

## ORDINARY MEETING OF COUNCIL

10 APRIL, 2018

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<b>ITEM-2</b>	<b>DRAFT VOLUNTARY PLANNING AGREEMENT - 'THE GREENS', 40 SOLENT CIRCUIT, BAULKHAM HILLS (5/2015/PLP)</b>
<b>THEME:</b>	Balanced Urban Growth.
<b>OUTCOME:</b>	7 Responsible planning facilitates a desirable living environment and meets growth targets.
<b>STRATEGY:</b>	7.2 Manage new and existing development with a robust framework of policies, plans and processes that is in accordance with community needs and expectations.
<b>MEETING DATE:</b>	<b>10 APRIL 2018</b> COUNCIL MEETING
<b>GROUP:</b>	<b>STRATEGIC PLANNING</b>
<b>AUTHOR:</b>	<b>STRATEGIC PLANNING COORDINATOR</b> PIERS HEMPHILL
<b>RESPONSIBLE OFFICER:</b>	<b>MANAGER – FORWARD PLANNING</b> STEWART SEALE

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**EXECUTIVE SUMMARY**

This report recommends that the draft Voluntary Planning Agreement (VPA) submitted in association with 'The Greens' Planning Proposal for land at part 40 Solent Circuit, Baulkham Hills (5/2015/PLP) be subject to legal review and publicly exhibited concurrent with the planning proposal and associated amendments to The Hills Development Control Plan Part D Section 8 Norwest Town Centre – Residential Development.

The planning proposal would facilitate a mixed use development on the site with nine (9) towers ranging in height from eight (8) storeys up to 26 storeys and accommodating 864 residential units and 6,000m<sup>2</sup> of commercial floor space. The planning proposal was considered by Council at its Ordinary Meeting on 8 November 2016, where Council resolved to forward the planning proposal to the Department of Planning and Environment for Gateway Determination. A Gateway Determination was received on 31 January 2017, enabling the proposal to proceed to public exhibition however this has been delayed pending the receipt and consideration of the Proponent's draft VPA offer.

A draft VPA offer has now been submitted by the Proponent, which would secure contributions from future development on the site with a total value of \$18.64 million. The contributions comprise works (construction of signals at Solent Circuit (east) and Norwest Boulevard, lighting and security measures around Norwest Lake and the inclusion of public access easements over a minimum of 2,000m<sup>2</sup> of 'urban plaza' space within the development) as well as a monetary contribution of \$16.14 million towards the provision of new local infrastructure servicing future growth within the Norwest Precinct by Council in the future.

Given the proposal precedes the completion of detailed precinct planning (and preparation of a contributions plan) for the Norwest Precinct, a VPA is the appropriate

mechanism for the developer to make a fair and reasonable contribution towards the provision of new local infrastructure, proportionate to the demand generated by the proposed development. It is considered that the value of the VPA offer is reasonable, having regard to the costs likely to be incurred by Council, in the future, to provide new local infrastructure to service growth within the Norwest Precinct.

### PROPONENT & OWNER

Mulpha Norwest Pty Limited

### POLITICAL DONATIONS

Nil disclosures by the proponent

### BACKGROUND

On 8 November 2016 Council resolved to forward a planning proposal for land at part 40 Solent Circuit, Baulkham Hills to the Department of Planning and Environment for Gateway Determination, which would facilitate a mixed use development on the site with nine (9) towers ranging in height from eight (8) storeys up to 26 storeys and accommodating 864 residential units and 6,000m<sup>2</sup> of commercial floor space.

