

SUPERLOT PLANNING AGREEMENT BELLA VISTA STATION PRECINCT BVJ

**THE HILLS SHIRE COUNCIL and
SYDNEY METRO**

www.thehills.nsw.gov.au

**THE
HILLS**
Sydney's Garden Shire



The Hills Shire Council

3 Columbia Court, Norwest NSW 2153

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

LAN_LAN21002_228

29 September 2025

**Planning Agreement
Summary Sheet**

Council	Name	The Hills Shire Council
	Address	3 Columbia Court Norwest, NSW 2153
	Telephone	(02) 9843 0555
	Facsimile	(02) 9843 0258
	Email	council@thehills.nsw.gov.au
	Representative	Mr Michael Edgar – General Manager
Landowner	Name	Sydney Metro
	Address	c/-680 George Street, Sydney NSW
	Telephone	(02) 8265 6017 or 0422984 957
	Email	Phil.leitjen@transportnsw.gov.au
	Representative	Phil Leijten
Land	See Schedule 2	
Concept Development Applications	SSD10343 and SSD10344	
Planning Proposal	Not Applicable	
Dedication Land	See Schedule 3	
Works	See Schedule 3	
Monetary Contributions	See Schedule 3 and clause 8.3	
Security Amount	See Clause 32	

CONTENTS

1.	Defined meanings	6
2.	Planning agreement under the Act	6
3.	Application of this document	6
4.	No restriction on Council's Powers	6
5.	Operation of this Agreement	7
6.	Further agreements	7
7.	Release on registration of this Agreement	7
8.	Application of s7.11 and s7.12 of the Act	8
9.	Responsibility for Development Contributions in Superlots	8
10.	Dedication of Dedication Land	9
11.	Easements Covenants and Restrictions on Title	9
12.	Acquisition of Dedication Lands	10
13.	Monetary Contributions	10
14.	Public Purpose for Monetary Contributions	10
15.	Obligation to Carry Out Works	11
16.	Concept Design	11
17.	Detailed Design	12
18.	Landscape Maintenance Plan	14
19.	Inspections of Public Works	15
20.	Contribution Values	16
21.	Protection of People, Property and the Environment	16
22.	Damage and Repairs to the Public Works	17
23.	Variation of Public Works	17
24.	Practical Completion of Works	17
25.	Hand-Over	18
26.	Extension to Delivery Date	19
27.	Works-As-Executed-Plan	19
28.	Rectification of Defects for Public Works	19
29.	Cost of Works carried out by the Council	20
30.	Insurance	20
31.	Landscape Maintenance Period	21
32.	Provision of Security	23

33.	Breach Notice and Rectification	23
34.	Dispute resolution – Expert Determination	24
35.	Dispute Resolution - Mediation.....	25
36.	Registration of document on Title	26
37.	Dealings with the Land	27
38.	Costs.....	27
39.	GST.....	27
40.	Private Certifiers	27
41.	Notices	27
42.	Governing law and jurisdiction.....	28
43.	Amendments.....	28
44.	Third parties	28
45.	Entire Agreement.....	28
46.	Further assurance.....	29
47.	Continuing performance	29
48.	Waivers	29
49.	Remedies.....	29
50.	Counterparts	29
51.	Representations and warranties.....	29
52.	Severability	29
53.	Definitions and interpretation	30

Planning Agreement

Dated 29 September 2025

Parties

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

Sydney Metro ABN 12 354 063 515 of 680 George Street, Sydney New South Wales 2000 (**Sydney Metro**)

Background

- A. The Landowner made the Concept Development Applications for the Proposed Development, which are concept development applications within the meaning of the *Environmental Planning Assessment Act 1979* (NSW) (**Act**).
- B. The Minister for Planning and Public Spaces granted the Concept Development Consents.
- C. The Concept Development Consents include conditions requiring the Landowner to enter into a planning agreement in the terms of the offer made on behalf of the Landowner to Council on 21 September 2022.
- D. The Landowner has agreed to make the Development Contributions on and subject to the terms of this Agreement.
- E. This Agreement, together with the other Superlot Planning Agreements and the Umbrella Planning Agreement are intended to be the planning agreement required by the Concept Development Consents, and no further planning agreement or other agreement pursuant to which Development Contributions will be required to be paid in relation to the Proposed Development will be required which is inconsistent with this Agreement.

Operative provisions

Part 1 - Preliminary

1. Defined meanings

Words used in this Agreement 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 Agreement is a planning agreement within the meaning set out in s7.4 of the Act and governed by **subdivision 2, Division 7.1, Part 7** of the Act.

3. Application of this document

This Agreement is made in respect of the Proposed Development and applies to the Land and the Proposed Development, subject to the provisions of this Agreement.

4. No restriction on Council's Powers

4.1 Consent authority

The parties acknowledge that Council is a consent authority with statutory rights and obligations pursuant to the terms of the Planning Legislation.

4.2 Agreement does not fetter discretion

This Agreement is not intended to operate to fetter, in any unlawful manner:

- (a) the power of Council to make any law; or
- (b) the exercise by Council of any statutory power or discretion,

(Discretion).

4.3 Severance of provisions

- (a) No provision of this Agreement is intended to, or does, constitute any unlawful fetter on any Discretion. If, contrary to the operation of this clause, any provision of this Agreement is held by a court of competent jurisdiction to constitute an unlawful fetter on any Discretion, the parties agree:
 - (i) they will take all practical steps, including the execution of any further documents, to ensure the objectives of this Agreement are substantially satisfied; and
 - (ii) in the event that paragraph (i) cannot be achieved without giving rise to an unlawful fetter on a Discretion, the relevant provision is to be severed and the remainder of this Agreement has full force and effect; and

- (iii) to endeavour to satisfy the common objectives of the parties in relation to the provision of this Agreement which is held to be an unlawful fetter to the extent that it is possible having regard to the relevant court judgment.
- (b) Where the law permits Council to contract out of a provision of that law or gives Council power to exercise a Discretion, then if Council has in this Agreement contracted out of a provision or exercised a Discretion under this Agreement, then to the extent of this Agreement is not to be taken to be inconsistent with the law.

4.4 No Obligations

Nothing in this Agreement will be deemed to impose any obligation on Council to exercise any of its functions under the Act in relation to the Development Consent, the Land or the Proposed Development in a certain manner.

5. Operation of this Agreement

- 5.1 This Agreement operates once it is entered into in accordance with section 203(3) of the Regulation.
- 5.2 This Agreement will be taken to have been entered into for the purposes of clause 5.1 once all Parties have either:
 - (a) executed the same copy of this Agreement; or
 - (b) each executed separate counterparts of this Agreement and exchanged counterparts.
- 5.3 The Parties are to insert the date when this Agreement operates on the front page and on the execution page.
- 5.4 This Agreement provides for Development Contributions to be made with respect to the Proposed Development as outlined in Schedule 3 and in accordance with the provisions of this Agreement.

6. Further agreements

- 6.1 The Parties may, at any time and from time to time, enter into agreements relating to the subject-matter of this Agreement that are not inconsistent with this Agreement for the purpose of implementing this Agreement.

7. Release on registration of this Agreement

- 7.1 This Agreement ceases to bind Sydney Metro when the Land has been sold by Sydney Metro and this Agreement has been registered on the title to the Land in accordance with clause .
- 7.2 If this Agreement ceases to bind Sydney Metro under clause 7.1, Sydney Metro is released and discharged from all rights and obligations, liability and claims (whether for costs, damages, fees, expenses or otherwise) arising under this Agreement except in relation to any breaches of this Agreement which arose prior to this Agreement ceasing to bind Sydney Metro.

Part 2 – Development Contributions

8. Application of s7.11 and s7.12 of the Act

8.1 Subject to clauses 8.2 and 8.3, this Agreement:

- (a) excludes the operation of section 7.11 and section 7.12 of the Act; and
- (b) if the Act is amended to include a new Subdivision 3A of the Act as proposed in the *Environmental Planning and Assessment Amendment (Infrastructure Contributions) Bill 2021* or any similar or other provision in respect of contributions in connection with development, excludes the operation of Subdivision 3A or that similar or other similar provision, to the extent legally possible,

in relation to the Proposed Development.

8.2 The Landowner acknowledges that at the time any Development Application is made for the construction of built form on the Land, the Development Application must demonstrate whether or not it proposes a number of dwellings which, when added to the number of dwellings approved under development consents relating to the Land and other parts of the Bella Vista Land and Kellyville Land, exceeds the maximum dwelling yield approved under the Concept Development Consents.

