

Explanatory Note
Planning Agreement
27 Victoria Avenue, Castle Hill

1 Introduction

- (1) The purpose of this Explanatory Note is to provide a plain English summary to support the notification of a proposed Voluntary Planning Agreement (**Planning Agreement**) under s7.4 of the *Environmental Planning and Assessment Act 1979* (NSW) (**Act**).
- (2) This Explanatory Note has been prepared jointly between the parties as required by clause 205 of the *Environmental Planning and Assessment Regulation 2021* (NSW) (**Regulations**).
- (3) This Explanatory Note is not to be used to assist in construing the Planning Agreement.

2 Parties to the Planning Agreement

The parties to the Planning Agreement are:

- (1) The Hills Shire Council (ABN 25 034 494 656) (**Council**); and
- (2) Marti's Investments Pty Ltd (ACN 124 605 287) (**Developer**).

3 Description of the Land to which the Planning Agreement applies

The Planning Agreement applies to Lot 5 in Deposited Plan 261795, known as 27 Victoria Avenue, Castle Hill (**Land**).

4 Description of the Development to which the Planning Agreement applies

The Planning Agreement applies to Planning Proposal 1/2022/PLP, which seeks to give effect to amendments to *The Hills Local Environmental Plan 2019* (as it relates to the Land) to:

- (1) increase the maximum floor space ratio shown for the Land from 1:1 to 1.98:1; and
 - (2) increase the maximum building height shown for the Land from 20 metres to 26 metres,
- (**Instrument Change**).

This Planning Agreement also applies to any future development of the Land above the existing gross floor area of the Land (**Existing GFA**), being 2,107 square metres (**Proposed Development**).

5 Summary of objects, nature and effect of the Planning Agreement

The **objective** of the Planning Agreement is to provide community infrastructure, amenities and resources to The Hills LGA community by facilitating the provision of monetary contributions as set out in **Schedule 1** in a timely and efficient manner (**Contributions**).

The **intent** of the Planning Agreement is to facilitate the provision of the Contributions by the Developer.

The Planning Agreement will be registered on the title of the Land.

Council will be able to withhold Construction Certificates and Occupation Certificates until such time as the Contributions (which are required to be delivered before a Construction Certificate in respect of the Proposed Development) are made.

The **nature** of the Planning Agreement is a contractual relationship between the Council and the Developer for providing the Contributions.

The **effect** of the Planning Agreement is that the Developer will provide the Contributions in the manner provided for by the Planning Agreement (as applicable) and as set out in **Schedule 1**.

6 Assessment of the merits of the Planning Agreement

6.1 The planning purposes served by the Planning Agreement

In accordance with section 7.4(2) of the Act, the Planning Agreement promotes the following public purposes:

- (1) Provision of contributions to accommodate and meet the demands of future developments and to mitigate the potential impacts of the Development on existing infrastructure.
- (2) The monitoring of the planning impacts of development on the Land.

6.2 How the Planning Agreement promotes the public interest

In accordance with the objects of the Act, the Planning Agreement promotes the public interest in the following manner:

- (1) By providing certainty for the Developer and Council as to the provision of the Contributions directed towards community infrastructure within The Hills LGA community.
- (2) By promoting the social and economic welfare of the community and a better environment.
- (3) The Planning Agreement will provide an opportunity for involvement and participation by members of the community in development assessment and are invited to make comment on the Planning Agreement.

6.3 How the Planning Agreement promotes Council's guiding principles

The Planning Agreement promotes a number of Council's guiding principles under section 8A of the *Local Government Act 1993* (NSW), as follows:

- (1) The exhibition of the Planning Agreement facilitates the involvement of members of the public in the consultation process for the Planning Agreement.
- (2) To plan strategically for the provision of effective and efficient services and regulation to meet the diverse needs of the local community.
- (3) To act fairly, ethically and without bias to the interests of the local community.
- (4) To recognise diverse local community needs and interests.
- (5) To have regard to the long term and cumulative effects of its decisions on future generations.
- (6) Transparent decision-making and active engagement with local communities, through the use of the integrated planning and reporting framework and other measures.
- (7) To engage in long-term strategic planning on behalf of the local community;
- (8) The Planning Agreement makes it clear that Council has a statutory role as consent authority in relation to the development proposal and that the Planning Agreement is not intended to unlawfully influence the exercise of Council's regulatory functions.

7 Identification of whether the Planning Agreement conforms with the Council's capital works program

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

Schedule 1 - Monetary Contributions

The following contributions will be provided in accordance with the Planning Agreement.

