

Voluntary Planning Agreement

February 2020

**PLANNING
AGREEMENT**

BETWEEN

Mulpha Norwest Pty Ltd (ABN 27 000 004 633)

AND

The Hills Shire Council

FOR

Part 40 Solent Circuit
Norwest NSW 2153

Lot 2107 DP 1216268

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Ref: AJWS/AYCS/3210130

Summary Sheet

Council	Name	The Hills Shire Council
	Address	3 Columbia Court NORWEST NSW 2153
	Telephone	(02) 9843 0555
	Facsimile	(02) 9843 0409
	Email	council@thehills.nsw.gov.au
	Representative	Mr Michael Edgar – General Manager
Developer	Name	Mulpha Norwest Pty Ltd ABN 27 000 004 633)
	Address	99 Macquarie Street, Sydney NSW
	Telephone	02 9239 5500
	Facsimile	02 9270 6199
	Email	enquiry@mulpha.com.au
	Representative	Mr Tim Spencer - Executive General Manager
Land	Lot 2107 DP 1216268	
Planning Proposal	The Proposal (5/2015/PLP) to amend The Hills Local Environmental Plan 2019, as it relates to the Land, to:	
	<ul style="list-style-type: none"> ▪ Permit additional land uses on the Land zoned R4 High Density Residential namely uses permitted in the B1 Neighbourhood Centres Zone - business premises, child care centres, health consulting rooms, medical centres, recreation facilities (indoors), restaurants, cafes and shops; ▪ Increase the maximum permissible building height from RL 116 metres to RL 176 metres; and ▪ Provide a maximum permissible floor space ratio (FSR) of 2.9:1 on the Land. 	
Proposed Development	The development of the Land is for the purposes of:-	
	<ul style="list-style-type: none"> ▪ Provision for approximately 864 residential apartments in nine towers, with construction to generally be undertaken in accordance with the Staging Plan. 	



Public Access Lands	See Schedule 1
Works	See Schedule 1
Monetary Contributions	See Schedule 1
Security Amount	Not Applicable – See Clause 20
Application of S7.11 S7.12 and S7.24 of the Act	Not Applicable – See Clause 22
Registration	Applicable – See Clause 28

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Planning Agreement

Dated February 2020

Parties

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

Mulpha Norwest Pty Ltd ABN 27 000 004 633 of 99 Macquarie Street Sydney New South Wales 2000 (**Developer**)

Background

- A. Council is the consent authority pursuant to the *Environmental Planning and Assessment Act 1979* (NSW) (**Act**) for the Proposed Development.
- B. The Developer is the owner of the Land and has lodged a Planning Proposal with Council in respect of the Land. Upon approval of the Planning Proposal, the Developer proposes to lodge a Development Application in respect of the Land.
- C. The Developer offers to:
 - (a) provide public access to the Public Access Land known as 'The Hub' which will be landscaped and embellished providing public access with a pedestrian link, water play, community gardens adjacent to feature stream, café terrace, restaurants and seating;
 - (b) carry out all necessary works for the installation of traffic lights at Solent Circuit (east) and provide lighting and security for public areas around Norwest Lake; and
 - (c) pay the Monetary Contributions to Council for additional active open space, landscaping, community and pedestrian/cycleway facilities, traffic lights at the intersection of Norwest Boulevard and Solent Circuit (west), and for land acquisition and works.

in accordance with the terms set out in this Agreement.

Operative provisions

1. Defined meanings

Words used in this document and the rules of interpretation that apply are set out and explained in the definitions and interpretation Clause 31 of this Agreement.

2. Planning agreement under the Act

The Parties agree that this Agreement is a planning agreement within the meaning of **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, including Staged Development Applications, Development Applications and any other Development Applications required for the Proposed Development, and applies to the Land.

4. No restriction on Council's Powers

This Agreement or anything done under this Agreement:

- (a) is not to be taken as approval or consent by Council as a regulatory authority; and
- (b) does not in any way inhibit, deter or prejudice Council in the proper exercise of its functions, duties or powers,

pursuant to any legislation including the Act, the *Roads Act 1993* (NSW) and the *Local Government Act 1993* (NSW).

5. Operation of this Agreement

5.1 The planning agreement operates when:

- (a) The Land is rezoned in order to allow for the Proposed Development to be carried out and the amending Local Environmental Plan is published on the NSW Legislation Website; and
- (b) Development Consent is granted for the Proposed Development

5.2 When this Agreement operates it is a binding contract between the parties.

6. Public Access Lands

6.1 The Developer must at its cost register the appropriate encumbrance on title creating easements for public access over the Public Access Lands on the Hand-Over Date.

6.2 The Council acknowledges and agrees that any dimensions and location of Public Access Lands as at the date of this Agreement, as indicated in Schedule 1, are approximate only and will be finalised upon submission of the relevant Development Application by the Developer to Council.