8.3 The Landowner acknowledges and agrees that if, at the time of determination of a Development Application, the development the subject of that Development Application Development includes Additional Dwellings or Additional GFA, then:

- (a) clause 8.3 will apply to the development the subject of the Development Application to the extent of the Additional Dwellings or Additional GFA or both; and
- (b) the dwelling yield or gross floor area that can be developed on the Land and other land within the Bella Vista Land or Kellyville Land without any additional Development Contributions being payable pursuant to clause 8.3 of this Agreement and other Superlot Planning Agreements, could be exhausted by other developers in respect of other land within the Bella Vista Land or Kellyville Land.

8.4 Where clause 8.3 applies, Development Contributions are payable under this Agreement in respect of Additional Dwellings and Additional GFA in an amount equal to the amount of development contributions, within the meaning of the Act, that would have been payable under s7.11 and 7.12 of the Act in respect of the Additional Dwellings and Additional GFA if the application of those provisions was not excluded by clause 8.1. For the avoidance of doubt, the Development Contributions payable under this clause are in addition to any Development Contributions specified in **Schedule 3**.

8.5 This Agreement does not exclude the application of Division 7.1, Subdivision 4 of the Act to the Proposed Development.

9. Responsibility for Development Contributions in Superlots

9.1 The Landowner is responsible for making the Development Contributions in Table 1 of Schedule 3 in accordance with the terms of this Agreement.

10. Dedication of Dedication Land

- 10.1 This clause 10 and clauses 11 and 12 only apply if Schedule 3 notes that any Dedication Land is to be dedicated under this Agreement.
- 10.2 The Landowner must at its cost Dedicate to Council the Dedication Lands in accordance with Schedule 3.
- 10.3 The Dedication will be effected when:
- (a) a plan of subdivision is registered with NSW Land Registry Services dedicating the Dedication Land to Council; or
 - (b) Council becomes the registered proprietor of an existing lot being part of the Dedication Lands as a result of the registration of a transfer of land.
- 10.4 The Landowner must do all things reasonably necessary to enable the registration of the plan of subdivision or transfer required under clause 10.3 including (in the case of transfer), delivering to Council:
- (a) a transfer in registrable form signed by the registered proprietor of the relevant land;
 - (b) any consent required by an interested party in the relevant land; and
 - (c) any document in registrable form which, when registered, will remove any Encumbrances registered on the title of that land, excluding the Permitted Easements.
- 10.5 Council must provide the Landowner with a tax invoice for its reasonable expenses incurred in relation to the Dedication of the Dedication Land including its legal costs and disbursements on an indemnity basis (including any registration fees).
- 10.6 The Landowner 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).
- 10.7 The Landowner must pay to Council the amount invoiced for expenses under sub-clause 10.5 within 10 Business Days of receipt of the invoice.
- 10.8 The Landowner must pay Council on reasonable notice the stamp duty (if any) on the Dedication of the Dedication Land.
- 10.9 After the Dedication Land is transferred to Council, Council will use the land for the public purposes for which it is Dedicated under this Agreement.

11. Easements Covenants and Restrictions on Title

- 11.1 Council agrees that notwithstanding any other provision of this Agreement, the Dedication Land can be transferred or Dedicated to Council subject to the Permitted Easements.
- 11.2 If, having used all reasonable endeavours, the Landowner cannot ensure that Dedication Land will, on its transfer or dedication to Council, be free from all Encumbrances and affectations, other than Permitted Easements, the Landowner may request that Council

agree to accept the Dedication Land subject to those encumbrances and affectations, and the Council may only withhold its approval if it is reasonable to do so having regard to the intended use of the Dedication Land.

12. Acquisition of Dedication Lands

- 12.1 If the Landowner does not dedicate the Dedication Lands at the time at which it is required to be Dedicated, the Landowner consents to the Council compulsorily acquiring the part of the Dedication Land which has not been Dedicated in accordance with the Just Terms Act for compensation in the amount of \$1 (being the total compensation payable by Council on account of that acquisition under the Just Terms Act) without having to follow the pre-acquisition procedure under the Just Terms Act.
- 12.2 The Council is to only acquire land pursuant to clause 12.1 if it considers it reasonable to do so having regard to the circumstances surrounding the failure by the Landowner to dedicate the Dedication Land.
- 12.3 Clause 12.1 constitutes an agreement for the purposes of s30 of the Just Terms Act.
- 12.4 If, as a result of the acquisition referred to in clause 12.1, the Council is required to pay compensation to any person other than the Landowner, the Landowner is to reimburse the Council that amount, no later than ten (10) business days after a written request being made by the Council and prior to the issue of the then next Subdivision Certificate with respect to the Proposed Development.
- 12.5 The Landowner indemnifies and keeps indemnified the Council against all claims made against the Council as a result of any acquisition by the Council of the whole or any part of the Dedication Lands except if, and to the extent that, the claim arises because of the Council's error, negligence or default.

13. Monetary Contributions

- 13.1 This clause 13 and clause 14 only apply if Schedule 3 indicates that a Monetary Contribution is required under this Agreement.
- 13.2 The Landowner must pay the Monetary Contributions in accordance with Schedule 3 and clause 8.3. Payment of the Monetary Contributions is made for the purpose of this Agreement when Council receives the full amount of the Monetary Contribution by the deposit, by means of electronic bank transfer of cleared funds into Council's nominated bank account.
- 13.3 On each anniversary of the date of this Agreement the amount of the Monetary Contributions remaining to be paid immediately prior to that anniversary 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.

14. Public Purpose for Monetary Contributions

- 14.1 In the event that the Monetary Contributions made for a public purpose noted in Schedule 3 exceed what is required in order for Council to deliver the works for that public purpose (**Surplus Contributions**), the Council may apply the Surplus Contributions to another public purpose as determined by Council from time to time.

- 14.2 Any Monetary Contributions required by clause 8.3 are to be applied by Council in accordance with any contributions plan within the meaning of the Act applicable to the Land at the time of the making of those Monetary Contributions, and if there are any Monetary Contributions made pursuant to clause 8.3 which exceed what is required by Council for the purposes of any such contributions plan, the Council may apply the excess to another public purpose as determined by Council from time to time.

15. Obligation to Carry Out Works

- 15.1 This clause 14.2, and clauses 16 to 31 only apply if Schedule 3 indicates that works are required to be carried out under this Agreement.
- 15.2 The Landowner, at its cost, must obtain any required development consent, and any other form of consent required at law by a relevant Authority, for the construction and use of the Public Works;
- 15.3 The Landowner, at its cost, is to carry out and complete the Works, the indicative locations of which are shown on the Superlot Plan, in accordance with Schedule 3 and this Agreement.
- 15.4 The Landowner's obligation under clause 15.3 exists irrespective of whether the Landowner:
- (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 Landowner's behalf.
- 15.5 The Landowner is to carry out and complete the Works in a good and workmanlike manner having regard to the intended purpose of the Works, complying with current industry practice and standards relating to each aspect of the Works, and in accordance with:
- (a) any applicable 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 applicable Development Consent or an applicable law; and
 - (d) the requirements of, or consents issued by, any Authority; and
 - (e) the approved Detailed Design of the Public Works.

16. Concept Design

- 16.1 The Council must notify the Landowner of any design standards or guidelines or other requirements or policies of the Council (**Council Standards**) applicable to the design and specifications of each Item of Public Works, within 15 Business Days of a request by the Landowner. All Council Standards must be published by Council and must be required to be complied with in relation to the Public Work in a consistent manner as is required for all other works similar to the Public Works and the Proposed Development.
- 16.2 The Landowner must consult with Council with respect to the development of the Concept Design and prepare the Concept Design for each Item of Public Works in accordance with

this Agreement and to a minimum standard equal to the Council Standards, and must submit the Concept Design to Council for approval before lodging any required Development Application for the Item of Public Works or proceeding with the Item of Public Works.

