

**PLANNING AGREEMENT
7-15 COLUMBIA WAY, NORWEST**

**THE HILLS SHIRE COUNCIL
GTL PROPERTIES PTY LTD**

www.thehills.nsw.gov.au

**THE
HILLS**
Sydney's Garden Shire



The Hills Shire Council

3 Columbia Court, Norwest NSW 2153
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[INSERT DATE]

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**Planning agreement
Summary Sheet**

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|-------------------------------|---|---------------------------------------|
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| | Address | 3 Columbia Court Norwest, NSW 2153 |
| | Telephone | (02) 9843 0555 |
| | Facsimile | (02) 9843 0258 |
| | Email | council@thehills.nsw.gov.au |
| | Representative | Mr Michael Edgar – General Manager |
| Developer | Name | GTL Properties Pty Ltd |
| | Address | GO2, 50 Norwest Blvd Norwest |
| | Telephone | 02 8853 5000 |
| | Facsimile | |
| | Email | lkent@cencorp.com.au |
| | Representative | Liz Kent |
| Land | Lot 2015 DP 857690 and Lot 200 DP 877496 known as 7-15 Columbia Way, Norwest | |
| Planning Proposal | Planning Proposal 3/2022/PLP | |
| Dedication Lands | See Schedule 1 | |
| Works | See Schedule 2 | |
| Monetary Contributions | See Schedule 3 | |
| Security Amount | See clause 15 | |

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Planning agreement

Dated

Parties

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

GTL Properties PTY LTD ABN 55 000 087 454 of GO2 50 Norwest Blvd Norwest, New South Wales 2153 (Developer)

Background

- A** The Developer owns the Land.
- B** 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.
- C** The Developer has agreed to make the Development Contributions on and subject to the terms of this agreement.
- D** If the Instrument Change is made, the Developer wishes to carry out the Proposed Development.

Operative provisions

1 Defined meanings

Words used in this agreement and the rules of interpretation that apply are set out and explained in the definitions and interpretation clause at the back of this agreement.

2 Planning agreement under the Act

The Parties agree that this agreement is a planning agreement within the meaning set out in s7.4 of the Act and governed by **subdivision 2, Division 7.1, Part 7** of the Act.

3 Application of this agreement

This agreement is made in respect of the Planning Proposal to make the Instrument Change and applies to the Land and the Proposed Development facilitated by the Planning Proposal and Instrument Changes.

4 No restriction on Council's Powers

4.1 Consent authority

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

4.2 Document does not fetter discretion

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

- (1) the power of Council to make any law; or
- (2) the exercise by Council of any statutory power or discretion,
(Discretion).

4.3 Severance of provisions

- (1) No provision of this agreement is intended to, or does, constitute any unlawful fetter on any Discretion. If, contrary to the operation of this clause, any provision of this agreement is held by a court of competent jurisdiction to constitute an unlawful fetter on any Discretion, the parties agree:
 - (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;
 - (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 agreement has full force and effect; and
 - (c) to endeavour to satisfy the common objectives of the parties in relation to the provision of this agreement which is held to be an unlawful fetter to the extent that it is possible having regard to the relevant court judgment.
- (2) Where the law permits Council to contract out of a provision of that law or gives Council power to exercise a Discretion, then if Council has in this agreement contracted out of a provision or exercised a Discretion under this agreement, then to the extent of this agreement is not to be taken to be inconsistent with the law.

4.4 No Obligations

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

5 Operation of this agreement

- (1) This agreement operates:
 - (a) as a deed from the date that it is executed by both parties; and
 - (b) as a planning agreement for the purpose of the Act from the date that the Instrument Change is made.
- (2) This agreement provides for Development Contributions to be made with respect to any Development Consent that comprises the Proposed Development facilitated by the Instrument Change.

6 Caveat over Dedication Lands

- (1) The Developer agrees that their obligations under this agreement create a caveatable interest in any Dedication Lands and prior to subdivision as a separate lot(s), the lot(s) of which the Dedication Lands form part.
- (2) The Developer must at the request of Council provide Council with survey plans for the Dedication Lands within 30 days of such a request being made in writing.
- (3) The Developer must not object to, seek to withdraw or issue a lapsing notice for a caveat lodged by Council in respect of any Dedication Lands.
- (4) Council must not unreasonably withhold its consent to the registration of any dealing by a mortgagee that would not have a material adverse effect on Council's interest in the Dedication Lands.
- (5) Council will give to the Developer a withdrawal of caveat within 7 days of this agreement being validly terminated.

7 Land dedication – Dedication Lands

7.1 Dedication Process

- (1) The Developer must, at their cost Dedicate to Council the Dedication Lands in accordance with the Schedule 1 of this agreement and any other provision of this agreement relating to the Dedication Lands.
- (2) The Dedication will be effected when:
 - (a) **(Deposited Plan)** a plan of subdivision is registered with NSW Land Registry Services dedicating the Dedication Lands to Council; or
 - (b) **(Transfer)** Council becomes the registered proprietor of an existing lot being part of the Dedication Lands as a result of the registration of a transfer of land.
- (3) For the purpose of this agreement the Developer's obligations in relation to the Dedication (by way of Transfer) will be satisfied once the Developer has provided the following to the Council:
 - (a) Transfer in registrable form signed by the registered proprietor of the lot;
 - (b) a discharge of mortgage, surrender of lease or other document to release the lot, or relevant part of the lot, from any Encumbrance;
 - (c) any consent required from an interested party in the relevant land; and
 - (d) subject to paragraph (5), a cheque or EFT transfer in favour of the Council for the amount of the registration fees.
- (4) Council will on receipt of these documents, and at the Developer's cost, arrange for the following:
 - (a) stamping of the Transfer; and
 - (b) lodgement of the Transfer and other documents with NSW Land Registry Services (or with Pexa and the case may be) for registration.
- (5) Council must provide the Developer with a tax invoice for its reasonable expenses incurred in relation to the Dedication of the Dedication Lands including its legal costs and disbursements on an indemnity basis (including any registration fees).
- (6) The Developers must pay to Council the amount invoiced for expenses under paragraph (5) within 14 days of receipt of the invoice.
- (7) The Developer must pay Council on reasonable notice the stamp duty (if any) on the Dedication of the Dedication Lands.