7. Obligation to Carry Out Works

7.1 The Developer is to carry out and complete the Works in Schedule 1 on the Land at the locations shown on the Location Plan in Schedule 2, and generally in accordance with the program of works provided for in the Staging Plan in Schedule 3.

7.2 The Developer's obligation under clause 7.1 exists irrespective of whether the Developer:

- (a) carries out the Works itself, or
- (b) enters into an agreement with another person under which the other person carries out the Works on the Developer's behalf.

- 7.3 Before the Developer commences an Item of Works, the Developer will, at its own cost, prepare and submit to the Council or a person specified by the Council, detailed plans and specifications in relation to the Item of Works.
- 7.4 Council, acting reasonably, may request that the Developer amend the detailed plans and specifications, and if it makes that request, the Developer must amend and resubmit the detailed plans and specifications with Council for approval under this clause.
- 7.5 The Developer is not to commence an Item of Works unless the Council or the person specified by the Council has given the Developer written approval of the plans and specifications relating to the Item of Works.
- 7.6 The Developer is to carry out and complete all Works in a good and workmanlike manner having regard to the intended purpose of the Works and otherwise to the satisfaction of Council, acting reasonably, in accordance with:
- (a) the Development Consent; and
 - (b) all applicable laws, including those relating to occupational health and safety; and
 - (c) this Agreement to the extent that it is not inconsistent with the Development Consent or an applicable law; and
 - (d) the written approval given under clause 7.5.
- 7.7 In the event of an inconsistency between this Agreement and the Development Consent or any applicable law, the Development Consent or the law prevails to the extent of the inconsistency.
- 7.8 It is the Developer's responsibility to ensure that everything necessary for the proper performance of its obligations under this Agreement is supplied or made available.
- 7.9 Each Item of Works is to be Handed-Over to the Council:
- (a) by no later than the Hand-Over Date for the Item of Works, and
 - (b) otherwise in accordance with this Agreement.

8. Staging of Works

The Proposed Development, including the preparation and lodgement of the relevant Development Applications, will generally be undertaken in accordance with the Staging Plan provided for at Schedule 3 of this Agreement.

If, due to market conditions and/or development factors at the relevant time, the Developer may, at its discretion, vary the terms of the Staging Plan if it considers reasonably necessary. The Council cannot unreasonably withhold any relevant consent, or object to such a variation. The Developer must, if so requested by the Council, provide evidence of the market conditions or other such legitimate factors that support the subject variation of the Staging Plan.

9. Ownership of Works

- 9.1 Ownership of the Works is transferred to Council on Hand-Over and nothing in, or done under, this Agreement gives the Developer, after Hand-Over any right, title or interest in the Works.

10. Access to the Land and location of Works

- 10.1 The Developer is to permit the Council, its officers, employees, agents and contractors to enter the Land at any time, upon giving reasonable, and no less than 7 days, prior notice in writing, in order to inspect, examine or test any Item of Works.
- 10.2 In the event that the Works are located on land owned by the Developer, other than the Land, Council land or a public road, the Developer is to permit the Council, its officers, employees, agents and contractors access to that land.

11. Protection of People, Property and the Environment

- 11.1 The Developer is to ensure in relation to the carrying out of the Works that:
- (a) all reasonable 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 avoided; 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 adhered to.

12. Damage and Repairs to the Works

- 12.1 The Developer, at its own cost, is to repair and make good to the satisfaction of the Council, acting reasonably, any loss or damage to the Works which occurs prior to the date on which the Works are Handed-Over to the Council.

13. Variation of Works

- 13.1 The Works are not to be varied by the Developer unless:
- (a) the Parties agree in writing to the variation; and
 - (b) any consent or approval required under the Act or any other law to the variation is first obtained; and
 - (c) the Developer bears all of the Council's reasonable costs of and incidental to agreeing to and approving the variation, except in respect of any variation arising in accordance with Clause 13.3 of this Agreement.
- 13.2 For the purposes of clause 13.1(a) a variation may relate to any matter in relation to the Works that is dealt with by this Agreement.
- 13.3 If Council requests a variation to the Works after Council has given its written approval under clause 7, then the Council shall be liable to pay to the Developer an

amount equal to the increase in the costs of completing the Works, which results from the variation requested by the Council.

13.4 Council shall repay the amount referred to in clause 13.3 to the Developer after the Works are complete, and within 28 days of receipt of:

- (a) a tax invoice for the amount claimed by the Developer; and
- (b) documentation which demonstrates to Council's satisfaction, acting reasonably, that the increase in costs is a result of the variation requested by the Council.