- 16.3 The Concept Design prepared by the Landowner must be consistent with the Reference Design and Concept Development Consents, unless modifications to the Reference Design have been agreed in writing between the Landowner and the relevant consent authority.
- 16.4 Council must, acting reasonably, advise the Landowner whether it agrees to the Concept Design submitted or requires any amendments to the Concept Design submitted within 10 Business Days of receiving the Concept Design. Council may request amendments to the Concept Design to reduce ongoing maintenance costs, provided that the amendments result in a generally similar level of embellishment as proposed in the Concept Design submitted to Council.
- 16.5 Council can only request amendments to the Concept Design under clause 16.4 if the amendments are minor in nature and would not alter the Contribution Value of the Item of Public Works (but can give rise to a reduction in value resulting from amendments to the Concept Design to reduce ongoing maintenance costs under clause 16.4), or if the amendments are required to ensure that the Concept Design is consistent with the Reference Design (including as amended under clause 16.3) and are to a standard at least equal to the Council Standards. A reasonable explanation as to why an amendment is required by Council must be given where any changes are requested by Council.
- 16.6 The Landowner must make any amendment to the Concept Design requested by Council under clause 16.4 and which complies with clause 16.4, and resubmit the Concept Design for Council's approval.
- 16.7 If the Landowner has made the amendments requested by Council then Council must advise the Landowner of its agreement to the amended Concept Design within 5 Business Days of receipt of the amended Concept Design in accordance with clause 16.5.
- 16.8 If Council does not respond to the initial Concept Design or the amended Concept Design in the timeframe required by clauses 16.4 or 16.7 (as applicable), the Concept Design will be deemed to have been approved by Council at the expiry of each of those timeframes (as applicable).

17. Detailed Design

- 17.1 In respect of each Item of Public Work, once Development Consent has been granted for the Item of Public Work (or if no Development Consent is required, before carrying out of the Item of Public Work) the Landowner must prepare the Detailed Design to be consistent with the Concept Design and any Development Consent for the Item of Public Works (and having specific regard to that Item of Public Work set out in **Schedule 3**, including the relevant Contribution Value) and submit the Detailed Design to the Council for approval.
- 17.2 Within 15 Business Days of receiving the Detailed Design, Council must notify the Landowner in writing whether the Detailed Design is approved or not approved, and Council must act reasonably where it seeks to withhold its approval under this clause.
- 17.3 If the Council does not approve the Detailed Design, the notice to the Landowner to that effect must detail:

- (a) what, if any, changes are required to the Detailed Design to ensure it complies with the Development Consent and the Concept Design for the Item of Public Work; and
- (b) what other changes Council requires which are not required to correct an inconsistency between the Detailed Design and the Concept Design or Development Consent for the Item of Public Work (**Council Variation**).

17.4 If a Council Variation is requested, the Landowner must submit for Council's consideration details of:

- (a) the increased costs estimated to be incurred by the Landowner as a result of the Council Variation;
- (b) whether the Landowner considers that the Council Variation will result in the estimated cost to complete the relevant Item of Public Work exceeding the Contribution Value for that Item of Public Work; and
- (c) an estimate of any delay in the delivery program for the relevant Item of Public Works as a result of the Council Variation.

17.5 Within 5 Business Days of receiving the information required under clause 17.4, Council must advise the Landowner whether it continues to require the Council Variation, or whether it no longer requires the Council Variation.

17.6 If Council advises that it does require a Council Variation, and the Council Variation results in the estimated costs to complete the relevant Item of Public Work exceeding the Contribution Value for that Item of Public Work, then Council must bear all additional costs incurred by the Landowner in providing the Item of Public Works as a result of the changes requested by the Council, including all construction and consultants costs, all costs in gaining consent authority approvals and any delay costs incurred by the Landowner in respect to the Public Works, and those costs must be reimbursed to the Landowner within 10 Business Days of a written demand for payment, supported by evidence of the increased costs actually incurred,

17.7 The Landowner must amend the Detailed Design in response to:

- (a) any request by Council pursuant to clause 17.3(a); and
- (b) a Council Variation which the Council advises it requires under clause 17.6

prior to making an application for a Construction Certificate for the relevant Item of Public Works, other than if:

- (c) the change is requested under clause 17.3(b); and
- (d) the Landowner (acting reasonably) considers the change will cause significant delay to the Public Works; or
- (e) require a modification of the Development Consent for the relevant Item of Public Works or any part of the Proposed Development;

in which case the Landowner is not required to amend the Detailed Design to reflect those changes requested by Council.

- 17.8 The amended Detailed Design prepared under clause 17.7 will be the agreed Detailed Design for the relevant Item of Public Works.
- 17.9 Council may not request any variations to the Detailed Design other than pursuant to clause 17.3.
- 17.10 Any acceptance by the Council of the Detailed Design under this clause 17 is not to be taken as approval of or to any Construction Certificate for the relevant Item of Public Works.
- 17.11 If Council fails to provide a response to the Detailed Design within the time required by clause 17.2, the Landowner may proceed to seek a Construction Certificate for the Detailed Design notwithstanding the remainder of this clause 17 and the Detailed Design is deemed to have been approved by Council.
- 17.12 When approving the Detailed Design the Council must also notify the Landowner of Council's requirements and formats for any reports, operational, maintenance or other manuals, checklists, forward budgets and any other documents or reports which Council will require in respect of the Item of Public Works on Hand-Over, or at the end of any Maintenance Period.

18. Landscape Maintenance Plan

- 18.1 The Council Standards to be notified under clause 17.1 must include any Council Standards relevant to the Landscape Maintenance Plan.
- 18.2 When the Detailed Design of any Vegetation Works is submitted to Council for approval under clause 18.1, the Landowner must also submit a proposed Landscape Maintenance Plan which has been prepared having regard to the Council Standards, and the Council must notify the Landowner whether the Landscape Maintenance Plan is approved or not approved when notifying the Landowner whether the Detailed Design is approved or not approved under clause 18, and of any amendments required to the Landscape Maintenance Plan if it is not approved.
- 18.3 The Council can only request reasonable amendments to the Landscape Maintenance Plan if the Council reasonably demonstrates:
- (a) the amendments are minor in nature; and
 - (b) would not alter the Contribution Value of any Item of Public Works; and
 - (c) proposes work to a standard in line with the Council Standards.
- 18.4 The Landowner must make any amendment to the Landscape Maintenance Plan requested by Council under clause 18.2 and which complies with clause 18.2.
- 18.5 The amended Landscape Maintenance Plan prepared under clause 18.4 will be the agreed Landscape Maintenance Plan for the relevant Item of Public Works.
- 18.6 If the Council fails to provide a response to the Landscape Maintenance Plan within the time required by clause 17.2 and 18.2, the Landscape Maintenance Plan is deemed to have been approved by Council.
- 18.7 For the purposes of clause 18.1 a Landscape Maintenance Plan must include:

- (a) a schedule of inspections of the Vegetation Works during the Landscape Maintenance Period to occur at specified stages of the works in the Landscape Maintenance Plan (**Vegetation Inspection Stage**); and
- (b) the landscape designer's design intent statement indicating the expected established landscape area's visual and physical performance during and at completion of the Landscape Maintenance Period; and
- (c) a maintenance schedule identifying the frequency of any regular maintenance and upkeep required to effect the landscape designers design intent statement, and which shall be logged in a maintenance register during the Landscape Maintenance Period; and
- (d) any operations and maintenance manuals relating to Vegetation Works that may be supplied by contractors at the end of the Defects Liability Period.

18.8 At the end of the Landscape Maintenance Period, the Landowner has no further obligations in respect of Vegetation Works or maintenance under the Landscape Maintenance Plan.

19. Inspections of Public Works

- 19.1 Within 20 Business Days of the approval of the Detailed Design for an Item of Public Works, Council must provide a schedule of inspections to be undertaken by Council (**Inspection Schedule**) to occur at specified stages of the construction of the Item of Public Works (**Inspection Stage**).
- 19.2 5 Business Days prior to reaching an Inspection Stage as set out in the Inspection Schedule, the Landowner must notify the Council of the inspection date (**Inspection Date**).
- 19.3 On the Inspection Date the Landowner must ensure that any employees, contractors, agents or representatives of Council have access to and may enter the part of the Land on which the Item of Work is being constructed to inspect the relevant Item of Public Work.
- 19.4 In addition to carrying out inspections in accordance with the Inspection Schedule, the Council may enter any part of the Land on which the relevant Item of Public Works is located to inspect the progress of the relevant Item of Public Works, subject to:
 - (a) giving reasonable notice to the Landowner;
 - (b) complying with all reasonable directions given by or on behalf of the Landowner, including by contractors carrying out the construction of the Public Works; and
 - (c) being accompanied by the Landowner or a nominee, or as otherwise agreed.
- 19.5 The Council may, acting reasonably, within 5 Business Days of carrying out an inspection (either under clause 19.3 or 19.4), notify the Landowner of any defect or non-compliance in the relevant Item of Public Works (**Inspection Defect Notice**) and direct the Landowner to carry out work to rectify that defect or non-compliance within a reasonable period of time. Such work may include, but is not limited to:
 - (a) removal of defective or non-complying material;

- (b) demolishing defective or non-complying work;
- (c) reconstructing, replacing or correcting any defective or non-complying work;
or
- (d) not delivering any defective or non-complying material to the site of the relevant Item of Public Works.