8 Not used

9 Not used

10 Contamination

10.1 Definitions

For the purpose of this clause 10:

Contamination means any material, gas, substance, liquid, chemical or biological mineral or other physical matter which would, if present on the Land:

- (1) result in an Authority issuing a notice, direction or order under an Environmental Law; or
- (2) which would constitute a violation of contribution of contravention of any Environmental Law.

Contaminated means subject to Contamination.

Environmental Law means all planning, environmental or pollution laws and any regulations, orders, directions, ordinances or requirements, permissions, permits, licences issued under those laws or instruments.

10.2 Warranties and Indemnities

The Developer:

- (1) warrants that as far as it is aware, and other than as disclosed to Council, any Dedication Lands is not Contaminated; and
- (2) indemnifies and must keep indemnified Council against all liability for and associated with any breach of the warranty contained in paragraph (1).

10.3 Remediation

- (1) If Council becomes aware or reasonably suspects that any part of the Dedication Lands was Contaminated before the date of this agreement, Council may as soon as practicable notify the Developer in writing to that effect.
- (2) As soon as practicable after receipt of the notice pursuant to paragraph (1) the Developer will at its cost (with the assistance of qualified experts) carry out all reasonable investigations (including investigations which Council reasonably directs in writing) to enable the parties to be informed of the full nature and extent of the Contamination in, on, under the surface of, and leaving from the relevant part of the Dedication Lands and provide copies of all reports on such investigations to Council (**Investigation Reports**).
- (3) As soon as practicable after receipt by Council of the Investigation Reports the parties must meet to discuss in good faith the method by which the relevant part of the Dedication Lands might be dealt with so that it is no longer Contaminated.
- (4) Following the discussions pursuant to paragraph (3) the Developer must at its own cost undertake all reasonable measures which the Developer (acting reasonably) determines (and as Council acting reasonably approves in writing) as necessary to ensure that the relevant part of the Dedication Lands is no longer Contaminated.

11 Development Infrastructure Contributions

11.1 Payment

- (1) Subject to clause 11.4, the Developer must pay the Monetary Contributions, if any, in accordance with Schedule 3 of this agreement.
- (2) Payment of the Monetary Contributions is made for the purpose of this agreement when Council receives the full amount of the Monetary Contributions payable under this agreement by the deposit by means of electronic bank transfer of cleared funds into Council's nominated bank account.

11.2 Indexation of amounts payable by Developer

Unless otherwise specified in this agreement, 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 agreement) in accordance with the following formula:

$$A = B \times (C/D)$$

where:

A = the Indexed amount;

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

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 this agreement.

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

11.3 Public Purpose

The Monetary Contributions will be used by Council for the funding of the construction of, or improvements to local infrastructure and the public domain in the vicinity of the Land (including those specified in section 7.4(2) of the Act) as determined by the General Manager of Council from time to time and Council will apply the Monetary Contributions for those purposes.

11.4 Developer Infrastructure Contributions

- (1) The Developer must, have the Works Completed in accordance with this agreement and in particular **Schedule 2**.
- (2) Prior to the Completion of an Item of Works, the Developer must (at its own cost), submit to Council a report from a Quantity Surveyor confirming the GST exclusive cost of the Completed Item of Works (**Actual Value**).
- (3) The parties agree that the report provided by the Quantity Surveyor under paragraph (2) is final and binding on the parties, subject to any manifest error.
- (4) Upon Completion of an Item of Works in connection with a Stage of the Proposed Development facilitated by the Planning Proposal and Instrument Changes, Council will off-set the Monetary Contributions Offset against the Monetary Contributions which are required to be paid by the Developer in connection with that Stage of the Proposed Development.
- (5) If the Actual Value for the Item of Works in Item 1 of Schedule 2 exceeds the Contribution Value for the Monetary Contributions for Stage 1 of the Proposed Development under Schedule 3, then Council will off-set the difference against the Monetary Contributions which are required to be paid by the Developer in connection with Stage 2 of the Proposed Development.

The Developer covenants and agrees that it will submit with each Development Application for the Proposed Development a written assessment of the CIV of the particular Development Application by an independent, suitably qualified and registered Quantity Surveyor (**QS Report**).

12 Works

12.1 Options

- (1) Before the date referred to in clauses 12.1(2)(a) or (b), the parties must do all things necessary to meet, discuss and/or negotiate in good faith, with a view to reaching an agreement as to the final specifications of the Works.
- (2) The parties must reach an agreement contemplated in paragraph (1):
 - (a) prior to the lodgement of a Development Application for Stage 1 of the Proposed Development; or
 - (b) by such other date that is agreed between the parties.
- (3) If an agreement contemplated in paragraph (1) is reached between the parties prior to the expiry of the period in paragraph (2), then Option 2 in Schedule 2 will apply to this agreement.

- (4) If an agreement contemplated in paragraph (1) is not reached between the parties prior to the expiry of the period in paragraph (2), then Option 1 in Schedule 2 will apply to this agreement.
- (5) For the purpose of clarity, an agreement contemplated in paragraph (1) is not reached between the parties prior to the expiry of the period in paragraph (2) if:
 - (a) both parties agree to the final specifications of the Works prior to the expiry of the period in paragraph (2); and
 - (b) Council and/or the Developer are not the registered proprietor(s) of all land subject to the Works under Option 2,
 at that time.

12.2 Obligation to Carry Out Works The Developer, at its cost, must obtain development consent, and any other form of consent required by a relevant Authority, for the construction and use of the Works.

