court of competent jurisdiction its reasonable costs, including costs determined in accordance with clause 20.2.
- 20.2 The Council's reasonable costs of carrying out, completing or rectifying the Works in accordance with this Agreement include, but are not limited to:
- (a) the reasonable costs of the Council's servants, agents and contractors reasonably incurred for that purpose,
  - (b) all fees and charges necessarily or reasonably incurred by the Council in order to have the Works carried out, completed, made safe or rectified, and
  - (c) without limiting the generality of the preceding sub-clause, all legal costs and expenses reasonably incurred by the Council, by reason of the Developer's failure to comply with this Agreement.

## **21. Indemnity and Insurance**

- 21.1 The Developer indemnifies the Council, its employees, officers, agents, contractors 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 personal injury, death or real property damage caused by the Developer's negligence or breach of its obligations under this Agreement, except to the extent that such losses, damages, costs, charges, expenses, actions, claims and demands are caused by Council, its employees, officers, agents and contractors.
- 21.2 The Developer is responsible for meeting all of its obligations under the terms of this Agreement regardless of whether the Developer engages any third party contractor to carry out any aspect of its obligations under this agreement on its behalf and accordingly, the Developer indemnifies and shall keep indemnified the Council, its employees, officers, agents, contractors from and against all losses, damages, costs, charges, expenses, actions, claims and demands whatsoever that may be sustained, suffered, recovered or made arising in connection with personal injury, death or real property damage caused by the negligence or breach of the Developer's obligations under this Agreement by any third party contractor engaged by the Developer in relation to any work, action, task or obligation of the Developer under this Agreement.
- 21.3 The Developer is to take out and keep current or procure that its contractor take out and keep current to the satisfaction of the Council the following insurances in relation to the Works up until the relevant date of Hand-Over to Council:
- (a) contract works insurance, noting the Council as an interested party, for the full replacement value of the Works (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 Works,
  - (b) public liability insurance for at least \$10,000,000 for a single occurrence, which covers the Council and the Developer for liability to any third party,
  - (c) workers compensation insurance as required by law, and
  - (d) any other insurance required by law.
- 21.4 The Developer warrants that it shall ensure that any third party contractor that it may engage from time to time in relation to any aspect of the Developers' obligations under this Agreement also has in place the necessary insurances referred to in clause 21.3 and shall provide copies of the certificates of currency of insurance to the Council upon request.
- 21.5 If the Developer fails to comply with clause 21.4, 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:
- (a) by calling upon the Security provided by the Developer to the Council under this Agreement, or
  - (b) recovery as a debt due in a court of competent jurisdiction.
- 21.6 The Developer is not to commence to carry out the Works unless it has first provided to the Council certificates of currency evidencing that all the insurances specified in clause 21.3 have been obtained.

## **22. Provision of Security**

- 22.1 This clause does not apply if:



- (a) the Summary Sheet at the front of this Agreement contains the words "Not Applicable" in relation to the Security Amount, or
  - (b) the Council, by notice in writing to the Developer, has otherwise waived compliance by the Developer with this clause.
- 22.2 The Developer is not to commence the Works unless it has given the Security to the Council.
- 22.3 The Security for the purposes of this agreement is confined to the Works related to Item 2 of Schedule 4.
- 22.4 The amount of the Security is to be equivalent to the Contribution Value of the Works identified in clause 22.3 plus a contingency of 50% of the Contribution Value and being the amount specified in the Summary Sheet.
- 22.5 In the event of any failure by the Developer to perform or observe any part of this Agreement so far as it relates to the Works described in Item 2 of Schedule 4, Council may without notice to the Developer call on the Security for any amount payable to Council.
- 22.6 If the Council calls on the Security in accordance with this Agreement, the Council may, by notice in writing to the Developer, require the Developer to provide a further 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 clause.
- 22.7 On each anniversary of the date of this Agreement the amount of the Security will be increased by the same percentage as the annual percentage increase (if any) in the Consumer Price Index most recently published prior to the relevant anniversary.
- 22.8 The Developer must at the request of Council increase the amount of the Security held by Council to the amount of the Security to be provided under this Agreement.
- 22.9 The Council must return the Security to the Developer within 14 days of the Hand- Over of the Works described in Item 2 of Schedule 4.