Item	Timing for Completion	Contribution Value
Monetary Contribution	Prior to the issue of a Construction Certificate in respect to the Proposed Development on the Land.	<p><u>Where the Proposed Development does not exceed the maximum building height and maximum floor space ratio:</u></p> <p>The amount of the Monetary Contribution will be calculated and indexed in accordance with <i>The Hills Section 7.12 Contributions Plan</i> adopted by Council in October 2020 (as amended from time to time) at the time that the relevant Monetary Contribution is required to be made and is payable in accordance with any relevant condition of Development Consent.</p> <p><u>Where the Proposed Development exceeds the maximum building height and/or maximum floor space ratio:</u></p> <p>The amount of the Monetary Contribution will be calculated and indexed in accordance with clause 2.19 of <i>Contributions Plan No. 19 – Showground Station Precinct (CP19)</i> adopted by Council on 11 September 2018 (pursuant to the following formula) at the time that the relevant Monetary Contribution is required to be made:</p> <p>A = (B – C) x D</p> <p>where:</p> <p>A = the Monetary Contribution payable.</p> <p>B = the total GFA of Land granted in a Development Consent(s).</p> <p>C = the Existing GFA.</p> <p>D = the indexed rate for non-residential floor space in CP19</p> <p>As at the date of this document, the parties acknowledge and agree that the relevant indexed rate for non-residential floor space in CP19 is as reflected in the following table:</p>

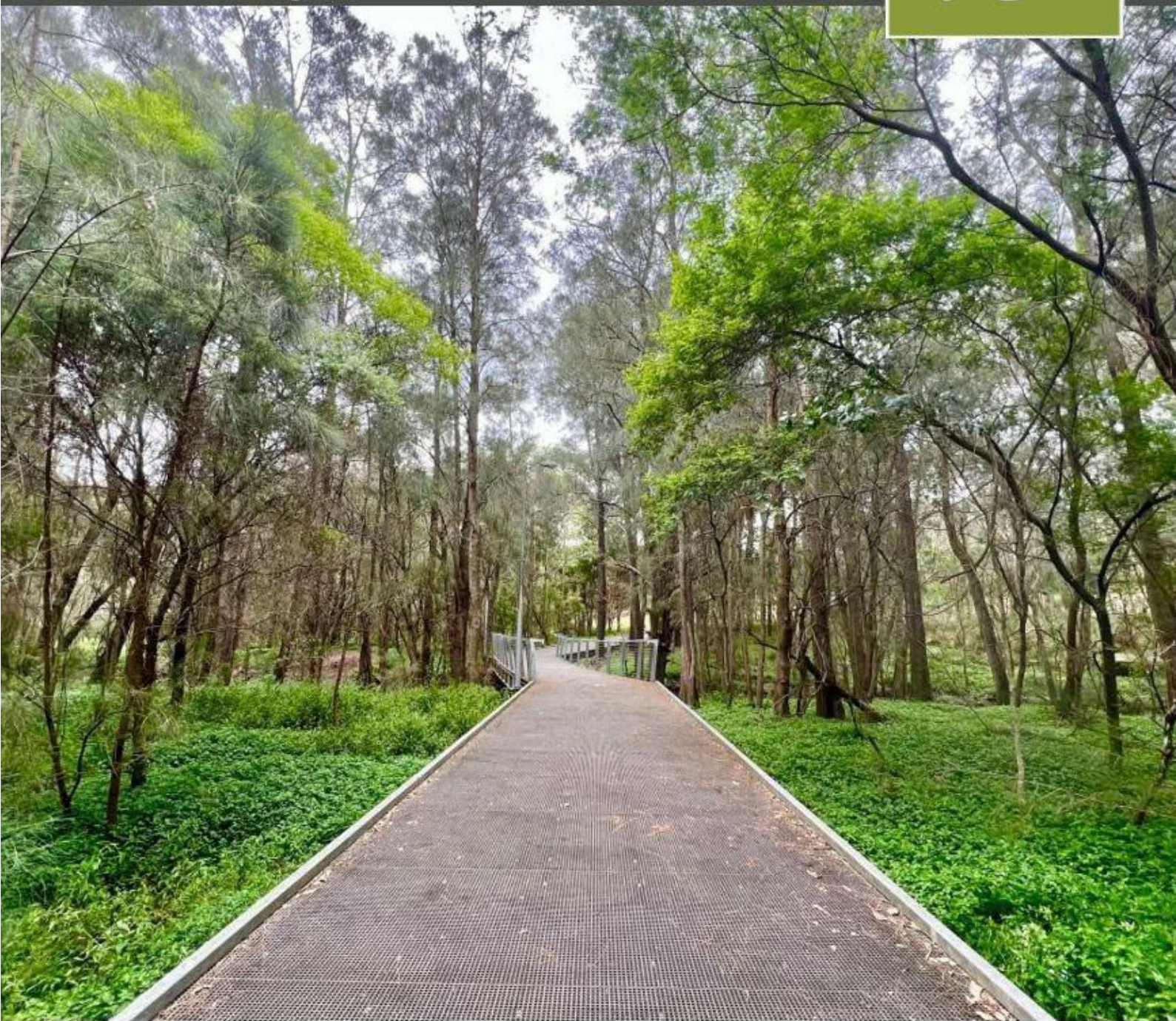
Item	Timing for Completion	Contribution Value													
		<table><tr><th>Contribution</th><th>(Per m² of GFA)</th></tr><tr><td>Transport Facilities – Land</td><td>\$ 49.03</td></tr><tr><td>Transport Facilities – Capital</td><td>\$ 76.31</td></tr><tr><td>Water Management</td><td>\$ 13.28</td></tr><tr><td>Administration</td><td>\$ 1.20</td></tr><tr><td>Total</td><td>\$ 139.82</td></tr></table>		Contribution	(Per m ² of GFA)	Transport Facilities – Land	\$ 49.03	Transport Facilities – Capital	\$ 76.31	Water Management	\$ 13.28	Administration	\$ 1.20	Total	\$ 139.82
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PLANNING AGREEMENT
27 Victoria Avenue, Castle Hill

