

Blacktown
City Council

Voluntary Stormwater Treatment Contributions
R3 Medium Density Residential Land in the North West
Growth Area

Monetary Contributions

DA-21-01394 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 an administrative fee payable to Council equal to \$1,000.00 plus 2% of the sum of the Contribution – Capital and the Contribution – Lifecycle.

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

Building Work has the same meaning as in the Act.

Construction Certificate has the same meaning as in the Act.

Contribution – Capital is the amount calculated as follows:

(Contribution Rate – Capital x Voluntary Stormwater Treatment Works Quantum)

Contribution – Lifecycle is the amount calculated as follows:

(Contribution Rate – Lifecycle x Voluntary Stormwater Treatment Works Quantum)

Contribution Rate – Capital means the rate indicated in Item 4 (a) of the Schedule indexed in accordance with clause 5.2.

Contribution Rate – Lifecycle means the rates indicated in Item 4 (b) of the Schedule indexed in accordance with clause 5.2.

Contribution Rates means the Contribution Rate – Capital and the Contribution Rate – Lifecycle.

Costs Amount means the amount specified in Item 7 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.

Investigation Fee means a fee payable to Council equal to \$4,500.00.

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

Monetary Contribution Amount is the sum of the Contribution – Capital, the Contribution – Lifecycle, the Administrative Fee and the Investigation Fee, as specified in Item 6 of the Schedule.

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

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.

Voluntary Stormwater Treatment Works Quantum means the additional treatment area (bio-retention, wetland or other treatment system) required to service the Development, being the area specified in Item 5 of the Schedule.

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

3.1 This Deed does not exclude the application of sections 7.11, 7.12 or 7.24 to the Development.

3.2 The Monetary Contribution Amount is 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.

4 Operation of the Schedule

4.1 The Schedule has effect.

5 Payment of Monetary Contribution Amount

5.1 The Developer acknowledges that the Contribution Rates are determined based on Council's estimated costs of constructing and maintaining stormwater treatment works over a 20 year period as at the date of this Deed.

5.2 The Contribution Rates are to be indexed as follows:

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

Where:

A = the indexed Contribution Rates used to calculate the Monetary Contribution Amount

B = the Contributions Rates indicated in Item 4 of the Schedule

C = the Index most recently published before the date of payment of the Monetary Contribution Amount

D = the Index most recently published before the date of this Deed

- 5.3 The Monetary Contribution Amount is to be paid:
- 5.3.1 if the Development involves Building Work but not Subdivision Work - prior to the issuing of a Construction Certificate,
 - 5.3.2 if the Development involves Subdivision Work but not Building Work - prior to the issuing of a Subdivision Certificate,
 - 5.3.3 if the Development involves Subdivision Work and Building Work - prior to the issuing of a Construction Certificate for the Building Work or a Subdivision Certificate, whichever occurs first.
- 5.4 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.
- 5.5 The Council is to apply the Monetary Contribution Amount made under this Deed towards the provision of off-site stormwater treatment works on Council owned drainage land, including administration, capital costs, routine maintenance and a one off renewal of the relevant works
- 5.6 The Developer acknowledges and agrees that the Monetary Contribution Amount is to be pooled with similar contributions provided by other Developers, and may not be applied in accordance with clause 5.5 for 3 to 5 years from the date of this Deed.

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 Contribution Amount paid by the Developer under this Deed less the Administrative Fee and the Investigation Fee, 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 the Monetary Contribution Amount 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, or 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 8 of the Schedule, or
 - 10.1.2 faxed to that Party at its fax number set out in Item 8 of the Schedule, or
 - 10.1.3 emailed to that Party at its email address set out in Item 8 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:
 - 13.2.1 is in writing,
 - 13.2.2 is addressed to the Party whose obligation or breach of obligation is the subject of the waiver,
 - 13.2.3 specifies the obligation or breach of obligation the subject of the waiver and the conditions, if any, of the waiver,
 - 13.2.4 is signed and dated by the Party giving the waiver.
- 13.3 Without limitation, a waiver may be expressed to be conditional on the happening of an event, including the doing of a thing by the Party to whom the waiver is given.
- 13.4 A waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given, and 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.
- 13.5 For the purposes of this Deed, an obligation or breach of obligation the subject of a waiver is taken not to have been imposed on, or required to be complied with by, the Party to whom the waiver is given.