### **23. Easements Covenants and Restrictions on Title**

- 23.1 Prior to any dedication of the Dedication Lands to Council, the parties are to resolve what easements, covenants and/or restrictions on title must necessarily be created upon any subdivision of the Land, having regard to the provisions of Part 6 of the *Conveyancing Act 1919* (NSW).
- 23.2 The parties warrant to do all things necessary to procure the registration on title to the Land or title(s) to any relevant lot created by subdivision of the Land of any easement, covenant or restriction on title as referred to in this clause.
- 23.3 The Developer will bear the costs associated with the registration of the easements, covenants and/or restrictions on title as agreed pursuant to clause 23.1.

### **24. Application of s7.11 and s7.12 of the Act**

- 24.1 This document excludes the operation of Section 7.11 and Section 7.12 of the Act (**Statutory Contributions**) to the Proposed Development.

### **25. Modifications**

- 25.1 In the event that the Proposed Development is changed, modified or amended prior to completion of the development, and a further development or modification application is made for the development of the Land, then any Development Contribution made pursuant to this Agreement shall, to the extent that it is lawful:

- (a) be taken into account as part of any development contribution for the purpose of any planning agreement relating to a later application in respect of the Land; and
- (b) be taken into account in determining any development contribution under section 7.11 and section 7.12 of the Act; and
- (c) be taken into account in determining whether or not any planning agreement excludes the operation of section 7.11 and/or section 7.12 of the Act; and
- (d) be taken into account for the purposes of section 7.11(6) of the Act; and
- (e) be taken into account for the purposes of section 4.15 of the Act.

## **26. Termination**

### **26.1 Bankruptcy & Insolvency**

This Agreement will immediately terminate if:

- (a) Any company officer of the Developer becomes subject of bankruptcy proceedings or becomes a bankrupt.
- (b) The Developer becomes subject of external administration or insolvency proceedings.

## **27. Consequences**

- 27.1 On the date of termination or rescission of this document, subject to the following subparagraphs each party releases each other from any obligation to perform any term, or any liability arising out of, this document after the date termination.
- 27.2 Any bond or Bank Guarantee that has been provided to Council will be refunded to the Developer as soon as practicable after the date of termination, unless Council has a potential claim against the Developer that may be met from that bond or Bank Guarantee.
- 27.3 Termination or rescission of this document does not release either party from any obligation or liability arising under this document before termination or rescission.

## **28. 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.

## **29. Notices**

- 29.1 Any notice to or by a party under this document must be in writing and signed by the sender or, if a corporate party, an authorised officer of the sender.
- 29.2 Any notice may be served by delivery in person or by post or transmission by facsimile to the address or number of the recipient specified in the Summary Sheet or most recently notified by the recipient to the sender.
- 29.3 Any notice is effective for the purposes of this document upon delivery to the recipient or production to the sender of a facsimile transmittal confirmation report before 4.00pm local time on a day in the place in or to which the written notice is delivered or sent or otherwise at 9.00am on the next day following delivery or receipt.



### **30. Breach Notice and Rectification**

- 30.1 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**).
- 30.2 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 written notification of the breach.
- 30.3 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 the Council in remedying the breach.

### **31. Dispute resolution**

#### **31.1 Disputes**

If there is any dispute, difference of opinion or failure to agree relating to or arising from this document that dispute must be referred for determination under this clause.

#### **31.2 No legal proceedings**

The Parties must not bring or maintain any action on any Dispute (except for urgent injunctive relief to keep a particular position) until it has been referred and determined as provided in this clause.

#### **31.3 Notice of disputes (Dispute Notice)**

A Party referring a Dispute for determination must do so by written notice to the other parties which must specify the nature of the Dispute and a nominated officer of the referring party with sufficient authority to determine the Dispute.

#### **31.4 Negotiated resolution and selection of expert**

- (a) On service of the Dispute Notice the receiving Parties must refer the Dispute to an officer with sufficient authority to determine the Dispute. The nominated officers of each Party must meet at least once and use reasonable endeavours to resolve the Dispute by negotiation within seven days of service of the Dispute Notice. Any resolution must be recorded in writing and signed by each nominated officer. By agreement, the nominated officers may employ the services of a mediator to assist them in resolving the Dispute.
- (b) If the nominated officers are unable to resolve the Dispute within seven days of service of the Dispute Notice they must endeavour within the following seven-day period to appoint an expert by agreement. That appointment must be recorded in writing and signed by each nominated officer.
- (c) If the nominated officers do not record the appointment of an expert within that second seven day period, the expert must be appointed, at the request of any party, by the President for the time being (or if none, the senior elected member) of the Law Society of New South Wales.