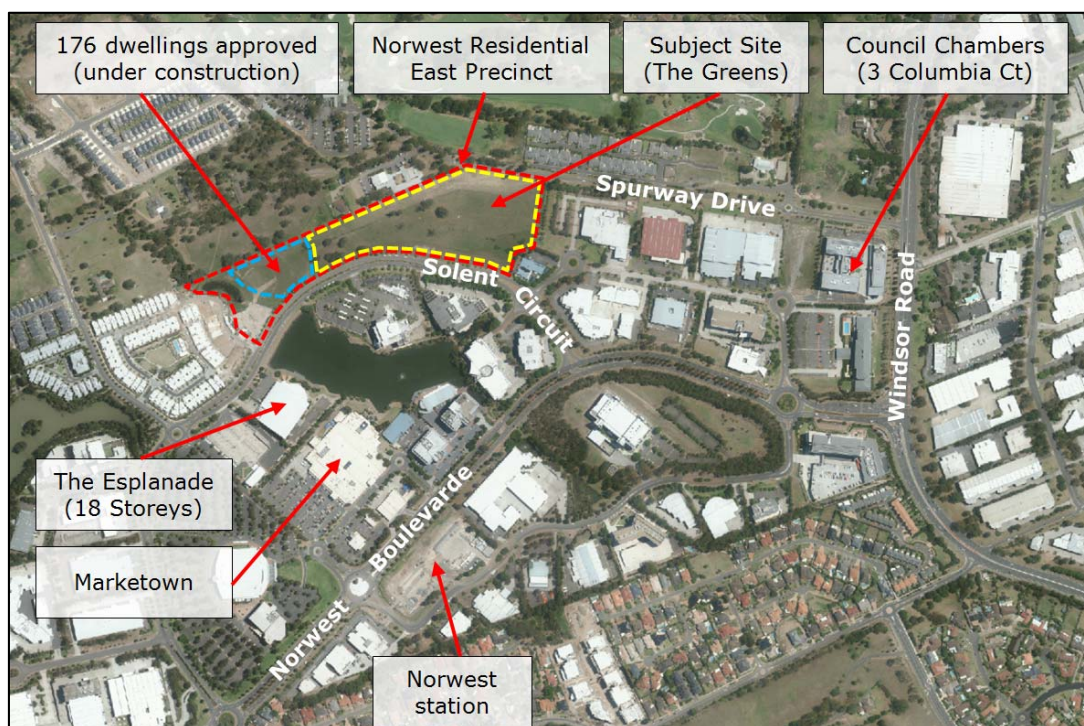


Figure 1

The site (yellow), Norwest Residential East Precinct (red) and context

Council also resolved to proceed with discussions with the proponent regarding preparation of a draft VPA which addresses the demand for additional local infrastructure generated by the proposal. Council's resolution required that following the preparation of the draft VPA, but prior to any public exhibition of the planning proposal, the draft VPA must be reported to Council for consideration.

A Gateway Determination was received on 31 January 2017, which permits the planning proposal to proceed to public exhibition. The proponent's draft VPA offer in association with the planning proposal (provided as Attachment 1) was received by Council in March 2018.

**DRAFT VOLUNTARY PLANNING AGREEMENT**

The draft VPA offer received from the proponent would require the proponent to complete works and pay monetary contributions in accordance with Table 1 below.

Works	Monetary Contrib.	Details	Est. value
✓		Signals at Solent Cct. East & Norwest Bld.	\$1.5m
✓		Norwest Lake lighting and security	\$1m
✓		Minimum of 2,000m <sup>2</sup> of 'urban plaza' - publicly accessible space with public access easement	n/a
	✓	Signals at Solent Cct. West & Norwest Bld.	\$5m
	✓	Contribution towards land acquisition & works for playing field	\$5.39m
	✓	Contribution for passive open space & landscaping	\$2.5m
	✓	Footpath & cycleway improvements	\$0.75m
	✓	Contribution towards a local community facility	\$2.5m
<b>Total</b>			<b>\$18.64m</b>

**Table 1:** Draft Voluntary Planning Agreement Offer

**REVIEW**

The site is subject to Contributions Plan No.8 – Kellyville/Rouse Hill Precinct (CP8), which seeks to provide new local infrastructure to service development within the Kellyville/Rouse Hill area. Contributions Plan No.8 anticipated a total yield of approximately 170 dwellings across the broader Norwest Residential East Precinct (the area identified in red in Figure 1). However, this yield has already been achieved within Norwest Residential East Precinct within approved developments to the west of "The Greens" Planning Proposal site (the area identified in blue in Figure 1).