19.6 If the Landowner is issued an Inspection Defect Notice the Landowner must, at its cost, rectify the defect or non-compliance specified in the Inspection Defect Notice within the time period specified in the Inspection Defect Notice, provided that it is reasonable having regard to the nature of the works.

19.7 For the avoidance of doubt, any acceptance by the Council that the Landowner has rectified a defect or non-compliance identified in an Inspection Defect Notice does not constitute:

- (a) acceptance by the Council that the relevant Item of Public Work complies with all Approvals and Laws; or
- (b) an Approval by the Council in respect of the Item of Public Works; or
- (c) an agreement or acknowledgment by the Council that the relevant Item of Public Works is complete and may be delivered to the Council in accordance with this Agreement.

20. Contribution Values

20.1 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 3.

20.2 Subject to clause 17.6, if the Landowner's actual cost of carrying out an Item of Works, including any costs incurred pursuant to this Agreement, determined at the date on which the Works is completed or, in the case of Public Works, is Handed-Over to the Council, differs from the Contribution Value, then no party to this Agreement shall be entitled to claim credit or reimbursement, as the case may be, for the difference.

20.3 On each anniversary of the date of this Agreement the Contribution Values 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.

21. Protection of People, Property and the Environment

21.1 The Landowner is to ensure in relation to the carrying out of the Public 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) 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)* are complied with.

22. Damage and Repairs to the Public Works

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

23. Variation of Public Works

- 23.1 Subject to clause 17.4 and 17.6, the Public Works are not to be varied by the Landowner, unless:

- (a) the Parties agree in writing to the variation; and
- (b) any Approval required is first obtained; and
- (c) the Landowner bears all of the Council's costs of and incidental to agreeing to and approving the variation.

- 23.2 If a variation to an Item of Public Works does not result in the sum of the Contribution Values of all Development Contributions falling below the sum of the Contribution Values at the date of this Agreement, and the variation is generally consistent with the intended objectives and outcomes of this Agreement at the date of this Agreement, then Schedule 3 will be deemed to be amended to include the varied Development Contributions and their Contribution Values.

- 23.3 A variation to the Developments Contributions under clause 23.2 does not require a variation to this Agreement.

24. Practical Completion of Works

- 24.1 The Landowner is to give the Council not less than 20 Business Days written notice of:

- (a) the date on which it considers that an Item of Works will reach Practical Completion; and
- (b) the Items of Works the subject of the notice.

- 24.2 If the Item of Works is an Item of Public Works, the Council may, within 10 Business Days of the date of receipt of the notice referred to in clause 24.1, carry out an inspection of the Item of Public Works the subject of the Notice, and shall, having regard to the requirements for Practical Completion for the Public Works, and acting reasonably, and within a further 10 Business Days from the date of its inspection, either:

- (a) provide written certification to the Landowner that the relevant Item of Public Works has reached Practical Completion (**Certificate of Practical Completion**); or
- (b) notify the Landowner of any additional information required or matters which must be addressed by the Landowner prior to the certification being issued, provided that the Council cannot require any additional information or matters to be addressed unless:
 - (i) the additional information or matters are required to be provided or addressed in order to ensure that the Item of Public Works complies with this Agreement; and

- (ii) it would not have been apparent to Council at any Inspection Stage that the additional information and matters would be required, or if they would have been reasonably apparent at any Inspection Stage, they were the subject of an Inspection Defect Notice which has not been satisfactorily complied with by the Landowner; and
 - (iii) the additional information or matters are required to be completed to satisfy the requirement for Practical Completion, as set out in this Agreement
- 24.3 If Council does not issue a notice under clause 24.2 within 20 Business Days of receipt of the Landowner's notice under clause 24.1, Council will be deemed to have accepted that Practical Completion of the Item of Public Works the subject of the notice has been achieved, and will be deemed to have issued a Certificate of Practical Completion.
- 24.4 If the Landowner is required to provide additional information or address any matters under clause 24.2(b), the Landowner will provide that information to Council or address those matters within 10 Business Days of receiving the notice or within a reasonable period of time, having regard to the nature of the requirement, and make a further request for a Certificate of Practical Completion.
- 24.5 In the event that the Landowner considers that a Certificate of Practical Completion should have been issued by Council in respect of an Item of Public Works, and none has been issued, the Landowner may refer the matter for dispute resolution.
- 24.6 In respect of an Item of Works which is not an Item of Public Works a Certificate of Practical Completion will be deemed to have been issued on the provision of the notice by the Landowner to Council under clause 24.1, provided that notice is accompanied by a compliance certificate within the meaning of s6.4 of the Act in respect of the Item of Work which certifies that the Work has been completed in accordance with this Agreement.

25. Hand-Over

- 25.1 Before an Item of Public Works which is to be Handed-Over to Council is Handed-Over, the Landowner is to remove from the part of the Land on which the Item of Public Works being Handed-Over is located:
 - (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 Item of Public Works as the case requires; unless that plant or equipment is required by the Landowner for the purposes of Defects rectification, in which case it must be removed immediately after the Defect has been rectified.
- 25.2 An Item of Public Works required to be Handed-Over to Council and which is located on land already owned by the Council and the Community Facility is taken to be Handed-Over to the Council when a Certificate of Practical Completion is issued by the Council under clause 24.
- 25.3 An Item of Public Works required to be Handed-Over to Council and which is located on part of the Land (other than the Community Facility), is Handed-Over when the part of

Land on which it is located is dedicated or transferred to Council in accordance with clause 10.

- 25.4 Ownership of an Item of Public Works is transferred to Council on Hand-Over and nothing in, or done under, this Agreement gives the Landowner, after Hand-Over any right, title or interest in the Item of Public Works.
- 25.5 On Hand-Over the Landowner must cause the legal title in the Item of Public Works and all materials and components of the Public Works to pass to Council free of any charge or other interest. The Landowner warrants that after Hand-Over the Public 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 Landowner 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.

26. Extension to Delivery Date

- 26.1 The Landowner may request an extension to the Delivery Date for an Item of Works due to:
- (a) a Force Majeure Event; or
 - (b) delays on the part of any Authority (including the Council) in granting any Approval necessary for the Works to be completed.
- 26.2 Council must act reasonably in determining whether to approve an extension to a Delivery Date, and may impose reasonable conditions on any such extension.
- 26.3 If the Council agrees to extend the Delivery Date for an Item of Works, the Delivery Date under this Agreement is deemed to have been extended without any further amendment to this Agreement.

27. Works-As-Executed-Plan

- 27.1 No later than 60 Business Days after a Certificate of Practical Completion is issued in respect of an Item of Public Works, the Landowner is to submit to the Council a full Works-As-Executed-Plan in respect of the Public Works the subject of the notice.
- 27.2 The Landowner shall provide with the Work-as-Executed Plan(s) all documents requested by the Council under clause 17.12 which are to be provided at Hand-Over.

28. Rectification of Defects for Public Works

- 28.1 During the Defects Liability Period for any Public Works the Council may give to the Landowner a Rectification Notice in relation to the Public Works specifying:
- (a) the Public Works requiring rectification and the nature of the Defect;
 - (b) the action required to be undertaken by the Landowner to rectify the Defect in those Public Works; and
 - (c) the reasonable date by which those Public Works are to be rectified.

- 28.2 The Landowner must comply with a Rectification Notice at its own cost according to the terms of the Notice, and acting reasonably, provide Council with a date by which the Defect in those Public Works will be rectified having regard to the nature of the Defect, the Public Works and the rectification required.
- 28.3 When the Landowner considers that rectification is complete, the Landowner may give to the Council a Rectification Certificate relating to the Public Works the subject of the relevant Rectification Notice.
- 28.4 A Rectification Certificate discharges the Landowner from any further obligation to comply with the relevant Rectification Notice.
- 28.5 If the Landowner has not complied with a Rectification Notice, the Council may do such things as are necessary to rectify the defect and may:
- (a) call upon any Security provided in respect of the Item of Public Works 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.

29. Cost of Works carried out by the Council

- 29.1 The Council's costs of carrying out, completing or rectifying the Public 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 Public 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 Landowner's failure to comply with this Agreement.