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.

Schedule

Item 1 – Developer

Tallawong Road Pty Limited
Level 5, 54 Miller St, North Sydney NSW 2060

Item 2 – Development

Staged Torrens Title subdivision 1 lot into 64 residential lots including construction of 54 dwellings, demolition, tree removal, new roads, civil works, private laneway, retaining walls and construction of a temporary stormwater basin.

Stage 1

Subdivision into 51 residential lots and 2 x residue lots (including the OSD basin) and construction of dwellings on lots 104, 109-113, 115-148, 150 & 151.

Stage 2

Subdivision of residue lot 300 into 10 residential lots including construction of dwellings on lots 301 – 310 once Tallawong Road upgraded (reconstructed at lower level).

Stage 3

Removal of temporary OSD on Lot 200 and subdivision of lots 201 – 203 and construction of dwellings on lots 201 & 202

Building envelope plans are provided on lots 101-103, 105-107, 149 & 203.

Item 3 – Land

Lot 46 DP 30186, Guntawong Road, Rouse Hill

Item 4 – Contribution Rate

- (a) Contribution Rate – Capital: \$1,170 / m²
- (b) Contribution Rate – Lifecycle: \$860 / m²

Item 5 – Voluntary Stormwater Treatment Works Quantum

31.2m²

Item 6 – Monetary Contributions Amount

\$36,504 - Contribution – Capital
\$26,832 - Contribution – Lifecycle
\$63,336 - Total

Item 7 – Costs Amount

Nil

Item 8 – Notices

Council: 2 Flushcombe Road, BLACKTOWN NSW 2148
(02) 9831 1961

Developer: council@blacktown.nsw.gov.au
Tallawong Road Pty Ltd
(02) 8912 9200
josh.partridge@metroprop.com.au

 21/08/2023
Blacktown City Council by its Attorney
Steven Paul Harris
pursuant to power of attorney
Registered Book 4758 No 886

Execution

Executed on behalf of the Council

General Manager

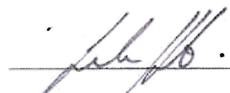
Witness

 Maria Souia Davis
21/8/23

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)


Name/Position **LUKE CHRISTIAN HARTMAN**
SOLE DIRECTOR & COMPANY SECRETARY

Name/Position

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

Developer

Witness/Name

Explanatory Note

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)

Tallawong Road Pty Ltd ACN 648 649 745 of Level 5, 54 Miller St, North Sydney NSW 2060 (Developer)

Description of the Land to which the Planning Agreement Applies

Lot 46 DP 30186, Guntawong Road, Rouse Hill.

Description of Proposed Development

Staged Torrens Title subdivision 1 lot into 64 residential lots including construction of 54 dwellings, demolition, tree removal, new roads, civil works, private laneway, retaining walls and construction of a temporary stormwater basin.

Stage 1

Subdivision into 51 residential lots and 2 x residue lots (including the OSD basin) and construction of dwellings on lots 104, 109-113, 115-148, 150 & 151.

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Subdivision of residue lot 300 into 10 residential lots including construction of dwellings on lots 301 – 310 once Tallawong Road upgraded (reconstructed at lower level).

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Summary of Objectives, Nature and Effect of the Planning Agreement

Objectives of Planning Agreement

The objective of the Planning Agreement is to require monetary development contributions towards the provision of off-site stormwater treatment works in the North West Growth Area.

Nature of Draft Planning Agreement

The 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 Planning Agreement

The 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 to be paid
- 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 Planning Agreement

The Planning Purposes Served by the Planning Agreement

The 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 Planning Agreement Promotes the Public Interest

The Planning Agreement promotes the public interest by promoting the objects of the Act as set out in s1.3(b),(d) and 1(j) of the Act.

For Planning Authorities:

Development Corporations - How the Planning Agreement Promotes its Statutory Responsibilities

N/A.

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

N/A.

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

The 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 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 Planning Agreement conforms to the Council's Capital Works Program.

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

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