THE HILLS SHIRE COUNCIL
MARTI'S INVESTMENTS PTY LTD

www.thehills.nsw.gov.au

**THE
HILLS**
Sydney's Garden Shire



The Hills Shire Council

3 Columbia Court, Norwest NSW 2153

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

[INSERT DATE]

Planning Agreement Summary Sheet

Council	Name	The Hills Shire Council
	Address	3 Columbia Court Norwest, NSW 2153
	Telephone	(02) 9843 0555
	Facsimile	(02) 9843 0258
	Email	council@thehills.nsw.gov.au
	Representative	Michael Edgar - General Manager
Developer	Name	Marti's Investments Pty Ltd
	Address	Unit 1/38 Brookhollow Avenue, Norwest NSW 2153
	Telephone	0404 495 495
	Facsimile	N/A
	Email	sergio@momentohospitality.com.au
	Representative	Sergio Colosimo
Land	27 Victoria Avenue, Castle Hill, NSW 2153 (Lot 5 DP 261795)	
Planning Proposal	1/2022/PLP	
Instrument Change	See clause 20	
Designated Land	Not Applicable	
Works	Not Applicable	
Monetary Contributions	See Schedule 1	
Application of s7.11 and s7.12 of the Act	See clause 10	
Security	Not Applicable	
Mechanism for Dispute resolution	See clause 14	
No obligation to grant consent or exercise functions	See clause 4	
Planning instrument and/or development application	(a)	The Developer has sought a change to an environmental planning instrument. Yes
	(b)	The Developer has made, or proposes to make, a Development Application. Yes

- (c) The Developer has entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies. Not Applicable.

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Planning Agreement

Dated [Insert]

Parties

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

Marti's Investments Pty Ltd ACN 124 605 287 of 1/38 Brookhollow Avenue Norwest, NSW
2153 (Developer)

Background

- A. The Landowner owns the Land.
- B. The Developer wishes to carry out the Proposed Development.
- C. The Developer has lodged a Planning Proposal with Council in respect of the Land seeking the Instrument Change to enable Development Application(s) to be made for Development Consent.
- D. The Developer has agreed to make the Development Contributions on and subject to the terms of this document.

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 at the back of this document.

2. Planning Agreement Under the Act

The parties agree that this document is a planning agreement within the meaning set out in Section 7.4 of the Act and governed by Subdivision 2 of Division 7.1 of Part 7 of the Act.

3. Application of this Document

- 3.1. This document is made in respect of the Instrument Change and applies to the Land, the Instrument Change and the Proposed Development.

4. No Restriction on Council's Powers

- 4.1. The parties acknowledge that Council is a consent authority with statutory rights and obligations pursuant to the terms of the Planning Legislation.
- 4.2. This document or anything done under this document:
- a) is not to be taken as approval or consent by the Council as a regulatory authority; and
 - b) does not in any way operate to inhibit, deter or prejudice the power of Council to make any Law or the exercise by Council of any statutory functions, duties or powers,
- pursuant to the Planning Legislation (**Discretion**).
- 4.3. No provision of this document is intended to, or does, constitute any unlawful fetter on any Discretion. If, contrary to the operation of this clause, any provision of this document is held by a court of competent jurisdiction to constitute an unlawful fetter on any Discretion, the parties agree:
- a) they will take all practical steps, including the execution of any further documents, to ensure the objective of this clause 4 is substantially satisfied; and
 - b) in the event that paragraph (a) cannot be achieved without giving rise to an unlawful fetter on a Discretion, the relevant provision is to be severed and the remainder of this document has full force and effect; and
 - c) to endeavour to satisfy the common objectives of the parties on relation to the provision of this document which is held to be an unlawful fetter to the extent that it is possible having regard to the relevant court judgment.
- 4.4. Where the Law permits Council to contract out of a provision of that Law or gives Council power to exercise a Discretion, then if Council has in this document contracted out of a provision or exercised a Discretion under this document, then to the extent of this document is not to be taken to be inconsistent with the Law.

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

5. Operation Of This document

This document operates:

- 5.1. as a deed from the date that it is executed by both parties; and
- 5.2. as a planning agreement for the purpose of the Act from the date that the Instrument Change becomes operative.

6. Monetary Contributions

- 6.1. The Developer must pay the Monetary Contribution to Council in accordance with Schedule 1 of this Agreement.
- 6.2. A Monetary Contribution is made for the purposes of this document when Council receives the full amount of the contribution payable under this document by the deposit by means of electronic funds transfer of cleared funds into a bank account nominated by Council.