30. Insurance

- 30.1 Each Landowner warrants to Council that it is:
- (a) legally and beneficially entitled to the Land;
 - (b) able to fully comply with its obligations under this Agreement;
 - (c) it has full capacity to enter into this Agreement; and
 - (d) there is no legal impediment to it entering into this Agreement, or performing the obligations imposed under it.
- 30.2 Each Landowner indemnifies Council from and against all Claims arising out of and in connection with the carrying out by the Landowner of the Public Works and any other obligation under this Agreement, except to the extent that such Claims do not arise as a result of the negligent acts or omissions of Council.

30.3 The Landowner is to take out and keep current or is to procure that any contractor carrying out the Public Works on behalf of the Landowner takes out and keeps current, to the satisfaction of the Council the following insurances in relation to the Public Works up until the end of the Defects Liability Period in relation to an item of Public Works:

- (a) contract works insurance, noting the Council as an interested party, for the full replacement value of the Public Works (including the cost of demolition and removal of debris, consultants' fees and authorities' fees), to cover the Landowner's liability in respect of damage to or destruction of the Public Works;
- (b) public liability insurance for at least \$10,000,000 for a single occurrence, which covers the Council, the Landowner and any subcontractor of the Landowner, for liability to any third party;
- (c) workers compensation insurance as required by law; and
- (d) any other insurance required by law.

30.4 If the Landowner fails to comply with clause 30.4, 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 Landowner to the Council and may be recovered by the Council as it deems appropriate including:

- (a) by calling upon the Security provided by the Landowner to the Council under this Agreement; or
- (b) recovery as a debt due in a court of competent jurisdiction.

30.5 The Landowner is not to commence to carry out the Public Works unless it has first provided to the Council satisfactory written evidence of all the insurances specified in clause 30.1.

31. **Landscape Maintenance Period**

31.1 During the Landscape Maintenance Period for Vegetation Works, the Landowner must maintain the Vegetation Works in accordance with the Landscape Maintenance Plan approved under clauses 17 and 18 (**Maintenance Works**).

31.2 Council must carry out inspections of the Maintenance Works during the Landscape Maintenance Period in accordance with the Landscape Maintenance Plan.

31.3 5 Business Days prior to reaching a Vegetation Inspection Stage as set out in the Landscape Maintenance Plan, the Landowner must notify the Council of the inspection date (**Vegetation Inspection Date**).

31.4 On the Vegetation Inspection Date the Landowner must ensure that any employees, contractors, agents or representatives of Council have access to and may enter the part of the Land on which the Maintenance Works are being carried out to inspect the Maintenance Works.

31.5 In addition to carrying out inspections in accordance with the Landscape Maintenance Plan, the Council may enter any part of the Land on which the Vegetation Works is located, and which is not land owned by Council at the time, to inspect the progress of the Maintenance Works, subject to:

- (a) giving reasonable notice to the Landowner;
 - (b) complying with all reasonable directions given by or behalf of the Landowner, including by contractors carrying out the Vegetation Works; and
 - (c) being accompanied by the Landowner or a nominee, or as otherwise agreed.
- 31.6 The Council may, acting reasonably, within 5 Business Days of carrying out an inspection (either under clause 31.4 or 31.5), notify the Landowner of any non-compliance of the Maintenance Works with the Landscape Maintenance Plan (**Vegetation Inspection Defect Notice**) and direct the Landowner to carry out work to rectify that non-compliance within a reasonable period of time.
- 31.7 If the Landowner is issued a Vegetation Inspection Defect Notice the Landowner must, at its cost, rectify the non-compliance specified in the Vegetation Inspection Defect Notice within the time period specified in the Vegetation Inspection Defect Notice, provided that it is reasonable having regard to the nature of any works required.
- 31.8 At least 20 Business Days prior to the end of the Landscape Maintenance Period, the Landowner will submit a condition report on the Vegetation Works to be prepared by an independent suitably qualified expert agreed between the parties as to whether the Landscape Maintenance Plan has been properly implemented and Maintenance Works are complete (**Condition Report**).
- 31.9 If the Condition Report identifies any matter requiring rectification within 3 months of the Landscape Maintenance Period ending, the Landowner will rectify that matter within 3 months of the end of the Landscape Maintenance Period, at its cost.
- 31.10 If the Condition Report does not identify any matter requiring rectification, or if the Landowner has carried out any rectification required by the Condition Report, the Landowner's obligations in respect of the Vegetation Works and Maintenance Works will cease at the end of the Landscape Maintenance Period, or within 3 months of the end of the Landscape Maintenance Period if the rectification works are required in that time frame under clause 31.9.
- 31.11 The Landowner must propose 3 independent suitably qualified experts in a written notice to Council at any time prior to the date on which the Condition Report under clause 31.8 is required to be provided, and Council must, acting reasonably, agree to one of those experts acting as the agreed expert and preparing the condition report.
- 31.12 For the avoidance of doubt, if Council is the owner of the land on which the Maintenance Works are being carried out during the Landscape Maintenance Period, the Landowner will have no responsibility for any damage caused to any Public Works, including Vegetation Works, on that land including due to vandalism, any acts by Council or its contracts, employees or agents or severe weather events, and the Landowner's obligations in respect of the Public Works and the Vegetation Works are limited to its obligations under the Landscape Maintenance Plan.
- 31.13 Council grants the Landowner, its contractors and agents a non-exclusive licence to access any land owned by the Council for the purpose of the Landowner meeting its obligations under this clause provided that, at all times, the Landowner complies with Council's reasonable direction, as well as Council's policies and procedures from time to time, as notified to the Landowner, as they relate to the protection of people and property.

Part 3 - Security and Enforcement

32. Provision of Security

- 32.1 Notwithstanding the remainder of this clause a Government Landowner is not required to provide any Security.
- 32.2 A Construction Certificate for any Item of Public Works cannot be issued unless the Landowner has provided the Security to the Council to secure the performance of the Landowner's obligations in respect of the Items of Public Works.
- 32.3 The amount of the Security is to be the Contribution Value of the Item of Public Works which has the highest Contribution Value of all Items of Public Works which remain to be completed.
- 32.4 Council may call on a Security in accordance with clause 28, 30, or 33.
- 32.5 If the Council calls on the Security in accordance with this Agreement, the Council may, by notice in writing to the Landowner, require the Landowner to provide a further Security in an amount that, when added to any unused portion of the existing Security provided by the Landowner, does not exceed the amount of the Security the Landowner is required to provide and the Council is entitled to hold under this clause.
- 32.6 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.
- 32.7 The Landowner may at any time provide the Council with a replacement Security provided that the amount of that replacement is not less than that which is required to be provided under this Agreement.
- 32.8 On receipt of a replacement Security, the Council is to release and return the Security that has been replaced to the Landowner.
- 32.9 Council shall within 10 Business Days of completion of an Item of Public Works return such part of any Security which it holds as is necessary to ensure that the Council does not hold any more Security under this clause than it is entitled to hold.
- 32.10 The Council is to release and return the Security or any unused part of it to the Landowner within 10 Business Days of the issue of a Certificate of Practical Completion for all Items of Public Works to which the Security relates.

33. Breach Notice and Rectification

- 33.1 If the Landowner is, in the opinion of Council, in breach of a material obligation under this Agreement, Council may provide written notice of the breach to the Landowner and require rectification of that breach within a reasonable period of time (**Breach Notice**).
- 33.2 Unless it is reasonable to extend or abridge the period of time permitted for rectification, having regard to the nature of the breach, a reasonable period of time is taken to be 15 Business Days from receipt of written notification of the breach.
- 33.3 If the breach is not rectified within the time specified in the Breach Notice, or otherwise agreed between the Parties, Council may, in addition to any rights it has at law, rectify the

breach. The Landowner must pay all reasonable costs incurred by the Council in remedying the breach and Council may call on the Security to recover its costs of remedying the breach.

34. Dispute resolution – Expert Determination

34.1 This clause applies to a Dispute between any of the Parties to this Agreement concerning a matter arising in connection with this Agreement that can be determined by an appropriately qualified expert if:

- (a) the Parties to the Dispute agree that it can be so determined; or
- (b) the Chief Executive Officer of the professional body that represents persons who appear to have the relevant expertise to determine the Dispute gives a written opinion that the Dispute can be determined by a member of that body.

34.2 A Dispute to which this clause applies is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.

34.3 If a notice is given under clause 34.1(b), the Parties are to meet within 10 Business Days of the notice in an attempt to resolve the Dispute.