#### **31.5 Assistance to the Expert (the Expert)**

- (a) Once the Expert has been appointed (the Expert), the Parties must:
  - (i) each use their best endeavours to make available to the Expert all information the Expert requires to settle or determine the Dispute; and

- (ii) ensure that their employees, agents or consultants are available to appear at any hearing or enquiry called by the Expert.
- (b) The Parties may give written submissions to the Expert but must provide copies to the other Parties at the same time.

#### 31.6 Expert's decision

- (a) The decision of the Expert must:
  - (i) be in writing and give reasons; and
  - (ii) be made and delivered to the parties within one month from the date of submission of the dispute to the Expert or the date of completion of the last hearing or enquiry called by the Expert, if later.
- (b) The Expert may conduct the determination of the Dispute in any way it considers appropriate but the Expert may, at its discretion, have regard to the Australian Commercial Disputes Centre's guidelines for expert determination of disputes or such other guidelines as it considers appropriate.
- (c) The Expert's decision is final and binding on the parties.
- (d) The Expert must act as an expert and not as an arbitrator.

#### 31.7 Expert's costs

- (a) The Expert must also determine how the expenses relating to the reference of the Dispute (including the Expert's remuneration) should be apportioned between the parties and in default of a decision by the Expert those expenses must be borne by the parties equally.
- (b) In determining the apportionment of costs the Expert may have regard to what the Expert, in its reasonable opinion, considers to be a lack of good faith or a failure to use reasonable endeavours by any party in assisting the Expert or resolving the dispute between the parties' nominated officers as required by this clause.

#### 31.8 Continual performance

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

### 32. Registration of document on Title

#### 32.1 Acknowledgement

The Developer agrees to register this document under section 7.6 of the Act on the Land and on registration by the Registrar-General the Agreement will be binding on and enforceable against the owners of the Lands from time to time as if each owner for the time being had entered into this document.

#### 32.2 Consents to Registration

The Developer must register this Agreement on the title of the Land within sixty (60) days after it is entered into between the parties and must provide written notice to Council immediately upon the registration of this Agreement on the title of the Land. Each Party must promptly execute any document and perform any action necessary to affect the registration of this document on the title of the Land.



### 32.3 Release from Registration

Provided the Developer is not in breach of any of its obligations under this document at the relevant time, Council will at the request of the Developer remove this document from the title of any part of the Land where the Development Contributions required to be provided by the Developer with respect to that part of the Land have been made, including completion of the Works and the payment of the Monetary Contribution or the Additional Monetary Contribution (as the case may be).

Where the Developer elects to pay a Monetary Contribution or Additional Monetary Contribution (as the case may be) prior to the creation of a residential lot (and prior to the construction of any Dwelling on that lot) based on the estimated number of Dwellings to be constructed on that lot, which is accepted by Council, Council will also remove this document from the title of any such lot, prior to the issue of a subdivision certificate for that lot.

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

### 32.4 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 document and the subsequent removal of registration.

## 33. Costs

- 33.1 The Developer is to pay to the Council, the Council's reasonable costs associated with the negotiation, preparation, exhibition, legal review, execution and registration of this Agreement within 7 days of a written demand by the Council for such payment. Any such written demand by the Council must include the relevant invoices evidencing such reasonable costs.

## 34. 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.

## 35. General

### 35.1 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 Development Consent, other than a proposed residential lot, the Developer (as vendor) shall disclose to the purchaser the existence of this Agreement.

### 35.2 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.

### 35.3 Amendments

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

### 35.4 Third parties

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

### 35.5 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.

### 35.6 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.

### 35.7 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.

### 35.8 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.

### 35.9 Remedies

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

### 35.10 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.



#### 35.11 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 as trustee of the trust. 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.

#### 35.12 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.

#### 35.13 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.

### 36. Definitions and interpretation

#### 36.1 Definitions

In this document unless the context otherwise requires:

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

**Additional Monetary Contribution** means the amount of monetary contributions to be provided by the Developer as determined by multiplying the Additional Monetary Contribution Rate by the number of Dwellings over and above the 270th Dwelling comprising the Proposed Development.