7. Indexation of Contribution Values

Unless an indexation methodology is specified in **Schedule 1** in relation to a Contribution Value (in which case that indexation methodology will apply to that Contribution Value), each Contribution Value will be increased annually (with the calculation to be made as from the date the relevant Development Contribution is required to be provided to Council under this document) in accordance with the following formula:

$$A = \frac{B \times C}{D}$$

where:

A = the Indexed amount;

B = the relevant amount as set out in this document;

C = the Index most recently published before the date that the relevant payment or the calculation with respect to the relevant amount is to be made; and

D = the Index most recently published before the commencement date of the Development Consent.

If **A** is less than **B**, then the relevant Contribution Value will not change.

8. Council may withhold Construction Certificates

- a) The Developer may only make, or cause, suffer or permit the making of, an application for a Construction Certificate in respect of the Proposed Development if, at the date of the application, the Developer is not in breach of its obligation to

make any Development Contribution under this document of which the Developer had notice and failed to rectify within a reasonable time after the date of the notice.

- b) Council may withhold the issue of a Construction Certificate if, at the relevant time, the Developer is in breach of any obligation to make any Development Contribution under this document until such time as the breach is rectified.

9. Council may withhold Occupation Certificates

- a) The Developer may only make, or cause, suffer or permit the making of, an application for an Occupation Certificate in respect of the Proposed Development if, at the date of the application, the Developer is not in breach of its obligation to make any Development Contribution under this document of which the Developer had notice and failed to rectify within a reasonable time after the date of the notice.
- b) Council may withhold the issue of an Occupation Certificate if, at the relevant time, the Developer is in breach of any obligation to make any Development Contribution under this document until such time as the breach is rectified.

10. Application of Section 7.11 and Section 7.12 of the Act

10.1. Application

- a) Subject to paragraph b), this document does not exclude the application of s7.11 and s7.12 of the Act to the Proposed Development.
- b) This document excludes s7.11 and s7.12 of the Act to the Proposed Development where the Proposed Development exceeds the Maximum Building Height and/or Maximum Floor Space Ratio. If the Proposed Development does not exceed both the Maximum Building Height and Maximum Floor Space Ratio, then s7.11 and s7.12 of the Act will not be excluded in relation to the Proposed Development.

10.2. Consideration of Benefits

Section 7.11(6) of the Act does not apply to the Development Contributions that are to be carried out or provided pursuant to this document.

10.3. Division 7.1, Subdivision 4

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

11. Termination

11.1. Termination

This document terminates in the following events:

- a) The parties agree in writing to terminate the operation of this document at any time.

- b) Council serves notice on the Developer terminating this document where the Developer has failed to comply with a notice issued in accordance with clause 13.

11.2. Consequence of termination

Upon termination of this document:

- a) all future rights and obligations of the parties are discharged; and
- b) all pre-existing rights and obligations of the parties continue to subsist.

11.3. Determination

- a) This document will determine upon the Developer satisfying all the obligations imposed on it in full.

12. 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 document to the private certifier.

13. Breach Notice and Rectification

13.1. Breach Notice

If the Developer, in the reasonable opinion of Council, breaches this document, Council may serve a notice on the Developer (**Breach Notice**) specifying:

- a) the nature and extent of the alleged breach;
- b) the time within which Council requires the breach to be rectified, which must be a reasonable time of not less than forty (40) Business Days,

(Event of Default)

13.2. Events of Default

The Developer commits an Event of Default if it:

- a) fails to comply with a Breach Notice; or
- b) becomes subject to an Insolvency Event.

13.3. Consequences of Events of default

Where the Developer commits an Event of Default and the Developer has not complied with the Breach Notice, Council may, in addition to any rights it has at Law rectify the relevant Breach Notice itself at the cost of the Developer, and where Council incurs any reasonable costs in that regard, these reasonable costs may be recovered by Council from the Developer as a debt due in a court of competent jurisdiction.

14. Dispute resolution

14.1. Disputes

If there is any dispute, difference of opinion or failure to agree relating to or arising from this document that dispute must be referred for determination under this clause 14.

14.2. No legal proceedings

The parties must not bring or maintain any action on any Dispute (except for urgent injunctive relief to keep a particular position) until it has been referred and determined as provided in this clause.

14.3. Notice of disputes (Dispute Notice)

A Party referring a Dispute for determination must do so by written notice to the other parties which must specify the nature of the Dispute and a nominated officer of the referring party with sufficient authority to determine the Dispute **(Dispute Notice)**.