14. Hand-Over of Works

14.1 The Developer is to give the Council not less than 20 days written notice of:

- (a) the date on which it proposes to Hand-Over any Works to the Council, being a date not later than the Hand-Over Date; and
- (b) the Items of Work the subject of the notice.

14.2 The Council may, at any time before the date specified in the notice referred to in clause 14.1(a), direct the Developer in writing:

- (a) to carry out certain work reasonably necessary for the Works to be completed in accordance with the approval referred to in clause 7.5 of this Agreement, before it is Handed-Over to the Council; and
- (b) to Hand-Over the Works to the Council by a specified date, irrespective of whether that date is later than the Hand-Over Date.

14.3 The Developer is to comply with a direction according to its terms and at the Developer's own cost.

14.4 Before the Works are Handed-Over to the Council, the Developer is to remove from the Land:

- (a) any rubbish or surplus material; and
- (b) any temporary works; and
- (c) any construction plant and equipment, relating to the carrying out of the Works as the case requires.

14.5 The Works are taken to be Handed-Over to the Council when the Developer has completed the Works in accordance with its obligations under this Agreement and gives the Council written notice to that effect and Council confirms in writing that the Works have been completed in accordance with this Agreement.

15. Failure to Carry Out and Hand-Over Works

15.1 The parties agree that the Hand-Over Date may be extended due to:

- (a) any Force Majeure Event;

- (b) any delay caused by any civil commotion, riot or industrial action beyond the control of the Owner or the Developer which prevents the development the subject of this Agreement from proceeding;
 - (c) any delay caused by court order, including an injunction;
 - (d) any delay caused by the bankruptcy or insolvency of any contractor or sub-contractor engaged by Developer for the purpose of the works the subject of this Agreement;
 - (e) any reasonable delay caused by rain, wind or incremental weather;
 - (f) any delay arising for any amendment to the law governing this Agreement;
 - (g) any delay arising from any reasonable request for an extension of term to any building contract between the Developer and any contractor or sub-contractor entered into to carry out the works the subject of this Agreement;
 - (h) any delay arising from any reasonable suspension by the Developer or any contractor or sub-contractor hired to carry out the works the subject of this Agreement;
 - (i) any delay caused by any act or omission of a contractor or sub-contractor engaged by the Developer to carry out the works the subject of this Agreement;
 - (j) any delays on the part of any government authority (including the Council) in granting any approval, consent, licence or permit necessary for the Works to be completed; or
 - (k) any direction the Council gives extending the Hand-Over Date.
- 15.2 If the Council considers that the Developer is in breach of any obligation under this Agreement relating to the carrying out of the Works, the Council must give the Developer a notice requiring:
- (a) the breach to be rectified to the Council's satisfaction; or
 - (b) the carrying out of the Works to immediately cease, except in relation to the rectification of the breach, and the breach to be remedied to the Council's satisfaction.
- 15.3 A notice given under clause 15.2 is to allow the Developer a reasonable period (and in any case not less than 60 days) to remedy the breach.
- 15.4 If the Developer fails to remedy the breach the subject of a notice given under clause 15.2, the Council may carry out and complete or make safe the Works.
- 15.5 Despite clauses 15.2, 15.3 and 15.4 of this Agreement, if urgent action is necessary to protect the Works, other property or people and the Developer fails to take the action then, in addition to any other remedies of the Council, the Council may take the necessary action without the need to provide notice (although Council will use all reasonable endeavours to provide a reasonable amount of notice in the circumstances).
- 15.6 For the purposes of clause 15.4 and clause 15.5:
- (a) the Developer must allow the Council, its servants, agents and contractors to enter the Land for the purpose of completing the Works; and

- (b) the costs incurred by the Council in carrying out, completing, or making safe the Works or taking the necessary action, may be recovered by the Council from the Developer as a debt due in a court of competent jurisdiction.

16. Works-As-Executed-Plan

- 16.1 No later than 60 days after a notice is given under clause 14.5, the Developer is to submit to the Council a full Works-As-Executed-Plan in respect of the Works the subject of the notice.
- 16.2 The Developer shall provide with the Works-as-Executed Plan(s) all appropriate certificates to verify that the Works have been carried out in accordance with relevant standards.