**Additional Monetary Contribution Rate** means the rate specified in Schedule 6.

**Bank Guarantee** means a written guarantee without a time limit acceptable to Council issued by an Australian Bank.

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

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

**Contribution Value** means the amount specified as the contribution value of the Works or the Dedication Lands (as applicable) as shown in Schedule 3 or 4.

**Current Development Consent** means Stage 1 of DA 6/2012/JP, 1683/2019/HA, 826/2019/HA, 805/2019/HA, and 803/2019/ZA.

**Dedication** means the creation or transfer of an estate in fee simple free of any mortgage, lease, easement or other encumbrance of a lot registered under the *Real Property Act 1900* (NSW).

**Dedication Lands** means the parts of the Land specifically identified for dedication to Council in Schedule 3.

**Developer** means a persons who has sought a change to an environmental planning instrument or who has made, or proposes to make, an application for development consent.

**Development Application** means the development application for the Development Consent.

**Development Consent** means the development consent granted by the Council under section 4.16 of the Act in relation to the Land.

**Development Contributions** means a monetary contribution, the dedication of land free of cost or the provision of a material public benefit including the Works, or a combination of any of them.

**Dispute Notice** means written notice provided by a Party referring a dispute for determination, specifying the nature of the dispute and a nominated officer of the referring party with sufficient authority to determine the dispute.

**Defects Liability Period** means the period specified in Column 4 of Schedule 4 in relation to the Works specified in Columns 1 and 2 of that Schedule commencing on the date a notice is given in relation to those Works.

**Dwelling** means a room, or suite of rooms, occupied or used, or so constructed or adapted, as to be capable of being occupied or used, as a separate domicile to be erected on the Land as part of the Proposed Development and is not limited to a Dwelling that is capable of being subject to a separate title and on-sold separately from other Residential Lots within the Proposed Development.

**Encumbrance** includes any mortgage or charge, lease, (or other right of occupancy) or profit a prendre.

**Environment** has the same meaning as set out in the Dictionary to the *Protection of the Environment Operations Act 1997* (NSW).

**Force Majeure Event** means any event or circumstance, or a combination of events or circumstances:

- (a) which arises from a cause beyond the reasonable control of a party, including:
  - (i) an act of God,
  - (ii) strike, lockout, other industrial disturbance or labour difficulty,
  - (iii) war (declared or undeclared), act of public enemy, blockade, revolution, riot, insurrection, civil commotion,
  - (iv) lightning, storm, flood, fire, earthquake, explosion, epidemic, quarantine
  - (v) embargo, unavailability of any essential equipment or materials, unavoidable accident, lack of transportation, or



- (vi) anything done or not done by or to a person, except the party relying on force majeure;
- (b) which the Developer takes all reasonable precautions to protect itself against, and uses all reasonable endeavours to mitigate the consequences of (which does not require the Developer to settle a labour dispute if, in the Developer's opinion, that is not in its best interests); and
- (c) which the Developer notifies the Council of, as soon as practicable after becoming aware of the event or circumstance.

**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;

**Hand-Over** means the hand-over to the Council of the Works in accordance with this Agreement.

**Hand-Over Date** means the date specified in Column 3 of Schedule 4 in relation to the Works specified in Columns 1 and 2 of that Schedule corresponding to that date, subject to any extension of that date.

**Hand-Over Notice** means a notice issued by the Council under clause 16.

**Item of Works** means an item of the Works.

**Land** means Lots 215, 216, 217 and 218 in DP1239622 and Lot 574 in DP713531, as shown in Schedule 1.

**Location Plan** means the plan contained in Schedule 1.

**Material Public Benefit Approval** means an approval under subclause 9.1.4.

**Monetary Contributions** means the monetary development contributions required to be paid to the Council as specified in Schedule 5.

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

**Producer Price Index** means the Producer Price Index for NSW published by the Australian Bureau of Statistics.

**Proposed Development** means the development described in Schedule 2.

**Rectification Certificate** means a compliance certificate within the meaning of section 6.4(1)(a)(v) of the Act to the effect that work the subject of a Rectification Notice has been completed in accordance with the notice.

**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* (NSW).

**Residential Lot** means a lot forming part of the Land which lot is intended to be developed by construction of one or more Dwellings and is not intended to be further subdivided prior to the construction of those Dwellings.