- (2) The Developer, at its cost is to carry out and complete the Works on the Land at the locations shown on the Location Plan and in accordance with Schedule 2 of this agreement and Annexures B and C.
- (3) The Developer's obligation to carry out Works 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.
- (4) The Developer must carry out and complete the Works in a good and workmanlike manner having regard to the intended purpose of the Works, complying with current industry practice and standards relating to each aspect of the Works, and otherwise to the satisfaction of Council, in accordance with:
 - (a) the Development Consent;
 - (b) all applicable laws, including those relating to occupational health and safety;
 - (c) this agreement to the extent that it is not inconsistent with the Development Consent or an applicable law;
 - (d) the requirements of, or consents issued by, any Authority;
 - (e) any Australian Standards applicable to works of the same nature as each aspect of the Works; and
 - (f) the specifications (if any) referred to in **Schedule 2** for the relevant item of Work.
- (5) 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.
- (6) The Works are to be Handed-Over to the Council by:
 - (a) by not later than the Hand-Over Date for the Works; and
 - (b) otherwise in accordance with this agreement.

12.3 Design of Works

- (1) The Developer must:
 - (a) consult with Council with respect to the development of the detailed design and specification with respect to each item of Works; and
 - (b) ensure that the relevant design is consistent with, and has regard to, any relevant policies of Council as identified in the Development Consent.

- (2) Before commencing construction of an item of Works, the Developer must submit to Council:
 - (a) for its approval, the detailed design and specification for that item of Works; and
 - (b) a report from a suitably qualified and experienced Quantity Surveyors which estimates the cost to complete the relevant item of Work in accordance with the detailed design.
- (3) The design and specification for the item of Works must be prepared by the Developer having specific regard to:
 - (a) the specification for that item of Works set out in **Schedule 2**; and
 - (b) the Contribution Value of the relevant item of Works.
- (4) Within thirty (30) days of the date of the first submission referred to in paragraph (2), Council must do either of the following:
 - (a) Notify the Developer in writing of its approval of the design and specification. The Developer is then to carry out and complete the item of Works in accordance with that design and specification.
 - (b) Notify the Developer in writing that it does not approve of the design and specification and provide the Developer with reasons for this.
- (5) If Council notifies the Developer in writing that it does not approve of the design and specification, the Developer may:
 - (a) elect to amend the design and specification and submit to Council the amended design and specification in which case the approval process set out in this clause 12.3 applies to that amendment; or
 - (b) if the Developer does not agree with the modifications requested by Council, then, it may refer the relevant matter for dispute resolution in accordance with this agreement.

12.4 Ownership of Works

- (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.
- (2) On Hand Over the Developer must cause the legal title in the Works and all materials and component of the Works to pass to Council free of any charge or other interest. The Developer warrants that after Hand Over the Works are not subject to any security interest (as defined in the *Personal Property Securities Act 2009 (Cth)* (**PPSA**)) and any security interest noted in the Personal Property Securities Register has been discharged. The Developer indemnifies Council for all claims, costs, losses and expense Council may suffer arising from any breach of this warranty or any claim or action taken by any person in respect of any security interest (as defined in the PPSA) in the Works.

12.5 Access to the land and location of Works

- (1) The Developer is to permit the Council, its officers, employees, agents and contractors to enter it's Land at any time, upon giving reasonable prior notice, in order to inspect, examine or test any the Works.
- (2) The Developer must enable Council, its officers, employees, agents and contractors access to the location of the Works where this is not the Land, Council land or a public road.
- (3) The Developer acknowledges and agrees that:

- (a) access to any Council owned land upon which any Works will be carried out is subject to any statutory approval or consent required, and also any applicable Council policy, to allow those Works to be carried out;
- (b) the Developer must obtain any such approvals or consents before commencing the Works; and
- (c) Council will consider any application for such approval or consent at the relevant time and is not bound to grant such approval or consent.

12.6 Protection of People, Property and the Environment

The Developer is to ensure in relation to the carrying out of the Works that:

- (1) all necessary measures are taken to protect people, property and the Environment;
- (2) unnecessary interference with the passage of people and vehicles is avoided;
- (3) nuisances and unreasonable noise and disturbances are prevented; and
- (4) 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).

12.7 Damage and Repairs to the Works

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

12.8 Variation of Works

- (1) The Works are not to be varied by the Developer, unless:
 - (a) the Parties agree in writing to the variation;
 - (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 costs of and incidental to agreeing to and approving the variation.
- (2) For the purposes of clause (1)(a) a variation may relate to any matter in relation to the Works that is dealt with by this agreement.
- (3) If Council requests a variation to the Works after Council has given its written approval under clause 12, 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.
- (4) Council shall repay the amount referred to in paragraph (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 the increase in costs as a result of the variation requested by the Council.

12.9 Hand-Over of Works

- (1) If the Developer considers that any particular item of the Works is Completed, 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 (**Hand-Over Date**); and
 - (b) the Items of Work (identifying the particular item(s) of the Works to which it relates) the subject of the notice,

(Hand-Over Notice)

- (2) The Council may, at any time before the date specified in the Hand-Over Notice, direct the Developer in writing:
 - (a) to carry out further work to complete the Works in accordance with clause 12.2(4) before it is Handed-Over to the Council; and
 - (b) to Hand-Over the Works completed in accordance with the Council's direction to the Council by a specified date, irrespective of whether that date is later than the Hand-Over Date.
- (3) The Developer is to comply with a direction according to its terms and at the Developer's own cost.
- (4) Before the Works are handed-over to the Council, the Developer is to remove from the Land:
 - (a) any rubbish or surplus material;
 - (b) any temporary works; and
 - (c) any construction plant and equipment, relating to the carrying out of the Works as the case requires.
- (5) The Works are taken to be Handed-Over to the Council when the Council accepts ownership, possession, control of, and risk in, any Works when those Works are Completed and Council gives the Developer written notice to that effect.