17. Rectification of Defects

- 17.1 During the Defects Liability Period the Council may give to the Developer a Rectification Notice in relation to the Works specifying:
 - (a) the Works requiring rectification;
 - (b) the action required to be undertaken by the Developer to rectify those Works; and
 - (c) the date on which those Works are to be rectified, being a reasonable time after the Rectification Notice is given to the Developer having regard to the scope, nature and extent of Works requiring rectification.
- 17.2 The Developer must comply with a Rectification Notice at its own cost according to the terms of the Notice.
- 17.3 When the Developer considers that rectification is complete, the Developer may give to the Council a Rectification Certificate relating to the Works the subject of the relevant Rectification Notice.
- 17.4 A Rectification Certificate discharges the Developer from any further obligation to comply with the relevant Rectification Notice.
- 17.5 If the Developer does not comply with a Rectification Notice, the Council may do such things as are necessary to rectify the defect

18. Cost of Works carried out by the Council

- 18.1 The Parties acknowledge and agree that where, in accordance with this Agreement, the Council incurs a cost in carrying out, completing or rectifying a defect in the Works, the Council may recover from the Developer in a court of competent jurisdiction its full costs.
- 18.2 The Council's costs of carrying out, completing or rectifying the Works in accordance with this Agreement include:
 - (a) the reasonable costs of the Council's servants, agents and contractors reasonably incurred for that purpose;
 - (b) all fees and charges necessarily or reasonably incurred by the Council in order to have the Works carried out, completed, made safe or rectified; and

- (c) without limiting the generality of the preceding sub-clause, all legal costs and expenses reasonably incurred by the Council, by reason of the Developer's failure to comply with this Agreement.

19. Indemnity and Insurance

19.1 The Developer is to take out and keep current the following insurances in relation to the Works up until the relevant date of Hand-Over to Council:

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

19.2 If the Developer fails to comply with clause 19.1, the Council may effect and keep in force such insurances and pay such premiums as may be necessary for that purpose and the amount so paid shall be a debt due from the Developer to the Council and may be recovered by the Council as it deems appropriate including:

- (a) recovery as a debt due in a court of competent jurisdiction.

19.3 The Developer is not to commence to carry out the Works unless it has first provided written evidence to the Council of all the insurances specified in clause 19.1.

20. Provision of Security

20.1 This clause does not apply if:

- (a) the Summary Sheet at the front of this Agreement contains the words "Not Applicable" in relation to the Security Amount.

21. Monetary Contributions

21.1 Payment

The Developer must pay the Monetary Contributions on or before the date for payment specified in Column 3 of Schedule 1. Payment of the Monetary Contributions may be made by cheque or electronic bank transfer to Council's nominated bank account.

21.2 Annual Increases

On each anniversary of the date the amending Local Environmental Plan (giving effect to the Planning Proposal) is published on the NSW Legislation Website, the Monetary Contribution applicable immediately prior to that anniversary will be increased in accordance with the Relevant Index. The increased Monetary Contributions will be the Monetary Contributions in the subsequent 12 months.

21.3 Public Purpose

- (a) The Monetary Contributions are required for the funding of the provision of new infrastructure and improvements, as determined by the General Manager of Council from time to time and Council will apply the Monetary Contributions for those purposes. The description and location of the works specified in Columns 1 and 2 of Schedule 1 are for indicative purposes only and Council may, at its full discretion, apply the Monetary Contributions towards any works (or land acquisition) for a public purpose which it deems appropriate to service new development within the Norwest Station Precinct.
- (b) Clause 21.3(a) shall not apply to the Monetary Contributions identified in Schedule 1 as 'Monetary Contribution towards regional road and transport infrastructure'. Those Monetary Contributions are to be held and maintained by the Council until such time as they are called upon by Transport for New South Wales, at which time the Council must duly transfer those moneys into an account specified in writing by Transport for New South Wales, so that they may be applied towards the public purpose of funding any regional road and transport infrastructure within The Hills Shire Council Local Government Area, as determined at the absolute discretion of Transport for New South Wales.

21.4 Pro Rata Increase of Monetary Contributions

In the event that the Proposed Development approved under the Development Consent achieves a yield in excess of 864 residential apartments (**Approved Apartments**) the Monetary Contributions payable by the Developer in accordance with this Agreement will increase on a pro rata basis (**Increased Monetary Contribution**) using the following formula:

Increased Monetary Contribution = (Contribution Value ÷ 864) x number of Approved Apartments

22. Application of sections 7.11, 7.12 and 7.24 of the Act

- 22.1 For the purpose of section 7.4(5) of the Act, this Agreement excludes the application of sections 7.11 and 7.12 of the Act in relation to the Development Application for the Proposed Development.

23. Termination

23.1 Planning Proposal

This Agreement will terminate in the event that Local Environmental Plan which applies to the Land is not amended generally in accordance with the Planning Proposal.

23.2 Development Consents

If Development Consent is granted by the Council with respect to the Development Application, this document terminates with respect to that particular Development Consent:

- (a) on the lapse of the Development Consent; or
- (b) on the formal surrender of the Development Consent; or

- (c) on the final determination by a Court of competent jurisdiction issuing a declaration that the Development Consent is invalid.

24. Consequences

- 24.1 On the date of termination or rescission of this Agreement, subject to the following sub-paragraphs each party releases each other party from any obligation to perform any term, or any liability arising out of, this document after the date termination.
- 24.2 Termination or rescission of this Agreement does not release either party from any obligation or liability arising under this document before termination or rescission.