34.4 If the Dispute is not resolved within a further 20 Business Days, the Dispute is to be referred to the President of the NSW Law Society to appoint an expert for expert determination. The expert appointed to determine a Dispute:

- (a) must have a technical understanding of the issues in Dispute;
- (b) must not have a significantly greater understanding of one party's business, functions or operations which might allow the other side to construe this greater understanding as a bias; and
- (c) must inform the parties before being appointed of the extent of the expert's understanding of each party's business or operations and, if that information indicates a possible bias, then that expert must not be appointed except with the written approval of the parties.

34.5 In reaching a determination in respect of a Dispute, the independent expert must give effect to the intent of the parties entering into this Agreement and the purposes of this Agreement. The expert must:

- (a) act as an expert and not as an arbitrator;
- (b) proceed in any manner as the expert thinks fit without being bound to observe the rules of natural justice or the rules of evidence;
- (c) not accept verbal submissions unless both parties are present;
- (d) on receipt of a written submission from one party, ensure that a copy of that submission is given promptly to the other party;
- (e) take into consideration all documents, information and other material which the parties give the expert which the expert in its absolute discretion considers relevant to the determination of the Dispute;

- (f) not be expected or required to obtain or refer to any other documents, information or material (but may do so if the expert so wishes);
 - (g) issue a draft certificate stating the expert's intended determination (together with written reasons), giving each party ten (10) Business Days to make further submissions;
 - (h) issue a final certificate stating the expert's determination (together with written reasons); and
 - (i) act with expedition with a view to issuing the final certificate as soon as practicable.
- 34.6 The parties must comply with all directions given by the expert in relation to the resolution of the Dispute.
- 34.7 The expert, as a condition of their appointment, must keep confidential all documents, information and other material disclosed to them during or in relation to the expert determination.
- 34.8 The expert determination must be in writing (giving reasons) and is binding on the Parties except in the case of fraud or misfeasance by the expert.
- 34.9 Each Party is to bear its own costs arising from or in connection with the appointment of the expert and the expert determination.
- 34.10 The Parties are to share equally the costs of the President, the expert, and the expert determination. If there is any dispute, difference of opinion or failure to agree relating to or arising from this Agreement that dispute must be referred for determination under this clause.
- 34.11 This clause does not prevent a party from seeking urgent injunctive or declaratory relief concerning any matter arising out of this Agreement.

35. Dispute Resolution - Mediation

- 35.1 This clause applies to any Dispute arising in connection with this Agreement other than a Dispute to which clause 34 applies.
- 35.2 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 35.3 If a notice is given under clause 35.2, the Parties are to meet within 10 Business Days of the notice in an attempt to resolve the Dispute.
- 35.4 If the Dispute is not resolved within a further 20 Business Days, 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 to select a mediator.
- 35.5 If the Dispute is not resolved by mediation within a further 20 Business Days, or such longer period as may be necessary to allow any mediation process which has been commenced to be completed, then the Parties may exercise their legal rights in relation to the Dispute, including by the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.

- 35.6 Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.
- 35.7 The Parties are to share equally the costs of the President, the mediator, and the mediation.
- 35.8 This clause does not prevent a party from seeking urgent injunctive or declaratory relief concerning any matter arising out of this Agreement.

36. Registration of document on Title

36.1 Acknowledgement

The Landowner agrees to register this Agreement 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 Land from time to time as if each owner for the time being had entered into this Agreement.

36.2 Consents to Registration

Sydney Metro, at its own cost, must procure the registration of this Agreement on the title of the Land prior to the Land being sold by Sydney Metro and before any Construction Certificate or Subdivision Certificate is issued for any part of the Proposed Development on the Land and take all necessary and practical steps, and otherwise do anything that Council reasonably requires, to procure:

- (a) the consent of each person who has an estate or interest in the Land or is seized or possessed of an estate or interest in the Land; and
- (b) the execution of any documents;

to enable the registration of this Agreement in accordance with clause 36.1.

Each Party must promptly execute any document and perform any action necessary to affect the registration of this Agreement on the title of the Land.

36.3 Release from Registration

- (a) Subject to clause 36.3(b), once the Landowner has satisfied its obligations in this Agreement, Council must, at the request of the Landowner, release the Land from registration of this Agreement.
- (b) Provided the Landowner is not in material breach of any of its obligations under this Agreement, Council must, at the request of the Landowner, release part of the Land from registration of this Agreement where:
 - (i) There are no Development Contributions required to be made by the Landowner under this Agreement in respect of that part of the Land or any such Development Contributions have been made in accordance with this Agreement with respect to that part of the Land; or
 - (ii) any part of the Land which is a Final Lot.

- (c) The obligations of the Council are satisfied when Council provides the Landowner with a signed Request in registrable form for the release of registration of this Agreement.

36.4 Registration Expenses

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

37. Dealings with the Land

37.1 The Landowner must not sell any part of the Land on which this Agreement is not registered (other than a Final Lot or part of the Land on which the Agreement was registered, but has been released under clause 36.3), or assign any right or liability under this Agreement, unless the Developer has first procured the execution by the person in whose favour the assignment will be made or to whom the part of the Land is to be sold or transferred of a deed in favour of the Council on terms reasonably satisfactory to the Council.

37.2 Clause 37.1 does not apply to a sale of the Land by Sydney Metro.

Part 4 - General Provisions

38. Costs

The Landowner is to pay or reimburse 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.

39. GST

If any payment made by one Party to any other Party under or relating to this Agreement constitutes consideration for a taxable supply for the purposes of GST or any similar tax, the party providing consideration for that taxable supply must also 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 Agreement. Unless otherwise expressly stated, prices or other sums payable under or in accordance with this Agreement are exclusive of GST.

40. Private Certifiers

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

41. Notices

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

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

41.3 Any notice is treated as given or made:

- (a) upon delivery to the recipient at the relevant address;
- (b) if sent by post, 5 Business Days after it is posted; or
- (c) if 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.

41.4 If a notice is given or made on a day which is not a Business Day or after 5pm on a Business Day, the notice is deemed to have been given or made at 9.00am on the next Business Day.

42. Governing law and jurisdiction

42.1 This Agreement is governed by and construed under the law in the State of New South Wales.

42.2 Any legal action in relation to this Agreement against any party or its property may be brought in any court of competent jurisdiction in the State of New South Wales.

42.3 Each party by execution of this Agreement 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.

43. Amendments

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

44. Third parties

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

45. Entire Agreement

This Agreement:

- (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.

46. Further assurance

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

47. Continuing performance

47.1 The provisions of this Agreement do not merge with any action performed or document executed by any party for the purposes of performance of this Agreement.

47.2 Any representation in this Agreement survives the execution of any document for the purposes of, and continues after, performance of this Agreement.

47.3 Any indemnity agreed by any party under this Agreement:

- (a) constitutes a liability of that party separate and independent from any other liability of that party under this Agreement or any other agreement; and
- (b) survives and continues after performance of this Agreement.

48. Waivers

Any failure by any party to exercise any right under this Agreement 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. A power or right may only be waived in writing, signed by the parties to be bound by the waiver.

49. Remedies

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

50. Counterparts

This Agreement may be executed in any number of counterparts, all of which taken together are deemed to constitute one and the same document. A party who has executed a counterpart of this Agreement may exchange it with another party by emailing a pdf (portable document format) copy of, the executed counterpart to that other party, and if requested by that other party, will promptly deliver the original by hand or post. Failure to make that delivery will not affect the validity and enforceability of this Agreement.

51. Representations and warranties

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

52. Severability

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

53. Definitions and interpretation

In this Agreement unless the context otherwise requires:

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

Additional Dwellings means the number of dwellings by which the maximum dwelling yield approved under the Concept Development Consents would be exceeded if the number of dwellings proposed in a Development Application is added to the number of dwellings approved under development consents relating to the Land and other parts of the Bella Vista Land and Kellyville Land.

Additional GFA means the amount of gross floor area for commercial or retail facilities by which the maximum gross floor area for commercial or retail facilities approved under the Concept Development Consents would be exceeded if the amount of gross floor area for commercial or retail facilities proposed in a Development Application is added to the amount of gross floor area for commercial or retail facilities approved under development consents relating to the Land and other parts of the Bella Vista Land and Kellyville Land, .

Approval means any certificate, licence, consent, permit, approval or other authorisation by any Authority.

Authority the Commonwealth or New South Wales government, a Minister of the Crown, a government department, a public authority established by or under any Act, a council or county council constituted under the Local Government Act 1993, or a person or body exercising functions under any Act including a commission, panel, court, or tribunal.