**Security** means a Bank Guarantee or bond in favour of the Council on terms satisfactory to the Council in accordance with clause 22.

**Total Monetary Contribution** has the meaning ascribed to that term in clause 8.1.

**Works** means the works specified or described in Column 1 of Schedule 4 and includes any Item of Works and any part of any Item of Works.

**Works-As-Executed-Plan** means detailed plans and specifications of the completed Works.

## 36.2 Interpretation

In this document unless the context otherwise requires:

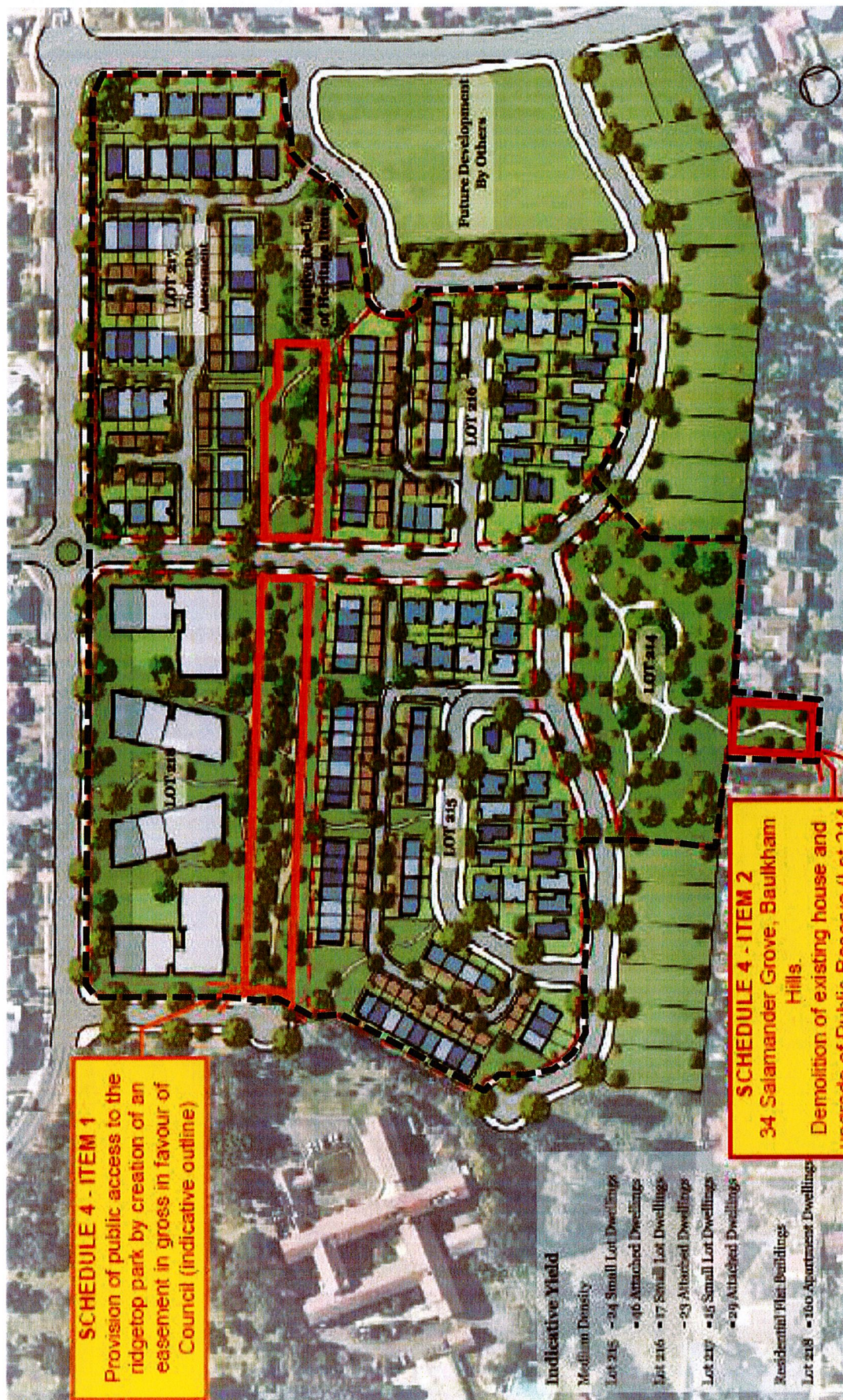
- (a) clause and subclause headings are for reference purposes only;
- (b) the singular includes the plural and vice versa;
- (c) words denoting any gender include all genders;
- (d) reference to a person includes any other entity recognised by law and vice versa;
- (e) where a word or phrase is defined 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 – Location Plan