Accordingly, the 864 dwellings that would be facilitated through "The Greens" planning proposal (within the area identified in yellow in Figure 1), would be in excess of the yield planned and catered for under Contributions Plan No.8. The VPA offer received from the proponent recognises this and seeks to address the demand for new local infrastructure, likely to be generated by 864 dwellings on the site.

An additional 864 dwellings (beyond that planned and catered for under Contributions Plan No.8) would generate the need for approximately:

- 43% of a new sports field;
- 43% of a standard local park (or 11% of a higher density "urban park");
- 43% of a netball court;
- 43% of a tennis court; and
- 17% of a local community centre.

A review of the draft VPA offer has been completed and the following matters are provided for consideration:

- Under Contributions Plan No.8, which applies to the land but does not cater for the yield proposed, the proposal for 864 units would result in a monetary contribution of approximately \$10.2 million (at a rate of approximately \$11,800 per unit). In comparison to this, the VPA offer equates to a rate of approximately \$21,500 per unit.
- The draft VPA includes considerable planning and public benefits which will support not only the additional residential population on this site, but also future development within the broader Norwest Precinct. These include:
  - 2,000m<sup>2</sup> of publicly accessible “urban plaza” space on site, which capitalises on the minimal site coverage (30%) proposed for the land as part of future development to contribute to availability of new passive open spaces within an urban context.
  - Upgrades to lighting and security measures around Norwest Lake, which will improve the usability of this important area of public domain within Norwest Precinct.
  - The completion of a new signalised intersection at Solent Circuit East and Norwest Boulevard to address a significant ‘bottleneck’ along Norwest Boulevard.
- In addition to these public benefits, the draft VPA would secure a monetary contribution for Council to utilise on the provision of new local infrastructure within the Precinct in the future. This includes:
  - \$5 million towards traffic improvements (potentially a partial contribution towards the intersection of Solent Circuit (west) and Norwest Boulevard to supplement existing funding sources for this work including Contributions Plan No.12 – Balmoral Road Release Area and a number of other VPA’s within the Norwest Precinct);
  - \$5.39 million towards land acquisition & works for new active open space;
  - \$2.5 million towards land acquisition and works for new passive open space;
  - \$2.5m towards a new local community centre; and
  - \$750,000 towards footpath & cycleway improvements.
- Noting that the planning proposal precedes the completion of detailed precinct planning for the Norwest Precinct (and preparation of a contributions plan), a development contribution rate for future development within the Norwest Precinct has not yet been determined. Notwithstanding this, having regard to the incremental demand for new local infrastructure generated by 864 dwellings as well as Council’s likely costs to provide new facilities in the future (servicing this development and other development within the Norwest Precinct), it is considered that the VPA offer is reasonable and adequate to cover the cost of new local infrastructure, proportionate to the level of demand for these new facilities generated by this specific proposal.

- It is Council's practice that any costs associated with the preparation, negotiation, execution and stamping of a draft VPA be paid by the Developer. The draft VPA includes a provision which requires the Developer to pay these and any of Council's legal costs associated with this VPA.

## **CONCLUSION**

It is considered that the draft VPA will facilitate a fair and reasonable contribution from future development on land at part 40 Solent Circuit, Baulkham Hills towards new local infrastructure in recognition of the demand created by 864 additional units, not planned or catered for under the Contributions Plan applicable to the land (CP8).

The proposed monetary contribution, in addition to the construction of a signalised intersection, lighting and security improvements around Norwest Lake and a 2,000m<sup>2</sup> publicly accessible "urban plaza", will be available for Council to, at its discretion, put towards full or partial funding of additional passive open space, active open space, community facilities and traffic infrastructure to address additional demand generated by development within the Norwest Precinct.

It is recommended that the draft VPA be placed on public exhibition concurrent with the associated planning proposal and DCP amendments.