12.10 Failure to Carry out and Hand-Over Works

- (1) 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 may 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 rectified to the Council's satisfaction.
- (2) A notice given under paragraph (1) is to allow the Developer a reasonable period (and in any case not less than 28 days) to rectify the breach.
- (3) If the Developer fails to rectify the breach the subject of a notice given under clause (1), the Council may:
 - (a) call upon the Security; and
 - (b) carry out and complete or make safe the Works.
- (4) For the purposes of paragraph (3)(b):
 - (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) any difference between the amount of the Security called upon pursuant to paragraph (3)(a), and the costs incurred by the Council in carrying out, completing, or making safe the Works, may be recovered by the Council from the Developer as a debt due in a court of competent jurisdiction.

12.11 Works-As-Executed-Plan

- (1) No later than 60 days after a notice is given under clause 12.9(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.
- (2) The Developer shall provide with the Work-as-Executed Plan(s) all appropriate certificates to verify that the Works have been carried out in accordance with relevant standards.

13 Defects

13.1 Rectification of Defects

- (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 (which must be a reasonable time and not less than five (5) business days).
- (2) The Developer must comply with a Rectification Notice as soon as practicable and at its own cost according to the terms of the Notice.
- (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.
- (4) A Rectification Certificate discharges the Developer from any further obligation to comply with the relevant Rectification Notice.
- (5) If the Developer does not comply with a Rectification Notice, the Council may do such things as are necessary to rectify the defect and may:
 - (a) call upon the Security to meet its costs in rectifying the defect; and
 - (b) recover, as a debt due in a court of competent jurisdiction, any difference between the amount of the Security and the costs incurred by the Council in rectifying the defect.
 - (c) The Developer must not impede or interfere with Council in its exercise of any of its rights under this paragraph (5).

13.2 Cost of Works carried out by the Council

- (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, including costs determined in accordance with paragraph (2).
- (2) The Council's costs of carrying out, completing or rectifying the Works in accordance with this agreement include, but are not limited to:
 - (a) the reasonable costs of the Council's servants, agents and contractors reasonably incurred for that purpose;
 - (b) all fees and charges necessarily or reasonably incurred by the Council in order to have the 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.

14 Indemnity and Insurance

- (1) The Developer warrants to Council that it is:
 - (a) legally and beneficially entitled to the Dedication Lands;
 - (b) able to fully comply with its obligations under this agreement;
 - (c) it has full capacity to enter into this agreement; and

- (d) there is no legal impediment to it entering into this agreement performing the obligations imposed under it.
- (2) The Developer indemnifies the Council, its employees, officers, agents, contractors from and against all Claims arising in connection with the carrying out by the Developer of the Works and any other obligation under this agreement, except to the extent that such Claims do not arise as a result of the negligent acts or omissions of Council, its employees, officers, agents and contractors.
- (3) The Developer is to take out and keep current to the satisfaction of the Council the following insurances in relation to the Works up until the end of the Defects Liability Period in relation to an item of Works:
 - (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.
- (4) If the Developer fails to comply with paragraph (3), 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) by calling upon the Security provided by the Developer to the Council under this agreement; or
 - (b) recovery as a debt due in a court of competent jurisdiction.
- (5) The Developer is not to commence to carry out the Works unless it has first provided to the Council satisfactory written evidence of all the insurances specified in paragraph (3).

15 Provision of Security

15.1 Not used

15.2 Easements Covenants and Restrictions on Title

- (1) Prior to any dedication of the Dedication Lands to Council, the parties are to resolve what easements, covenants and/or restrictions on title must necessarily be created upon any subdivision of the Land, having regard to the provisions of Part 6 of the *Conveyancing Act 1919* (NSW).
- (2) The Developer warrants and agrees that it will not release or extinguish any existing easements for service currently registered on the title to the Dedication Lands prior to its dedication to Council unless expressly directed by Council by notice in writing.
- (3) The parties warrant one with the other to do all things necessary to procure the registration on title to the Land or title(s) to any relevant lot created by subdivision of the Land of any easement, covenant or restriction on title as referred to in this clause.

15.3 Compulsory Acquisition of the Dedication Lands

- (1) The Developer consents to the compulsory acquisition of the Dedication Lands:
 - (a) in accordance with the Acquisition Act; and
 - (b) on the terms set out in this clause 15.3.

- (2) Council may only acquire the Dedication Lands compulsorily in accordance with the Acquisition Act if the Developer has committed a breach of this agreement with respect the dedication of that land under this agreement.
- (3) If Council acquires the Dedication Lands compulsorily in accordance with the Acquisition Act:
 - (a) the Developer agrees that the compensation payable to it on account of that acquisition under the Acquisition Act is \$1.00; and
 - (b) Council must complete that acquisition within twelve (12) months of the relevant breach.
- (4) The parties agree that the provisions of this clause 15.3 are an agreement with respect to the compulsory acquisition of the Dedication Lands for the purpose of s30 of the Acquisition Act.
- (5) If Council:
 - (a) acquires the Dedication Lands under paragraph (3); and
 - (b) is required to pay any compensation to a third party as a result of that acquisition,
 then the Developer must pay Council the amount of that compensation as a Monetary Contribution:
 - (c) within ten (10) business days of demand for payment being made by Council; and
 - (d) prior to the issue of the then next Occupation Certificate or Subdivision Certificate with respect to the Proposed Development.

15.4 Council may withhold Occupation Certificates

- (1) 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 agreement.
- (2) 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 agreement until such time as:
 - (a) the breach is rectified; or
 - (b) Council calls upon the Security provided by the Developer in respect of the Development Contribution to which the breach relates.

