



## **Water Sensitive Urban Design and Integrated Water Cycle Management**

### **DA – 23 – 00041 Planning Agreement**

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

#### **Parties**

**Blacktown City Council** ABN 18 153 831 768 of 62 Flushcombe Road, BLACKTOWN NSW 2148 (Council)

&

The person named in Item 1 of the Schedule

#### **Operative provisions**

##### **1 Definitions & Interpretation**

1.1 In this Deed the following definitions apply:

**Act** means the *Environmental Planning and Assessment Act 1979* (NSW) as in force from time to time.

**Administrative Fee** means the administrative fee payable to Council equal to:

- 3%, where an Approval has been granted to modify the Development Consent for the Development under s4.55 of the Act to enable entry into this Deed; or
- 1.5% in any other case.

**Approval** includes approval, consent (including Development Consent), licence, permission or the like.

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

**Costs Amount** means the amount specified in Item 6 of the Schedule.

**Deed** means this Deed and includes any schedules, annexures and appendices to this Deed.

**Developer** means the person named in Item 1 of the Schedule.

**Development** means the development described in Item 2 of the Schedule.

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

**Index** means the Consumer Price Index (Sydney – All Groups), published quarterly by the Australian Bureau of Statistics.

**Land** means the land described in Item 3 in the Schedule.

**Monetary Contribution Amount** is calculated as:

(Monetary Contribution Rate x NDA of the Development) x Administrative Fee

**Monetary Contribution Rate** means either Monetary Contribution Rate A or Monetary Contribution Rate B or a combination of both those rates as specified in Item 4 of the Schedule.

**Monetary Contribution Rate A** means \$83,649.00 per hectare of NDA or part thereof.

**Monetary Contribution Rate B** means \$62,890.00 per hectare of NDA or part thereof.

**Monetary Development Contribution** means a monetary contribution paid by the Developer to the Council to be applied towards a public purpose.

**Net Developable Area (NDA)** means the total area of the Land measured in hectares, or part thereof, less the following:

- Land zoned for a public purpose;
- Land dedicated for proposed or existing public roads;
- Land that is to be a Residue Lot.

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

**Regional Water Quality Plan** means the plan annexed at Annexure 1.

**Residue Lot** means a lot created by the subdivision of the Land, which is to be the subject of further subdivision, or which is to be amalgamated with adjoining land.

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

**Subdivision Work** has the same meaning as in the Act.

**Work** means the physical result of any building, engineering or construction work in, on, over or under land, and includes Subdivision Work.

1.2 In the interpretation of this Deed, the following provisions apply unless the context otherwise requires:

- 1.2.1 If the day on which something is to be done under this Deed is not a business day, it must be done on the next business day.
- 1.2.2 Monetary Contributions and other dollar amounts are payable in Australian dollars.
- 1.2.3 A reference to a party to this Deed includes a reference to the servants, agents and contractors of the party, and the party's successors and assigns.

## **2 Status, Application & Commencement of this Deed**

- 2.1 This Deed is a planning agreement within the meaning of s7.4(1) of the Act.
- 2.2 This Deed applies to the Development and the Land.
- 2.3 This Deed commences when it has been executed by all of the Parties.

## **3 Operation of the Schedule**

- 3.1 The Schedule has effect.

## **4 Payment of Monetary Contribution Amount**

- 4.1 Item 4 of the Schedule specifies whether to apply Monetary Contribution Rate A or Monetary Contribution Rate B or a combination of both Monetary Contribution Rate A and B.
- 4.2 The Monetary Contribution Rate identified at Item 4 of the Schedule is determined by reference to the location of the Land on the Regional Water Quality Plan, as follows:
  - 4.2.1 Land falling within the pink area attracts Monetary Contribution Rate A;
  - 4.2.2 Land falling within the blue area attracts Monetary Contribution Rate B;
  - 4.2.3 Land falling within both the pink and blue areas attracts a combination of Monetary Contribution Rates A and B proportionate to the area of Land within the pink and blue areas respectively.
- 4.3 Item 5 of the Schedule specifies the number of hectares of NDA in the Development which is used to calculate the Monetary Contribution Amount.
- 4.4 The Developer is to pay to the Council Monetary Development Contributions equal to the Monetary Contribution Amount indexed as follows:

$$A = B \times C/D$$

Where:

A = the indexed Monetary Contribution Amount at the time payment is made

B = the Monetary Contribution Amount

C = the Index most recently published before the date of payment

D = the March 2015 Index published by the ABS, being - **107.3**

For the avoidance of doubt, if A is less than B, then the amount of Monetary Contribution Amount will not change

- 4.5 The Parties acknowledge that the Monetary Contribution Amount is inclusive of the Administrative Fee.
- 4.6 The Monetary Contribution Amount is to be paid:
  - 4.6.1 prior to the issuing of a Construction Certificate if the Development involves Work; or
  - 4.6.2 prior to the issuing of a Subdivision Certificate if the Development constitutes subdivision of the Land only.
- 4.7 The Monetary Contribution Amount is made for the purposes of this Deed when the Council receives the full amount in cash or by unendorsed bank cheque.
- 4.8 The Council is to apply the Monetary Development Contribution made under this Deed towards the provision of regional off-site stormwater treatment works.

## **5 Application of s7.11, s7.12 and s7.24 of the Act to the Development**

- 5.1 This Deed does not exclude the application of sections 7.11, 7.12 or 7.24 to the Development.
- 5.2 Monetary Development Contributions made under this Deed are not to be taken into consideration in determining a development contribution under section 7.11, 7.12 or 7.24 in relation to the Development.

## **6 Dispute Resolution - mediation**

- 6.1 A Party may notify the other Party in writing that it disputes a matter relating to the interpretation or performance of this Deed.
- 6.2 The notice is to be signed and dated, and is to specify details of the matter in dispute.
- 6.3 The Parties are to meet not later than 10 business days after the date of the notice to attempt to resolve the dispute.
- 6.4 If the dispute is not resolved within 20 business days after the date of the notice, the Parties are to mediate the dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and are to request the President of the Law Society, or the President's nominee, to appoint a suitably qualified mediator.
- 6.5 If the dispute is not resolved by mediation within 40 business days after the date of the notice, or such longer period as the Parties agree, the Parties may exercise their legal rights in relation to the dispute.

## **7 Registration of this Deed**

- 7.1 Upon commencement of this Deed, the Developer is to provide the Council with:
  - 7.1.1 an instrument in registrable form duly executed by the Developer requesting registration of this Deed on the title to the Land, and
  - 7.1.2 the written irrevocable consent of each person referred to in s7.6(1) of the Act to that registration in a form satisfactory to the Registrar-General.
- 7.2 The Council is to do such things as are reasonably necessary to remove any notation relating to this Deed from the title to the Land once the Developer has fully complied with this Deed to the Council's reasonable satisfaction.

## **8 Release from this Deed**

- 8.1 The Council acting in its complete discretion, may by written notice served on the Developer, release the Developer from its obligations under this Deed if one or more Development Consents for the Development lapses.

- 8.2 If the Council releases the Developer under clause 8.1, the Council will refund to the Developer any Monetary Development Contributions paid by the Developer under this Deed, within 28 days of the date written notice is served under that clause.
- 8.3 The Council is not required under clause 8.2 to refund any interest earned on Monetary Development Contributions paid by the Developer under this Deed.
- 8.4 The Parties agree that the Council will retain the Costs Amount in the event that Council releases the Developer under clause 8.1.
- 8.5 If the Council releases the Developer under clause 8.1, the Council is to do such things as are reasonably necessary to remove any notation relating to this Deed from the title to the Land.

## **9 Assignment, Dealings, etc**

- 9.1 The Developer is not to assign its rights or obligations under this Deed or novate this Deed to any person unless:
  - 9.1.1 the Developer is not in breach of this Deed, and
  - 9.1.2 the Council consents in writing to the assignment or novation, and
  - 9.1.3 the person enters into a deed with the Council on terms reasonably satisfactory to the Council agreeing to be bound by this Deed.

## **10 Notices**

- 10.1 Any notice, consent, request given or made by a Party under this Deed is only valid if it is in writing and sent in one of the following ways:
  - 10.1.1 delivered or posted to that Party at its address set out in Item 7 of the Schedule, or
  - 10.1.2 faxed to that Party at its fax number set out in Item 7 of the Schedule, or
  - 10.1.3 emailed to that Party at its email address set out in Item 7 of the Schedule.
- 10.2 Any notice, consent, information, application or request is to be treated as given or made if it is:
  - 10.2.1 delivered, when it is left at the relevant address,
  - 10.2.2 sent by post, 2 business days after it is posted, or
  - 10.2.3 sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number, or
  - 10.2.4 sent by email and the sender does not receive a delivery failure message from the sender's internet service provider within a period of 24 hours of the email being sent.
- 10.3 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

## **11 Entire Agreement**

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

## **12 Severability**

- 12.1 If a clause or part of a clause of this Deed 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.
- 12.2 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 Deed, but the rest of this Deed is not affected.