## **IMPACTS**

### **Financial**

Contributions Plan No.8 envisaged a yield of 176 dwellings across the entire Norwest Business Park East Precinct Residential Precinct however this yield has already been achieved within approved development (outside of the area subject to "The Greens" Planning Proposal). Accordingly, the planning proposal would enable 864 dwellings over that envisaged for the site under Contributions Plan No.8 and is likely to result in an increase in demand for local infrastructure not provided for under the current contributions plan.

The draft VPA secures contributions valued at \$18.64 million towards the provision of new local infrastructure. A portion of this will be in the form of works completed by the developer (provision of a signalised intersection, lighting and security improvements around Norwest Lake and a 2,000m<sup>2</sup> publicly accessible space), within minimal risk to Council.

The remainder of the contribution under the draft VPA (\$16.14 million) would be in the form of a monetary contribution which Council will be able pool with current and future VPA or contribution plan funds to provide additional local infrastructure within the Norwest Precinct.

### **Strategic Plan - Hills Future**

The draft VPA supports the Community Strategic Direction by contributing to the delivery of facilities and infrastructure which will enhance and maintain an attractive, safe and tidy environment and ensure future development is consistent with the Shire's character.

## **RECOMMENDATION**

The draft Voluntary Planning Agreement be publicly exhibited for a period of 28 days in accordance with the EP&A Act 1979, concurrently with the associated planning proposal (5/2015/PLP) and DCP amendments.

## **ATTACHMENTS**

1. Draft Voluntary Planning Agreement (30 Pages)



## PLANNING AGREEMENT

### BETWEEN

Mulpha Norwest Pty Ltd

### AND

The Hills Shire Council

### FOR

Part 40 Solent Circuit  
Baulkham Hills NSW 2153

Lot 2105 DP 1201899

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Ref: AJWS/AYCS/3210130



## Summary Sheet

<b>Council</b>	Name	The Hills Shire Council
	Address	3 Columbia Court BAULKHAM HILLS NSW 2153
	Telephone	(02) 9843 0555
	Facsimile	(02) 9843 0409
	Email	council@thehills.nsw.gov.au
	Representative	Mr Michael Edgar – General Manager
<b>Developer</b>	Name	<b>Mulpha Norwest Pty Ltd</b>
	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
<b>Land</b>	<b>Lot 2105 DP 1201899</b>	
<b>Planning Proposal</b>	The Planning Proposal seeks to:	
	<ul style="list-style-type: none"><li>▪ 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;</li><li>▪ Increase the maximum permissible building height from RL 116 metres to RL 176 metres; and</li><li>▪ Provide a maximum permissible floor space ratio (FSR) of 2.9:1 on the Land.</li></ul>	
<b>Proposed Development</b>	The development of the Land is for the purposes of:-	
	<ul style="list-style-type: none"><li>▪ Provision for approximately 864 residential apartments in nine towers within 500 metres of the proposed Norwest Rail Station, and Norwest Town Centre and Business Park, supporting transit orientated development;</li><li>▪ Providing substantial open space for public use and residents</li><li>▪ Activating the area after hours with mixed use development;</li></ul>	



- Contributing additional jobs to meet the target for Norwest; and
- Providing housing in close proximity to the largest employment area in the North West of Sydney.

<b>Public Access Lands</b>	See Schedule 1
<b>Works</b>	See Schedule 1
<b>Monetary Contributions</b>	See Schedule 1
<b>Security Amount</b>	Not Applicable – See Clause 19
<b>Application of S7.11, S7.12 and S7.24 of the Act</b>	Not Applicable – See Clause 21
<b>Registration</b>	Applicable – See Clause 27