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

- (1) For the purpose of section 7.4(5) of the Act, this agreement:
 - (a) excludes the application of section 7.11 and section 7.12 of the Act in relation to the Proposed Development facilitated by the Planning Proposal and the Instrument Changes to the extent that Council is the consent authority for the Development Consent(s) in connection with the Proposed Development; and
 - (b) does not exclude the application of section 7.11 and section 7.12 of the Act in relation to Development in all other circumstances.
- (2) This agreement does not exclude the application of s7.24 of the Act to the any Development.

17 Termination

17.1 Agreement to terminate

This agreement terminates in the following events:

- (1) 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; or
 - (d) The Instrument Change is not made on terms proposed by the Planning Proposal.
- (2) The parties agree in writing to terminate the operation of this agreement at any time.
- (3) Council serves notice on the Developer terminating this agreement where the Developer has failed to comply with a notice issued in accordance with clause 19(1).
- (4) The Developer, or any company office of the Developer, is subject to an Insolvency Event.
- (5) For the avoidance of doubt, all obligations under this agreement cease to apply in circumstances where the Instrument Change is not made.
- (6) In circumstances where the agreement is terminated, or an event of termination occurs, and the Developer is not in breach of the agreement immediately prior to the agreement being terminated, the Council agrees to sign all documents necessary to facilitate the removal of the registration of this agreement from the Title of the Land.

17.2 Consequences

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

18 Private Certifiers

Where Council is not the certifying authority for any aspect of any Development facilitated by the Planning Proposal and Instrument Changes the Developer must on the appointment of a private certifier provide a copy of this agreement to the private certifier.

19 Breach Notice and Rectification

- (1) If the Developer is, in the opinion of Council, in breach of a material obligation under this agreement, Council may provide written notice of the breach to the Developer and require rectification of that breach within a reasonable period of time (**Breach Notice**).
- (2) Unless there are compelling reasons to extend or abridge the period of time permitted for rectification, a reasonable period of time is to be determined having regard to the scope and nature of the breach which has been identified and will not be more than fourteen days from receipt of written notification of the breach.
- (3) If the breach is not rectified within the time specified in the Breach Notice, or otherwise agreed between the Parties, Council may, in addition to any rights it has at law, rectify the breach. The Developer must pay all reasonable costs incurred by the Council in remedying the breach and Council may call on the Security to the

extent of any compensation claimed in a Breach Notice and not paid by the Developer.

20 Dispute resolution

20.1 Disputes

If there is any dispute, difference of opinion or failure to agree relating to or arising from this agreement that dispute must be referred for determination under this clause 20.

20.2 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.

20.3 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**).

20.4 Negotiated resolution and selection of expert

- (1) 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 twenty-one (21) 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.
- (2) If the nominated officers are unable to resolve the Dispute within twenty-one (21) days of service of the Dispute Notice they must endeavour within the following twenty-one (21) day period to appoint an expert by agreement. That appointment must be recorded in writing and signed by each nominated officer.
- (3) If the nominated officers do not record the appointment of an expert within that second twenty-one (21) 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.

20.5 Qualifications of Expert:

The expert appointed to determine a Dispute:

- (1) must have a technical understanding of the issues in Dispute;
- (2) 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
- (3) 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.

20.6 Assistance to the Expert (the Expert)

- (1) Once the Expert has been appointed (the Expert), 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.

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

20.7 Directions to expert

- (1) In reaching a determination in respect of a Dispute, the independent expert must give effect to the intent of the parties entering into this agreement and the purposes of this agreement.
- (2) The expert must:
 - (a) act as an expert and not as an arbitrator;
 - (b) proceed in any manner as the expert thinks fit without being bound to observe the rules of natural justice or the rules of evidence;
 - (c) not accept verbal submissions unless both parties are present;
 - (d) on receipt of a written submission from one party, ensure that a copy of that submission is given promptly to the other party;
 - (e) take into consideration all documents, information and other material which the parties give the expert which the expert in its absolute discretion considers relevant to the determination of the Dispute;
 - (f) not be expected or required to obtain or refer to any other documents, information or material (but may do so if the expert so wishes);
 - (g) issue a draft certificate stating the expert's intended determination (together with written reasons), giving each party ten (10) Business Days to make further submissions;
 - (h) issue a final certificate stating the expert's determination (together with written reasons); and
 - (i) act with expedition with a view to issuing the final certificate as soon as practicable.
- (3) 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:
 - (a) a short statement of facts;
 - (b) a description of the Dispute; and
 - (c) any other documents, records or information which the expert requests.

20.8 Expert may commission reports

- (1) Subject to paragraph 20.11(2):
 - (a) 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
 - (b) the parties must indemnify the expert for the cost of those advisers or consultants in accordance with this clause 20.
- (2) The parties must approve the costs of those advisers or consultants in writing prior to the expert engaging those advisers or consultants.

20.9 Expert may convene meetings

- (1) 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.

- (2) The parties agree that a meeting under paragraph (1) is not a hearing and is not an arbitration.

20.10 Confidentiality of information provided in dispute resolution process

- (1) The parties agree, and must procure that the mediator and the expert agree as a condition of his or her appointment:
 - (a) subject to paragraph (2), to keep confidential all documents, information and other material disclosed to them during or in relation to the mediation or expert determination;
 - (b) not to disclose any confidential documents, information and other material except:
 - (i) to a party or adviser or consultant who has signed a confidentiality undertaking; or
 - (ii) if required by Law or any Authority to do so; and
 - (c) 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.
- (2) 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:
 - (a) views expressed or proposals or suggestions made by a party or the mediator or the expert during the expert determination or mediation relating to a possible settlement of the Dispute;
 - (b) admissions or concessions made by a party during the mediation or expert determination in relation to the Dispute; and
 - (c) 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.

20.11 Expert's decision

- (1) The decision of the Expert must:
 - (a) be in writing and give reasons; and
 - (b) 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.
- (2) Subject to this clause 20, 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.
 - (a) The Expert's decision is final and binding on the parties.
 - (b) The Expert must act as an expert and not as an arbitrator.