14.4. Negotiated resolution and selection of expert

- a) On service of the Dispute Notice the receiving Parties must refer the Dispute to an officer with sufficient authority to determine the Dispute. The nominated officers of each Party must meet at least once and use reasonable endeavours to resolve the Dispute by negotiation within ten (10) Business Days of service of the Dispute Notice. Any resolution must be recorded in writing and signed by each nominated officer. By agreement, the nominated officers may employ the services of a mediator to assist them in resolving the Dispute.
- b) If the nominated officers are unable to resolve the Dispute within ten (10) Business Days of service of the Dispute Notice they must endeavour within the following ten (10) Business Day period to appoint an expert by agreement. That appointment must be recorded in writing and signed by each nominated officer.
- c) If the nominated officers do not record the appointment of an expert within that following ten (10) Business Day period, the expert must be appointed, at the request of any party, by the President for the time being (or if none, the senior elected member) of the Law Society of New South Wales.

14.5. Qualifications of Expert

The independent expert appointed to determine a Dispute **(Expert)**:

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

14.6. Assistance to the Expert

Once the Expert has been appointed, the Parties must:

- a) each use their best endeavours to make available to the Expert all information the Expert requires to settle or determine the Dispute; and
- b) ensure that their employees, agents or consultants are available to appear at any hearing or enquiry called by the Expert.

The Parties may give written submissions to the Expert but must provide copies to the other Parties at the same time.

14.7. Directions to Expert

- a) In reaching a determination in respect of a Dispute, the Expert must give effect to the intent of the parties entering into this document and the purposes of this document.
- b) The Expert must:
 - (i) act as an expert and not as an arbitrator;
 - (ii) proceed in any manner as the Expert thinks fit without being bound to observe the rules of natural justice or the rules of evidence;
 - (iii) not accept verbal submissions unless both parties are present;
 - (iv) on receipt of a written submission from one party, ensure that a copy of that submission is given promptly to the other party;
 - (v) take into consideration all documents, information and other material which the parties give the Expert which the Expert in its absolute discretion considers relevant to the determination of the Dispute;
 - (vi) not be expected or required to obtain or refer to any other documents, information or material (but may do so if the Expert so wishes);
 - (vii) issue a draft certificate stating the Expert's intended determination (together with written reasons), giving each party ten (10) Business Days to make further submissions;
 - (viii) issue a final certificate stating the Expert's determination (together with written reasons); and
 - (ix) act with expedition with a view to issuing the final certificate as soon as practicable.
- c) The parties must comply with all directions given by the Expert in relation to the resolution of the Dispute and must within the time period specified by the Expert, give the Expert:

- (i) a short statement of facts;
- (ii) a description of the Dispute; and
- (iii) any other documents, records or information which the Expert requests.

14.8. Expert may commission reports

a) Subject to paragraph 14.10(b):

- (i) the Expert may commission the Expert's own advisers or consultants (including lawyers, accountants, bankers, engineers, surveyors or other technical consultants) to provide information to assist the Expert in making a determination; and
- (ii) the parties must indemnify the Expert for the cost of those advisers or consultants in accordance with this clause.

b) The parties must approve the costs of those advisers or consultants in writing prior to the Expert engaging those advisers or consultants.

14.9. Expert may convene meetings

- a) The Expert must hold a meeting with all of the parties present to discuss the Dispute. The meeting must be conducted in a manner which the Expert considers appropriate. The meeting may be adjourned to, and resumed at, a later time in the Expert's discretion.
- b) The parties agree that a meeting under paragraph (a) is not a hearing and is not an arbitration.

14.10. Expert's decision

a) The decision of the Expert must:

- (i) be in writing and give reasons; and
- (ii) be made and delivered to the parties within one month from the date of submission of the dispute to the Expert or the date of completion of the last hearing or enquiry called by the Expert, if later.

b) Subject to this clause 14, the Expert may conduct the determination of the Dispute in any way it considers appropriate but the Expert may, at its discretion, have regard to the Australian Commercial Disputes Centre's guidelines for expert determination of disputes or such other guidelines as it considers appropriate.

c) The Expert's decision is final and binding on the parties.

d) The Expert must act as an expert and not as an arbitrator.

14.11. Expert's costs

- a) The Expert must also determine how the expenses relating to the reference of the Dispute (including the Expert's remuneration) should be apportioned between the parties and in default of a decision by the Expert those expenses must be borne by the parties equally.
- b) If any Expert does not award costs, each party must contribute equally to the Expert's costs in making the determination.
- c) In determining the apportionment of costs the Expert may have regard to what the Expert, in its reasonable opinion, considers to be a lack of good faith or a failure to use reasonable endeavours by any party in assisting the Expert or resolving the dispute between the parties' nominated officers as required by this clause.

14.12. Confidentiality of information provided in dispute resolution process

- a) The parties agree, and must procure that the mediator and Expert agree as a condition of his or her appointment:
 - (i) subject to paragraph b, to keep confidential all documents, information and other material disclosed to them during or in relation to the mediation or Expert determination;
 - (ii) not to disclose any confidential documents, information and other material except to a party or adviser or consultant who has signed a confidentiality undertaking; or if required by Law or any Authority to do so; and
 - (iii) not to use confidential documents, information or other material disclosed to them during or in relation to the mediation or Expert determination for a purpose other than the mediation or Expert determination.
- b) The parties must keep confidential and must not disclose or rely upon or make the subject of a subpoena to give evidence or produce documents in any arbitral, judicial or other proceedings:
 - (i) views expressed or proposals or suggestions made by a party or the Expert during the mediation or Expert determination relating to a possible settlement of the Dispute;
 - (ii) admissions or concessions made by a party during the mediation or Expert determination in relation to the Dispute; and
 - (iii) information, documents or other material concerning the dispute which are disclosed by a party during the mediation or Expert determination unless such information, documents or facts would be discoverable in judicial or arbitral proceedings.