### **13 Waiver**

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

### **14 Costs Amount**

- 14.1 The Developer is to pay the Costs Amount to the Council at the same time as the Monetary Contribution Amount is paid.
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## **Schedule**

### **Item 1 – Developer**

W.J Friend Holdings Pty Ltd  
465 George Street  
SOUTH WINDSOR NSW 2756

### **Item 2 – Development**

Construction of a warehouse and distribution centre with ancillary office

### **Item 3 – Land**

Lot 2 in DP 1229109, Sterling Road Minchinbury

### **Item 4 – Monetary Contribution Rate**

Monetary Contribution Rate B applies to the Development

### **Item 5 – Net Developable Area (NDA)**

0.8017 hectares

### **Item 6 – Costs Amount**

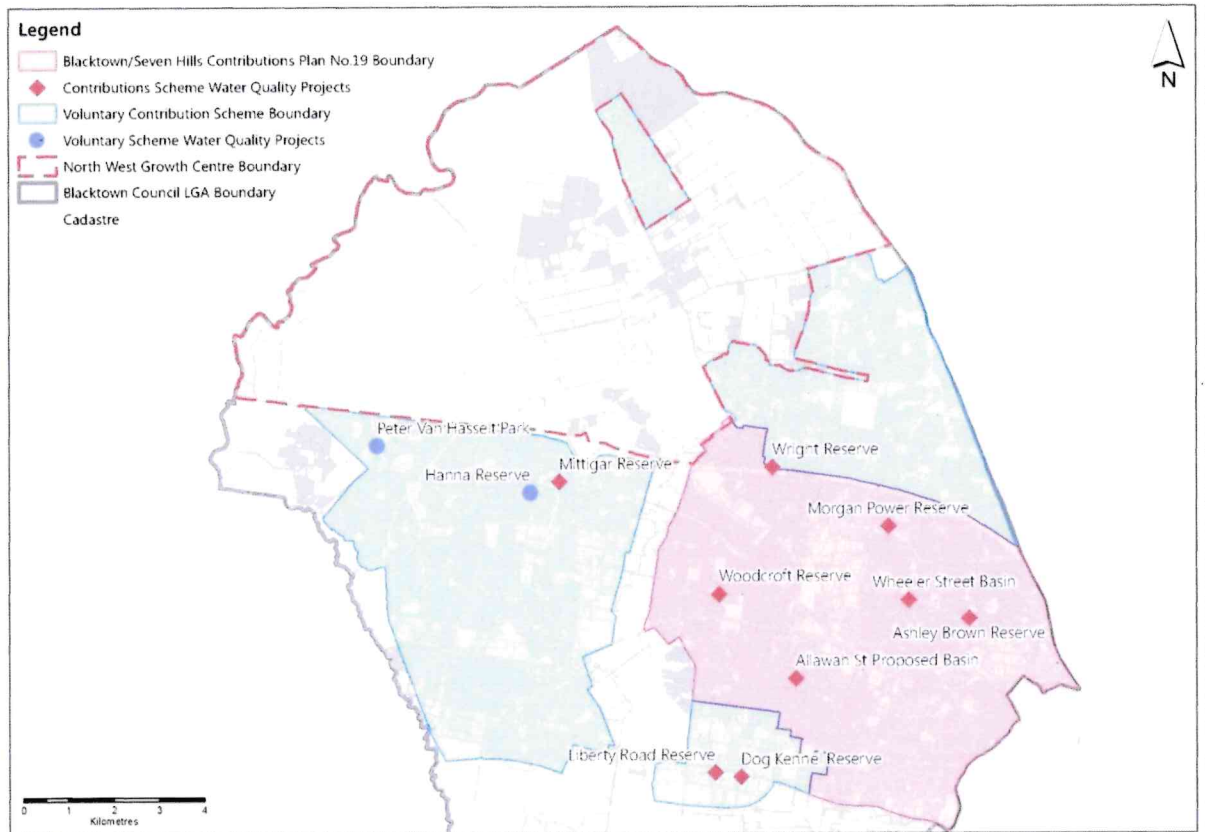
Nil

### **Item 7 – Notices**

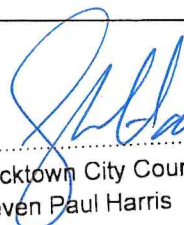
**Council:** 62 Flushcombe Road, BLACKTOWN NSW 2148  
(02) 9831 1961  
council@blacktown.nsw.gov.au