20.12 Expert's costs

- (1) 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.
- (2) If any independent expert does not award costs, each party must contribute equally to the expert's costs in making the determination.

- (3) 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.

20.13 Urgent relief

This clause 20 does not operate to limit the availability of any remedies available to Council under the Act. This clause 20 does not prevent a party from seeking urgent injunctive or declaratory relief concerning any matter arising out of this agreement.

20.14 Continual performance

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

21 Registration of agreement on Title

21.1 Acknowledgement

The Developer agrees to register this agreement on the title to the Land pursuant to section 7.6 of the Act.

21.2 Consents to Registration

- (1) The Developer, at its own cost, must register this agreement on the title of the Land within sixty (60) days after it is entered into between the parties and, in any event, before the issue of any Construction Certificate or Subdivision Certificate for the Proposed Development and take all necessary and practical steps, and otherwise do anything that Council reasonably requires, to procure:
- (a) the consent of each person who:
 - (i) has an estate or interest in the Land; or
 - (ii) is seized or possessed of an estate or interest in the Land; and
 - (b) the execution of any documents;
- to enable the registration of this agreement in accordance with clause 21.1.
- (2) Each Party must promptly execute any document and perform any action necessary to affect the registration of this agreement on the title of the Land.

21.3 Release from Registration

Provided the Developer is not in breach of any of its obligations under this agreement, Council will at the request of the Developer release part of the Land from registration of this agreement where the Development Contributions have been made including completion of the Works and no other money is owing to Council under this agreement. The obligations of the Council are satisfied when Council provides the Developer with a signed Request in registrable form for the release of registration of this agreement.

If for any reason this agreement is terminated, the Council will execute all documents necessary to facilitate the removal of this agreement from the title of the Land, provided the Developer was not in breach of its obligations under this agreement immediately prior to the agreement being terminated.

21.4 Registration Expenses

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

22 Costs

The Developer will pay or reimburse to the Council, the Council's costs (reasonably incurred) associated with the negotiation, preparation, exhibition, legal review, execution and registration of this agreement within 7 days of a written demand by the Council for such payment.

23 GST

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

24 General

24.1 Notices

- (1) Any notice, consent or other communication under this agreement 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:
 - (a) delivered to that person's address;
 - (b) sent by pre-paid mail to that person's address; or
 - (c) transmitted by facsimile or email to that person's address.
- (2) A notice given to a person in accordance with this clause is treated as having been given and received:
 - (a) if delivered to a person's address, on the day of delivery if a business day, otherwise on the next business day;
 - (b) if sent by pre-paid mail, on the third business day after posting;
 - (c) 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
 - (d) 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.
- (3) For the purpose of this clause the address of a person is the address set out in this agreement or another address of which that person may from time to time give notice to each other person.

24.2 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 agreement and the rights and obligations of the parties under it.

24.3 Assignment

- (1) A party must not Assign any right or liability under this agreement, or Assign any part of the Land, without the prior consent of each other party.

- (2) Subject to paragraph (1), where the Developer enters into a contract for the sale of the Land, the Developer (as vendor) shall disclose to the purchaser the existence of this agreement.
- (3) The council is not to unreasonably withhold its consent to any transfer or assignment in which event the Developer is released from all its obligations under this agreement.
- (4) Subject to paragraph (5), the Council is not to withhold its consent to the Transfer or Assignment if the incoming purchaser or Assignee has executed a deed on the same terms as this agreement at no cost to Council.
- (5) Council is under no obligation to consider granting its consent to any request made by the Developer under this clause 24.3 if, at the time the request is made:
 - (a) the Developer is in breach of this agreement; and
 - (b) the third party in whose favour the assignment is to be made has not executed an appropriate deed agreeing to be bound by the terms of this agreement (including the provision of any Security, which must be provided at the same time, or prior to, entering the relevant deed of assignment).

24.4 Governing law and jurisdiction

- (1) This agreement is governed by and construed under the law in the State of New South Wales.
- (2) Any legal action in relation to this agreement against any party or its property may be brought in any court of competent jurisdiction in the State of New South Wales.
- (3) Each party by execution of this agreement:
 - (a) 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 agreement; and
 - (b) may not seek to have any proceedings removed from the jurisdiction of New South Wales on the grounds of *forum non conveniens*.

24.5 Amendments

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

24.6 Third parties

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

24.7 Entire agreement

This agreement:

- (1) expresses and incorporates the entire agreement between the parties in relation to its subject matter, and all the terms of that agreement; and
- (2) 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.

24.8 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 agreement.

24.9 Continuing performance

- (1) The provisions of this agreement do not merge with any action performed or document executed by any party for the purposes of performance of this agreement.
- (2) Any indemnity agreed by any party under this agreement:
 - (a) constitutes a liability of that party separate and independent from any other liability of that party under this agreement or any other agreement; and
 - (b) survives and continues after performance of this agreement.

24.10 Waivers

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

24.11 Remedies

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

24.12 Counterparts

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

24.13 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:

- (1) 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;
- (2) 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 agreement on behalf of the trust and that this agreement is being executed and entered into as part of the due and proper administration of the trust and for the benefit of the beneficiaries of the trust; and
- (3) 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.

24.14 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 agreement will not result in the breach of any law.

24.15 Severability

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

25 Definitions and interpretation

25.1 Definitions

In this agreement unless the context otherwise requires:

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

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

Actual Value has the meaning ascribed to it in clause 11.4(2).

Assign means, as the context requires, any assignment, sale, transfer, disposition, declaration of trust over or other assignment of a legal and/or beneficial interest.

Authority means (as appropriate) any:

- (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.

Bank Guarantee means an irrevocable and unconditional written guarantee without a time limit or end date acceptable to Council issued by an Australian Bank (being a financial institution approved by Council).

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

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

Completed means completed in accordance with the requirements of this agreement.

Construction Certificate has the same meaning as in section 6.4(a) of the Act.