**SCHEDULE 4 - ITEM 1**  
Provision of public access to the ridgetop park by creation of an easement in gross in favour of Council (indicative outline)

**SCHEDULE 4 - ITEM 2**  
34 Salamander Grove, Baulkham Hills.  
Demolition of existing house and upgrade of Public Reserve (Lot 214 DP1239622 and 34 Salamander Grove) including landscaping, pathways and plantings

**Indicative Yield**

- Medium Density
- Lot 215 - 24 Small Lot Dwellings
  - 46 Attached Dwellings
  - Lot 216 - 17 Small Lot Dwellings
  - 23 Attached Dwellings
  - Lot 217 - 45 Small Lot Dwellings
  - 29 Attached Dwellings

- Residential Flat Buildings
- Lot 218 - 100 Apartment Dwellings

100% Architecture • 10% Marketing Drive, Newport • 20%



## **Schedule 2 – Proposed Development**

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Development of the Land for residential purposes, including the subdivision of the Land and the erection of Dwellings on the Residential Lots created as part of that subdivision, any associated drainage works and embellishment of public open space, permitted as a consequence of the rezoning of the land in accordance with Planning Proposal No. 5/2018/PLP, excluding any development permitted under any Current Development Consent.

For the avoidance of any doubt, the Proposed Development only includes Dwellings that are subject to the first Occupation Certificate issued with respect to the relevant part of the Land on which those Dwellings are constructed. Any further Dwellings erected on that Residential Lot do not form part of the Proposed Development and will be subject to section 7.11 or 7.12 of the Act.

## Schedule 3 – Dedication Land

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Table

Column 1	Column 2	Column 3	Column 4
Address of Land	Legal Description	Timing of Dedication	Contribution Value
34 Salamander Grove, Baulkham Hills	Lot 574 DP 713531	Following the completion of the Works identified as Item 2 in Schedule 4	\$1,350,000



## Schedule 4 – The Works

Table

Column 1	Column 2	Column 3	Column 4	Column 5
Item	Item of Works	Hand-Over Date	Defects Liability Period	Contribution Value
1	Embellishment of, and provision of public access to, the ridgetop park (areas identified in Schedule 1 of this Agreement over part of Lot 217 and 218 in DP 1239622) by creation of an easement in gross in favour of Council on terms acceptable to Council.	NA	<p>Embellishment Works must be completed prior to the registration of the relevant easements.</p> <p>Easements to be registered in conjunction with the registration of the relevant plan(s) of subdivision for the creation of common property over part of Lot 217 and 218 in DP1239622 respectively.</p> <p>For the avoidance of any doubt, the ridgetop park may be created in two stages, with each stage linked to the development of the adjoining land in either Lot 217 or Lot 218.</p>	\$1,900,000
2	Embellishment of (Lot 574 DP713531) including landscaping, pathways and plantings and which is to be undertaken by the Developer in accordance with Council's landscape design specifications and the plan within Schedule 4.	Prior to the issue of an Occupation Certificate with respect to, the first Dwelling in the Proposed Development.	12 months from date of actual Hand-Over of the Works	\$100,000





## Schedule 5 – Monetary Contributions

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Item	Contribution Item	Monetary Contribution	Timeframe for Payment
1	Contribution to public domain and pedestrian network upgrades.	\$700,000	To be paid on a per Dwelling basis in accordance with Schedule 7.
2	Contribution to offsite active open space.	\$800,000	To be paid on a per Dwelling basis in accordance with Schedule 7.
3	Contribution to traffic improvements on a precinct scale within Norwest	\$400,000	To be paid on a per Dwelling basis in accordance with Schedule 7.
4	Contribution towards local infrastructure	\$1,177,725.	To be paid on a per Dwelling basis in accordance with Schedule 7.

## **Schedule 6 – Additional Monetary Contribution**

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Additional Monetary Contribution Rate:

\$26,275.51 per Dwelling

Timing for payment of the Additional Monetary Contribution:

The Additional Monetary Contribution must be paid on a per Dwelling basis in accordance with Schedule 7.