25. Private Certifiers

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

26. Dispute Resolution

26.1 Notice of Dispute

If a party claims that a dispute has arisen under this Agreement (**Claimant**), it must give written notice to the other party (**Respondent**) stating the matters in dispute and designating as its representative a person to negotiate the dispute (**Claim Notice**). No party may start court proceedings (except for proceedings seeking interlocutory relief) in respect of a dispute unless it has first complied with this clause 26.1.

26.2 Response to Notice

Within 10 business days of receiving the Claim Notice, the Respondent must notify the Claimant of its representative to negotiate the dispute.

26.3 Negotiation

The nominated representative must:

- i. meet to discuss the matter in good faith within 5 business days after service by the Respondent of notice of its representative; and
- ii. use reasonable endeavours to settle or resolve the dispute within 15 business days after they have met.

26.4 Further Notice if Not Settled

If the dispute is not resolved within 15 business days after the nominated representatives have met, either party may give to the other a written notice calling for determination of the dispute (**Dispute Notice**) by mediation under clause 26.5.

26.5 Mediation

If a party gives a Dispute Notice calling for the dispute to be mediated:

- a) the parties must agree to the terms of reference of the mediation within 3 business days of the receipt of the Dispute Notice (the terms will include a requirement that the mediation rules of the Institute of Arbitrators and Mediators Australia (NSW Chapter) apply);

- b) the Mediator will be agreed between the parties, or failing agreement within 3 business days of receipt of the Dispute Notice, either party may request the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter) to appoint a mediator;
- c) the Mediator appointed pursuant to this clause 26.5 must:
 - i. have reasonable qualifications and practical experience in the area of the dispute; and
 - ii. have no interest or duty which conflicts or may conflict with his function as mediator, he being required to fully disclose any such interest or duty before his appointment;
- d) the Mediator will be required to undertake to keep confidential all matters coming to his knowledge by reason of his appointment and performance of his duties;
- e) the parties must within 5 business days of receipt of the Dispute Notice notify each other of their representatives who will be involved in the mediation;
- f) the parties agree to be bound by a mediation settlement and may only initiate judicial proceedings in respect of a dispute which is the subject of a mediation settlement for the purpose of enforcing that mediation settlement;
- g) must convene and attend the mediation within 21 days of the date of the Dispute Notice;
- h) in relation to costs and expenses:
 - i. each party will bear their own professional and expert costs incurred in connection with the mediation; and
 - ii. the costs of the Mediator will be shared equally by the parties unless the Mediator determines a party has engaged in vexatious or unconscionable behaviour in which case the Mediator may require the full costs of the mediation to be borne by that party.

26.6 Litigation

If the dispute is not finally resolved in accordance with this clause 26, either party is at liberty to litigate the dispute.

26.7 Continue to Perform Obligations

Each party must continue to perform its obligations under this document, despite the existence of a dispute.

27. Registration of document on Title

27.1 Acknowledgement

The Developer acknowledges that Council intends to register this document under section 7.6 of the Act on the Land and on registration by the Registrar-General the document 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 document.

27.2 Consents to Registration

This Agreement must be registered on the title of the Land as soon as practicable after it is made. Each Party must promptly execute any document and perform any action necessary to effect the registration of this Agreement on the title of the Land.

27.3 Release from Registration

Council will at the request of the Developer execute and provide any necessary document (in registrable form) and perform any action necessary to remove this Agreement from the title of the Land where the Development Contributions have been made (including completion of the Works), no other money is owing to Council under this Agreement and the Developer is not in breach of any of its obligations under this Agreement.

27.4 Registration Expenses

The Developer must pay Council's reasonable expenses including registration fees, any stamp duty, for the registration of this document and the subsequent removal of registration.

28. Costs

The Developer will bear all of Council's reasonable costs associated with the negotiation, preparation, exhibition, legal review, execution and registration of this Agreement.

29. GST

29.1 If any payment made by one party to any other party under or relating to this document constitutes consideration for a taxable supply for the purposes of GST or any similar tax, the amount to be paid for the supply will be increased so that the net amount retained by the supplier after payment of that GST is the same as if the supplier was not liable to pay GST in respect of that supply. This provision is subject to any other agreement regarding the payment of GST on specific supplies, and includes payments for supplies relating to the breach or termination of, and indemnities arising from, this document.

30. General

30.1 Assignment

- (a) The Developer must not transfer any right or liability under this Agreement without the prior consent of Council. This clause 30.1(a) will not operate in the event that the Developer enters into a contract of the sale of the Land the subject of this Agreement, and this Agreement has been registered on title in accordance with clause 27 of this Agreement.
- (b) In the event that the Developer enters into a contract for the sale of the Land the subject of the Development Consent, the Developer (as vendor) shall disclose to the purchaser the existence of this Agreement.