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## CONTENTS

1.	Defined meanings .....	6
2.	Planning agreement under the Act .....	6
3.	Application of this document .....	7
4.	No restriction on Council's Powers .....	7
5.	Operation of this Agreement .....	7
6.	Public Access Lands .....	7
7.	Obligation to Carry Out Works .....	7
8.	Ownership of Works .....	8
9.	Access to the Land and location of Works .....	8
10.	Protection of People, Property and the Environment .....	8
11.	Damage and Repairs to the Works .....	9
12.	Variation of Works .....	9
13.	Hand-Over of Works .....	9
14.	Failure to Carry out and Hand-Over Works .....	10
15.	Works-As-Executed-Plan .....	11
16.	Rectification of Defects .....	11
17.	Cost of Works carried out by the Council .....	12
18.	Indemnity and Insurance .....	12
19.	Provision of Security .....	13
20.	<b>Monetary Contributions</b> .....	13
21.	Application of s7.11, s7.12 and s7.24 of the EPAA .....	14
22.	Modifications .....	14
23.	Termination .....	14
24.	Consequences .....	14
25.	Private Certifiers .....	15
26.	Dispute Resolution .....	15
27.	Registration of document on Title .....	17



28.	Costs.....	17
29.	GST.....	17
30.	General .....	17
31.	Definitions and interpretation.....	20

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## Planning Agreement

Dated May 2018

### Parties

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

**Mulpha Norwest Pty Ltd** ABN 27000004633 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 6, Part 4** 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 in Stages and/or implemented by way of any Development Consent and a Notice of Commencement pursuant to Section 81 of the Act for that Development Consent has been submitted to Council notifying that a principal certifying authority has been appointed and work is to commence.

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.
- 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 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.
- 7.5 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 7.4.
- 7.6 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.
- 7.7 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.
- 7.8 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. **Ownership of Works**
  - 8.1 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.
- 9. **Access to the Land and location of Works**
  - 9.1 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.
  - 9.2 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.
- 10. **Protection of People, Property and the Environment**



10.1 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.

#### 11. Damage and Repairs to the Works

11.1 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 Hand-Over to the Council.

#### 12. Variation of Works

12.1 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 12.3 of this Agreement.

12.2 For the purposes of clause 12.1(a) a variation may relate to any matter in relation to the Works that is dealt with by this Agreement.

12.3 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.

12.4 Council shall repay the amount referred to in clause 12.3 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.

#### 13. Hand-Over of Works

13.1 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.

13.2 The Council may, at any time before the date specified in the notice referred to in clause 13.1(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 7.4 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.

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

13.4 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.

13.5 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.

#### 14. **Failure to Carry out and Hand-Over Works**

14.1 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.

14.2 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.

14.3 A notice given under clause 14.2 is to allow the Developer a reasonable period (and in any case not less than 60 days) to remedy the breach.

14.4 If the Developer fails to remedy the breach the subject of a notice given under clause 14.2, the Council may carry out and complete or make safe the Works.

14.5 Despite clauses 14.2, 14.3 and 14.4 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).

14.6 For the purposes of clause 14.4 and clause 14.5:

- (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.

#### 15. **Works-As-Executed-Plan**

15.1 No later than 60 days after a notice is given under clause 13.5, the Developer is to submit to the Council a full Works-As-Executed-Plan in respect of the Works the subject of the notice.

15.2 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.

#### 16. **Rectification of Defects**

16.1 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.

16.2 The Developer must comply with a Rectification Notice at its own cost according to the terms of the Notice.

16.3 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.

16.4 A Rectification Certificate discharges the Developer from any further obligation to comply with the relevant Rectification Notice.

16.5 If the Developer does not comply with a Rectification Notice, the Council may do such things as are necessary to rectify the defect

#### 17. **Cost of Works carried out by the Council**

17.1 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.

17.2 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.

#### 18. **Indemnity and Insurance**

18.1 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.

18.2 If the Developer fails to comply with clause 18.1, 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.

18.3 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 18.1.

## 19. Provision of Security

19.1 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.

## 20. Monetary Contributions

### 20.1 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.

### 20.2 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.

### 20.3 Public Purpose

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.