**Developer:** 465 George Street, SOUTH WINDSOR NSW 2756  
0414 857 337  
keith@wjf.com.au

## Annexure 1



**Execution**

 17/04/2023  
Blacktown City Council by its Attorney  
Steven Paul Harris  
pursuant to power of attorney  
Registered Book 4758 No 886

**Executed on behalf of the Council**

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

  
DEBORAH ANN HOSIE  
Witness

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Witness

**Executed on behalf of the Developer** in accordance with s127(1) of the Corporations Act (Cth) 2001 (\*for use if Developer is a corporation)

Keith Friend/ Director

\_\_\_\_\_  
Name/Position



\_\_\_\_\_  
Name/Position

**Executed by the Developer** (\*for use if Developer is an individual)

\_\_\_\_\_  
Developer

\_\_\_\_\_  
Witness/Name

## **Explanatory Note**

### **Draft Planning Agreement**

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

#### **Parties**

**Blacktown City Council** ABN 18 153 831 768 of 62 Flushcombe Rd, Blacktown NSW 2148 (**Council**)

**W.J Friend Holdings Pty Ltd** ABN 80 000 452 871 of 465 George Street, South Windsor NSW 2756 (**Developer**)

### **Description of the Land to which the Draft Planning Agreement Applies**

Lot 2 in DP 1229109, Sterling Road Minchinbury

### **Description of Proposed Development**

Construction of a warehouse and distribution centre with ancillary office

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

#### **Objectives of Draft Planning Agreement**

The objective of the Draft Planning Agreement is to require monetary development contributions towards the provision of regional off-site stormwater treatment works.

#### **Nature of Draft Planning Agreement**

The Draft Planning Agreement is a planning agreement under s7.4 of the *Environmental Planning and Assessment Act 1979* (**Act**). The Draft Planning Agreement is a voluntary agreement under which Development Contributions are made by the Developer for various public purposes (as defined in s7.4(3) of the Act).

#### **Effect of the Draft Planning Agreement**

The Draft Planning Agreement:

- relates to the carrying out by the Developer of development on the Land
- includes the application of s7.11 of the Act to the Development
- includes the application of s7.24 of the Act to the Development
- requires monetary Development Contributions
- is to be registered on the title to the Land
- imposes restrictions on the Parties transferring the Land or part of the Land or assigning an interest under the agreement
- provides dispute resolution for a dispute under the agreement.

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

### **The Planning Purposes Served by the Draft Planning Agreement**

The Draft Planning Agreement:

- promotes and co-ordinates of the orderly and economic use and development of the Land to which the agreement applies
- provides and co-ordinates the provision of public infrastructure and facilities in connection with the Development
- provides increased opportunity for public involvement and participation in environmental planning and assessment of the Development.

### **How the Draft Planning Agreement Promotes the Public Interest**

The draft Planning Agreement promotes the public interest by promoting the objects of the Act as set out in s1.3(b), (d) and (j), of the Act.

#### **For Planning Authorities:**

##### ***Development Corporations - How the Draft Planning Agreement Promotes its Statutory Responsibilities***

N/A.

##### ***Other Public Authorities – How the Draft Planning Agreement Promotes the Objects (if any) of the Act under which it is Constituted***

N/A.

##### ***Councils – How the Draft Planning Agreement Promotes the Elements of the Council's Charter***

The Draft Planning Agreement promotes the elements of the Council's charter by:

- providing monetary contributions for public infrastructure for the community
- providing a means that allows the wider community to make submissions to the Council in relation to the agreement.

##### ***All Planning Authorities – Whether the Draft Planning Agreement Conforms with the Authority's Capital Works Program***

Monetary contributions will be used in the Council's capital works Program. As such, the Draft Planning Agreement conforms to the Council's Capital Works Program.

##### ***All Planning Authorities – Whether the Draft Planning Agreement specifies that certain requirements must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued***

The Draft Planning Agreement specifies that monetary development contributions must be made prior to the issuing of a Construction Certificate for the Development.