30.2 Governing law and jurisdiction

- (a) This Agreement is governed by and construed under the law in the State of New South Wales.

- (b) Any legal action in relation to this document against any party or its property may be brought in any court of competent jurisdiction in the State of New South Wales.
- (c) Each party by execution of this document irrevocably, generally and unconditionally submits to the non-exclusive jurisdiction of any court specified in this provision in relation to both itself and its property.

30.3 Amendments

Any variation or amendment to this Agreement has no force or effect, unless documented in writing and executed by the parties.

30.4 Pre-contractual negotiation

This document:

- (a) expresses and incorporates the entire agreement between the parties in relation to its subject matter, and all the terms of that agreement; and
- (b) supersedes and excludes any prior or collateral negotiation, understanding, communication or agreement by or between the parties in relation to that subject matter or any term of that agreement.

30.5 Further assurance

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

30.6 Continuing performance

- (a) 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 document.
- (b) Any representation in this Agreement survives the execution of any document for the purposes of, and continues after, performance of this document.
- (c) Any indemnity agreed by any party under this document:
 - (i) constitutes a liability of that party separate and independent from any other liability of that party under this document or any other agreement; and
 - (ii) survives and continues after performance of this document.

30.7 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.

30.8 Remedies

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

30.9 Counterparts

This Agreement may be executed in any number of counterparts and exchanged electronically, all of which taken together are deemed to constitute one and the same document.

30.10 Party acting as trustee

If a party enters into this Agreement as trustee of a trust, that party and its successors as trustee of the trust will be liable under this Agreement in its own right and as trustee of the trust. Nothing releases the party from any liability in its personal capacity. The party warrants that at the date of this Agreement:

- (a) all the powers and discretions conferred by the deed establishing the trust are capable of being validly exercised by the party as trustee and have not been varied or revoked and the trust is a valid and subsisting trust;
- (b) the party is the sole trustee of the trust and has full and unfettered power under the terms of the deed establishing the trust to enter into and be bound by this document on behalf of the trust and that this document is being executed and entered into as part of the due and proper administration of the trust and for the benefit of the beneficiaries of the trust; and
- (c) no restriction on the party's right of indemnity out of or lien over the trust's assets exists or will be created or permitted to exist and that right will have priority over the right of the beneficiaries to the trust's assets.

30.11 Representations and warranties

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

30.12 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 severed from this Agreement but does not affect the validity of the remaining Agreement.

31. Definitions and interpretation

31.1 In this document unless the context otherwise requires:

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

Agreement means this Planning Agreement.

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

Construction Certificate has the same meaning as in the Act;

Contribution Value means the amount specified in Column 5 of Schedule 1.

Dedication means the creation or transfer of an estate in fee simple at no cost to Council.

Development Application means a development application made under Part 4 of the Act for the Proposed Development.

Development Consent means a development consent granted by the Council under section 4.16 of the Act for the Proposed Development.

Development Contributions means the Monetary Contributions, dedication of land or the provision of a material public benefit including the Works, under this Agreement and as set out in Schedule 1.

Defects Liability Period means the period specified in Column 4 of Schedule 1 in relation to the Works specified in Column 1 of that Schedule commencing on the date a Hand-Over Notice is given in relation to those Works.

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

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

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

- (a) which arises from a cause beyond the reasonable control of a party, including:
 - (i) an act of God;
 - (ii) strike, lockout, other industrial disturbance or labour difficulty;
 - (iii) war (declared or undeclared), act of public enemy, blockade, revolution, riot, insurrection, civil commotion;
 - (iv) lightning, storm, flood, fire, earthquake, explosion, epidemic, quarantine;
 - (v) embargo, unavailability of any essential equipment or materials, unavoidable accident, lack of transportation; or
 - (vi) anything done or not done by or to a person, except the party relying on force majeure;
- (b) which the Developer takes all reasonable precautions to protect itself against, and uses all reasonable endeavours to mitigate the consequences of (which does not require the Developer to settle a labour dispute if, in the Developer's opinion, that is not in its best interests); and
- (c) which the Developer notifies the Council of, as soon as practicable after becoming aware of the event or circumstance.

GST means any tax, levy, charge or impost implemented under the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (**GST Act**) or an Act of the Parliament of the Commonwealth of Australia substantially in the form of, or which has a similar effect to, the GST Act.

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

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

Hand-Over Notice means a notice issued by the Council under clause 14.

Item of Works means an item of the Works.

Land means the land specified in the Summary Sheet.

Location Plan means the plans contained in Schedule 2

Monetary Contributions means the monetary contributions specified in Schedule 1.