14.13. Urgent relief

This clause 14 does not operate to limit the availability of any remedies available to Council under the Act. This clause 14 does not prevent a party from seeking urgent injunctive or declaratory relief concerning any matter arising out of this document.

14.14. Continual performance

Each Party must continue to perform its obligations under this document while any dispute is being determined under this clause, unless the appropriate party indemnifies the other party against costs, damages and all losses suffered in completing the disputed matter if the Dispute is not resolved in favour of the indemnifying party.

15. Registration of document on Title

15.1. Registration of this document

The Developer acknowledges and agrees that:

- a) this document must be registered on the title to the Land pursuant to section 7.6 of the Act.

15.2. Obligations of Developer

The Developer, at its own expense, must register this document on the title of the Land within sixty (60) days after it is executed by the parties and before the issue of any Construction Certificate or Occupation Certificate for the Proposed Development and take all necessary and practical steps, and otherwise do anything that the Council reasonably requires, to procure:

- a) the consent of each person (including the Landowner) who:
 - (i) has an estate or interest in the Land; or
 - (ii) is seized or possessed of an estate or interest in the Land;
- b) the execution of any documents; and
- c) the production of the relevant title documentation,

to enable the registration of this document in accordance with clause 15.1.

The Developer, at its own expense, will take all practical steps, and otherwise do anything that the Council reasonably requires:

- a) to procure the lodgement of this document with the Registrar-General as soon as reasonably practicable after this document is executed between Parties but in any event, no later than sixty (60) Business Days after that date; and
- b) to procure the registration of this document by the Registrar-General in the relevant folios of the Register for the Land as soon as reasonably practicable after this document is lodged for registration.

15.3. Discharge from the Register

The parties must do all things reasonably necessary to remove any notation relating to this document from the title to the Land on the earlier of:

- a) the Developer's obligations under this document having been performed to Council's satisfaction; and
- b) if this document is terminated or otherwise comes to an end for any other reason.

16. Costs

- 16.1. The Developer must pay or reimburse to the Council, the Council's costs associated with the negotiation, preparation, exhibition, legal review, execution and registration of this document within ten (10) Business Days of a written demand by the Council for such payment.
- 16.2. Without limiting clause 16.1, the Developer will pay or reimburse the legal costs and disbursements of Council arising from the ongoing administration and enforcement of this document including in relation to:
- a) the registration or removal of this document on the title to the Land in accordance with clause 15; and
 - b) any breach or default by the Developer of its obligations under this document.

17. GST

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 party providing consideration for that taxable supply must also pay GST in respect of that supply as additional consideration. 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. Unless otherwise expressly stated, prices or other sums payable or consideration to be provided under or in accordance with this document are exclusive of GST.

18. Assignment

18.1. Restriction on Assignment

Other than in accordance with this clause 18, the Developer may not:

- a) Assign any part of the Land; and/or
- b) Assign their rights or obligations under this document.

18.2. Procedure for Assignment

If the Developer:

- a) wishes to Assign any part of the Land; and/or
- b) wishes to Assign its rights or obligations under this document,

then the Developer must:

- a) provide a written request to Council for the consent of Council to the relevant Assignment;
- b) provide Council with any evidence required by Council, acting reasonably, to satisfy Council that the third party in whose favour the Assignment is to be made (Assignee) is reasonably capable of performing the obligations under this document that are to be Assigned to it;
- c) obtain written consent of Council to the relevant Assignment (which cannot be unreasonably withheld or delayed if paragraph 18.2(b) is complied with); and
- d) at no cost to Council, procure:
 - (i) the execution by the Assignee of an appropriate deed where the Assignee agrees to be bound by the terms of this document; and
 - (ii) the provision of all securities to Council by the Assignee that the Developer is required to provide under this document (and any additional securities if required by Council acting reasonably) at the same time as, or prior to, entering into that deed.

Council is under no obligation to consider granting its consent to any request made by the Developer under paragraph c) if, at the time the request is made, the Developer is in breach of this document of which the Developer had notice and has not complied with the Breach Notice.