Bank Guarantee means a written guarantee without a time limit acceptable to Council issued by an Australian Bank (being an *Australian Bank* as defined in Council's adopted Planning Agreement Policy from time to time).

Bella Vista Land means the Superlots shown on the Bella Vista – Sub-precinct plan in Schedule 4.

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

Certificate of Practical Completion means a certificate issued by Council or deemed to have been issued under clause 24.

Claim means, against any person, any allegation, action, demand, cause of action, suit, proceeding, judgement, debt, damage, loss, cost, expense or liability howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise.

Concept Design means the concept design for an Item of Public Works approved by Council under clause 16 of this Agreement.

Concept Development Application means SSD10343 and SSD10344.

Concept Development Consents means the Development Consents granted by the Minister to the Concept Development Applications on 1 December 2022 as modified from

time to time, but excluding any modification in respect of the dwelling caps of 3804 for the Bella Vista Land and 1910 for the Kellyville Land, and up to 176,736 square metres of gross floor area for retail and commercial facilities.

Construction Certificate has the same meaning as in the Act.

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

Contribution Value means the amount specified in Column 5 of Schedule 3.

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

Dedication Lands means any parts of the Land to be dedicated to Council as required by Part B of the table in Schedule 3 and the indicative location of which is shown on the Location Plan and Superlot Plans.

Defect means a defect in an Item of Public Works (other than Vegetation Works) which results in the Item of Public Works failing to perform according to its specification or intended use as assessed during the Defects Liability Period.

Defects Liability Period means in respect of each Item of Public Works, 12 months commencing on the date a Certificate of Practical Completion is issued in respect of that Item of Public Works.

Delivery Date means the date specified in Column 4 of the table in Schedule 3 in relation to any Works specified in Column 1 of the table in that Schedule corresponding to that date, subject to any extension of that date.

Detailed Design means the detailed design for the Item of Public Works approved under clause 17 of this Agreement.

Development Application means a development application within the meaning of the Act in respect of the Proposed Development other than the Concept Development Applications.

Development Consent means a development consent within the meaning of the Act for the Proposed Development, other than a Concept Development Consent.

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 required under this Agreement.

Dispute means a dispute or difference between the Parties under or in relation to this Agreement.

Encumbrance means an interest or power:

- (a) reserved in or over an interest in any asset;
- (b) arising under, or with respect to, a bio-banking agreement within the meaning of the *Biodiversity Conservation Act 2016*;
- (c) created or otherwise arising in or over any interest in any asset under any mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, title retention,

conditional sale agreement, hire or hire purchase agreement, option, restriction as to transfer, use or possession, easement, covenant, lease, subordination to any right of any other person and any other encumbrance or security interest, trust or bill of sale; or

- (d) by way of security for the payment of a debt or other monetary obligation or the performance of any obligation.

Encumber means to grant an Encumbrance.

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

Final Lot means a lot created in the Proposed Development, including a strata lot, for separate residential, retail or commercial occupation and disposition not being a Superlot.

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, pandemic, 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 Landowner takes all reasonable precautions to protect itself against, and uses all reasonable endeavours to mitigate the consequences of (which does not require the Landowner to settle a labour dispute if, in the Landowner's opinion, that is not in its best interests); and
- (c) which the Landowner notifies the Council of, as soon as practicable after becoming aware of the event or circumstance.

Government Landowner means Sydney Metro or any other public authority within the meaning of the Act.

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 and Handed Over means the hand-over to the Council of any Public Works in accordance with this Agreement.

Item of Works means an item of the Works.

Item of Public Works mean an item of Public Works.

Just Terms Act means the *Land Acquisition (Just Terms Compensation Act) 1991*.

Kellyville Land means the Superlots shown on the Kellyville – Sub-precinct plan in Schedule 4.

Land means the land described in Schedule 2 being Superlot BVJ shown on the Superlot Plan.

Landowner means the owner of the Land, and at the date of this Agreement means Sydney Metro.

Landscape Maintenance Period means the period of 24 months commencing on the Hand-Over of any Item of Public Works which involves Vegetation Works.

Landscape Maintenance Plan means the plan submitted with the Detailed Design in accordance with clauses 17 and 18 and approved by Council under those clauses. The Landscape Maintenance Plan operates during the Landscaping Maintenance Period.

LEP means *The Hills Local Environmental Plan 2019*.

Location Plan means the plan contained in Schedule 1.

Monetary Contributions means any Development Contributions in Part A of the table in Schedule 3 and/or made under clause 8.3 indexed and paid in accordance with clause 13.

Occupation Certificate has the same meaning as in the Act.

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

Permitted Easement means any easement, covenant, restriction on use or other encumbrance or affectation which does not adversely affect the intended use of the Dedication Land, including those set out in Schedule 6.

Planning Legislation means the Act, the *Local Government Act 1993* (NSW) and the *Roads Act 1993* (NSW).

Practical Completion means that stage in the carrying out and completion of an Item of Works when:

- (a) the Works are complete except for minor defects:
 - (i) which do not prevent the Works from being reasonably capable of being used for their stated purpose;
 - (ii) the rectification of which will not prejudice the convenient use of the Works;
- (b) any tests which are required by any construction contract for the Works to be carried out and passed before the Works reach Practical Completion have been carried out and passed; and

- (c) documents and other information required under any construction contract for the Works which are essential for the use, operation and maintenance of the Works have been supplied to the Landowner.

Public Works means any Item of Works which is located on land owned by the Council or on land which is to be Dedicated to Council under this Agreement.

Proposed Development means the development of the Land:

- (a) consistently with the Concept Development Consents pursuant to any further Development Consent issued for the Land; and
- (b) for the purpose of any Additional Dwellings and/or Additional GFA.

Rectification Certificate means a compliance certificate within the meaning of section 6.4(e) 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 Public Work and requires rectification of the Defect within a specified period of time.

Reference Design is the design of the Public Works contained within the Concept Development Applications and in respect of works for open space or public recreation, also in Schedule 5.

Regulation means the *Environmental Planning and Assessment Regulation 2021* (NSW).

Security means a Bank Guarantee or bond in favour of the Council of a type which is in accordance with Council's adopted Planning Agreement Policy from time to time and on terms satisfactory to the Council, or such other form of security as the Council may require in its absolute discretion.

Subdivision Certificate has the same meaning as in the Act.

Superlot means each Superlot shown on the Superlot Plan, including the Land.

Superlot Planning Agreement means this Agreement and any other planning agreement entered into between the Parties in respect of an individual Superlot.

Superlot Plan means the plans in Schedule 4.

Umbrella Planning Agreement means the Agreement entered into by the Parties in respect of the land comprising all of the Superlots.

Vegetation Works means an Item of Public Works which involves vegetation planting.

Works means any works specified or described in Part C of Column 1 of the table in Schedule 3 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 Public Works.

53.2 Interpretation

In this Agreement 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 Agreement 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 Agreement;
- (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) reference to an exhibit, annexure, attachment or schedule is a reference to the corresponding exhibit, annexure, attachment or schedule in this Agreement;
- (l) 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 Agreement means a cross reference to that clause, subclause, paragraph, schedule, item, annexure, exhibit or attachment;
- (m) when a thing is required to be done or money required to be paid under this Agreement 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
- (n) 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