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

Planning Proposal means the 'Planning Proposal' specified in the Summary Sheet

Proposed Development means the 'Proposed Development' specified in the Summary Sheet.

Public Access Land means any parcel of land identified in Schedule 1 of this Planning Agreement as 'Public Access Land' and which will be burdened by a restriction of title permitting public access.

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 the Works and requires rectification of the defect within a specified period of time.

Regulation means the *Environmental Planning and Assessment Regulation 2000* (NSW).

Relevant Index means the index specified in column 6 of Schedule 1.

Staging Plan means the plan contained in Schedule 3. The Staging Plan contained in Schedule 3 is indicative for the purpose of clarifying the timing identified in Column 3 of Schedule 1 of this Agreement only.

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

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

31.2 Interpretation

In this document unless the context otherwise requires:

- (a) clause and subclause headings are for reference purposes only;
- (b) the singular includes the plural and vice versa;

- (c) words denoting any gender include all genders;
- (d) reference to a person includes any other entity recognised by law and vice versa;
- (e) where a word or phrase is defined its other grammatical forms have a corresponding meaning;
- (f) any reference to a party to this document includes its successors and permitted assigns;
- (g) any reference to a provision of an Act or Regulation is a reference to that provision as at the date of this document;
- (h) any reference to any agreement or document includes that agreement or document as amended at any time;
- (i) the use of the word **includes** or **including** is not to be taken as limiting the meaning of the words preceding it;
- (j) the expression **at any time** includes reference to past, present and future time and the performance of any action from time to time;
- (k) an agreement, representation or warranty on the part of two or more persons binds them jointly and severally;
- (l) an agreement, representation or warranty on the part of two or more persons is for the benefit of them jointly and severally;
- (m) reference to an exhibit, annexure, attachment or schedule is a reference to the corresponding exhibit, annexure, attachment or schedule in this document;
- (n) reference to a provision described, prefaced or qualified by the name, heading or caption of a clause, subclause, paragraph, schedule, item, annexure, exhibit or attachment in this document means a cross reference to that clause, subclause, paragraph, schedule, item, annexure, exhibit or attachment;
- (o) when a thing is required to be done or money required to be paid under this document on a day which is not a Business Day, the thing must be done and the money paid on the immediately following Business Day; and
- (p) reference to a statute includes all regulations and amendments to that statute and any statute passed in substitution for that statute or incorporating any of its provisions to the extent that they are incorporated.

SCHEDULE 1 Development Contributions

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
Items of Works	Area	Hand-Over Date (or date of payment for Monetary Contributions)	Defects Liability Period	Contribution Value	Indexation source (for purposes of Clause 21.2)
Public Access Land					
'The Hub' publicly accessible space – public access easement	Area to be defined with Development Application for buildings B and C – stage 1 (not less than 2,000m ²)	Registration of easement prior to issue of buildings B and C - stage 1 occupation certificate	N/A	Contribution to public amenity – through site link and pedestrian connectivity	N/A
Works					
Norwest Lake lighting & security	A minimum of 20 smart light poles around Norwest Lake covering the pedestrian boardwalk, paths and public domain areas. The smart poles shall, at a minimum, include Smart Wireless LED Street Area Lighting, 4G/5G and WIFI connectivity, CCTV, Power Outlets, Signage and capacity for additional functions over time.	Prior to Construction Certificate for stage 1	12 months from Hand-Over Date	\$1,000,000.00	N/A
Solent Circle (East) and Norwest	Traffic lights at intersection	Operational April 2018	12 months from Hand-Over Date	\$1,500,000.00	N/A

Boulevard traffic lights	on Norwest Boulevard				
Monetary Contributions					
Additional Passive open space and landscaping	Council to determine	Prior to Construction Certificate for Stage 1 (as per the Staging Plan)	N/A – Council responsible for defects	\$2,500,000.00	ABS PPI Non-residential Building Construction for NSW #3020
Contribution towards community facilities	Council to determine	Prior to Construction Certificate for Stage 2 (as per the Staging Plan)	N/A – Council responsible for defects	\$2,500,000.00	ABS PPI Non-residential Building Construction for NSW #3020
Pedestrian path and cycleway connection improvements	Council to determine	Prior to Construction Certificate for Stage 1 (as per the Staging Plan)	N/A – Council responsible for defects	\$750,000.00	ABS PPI Road and Bridge Construction for NSW #3101
Contribution towards traffic facilities	Traffic lights at intersection on Norwest Boulevard	Prior to Construction Certificate for Stage 3 (as per the Staging Plan)	N/A – Council responsible for defects	\$5,000,000.00	ABS PPI Road and Bridge Construction for NSW #3101
Contribution towards Active Open Space	Council sports field, local park, netball court, tennis court				
	<u>Land</u> Council sports field, local park, netball court, tennis court	Prior to Construction Certificate for Stage 4 (as per the Staging Plan)	N/A – Council responsible for defects	\$4,515,000.00	ABS Sydney Established House Price Index #6416
	<u>Works</u> Council sports field, local park, netball court, tennis court	Prior to Construction Certificate for Stage 5 (as per the Staging Plan)	N/A – Council responsible for defects	\$877,200.00	ABS PPI Non-residential Building Construction for NSW #3020