19. General

19.1. Notices

- a) Any notice, consent or other communication under this document must be in writing and signed by or on behalf of the person giving it, addressed to the person to whom it is to be given and:
 - (i) delivered to that person's address;
 - (ii) sent by pre-paid mail to that person's address; or
 - (iii) transmitted by facsimile or email to that person's address.
- b) A notice given to a person in accordance with this clause is treated as having been given and received:
 - (i) if delivered to a person's address, on the day of delivery if a Business Day, otherwise on the next Business Day;
 - (ii) if sent by pre-paid mail, on the third Business Day after posting;
 - (iii) if transmitted by facsimile to a person's address and a correct and complete transmission report is received, on the day of transmission if a Business Day, otherwise on the next Business Day; and

(iv) if sent by email and the sender does not receive a delivery failure message from the sender, within a period of twenty four (24) hours of the email being sent.

c) For the purpose of this clause the address of a person is the address set out in this document or another address of which that person may from time to time give notice to each other person.

19.2. Cooperation

Each party must sign, execute and deliver all agreements, documents, instruments and act reasonably and effectively to carry out and give full effect to this document and the rights and obligations of the parties under it.

19.3. Governing law and jurisdiction

a) This document 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 exclusive jurisdiction of the courts of New South Wales and that may hear appeal from those courts in respect of any proceedings in connection with this document and may not seek to have any proceedings removed from the jurisdiction of New South Wales on the grounds of *forum non conveniens*.

19.4. Amendments

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

19.5. Third parties

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

19.6. Obligation to act in good faith

The parties must at all times:

a) cooperate and use their best endeavours to profitably and professionally give effect to their rights and obligations set out in this document;

b) not unreasonably delay any action, approval, direction, determination or decision which is required of them;

c) make approvals or decisions that are required of them in good faith and in a manner consistent with the completion of the transactions set out in this document; and

d) be just and faithful in their activities and dealings with the other parties.

19.7. Entire Agreement

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.

19.8. Further assurance

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

19.9. Continuing performance

- a) The provisions of this document 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 document 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.

19.10. Waivers

Any failure by any party to exercise any right under this document does not operate as a waiver and the single or partial exercise of any right by that party does not preclude any other or further exercise of that or any other right by that party. A power or right may only be waived in writing, signed by the parties to be bound by the waiver.

19.11. Remedies

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

19.12. Counterparts

This document may be executed in any number of counterparts, all of which taken together are deemed to constitute one and the same document. A party who has executed a counterpart of this document may exchange it with another party by emailing a pdf (portable document format) copy of, the executed

counterpart to that other party, and if requested by that other party, will promptly deliver the original by hand or post. Failure to make that delivery will not affect the validity and enforceability of this document.

19.13. Party acting as trustee

If a party enters into this document as trustee of a trust, that party and its successors as trustee of the trust will be liable under this document 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 document:

- 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.

19.14. Representations and warranties

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

19.15. Severability

If a clause or part of a clause of this document can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this document, but the rest of this document is not affected.

19.16. Developer's warranties

The Developer warrants to Council that it is:

- a) legally and beneficially entitled to the Land;
- b) able to fully comply with its obligations under this document;
- c) it has full capacity to enter into this document; and
- d) there is no legal impediment to it entering into this document, or performing the obligations imposed under it.

20. Definitions and interpretation

In this document unless the context otherwise requires:

Act	means the <i>Environmental Planning and Assessment Act 1979</i> (NSW).
Assign	as the context requires refers to any assignment, sale, transfer, disposition, declaration of trust over or other assignment of a legal and/or beneficial interest.
Authority	means (as appropriate) any: <ul style="list-style-type: none">(1) federal, state or local government;(2) department of any federal, state or local government;(3) any court or administrative tribunal; or(4) statutory corporation or regulatory body.
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 Schedule 1 for any of the Development Contributions in the column headed "Contribution Value" (as applicable).
CP19	means <i>Contributions Plan No. 19 – Showground Station Precinct</i> adopted by Council on 11 September 2018.
Development Application	means the development application for the Development Consent.
Development Consent	means development consent or project approval within the meaning of the Act and granted with respect to the Proposed Development.
Development Contributions	means the Monetary Contributions.
Dispute Notice	means written notice provided by a party referring a dispute for determination, specifying the nature of the dispute and a nominated officer of the referring party with sufficient authority to determine the dispute.
Event of Default	has the meaning ascribed to is in clause 13.1.
Existing GFA	means the GFA currently occupied on the Land as at 6 May 2024, being 2,107 square metres.
GFA	means gross floor area (in square metres).

GST	means any tax, levy, charge or impost implemented under the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (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.
Index	means the Producer Price Index (Non Residential Building Construction in NSW) as provided by the Australian Bureau of Statistics.
Insolvency Event	<p>means the happening of any of the following events:</p> <ul style="list-style-type: none"> a) Application which is not withdrawn or dismissed within fourteen (14) days is made to a court for an order or an order is made that a body corporate be wound up. b) An application which is not withdrawn or dismissed within fourteen (14) days is made to a court for an order appointing a liquidator or provisional liquidator in respect of a body corporate or one of them is appointed, whether or not under an order. c) Except to reconstruct or amalgamate while solvent, a body corporate enters into, or resolves to enter into, a scheme of arrangement, agreement of company arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them. d) A body corporate resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so, except to reconstruct or amalgamate while solvent or is otherwise wound up or dissolved. e) A body corporate is or states that it is insolvent. f) As a result of the operation of section 459F (1) of the Corporations Act 2001 (Cth) (Corporations Act), a body corporate is taken to have failed to comply with a statutory demand. g) A body corporate is or makes a statement from which it may be reasonably deduced that the body corporate is, the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act. h) A body corporate takes any step to obtain protection or is granted protection from its creditors, under any applicable legislation or an administrator is appointed to a body corporate. i) A person becomes an insolvent under administration as defined in section 9 of the Corporations Act or action is taken which could result in that event. j) A receiver, manager or receiver and manager is appointed to the Company.