Contribution Value means the amount specified in Schedules 1, 2 and 3 as the "contribution value" for each item of the Development Contributions (as Indexed from time to time in accordance with clause 11.2 of this agreement).

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

Dedication Lands means the land to be dedicated by the Developer specifically identified in Schedule 1 as 'Dedication Land' as illustrated on the site plan.

Developer means a persons who has sought a change to an environmental planning instrument or who has made, or proposes to make, an application for development consent.**Development Infrastructure Contribution** means the Contribution so described in **Schedule 3**.

Development Infrastructure Contribution Rate means an amount equal to 2.8% of the cost of carrying out the Proposed Development under all relevant Development Consents (as calculated by Council in accordance with s208 of the Regulation at the development assessment stage for the Development Consent(s)).

Development Application means the development application for the Development Consent.

Development Consent means a development consent granted in accordance with the Act for the Proposed Development.

Development Contributions means the Monetary Contribution, the Dedication Lands and the Works (including the Development Infrastructure Contribution).

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.

Defects Liability Period means a period of twelve (12) months commencing on and from the Hand-Over Date.

Encumbrance means an interest or power:

- (1) reserved in or over an interest in any asset;
- (2) arising under, or with respect to, a Bio-Banking agreement;
- (3) created or otherwise arising in or over any interest in any asset under any mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, title retention, conditional sale agreement, hire or hire purchase agreement, option, restriction as to transfer, use or possession, easement, covenant, lease, subordination to any right of any other person and any other encumbrance or security interest, trust or bill of sale; or
- (4) by way of security for the payment of a debt or other monetary obligation or the performance of any obligation.

Encumber means to grant an Encumbrance.

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

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 has the meaning ascribed to it in clause 12.9(1).

Hand-Over Notice means a notice issued by the Council under clause 12.9.

Index means

- (1) the Producer Price Index (Road and Bridge Construction New South Wales) as provided by the Australian Bureau of Statistics, in respect of the Contribution Value for Item 1 of the Works; and
- (2) the Consumer Price Index (All Groups - Sydney) as provided by the Australian Bureau of Statistics, in respect of the Contribution Value for all other Development Contributions.

Instrument Change means an amendment to the LEP (as it relates to the Land) to:

- (1) increase the maximum building height from 116 metres to 155.85 metres; and
- (2) increase the maximum floor space ratio from 1:1 to 2.36:1.

Insolvency Event means the happening of any of the following events:

- (1) 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.
- (2) 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.

- (3) 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.
- (4) 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.
- (5) A body corporate is or states that it is insolvent.
- (6) 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.
- (7) 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.
- (8) 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.
- (9) 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.
- (10) A receiver, manager or receiver and manager is appointed to the Company.
- (11) 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.
- (12) Anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

Item of Works means an item of the Works.

Land means the “Land” set out in the Summary Sheet.

LEP means *The Hills Local Environmental Plan 2019*.

Location Plan means the plan contained in **Annexure 1**.

Monetary Contributions means the development infrastructure contributions required to be paid to the Council as specified in Schedule 3.

Monetary Contributions Offset means an amount equal to the lessor of:

- (1) the Actual Value; and
- (2) the Contribution Value.

Occupation Certificate has the same meaning as in section 6.4(c) of the Act.

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

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

Planning Proposal means the Planning Proposal (3/2022/PLP) to give effect to the Instrument Change.

Proposed Development means the development of the Land approved by a Development Consent subsequent to the enactment and commencement of the Instrument Changes:

- (1) to the extent that such development would be permitted if the Planning Proposal is implemented, comprising of Stage 1, Stage 2, Stage 3 and Stage 4; and/or
- (2) up to a total gross floor area of 71,516 square metres.

Quantity Surveyor means a person who:

- (1) is a member of their respective professional organisation and has been for at least five (5) years;
- (2) practises as a quantity surveyor for works of the same nature as the relevant Works;
- (3) is active as a quantity surveyor at the time of his appointment;
- (4) has at least three (3) years experience in valuing works of the same nature as the relevant Works; and
- (5) undertakes to act fairly and promptly in accordance with the requirements of this document.

Rectification Certificate means a compliance certificate within the meaning of section 6.4(e) of the Act to the effect that work the subject of a Rectification Notice has been completed in accordance with the notice.

Rectification Notice means a notice in writing that identifies a defect in a work and requires rectification of the defect within a specified period of time.

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

Security means a Bank Guarantee or bond in favour of the Council on terms satisfactory to the Council, or such other form of security as the Council may require in its absolute discretion.

Stage means each of Stage 1, Stage 2, Stage 3 and Stage 4 as identified and described in the Staging Plan.

Stage 1 means the stage of development in accordance with a Development Consent for that part of the Proposed Development identified as 'Stage 1' in the Staging Plan.

Stage 2 means the stage of development in accordance with a Development Consent for that part of the Proposed Development identified as 'Stage 2' in the Staging Plan.

Stage 3 means the stage of development in accordance with a Development Consent for that part of the Proposed Development identified as 'Stage 3' in the Staging Plan.

Stage 4 means the stage of development in accordance with a Development Consent for that part of the Proposed Development identified as 'Stage 4' in the Staging Plan.

Staging Plan means Annexure 2.

Subdivision Certificate has the same meaning as in section 6.4(d) of the Act.

Summary Sheet means page 2 of this agreement.

Works means the works specified or described in Schedule 2 and Annexure B 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.