Voluntary Planning Agreement
Part 40 Solent Circuit, Baulkham Hills

'THE GREENS' - CONCEPT STAGING PLAN

SUBMIT CHOUT - NORTHWEST, NSW 2153

DATE: JANUARY 2018
SCALE: 1:500 @ A1 (10m EA)
PROJECT NO.: 0418
DRAWING NO.: 03

K-B

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Execution Page

The common seal of **The Hills Shire Council** was affixed under a resolution passed by council on 10 DECEMBER 2019 2020 in the presence of:



General Manager

Mayor

Witness

Witness

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

Secretary/Director

Director

Print name

Print name

Witness

Witness

EXPLANATORY NOTE TO

VOLUNTARY PLANNING AGREEMENT

PLANNING PROPOSAL FOR Part 40 SOLENT CIRCUIT, NORWEST

FOR

PROPOSED RESIDENTIAL AND MIXED USE DEVELOPMENT

Background

The developer has lodged a Planning Proposal with Council with the intention to develop the Land for proposed residential apartment development comprising nine residential buildings and ancillary retail facilities on vacant land known as The Greens at Part 40 Solent Circuit Norwest (**Proposed Development**). Upon approval of the Planning Proposal, the Developer proposes to lodge development applications with the Council for the site.

The Developer has offered to enter into the Planning Agreement in connection with the Planning Proposal to specify the development contributions to be made to Council in connection with the carrying out of the Proposed Development subject to and in accordance with the Planning Agreement.

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

The objective of the proposed Planning Agreement is to record the terms of the offer made by the developer and its obligations to:-

- provide public access to land within the development known as The Hub with a pedestrian link, water play, recreation space, cafe terrace, restaurants and other services;
- carry out works in kind to improve traffic on Norwest Boulevard by provision of traffic lights at Solent Circuit (East) and provide lighting and security for public areas around Norwest Lake; and
- pay the Monetary Contributions to Council for additional active open space, landscaping, community and pedestrian/cycleway facilities, traffic lights at the intersection of Norwest Boulevard and Solent Circuit (west), land acquisition and works, and regional road infrastructure.

(Development Contributions).

The Planning Agreement relates to the delivery of infrastructure to support the increased demands for facilities arising from the development, to provide public amenity open space, public access to land, traffic infrastructure works and community facilities, and is generally consistent with The Hills Local Environmental Plan 2019 and The Hills Development Control Plan requirements for development in Norwest and the Baulkham Hills and Bella Vista suburbs.

If the proposed Planning Agreement is entered into between the developer and the Council, the developer will be required to make the Development Contributions as set out in Schedules 1,2 and 3 of the Planning Agreement. The works in kind respond to the subject proposal, on-going development in Norwest Business Park, the Sydney Metro

North West rail project and are consistent with the objectives of Council's Contributions plans to improve public amenity and provide new infrastructure.

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

The Planning Agreement provides for contributions by the developer of approximately \$18.64M at the times set out in Schedule 1 of the Planning Agreement

It has been entered into to provide certainty for the developer and the Council as to the amount to be paid by way of contribution for infrastructure, and is targeted to the particular needs and opportunities arising from the proposed development.

Identification of how the proposed Planning Agreement promotes the public interest

The Planning Agreement will support the provision of new development to meet demand for employment and housing consistent with the Greater Sydney Region Plan, A Plan for Growing Sydney, the Central City District Plan, Council's Local Strategy and The Hills Corridor Strategy. The Planning Agreement supports the delivery of infrastructure required to meet traffic concerns, and expectations regarding community facilities in Norwest and Bella Vista Farm Park resulting in significant public benefit and amenity.

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

The Planning Agreement promotes the Council's charter under section 8 of the *Local Government Act 1993* by providing adequate, equitable and appropriate services and facilities for the community and to ensure that those services and facilities are managed efficiently and effectively. The Planning Agreement further keeps the local community informed of Council's activities.

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

The Planning Agreement provides a reasonable means of achieving and securing outcomes envisaged by The Hills Local Environmental Plan 2019 and The Hills Development Control Plan by identifying the works, method of payment and timing to ensure the public benefits secured by the Planning Agreement meet the increased demand for public facilities within Norwest resulting from the development.

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

The proposed Planning Agreement, in particular the development contributions, will assist in providing for local needs and infrastructure in association with Council's section 7.11 and 7.12 Contributions Plans.