## Schedule 7 – Timing of payment of Monetary Contribution and Additional Monetary Contribution

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1.1 For the purpose of this Schedule 7:

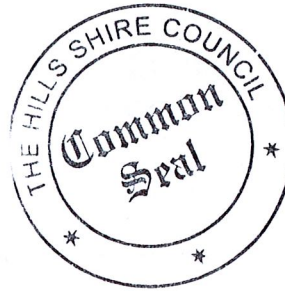
- (a) the **Per Lot Monetary Contribution** payable is \$15,703;
- (b) **Integrated Housing Approval** means a Development Consent that approves both the creation of Residential Lots and the erection of a Dwelling on each Residential Lot;  
  
and
- (c) the **Initial Payment Timing** for a Dwelling is the earlier of immediately prior to:
  - (i) the issue of the Occupation Certificate for the Dwelling; and
  - (ii) in the case of only of Residential Lots created as part of an Integrated Housing Approval, the issue of a Subdivision Certificate for the Residential Lot on which the Dwelling is proposed to be constructed.

2. Timing of Payment

- (a) For the purpose of this Schedule 7, the number of Dwellings on the Land at any point in time, including as part of the Proposed Development, will be determined having regard to:
  - (i) Occupation Certificates that have been issued for Dwellings, where such certificates have been issued; and
  - (ii) The number of Residential Lots which have been created as part of an Integrated Housing Approval for which no such Occupation Certificates have been issued.
- (b) The Developer must pay the **Per Lot Monetary Contribution** on or before the Initial Payment Timing for each Dwelling which forms part of the Proposed Development up to and including the 270<sup>th</sup> Dwelling.
- (c) The Developer must pay the **Additional Monetary Contribution Rate** on or before the Initial Payment Timing for each Dwelling which forms part of the Proposed Development after the 270<sup>th</sup> Dwelling.

## Execution Page

The common seal of The Hills Shire Council was  
affixed under a resolution passed by council on  
... 26 October 2021 ... in the  
presence of:



General Manager

Mayor

Print name

Print name

Witness

Print name

Executed by the Developer in accordance with  
s127 of the Corporations Act 2001 (Cth):

Secretary/Director

Director

Print name

Print name

Executed by the Landowner in accordance with  
s127 of the Corporations Act 2001 (Cth):

Secretary/Director

Director

Print name

Print name



## Execution Page

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

\_\_\_\_\_  
General Manager

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Print name

Executed by the Developer in accordance with ~~s127 of the Corporations Act 2001 (Cth)~~ by its attorney Shangjin Lin pursuant to  
power of attorney dated 24 May 2017 BK4726  
NO 542

\_\_\_\_\_  
Secretary/Director

*Witness*

\_\_\_\_\_  
Director

*Attorney*

*Le Hai*

*Shangjin Lin*

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Print name

Executed by the Landowner in accordance with  
s127 of the Corporations Act 2001 (Cth):

\_\_\_\_\_  
Secretary/Director

\_\_\_\_\_  
Director

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Print name

## EXPLANATORY NOTE TO VOLUNTARY PLANNING AGREEMENT

### DEVELOPMENT OF MACKILLOP DRIVE, NORWEST NSW 2153

#### Background

The purpose of this Explanatory Note is to provide a plain English summary to support the notification of a draft voluntary Planning Agreement (**Planning Agreement**) under s7.4 of the *Environmental Planning and Assessment Act 1979* (NSW) (Act).

This Explanatory Note has been prepared jointly between the parties as required by clause 25E of the *Environmental Planning and Assessment Regulation 2000* (**Regulations**).

This Explanatory Note is not to be used to assist in construing the Planning Agreement.

#### Parties

- (a) The Hills Shire Council (**Council**); and
- (b) Aqualand Baulkham Hills Development Pty Ltd as trustee for the Aqualand Baulkham Hills Development Trust (**Developer**)

#### Description of the Land to which the Planning Agreement applies

The Planning Agreement applies to the land contained in Lots 214, 215, 216, 217 and 218 in DP1239622 and Lot 574 in DP713531, known as Mackillop Drive, Norwest NSW 2153 (**Land**).

#### Description of the Development to which the Planning Agreement applies

The development to which the Planning Agreement applies is described in Schedule 2.