		<ul style="list-style-type: none"> k) A claim is filed in a court against a person that is not defended, released or otherwise settled within twenty eight (28) days of the date of its filing at the court. l) Anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.
Instrument Change		means amendments to the LEP (as it related to the Land) to: <ul style="list-style-type: none"> a) Increase the Maximum Floor Space Ratio to 1.98:1; and b) Increase the Maximum Building Height to 26 metres.
Land		means the “Land” as set out in Summary Sheet.
Landowner		means Cavasign Pty Ltd (including any of its successors and/or assigns)
Law		means all legislation, regulations, by-laws, common law and other binding order made by any Authority.
LEP		means <i>The Hills Local Environmental Plan 2019</i> .
Maximum Building Height	Building	means twenty (20) metres, being the maximum height of buildings shown for the Land at the date of this document pursuant to Part 4 of the LEP.
Maximum Floor Space Ratio	Floor Space	means 1:1, being the maximum floor space ratio shown for the Land at the date of this document pursuant to Part 4 of the LEP.
Monetary Contributions		means the monetary development contributions required to be paid to the Council as specified in Schedule 1.
Occupation Certificate		has the same meaning ascribed to it in the Act.
Planning Legislation		means the Act, the <i>Local Government Act 1993</i> (NSW) and the <i>Roads Act 1993</i> (NSW).
Planning Proposal		means Planning Proposal 1/2022/PLP to give effect to the Instrument Change.
Proposed Development		means any future development of the Land, which for the purpose of clarity excludes development comprising the Existing GFA.
Regulation		means the <i>Environmental Planning and Assessment Regulation 2021</i> (NSW).
Subdivision Certificate		has the same meaning as in the Act.
Summary Sheet		means the summary sheet at page 2 of this document.

21. 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 – Monetary Contributions

Item	Time for Completion	Contribution Value
Monetary Contributions	The Monetary Contribution must be paid to the Council prior to the issue of a Construction Certificate in respect to the Proposed Development on the Land.	<p><u>Where the Proposed Development does not exceed the Maximum Building Height and Maximum Floor Space Ratio:</u></p> <p>The amount of the Monetary Contribution will be calculated and indexed in accordance with <i>The Hills Section 7.12 Contributions Plan</i> adopted by Council in October 2020 (as amended from time to time) at the time that the relevant Monetary Contribution is required to be made and is payable in accordance with any relevant condition of Development Consent.</p> <p><u>Where the Proposed Development exceeds the Maximum Building Height and/or Maximum Floor Space Ratio:</u></p> <p>The amount of the Monetary Contribution, will be calculated and indexed in accordance with clause 2.19 of CP19 (pursuant to the following formula) at the time that the relevant Monetary Contribution is required to be made:</p> <p>A = (B – C) x D</p> <p>where:</p> <p>A = the Monetary Contribution payable.</p> <p>B = the total GFA of Land granted in a Development Consent(s).</p> <p>C = the Existing GFA.</p> <p>D = the indexed rate for non-residential floor space in CP19.</p>

		<p>As at the date of this document, the parties acknowledge and agree that the relevant indexed rate for non-residential floor space in CP19 is as reflected in the following table:</p> <table><tr><th>Contribution</th><th>(Per m² of GFA)</th></tr><tr><td>Transport Facilities – Land</td><td>\$ 49.03</td></tr><tr><td>Transport Facilities – Capital</td><td>\$ 76.31</td></tr><tr><td>Water Management</td><td>\$ 13.28</td></tr><tr><td>Administration</td><td>\$ 1.20</td></tr><tr><td>Total</td><td>\$ 139.82</td></tr></table>	Contribution	(Per m ² of GFA)	Transport Facilities – Land	\$ 49.03	Transport Facilities – Capital	\$ 76.31	Water Management	\$ 13.28	Administration	\$ 1.20	Total	\$ 139.82
Contribution	(Per m ² of GFA)													
Transport Facilities – Land	\$ 49.03													
Transport Facilities – Capital	\$ 76.31													
Water Management	\$ 13.28													
Administration	\$ 1.20													
Total	\$ 139.82													

Execution Page

Executed as a deed

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

General Manger

Mayor

Print Name

Print Name

Witness

Print Name

Signed, sealed and delivered by Marti's
Investments Pty Ltd (ACN 124 605 287) in
accordance with s127 of the Corporations Act
2001 (Cth):

Director/Secretary (Signature)

Director (Signature)

Print Name

Print name