



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

Monetary Contributions

DA-18-01705 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**)

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The person named in Item 1 of the Schedule

Background

- A. The Developer is the registered proprietor of the Land.
- B. The Developer has made the Development Application to the Council.
- C. In general terms, the Development Application is for the:
 - demolition of existing structures;
 - the construction of 43 townhouses, including associated roads and services; and
 - subdivision of the site.
- D. If a Development Consent is granted to the Development Application (and is acted upon) the Developer is prepared to make a monetary contribution in accordance with this Deed.
- E. At the time that this Deed was negotiated, the Development Application proposed that that stormwater treatment/water quality measures be implemented within an 'on-lot approach' on private land.
- F. The Council and the Developer have entered into this Deed with the intention that the 'on-lot approach' will not be necessary and that the stormwater treatment/water quality measures will be implemented by the Council on its land (using the contribution to be paid under this Deed).
- G. The Parties agree that this Deed will no longer apply if the development the subject of Development Consent to DA-18-01705 includes stormwater treatment/water quality measures that must be implemented on the Land.

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.

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

Mortgagee — see clause 9.4.1.

Party means a party to this Deed, including their successors and assigns and includes a person who is bound by this Deed under section 7.6(3) of the Act.

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 (but not for the purposes of the giving of notice, the making of an agreement or for the giving of a consent), 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 Subject to clause 2.4, this Deed applies to the Development and the Land.
- 2.3 This Deed commences when it has been executed by all of the Parties.
- 2.4 This Deed does not apply if the Development includes stormwater treatment and water quality measures that must be implemented on the Land.

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 - immediately prior to the issuing of a Construction Certificate (other than a Construction Certificate for investigative or demolition work),
 - 5.3.2 if the Development involves Subdivision Work but not Building Work - immediately prior to the issuing of a Subdivision Certificate,
 - 5.3.3 if the Development involves Subdivision Work and Building Work – immediately prior to the issuing of a Construction Certificate for the Building Work (other than a Construction Certificate for investigative or demolition work) or a Subdivision Certificate, whichever occurs first.
- 5.4 Nothing in this Deed prevents the Developer from electing to make the Monetary Contribution Amount earlier than it is required to do so.
- 5.5 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.

- 5.6 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. This clause 5.6 has effect after the termination of this Deed.
- 5.7 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 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 either:
 - 7.2.1 once the Developer has fully complied with this Deed to the Council's reasonable satisfaction; or
 - 7.2.2 this Deed has been terminated.

8 Release from this Deed

- 8.1 The Council, 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
 - 8.1.1 lapses;
 - 8.1.2 has been surrendered;
 - 8.1.3 is declared by a Court to be void; or
 - 8.1.4 otherwise ceases to have effect.
- 8.2 If the Developer requests a release under clause 8.1, the Council must not unreasonably withhold giving the release.
- 8.3 If the Council releases the Developer under clause 8.1, the Council may, at its absolute discretion, refund to the Developer any Monetary Contribution Amount paid by the Developer under this Deed less the Administrative Fee within 28 days of the date written notice is served under that clause.
- 8.4 If the Council exercises its discretion to make a refund under clause 8.3, the Council is not required under clause 8.3 to refund any interest earned on the Monetary Contribution Amount paid by the Developer under this Deed.
- 8.5 The Parties agree that the Council will retain any amount that the Developer has paid in relation to the Council's legal costs in preparing this Deed in the event that Council releases the Developer under clause 8.1.

- 8.6 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.
- 9.2 The Council must not unreasonably withhold or delay the giving of consent under clause 9.1.2.
- 9.3 For the avoidance of doubt, despite the other provisions of this clause 9:
- 9.3.1 the Developer may mortgage, charge, encumber and/or grant a security interest (however defined or described) over or in respect of all or any of the Developer's right, powers, title, benefit and/or interest in, to, under or derived from the Land, this Deed and/or any other asset or property of the Developer to or in favour of any financier or creditor of the Developer (or to or in favour of any agent or trustee of or for any such financier or creditor) (any such person being a **Mortgagee**); and
 - 9.3.2 nothing prevents the Developer from entering into an agreement to sell or transfer, or grant an option or lease in respect of, any lot authorised to be created in the Development by the applicable Development Consent.

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.

Schedule

Item 1 – Developer

Prisma Rouse Hill Development Pty Ltd

Item 2 – Development

The development authorised by any Development Consent granted to development application 18-01705.

Item 3 – Land

Lot 132 DP208203

Item 4 – Contribution Rate

- (a) Contribution Rate – Capital: \$1060
- (b) Contribution Rate – Lifecycle: \$780

Item 5 – Voluntary Stormwater Treatment Works Quantum

35m²

Item 6 – Monetary Contributions Amount

\$37,100 - Contribution – Capital
\$27,300 - Contribution – Lifecycle
\$2,288- Administrative Fee
\$66,688 - Total

Item 7 – [SPARE]

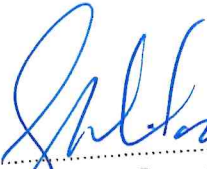
Item 8 – Notices

Council: 2 Flushcombe Road, BLACKTOWN NSW 2148
(02) 9831 1961
council@blacktown.nsw.gov.au

Developer: Unit 5807, 93 Liverpool Street Sydney NSW 2000

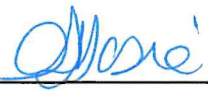
mark@celesteemgroup.com.au

Execution

 07/02/2024
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

 07/02/2024

Witness

Mayor

Witness

Executed on behalf of the Developer in accordance with s127(1) of the Corporations Act (Cth) 2001



Name/Position **MARK DIRECTOR / SECRETARY**



Name/Position **Xinni Lu DIRECTOR**

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**)

Prisma Rouse Hill Development Pty Ltd ACN 622 425 816 of unit 5807, 93 Liverpool Street Sydney NSW 2000 (**the Developer**)

Description of the Land to which the Draft Planning Agreement Applies

Lot 132 DP208203

Description of Proposed Development

The development authorised by any Development Consent granted to development application 18-01705.

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 off-site stormwater treatment works in the North West Growth Centre.

The Planning Agreement does not apply if the development authorised by any development consent granted to development application 18-01705 includes stormwater treatment and water quality measures that must be implemented on the Land.

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
- does not apply if the development authorised by any development consent granted to development application 18-01705 includes stormwater treatment and water quality measures that must be implemented on the Land
- includes the application of s7.11 of the Act to the Development
- includes the application of s7.12 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 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 1(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 and the Principles for Local Government

The Draft Planning Agreement promotes the elements of the now repealed Council's charter (and the Principles for Local Government that replaced that 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 or Subdivision Certificate for the Development.