#### Summary of Objectives, Nature and Effect of the proposed Planning Agreement

The objective of the proposed Planning Agreement is to record the terms of the offer made by the developer and its obligations (if the Planning Agreement is entered into with the Council) to:

- (a) dedicate land to the Council;
- (b) pay the monetary contribution to Council; and
- (c) to carry out the works,

#### (Development Contributions).

The **objective** of the Planning Agreement is to require the Developer to undertake the Contributions so as to ensure that the Developer contributes to the implementation of dedication and works required and that existing communities do not bear those costs.

The **nature** of the Planning Agreement is a contractual relationship between the Council and the Developer for undertaking the Contributions.

The **effect** of the Planning Agreement is that the Developer Parties will undertake the Contributions in the manner provided for by the Planning Agreement (as applicable).

#### Whether the Planning Agreement specifies that certain requirements must be complied with before issuing of a construction certificate, occupation certificate or subdivision certificate

The development to which the Planning Agreement applies includes the Developer's offer to make Development Contributions in the form of the:



- (a) land dedication as described in Schedule 3 as Lot 574 DP713531 known as 34 Salamander Grove, Baulkham Hills (contribution value \$1,350,000.00);
- (b) monetary contributions (as described in Schedules 5 and 6); and
- (c) works (as described in Schedule 4).

The following requirements must be complied with before the issuing of a construction certificate, occupation certificate or subdivision certificate:

- (a) **Monetary Contributions** (being \$15,703 per Dwelling) to be paid on per Dwelling basis for each Dwelling from and including the 119<sup>th</sup> Dwelling up to and including the 270<sup>th</sup> Dwelling in accordance with Schedule 7, which includes a requirement to pay the relevant contribution prior to the issue of a subdivision certificate or an occupation certificate.
- (b) **Additional Monetary Contribution** (being \$26,275.51 per Dwelling) to be paid on per Dwelling basis for each Dwelling after the 270<sup>th</sup> Dwelling in accordance with Schedule 7, which includes a requirement to pay the relevant contribution prior to the issue of a subdivision certificate or an occupation certificate.
- (c) **Embellishment of land** – the embellishment of the land to be dedicated to Council under the Planning Agreement must be completed prior to the issue of an Occupation Certificate for the first Dwelling within the Proposed Development (which is the 119<sup>th</sup> Dwelling on the Land).

#### **Assessment of the Merits of the proposed Planning Agreement and impact on the public**

The Planning Agreement promotes:

- (a) the public interests; and
- (b) the Objects of the Act.

The Planning Agreement will provide certainty for the Developer and the Council as to provision of the Development Contributions and promote and co-ordinate the orderly and economic use and development of the Land to which the Planning Agreement applies.

#### **Identification of how the Planning Agreement promotes the public interest**

The Planning Agreement supports the public interest through the provision of the Contributions, resulting in significant public benefit through the Monetary Contributions and Dedication Land being used for future public purposes as Council may consider appropriate.

#### **Identification of how the proposed Planning Agreement promotes elements of the Council's charter under the Local Government Act 1993**

The Planning Agreement promotes the Council's charter under section 8 of the *Local Government Act 1993* as follows:

- (a) This Explanatory Note is prepared for the purposes of keeping the community informed about its activities and to ensure that its decision-making is transparent.
- (b) To manage land and other assets so that current and local community needs can be met in an affordable way.
- (c) To plan strategically, using the integrated planning and reporting framework, for the provision of effective and efficient services and regulation to meet the diverse needs of the local community.

- (d) Providing strong and effective representation, leadership, planning and decision-making.
- (e) To act fairly, ethically and without bias in the interests of the local community.
- (f) To recognise diverse local community needs and interests.
- (g) To have regard to the long term and cumulative effects of its decisions on future generations.
- (h) To engage in long-term strategic planning on behalf of the local community.

**Identification of the planning purpose served by the proposed Planning Agreement and whether the proposed Planning Agreement provides for a reasonable means of achieving that purpose**

The Planning Agreement satisfies the objective of promoting the sustainable management of built and cultural heritage to ensure that existing communities do not bear those costs.

The Planning Agreement provides a reasonable means of achieving and securing outcomes by identifying the Contributions and timing for completion of the Contributions.

**Identification of whether the agreement conforms with Council's capital works program**

The Planning Agreement conforms with Council's capital works program.