### 20.4 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

**21. Application of s94, s94A and s94EF of the EPAA**

21.1 For the purpose of section 7.4(5) 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.

**22. Modifications**

22.1 In the event that the Proposed Development is changed, modified or amended prior to completion of the development, and a further development or modification application is made for the development of the Land, then any Development Contributions made pursuant to this Agreement shall, to the extent that it is lawful:

- (a) be taken into account as part of any development contribution for the purpose of any planning agreement relating to a later application in respect of the Land; and
- (b) be taken into account in determining any development contribution under section 7.11 and section 7.12 of the Act; and
- (c) be taken into account in determining whether or not any planning agreement excludes the operation of section 7.11 and/or section 7.12 of the Act; and
- (d) be taken into account for the purposes of section 7.11(6) of the Act; and
- (e) be taken into account for the purposes of section 4.15 of the Act.

**23. Termination**

**23.1 Planning Proposal**

This Agreement will terminate in the event that the Land the subject of this Agreement is not rezoned generally in accordance with the Planning Proposal and the Development Consent.

**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 93H 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) and no other money is owing to Council 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 t:

- (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;
- (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.

**Developer** means a person who has sought a change to an environmental planning instrument or who has made, or proposes to make, an application for development consent.

**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 80 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.

**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 13.

**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.

**Proposed Development** means the development of the Land for the purposes of:-

- (a) Provision for no less than 864 residential apartments in nine towers within 500 metres of the proposed Norwest Rail Station, and Norwest Town Centre and Business Park, supporting transit orientated development;
- (b) Providing substantial open space for public use and residents
- (c) Activating the area after hours with mixed use development;



- (d) Contributing additional jobs to meet the target for Norwest; and
- (e) Providing housing in close proximity to the largest employment area in the North West of Sydney

**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 109C(1)(a)(v) 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.

**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 20.2)
<b>Public Access Land</b>					
'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 <sup>2</sup> )	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
<b>Works</b>					
Norwest Lake lighting & security	A minimum of 20 smart 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	Prior to Construction Certificate for stage 1	12 months from Hand-Over Date	\$1,000 ,000.00	N/A



	over time.				
Solent Circle (East) and Norwest Boulevard traffic lights	Traffic lights at intersection on Norwest Boulevard	Operational April 2018	12 months from Hand-Over Date	\$500,000.00	N/A
<b>Monetary Contributions</b>					
Additional Passive open space and landscaping	Council to determine	Target date 2019 - Prior to Construction Certificate for stage 1	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	Target date 2020 - Prior to Construction Certificate for stage 2	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	Target date 2019 - Prior to Construction Certificate for stage 1	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	Target date 2021 - Prior to Construction Certificate for stage 3	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				
	Land Council sports field, local park, netball court, tennis court	Target date 2022 - Prior to Construction Certificate for stage 4	N/A – Council responsible for defects	\$4,515,000.00	ABS Sydney Established House Price Index #6416
	Works Council sports field, local park,	Target date 2023 - Prior to Construction Certificate for stage 5	N/A – Council responsible for defects	\$877,200.00	ABS PPI Non-residential Building Construction for NSW #3020



	netball court, tennis court				
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DRAFT





**Schedule 2 - Location Plans**







The common seal of **The Hills Shire Council**  
was affixed under a resolution passed by council  
on  
2018 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, BAULKHAM HILLS**  
**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 Baulkham Hills (**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 building 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), and for land acquisition and works.

**(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 2012 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 and 2 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 \$17.6M at the times set out in Schedules 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 2012 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 S94 and S94A Contributions Plans.

**ITEM-1 CONFIRMATION OF MINUTES**

THE MOTION WAS PUT AND CARRIED.

## APOLOGIES

THE MOTION WAS PUT AND CARRIED.

## COMMUNITY FORUM

7.38pm Councillor Uno left the meeting and returned at 7.39pm during Item 2.

THE MOTION WAS PUT AND CARRIED UNANIMOUSLY.

The draft Voluntary Planning Agreement be publicly exhibited for a period of 28 days in accordance with the EP&A Act 1979, concurrently with the associated planning proposal (5/2015/PLP) and DCP amendments.