See the Superlot Plans

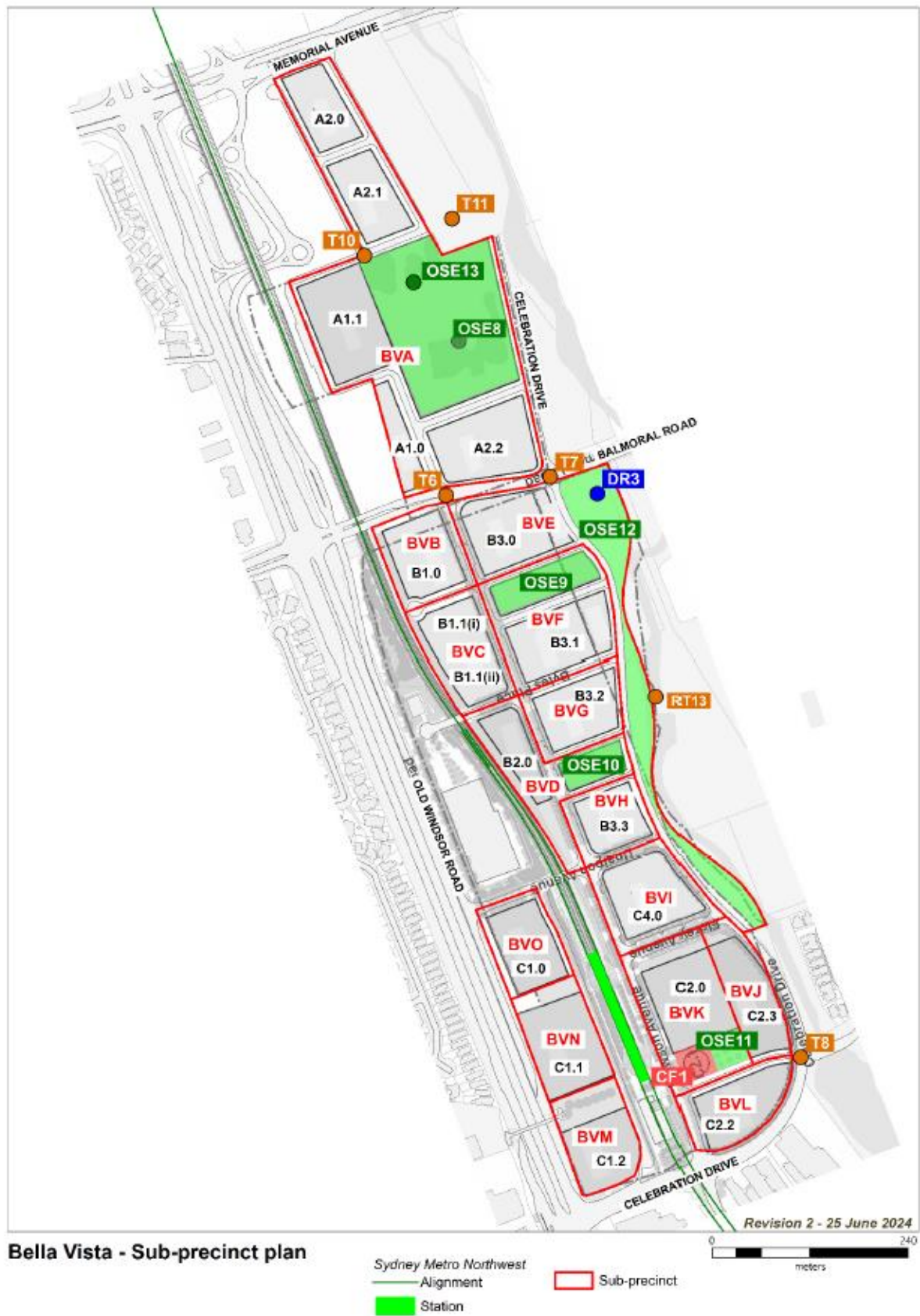
Schedule 2 – Land

Lot No.	Plan No.	Owner
Part 102	DP 1252968	Sydney Metro

Schedule 3 – Contributions Table

Column 1	Column 2	Column 3	Column 4	Column 5
Item/ Contribution	Public Purpose	Manner & Extent	Timing	Contribution Value
A. Monetary Contributions				
1. Monetary Contribution	Community Facility	\$975,657	Prior to the issue of the first Occupation Certificate for a building in the Proposed Development in Superlot BVJ	\$975,657
B. Dedication of Land				
NA				
C. Carrying out of Work				
NA				
D. Other material public benefits				
NA				
TOTAL SUPERLOT BVJ				\$975,657

Schedule 4 – Superlots





Revision 1 - 19 April 2024

Kellyville - Sub-precinct plan

Sydney Metro Northwest

Alignment

Station

Sub-precinct

0 160
meters

Schedule 5 – Open Space Reference Design and Specifications

- Not Applicable.

Schedule 6 – Permitted Easements

- Not Applicable.

Execution Page

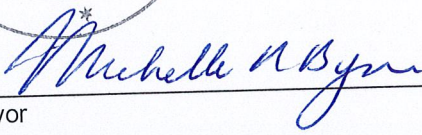
The common seal of **The Hills Shire Council** was affixed under a resolution passed by council on 9 July 2024 in the presence of:




General Manager

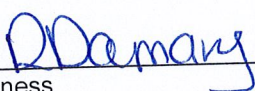
MICHAEL EDGAR

Print Name


Mayor

DR MICHELLE BYRNE

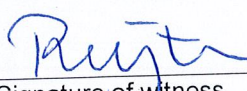
Print Name


Witness

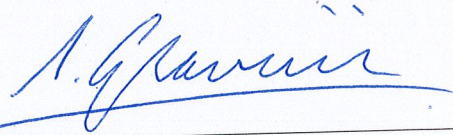
Michael Damary
Print Name

29 September 2025

Signed for and on behalf of **Sydney Metro** by its authorised signatory in the presence of:


Signature of witness

PHIL LEIJTEN
Full name of witness


Signature of authorised signatory

IVAN GLAVINIK
Full name of authorised signatory

680 George St SYDNEY
Address of witness

Electronic signature of me,
by me, or at my direction, on

affixed

Electronic signature of me,
by me, or at my direction, on

affixed

*By signing this document, the witness states that they witnessed the signature of
by audio visual link in accordance with section 14G of the Electronic Transactions Act 2000 (NSW).

EXPLANATORY NOTE

Draft Planning Agreement

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

Parties

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

Sydney Metro ABN 12 354 063 515 of 680 George Street, Sydney New South Wales 2000
(Sydney Metro)

Background

The purpose of this Explanatory Note is to help the community to simply and clearly understand what the draft Voluntary Planning Agreement (**Planning Agreement**) is proposing, how it delivers public benefits, and why it is acceptable and in the public interest.

This Explanatory note supports the public notification and exhibition of the draft Planning Agreement as required by section 7.5(2) of the *Environmental Planning and Assessment Act 1979* (NSW) (**Act**) and section 204(1) of *Environmental Planning and Assessment Regulation 2021* (**Regulation**).

This Explanatory Note has been prepared jointly between the parties as required by section 205 of the Regulation.

Description of the Land to which the Draft Planning Agreement Applies

This draft Planning Agreement applies to the land comprised in Part Lot 102 of DP1252968, as well as any lot created by a subdivision or consolidation of this lot.

Description of Proposed Development

The draft Planning Agreement applies to the development on the Land pursuant to further development consents granted consistent with the Concept Development Consents to the Concept Development Applications SSD10343 and SSD10344.

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 Sydney Metro and its obligations (if the Planning Agreement is entered into with the Council) to make the following contributions:

- monetary contribution for the purposes of a Community Facility to be made prior to the issue of the first Occupation Certificate for a building in the Proposed Development in Superlot BVJ.

The draft Planning Agreement:

- requires Sydney Metro to make monetary contributions;
- excludes the application of ss 7.11, and 7.12 of the EPA Act to the Proposed Development, other than to the extent of any Additional Dwellings;

- is to be registered on the title to the Land;
- imposes restrictions on Sydney Metro transferring the Land or part of the Land;
- provides a dispute resolution method where a dispute arises under the draft Planning Agreement, being expert determination and mediation;
- provides that the draft Planning Agreement is governed by the law of New South Wales; and
- provides that the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) applies to the draft Planning Agreement.

The draft Planning Agreement is a planning agreement under s7.4 of the EPA Act.

Assessment of the Merits of the proposed Planning Agreement and Impact on the Public

The draft Planning Agreement:

- promotes and co-ordinates the orderly and economic use and development of the land to which the draft Planning Agreement applies;
- provides and co-ordinates community services and facilities; and
- provides increased opportunity for public involvement and participation in the form of public notification of the draft Planning Agreement.

The draft Planning Agreement provides a reasonable means of achieving these planning purposes by requiring the Developer to make development contributions as described further above to Council, to facilitate the development of the Land in connection with the provision of necessary infrastructure, open space and community facilities.

Identification of how the proposed Planning Agreement promotes the public interest

The draft Planning Agreement promotes the public interest by:

- promoting the objects of the EPA Act set out in sections 1.3(a),(b), (c), (g) and (j); and
- making of monetary contributions for the delivery of community infrastructure which will benefit the local and wider community.

Identification of how the proposed Planning Agreement promotes the Guiding Principles for Councils in section 8A of the Local Government Act 1993

The draft Planning Agreement promotes the guiding principles for Councils by:

- working with others to secure appropriate services for local community needs; and
- promoting Council's 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 draft Planning Agreement serves the public purpose of public recreation and community facilities, and provides reasonable means for achieve that purpose.

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

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