25.2 Interpretation

In this agreement unless the context otherwise requires:

- (1) clause and subclause headings are for reference purposes only;
- (2) the singular includes the plural and vice versa;
- (3) words denoting any gender include all genders;
- (4) reference to a person includes any other entity recognised by law and vice versa;
- (5) where a word or phrase is defined its other grammatical forms have a corresponding meaning;

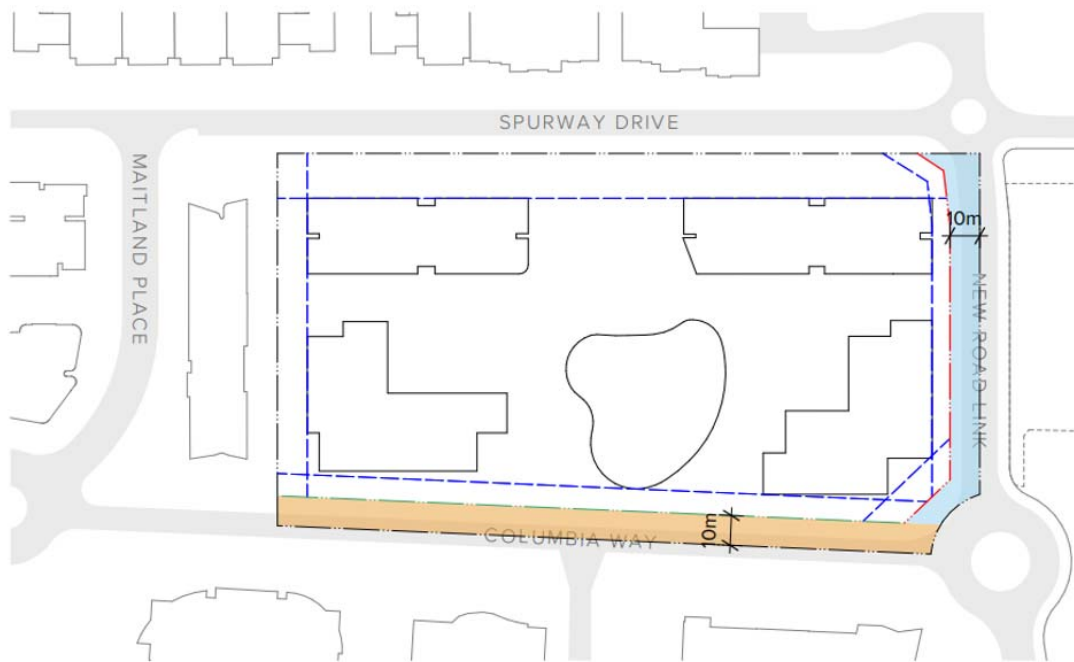
- (6) any reference to a party to this agreement includes its successors and permitted assigns;
- (7) any reference to a provision of an Act or Regulation is a reference to that provision as at the date of this agreement;
- (8) any reference to any agreement or document includes that agreement or document as amended at any time;
- (9) the use of the word **includes** or **including** is not to be taken as limiting the meaning of the words preceding it;
- (10) the expression **at any time** includes reference to past, present and future time and the performance of any action from time to time;
- (11) an agreement, representation or warranty on the part of two or more persons binds them jointly and severally;
- (12) an agreement, representation or warranty on the part of two or more persons is for the benefit of them jointly and severally;
- (13) reference to an exhibit, annexure, attachment or schedule is a reference to the corresponding exhibit, annexure, attachment or schedule in this agreement;
- (14) reference to a provision described, prefaced or qualified by the name, heading or caption of a clause, subclause, paragraph, schedule, item, annexure, exhibit or attachment in this agreement means a cross reference to that clause, subclause, paragraph, schedule, item, annexure, exhibit or attachment;
- (15) when a thing is required to be done or money required to be paid under this agreement on a day which is not a Business Day, the thing must be done and the money paid on the immediately following Business Day; and
- (16) 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 – Dedication Lands

The Land to be dedicated to Council is shown on Figure 1.

Details of the Dedication Land is provided below:

| Column 1 | Column 2 | Column 3 | Column 4 |
|----------|---|---|---|
| Item | Lot and DP | Area to be Dedicated | Timing |
| Item 1 | Part of Lot 2015 in DP 857690 Part of Lot 200 in DP 877496 | A parcel of land ten (10) metres in length along the Columbia Way frontage of the Land with a total approximate area of 2,205 square metres and as shown, hatched in orange, in Figure 1. Following completion of the detailed design for the Columbia Way Road Upgrade, the area of road dedication may increase, at Council's full discretion, provided the extent of the area is within the proposed setback distance and does not impact on the proposed building footprints identified in Figure 1. | Prior to the grant of the first Occupation Certificate in respect of Stage 1 of the Proposed Development specified in the Staging Plan. |
| Item 2 | Part of Lot 200 in DP 877496 | A parcel of land ten (10) metres in depth along the eastern edge of the Land, with a total approximate area of 1,335 square metres, as shown, hatched in blue, in Figure 1. | Prior to the grant of the first Occupation Certificate in respect of Stage 4 of the Proposed Development specified in the Staging Plan. |



- 1,335m²
approx Area to be dedicated for proposed New Road Link
- 2,205m²
approx Area to be dedicated for future Columbia Way road widening
- Proposed Site Boundary
- Future Site Boundary
- Existing Site Boundary
- Proposed Building Setback

Figure 1: Land Dedications

Schedule 2 – The Works

Option 1

| Column 1 Item | Column 2 Item of Works | Column 3 Timing | Column 4 Contribution Value |
|------------------|---|--|--------------------------------|
| 1 | Part road reconstruction of Columbia Way (10 metre wide land along the southern boundary of the site, as illustrated in Figure 1 of Schedule 1), in accordance with Council's road design concept within Annexure B. | Prior to the grant of the first Occupation Certificate in respect of Stage 1 of the Proposed Development, as specified in the Staging Plan.. | \$3,140,355.00 |
| 2 | Construction of a new local road along the Columbia Court frontage of the site connecting Spurway Drive with Columbia Way, as illustrated in Figure 1 of Schedule 1 subject to the preparation of detailed designs, generally in accordance with Annexure B, and the conditions of any Development Consent. | Prior to the grant of the first Occupation Certificate in respect of Stage 4 of the Proposed Development, as specified in the Staging Plan. | \$755,000.00 |

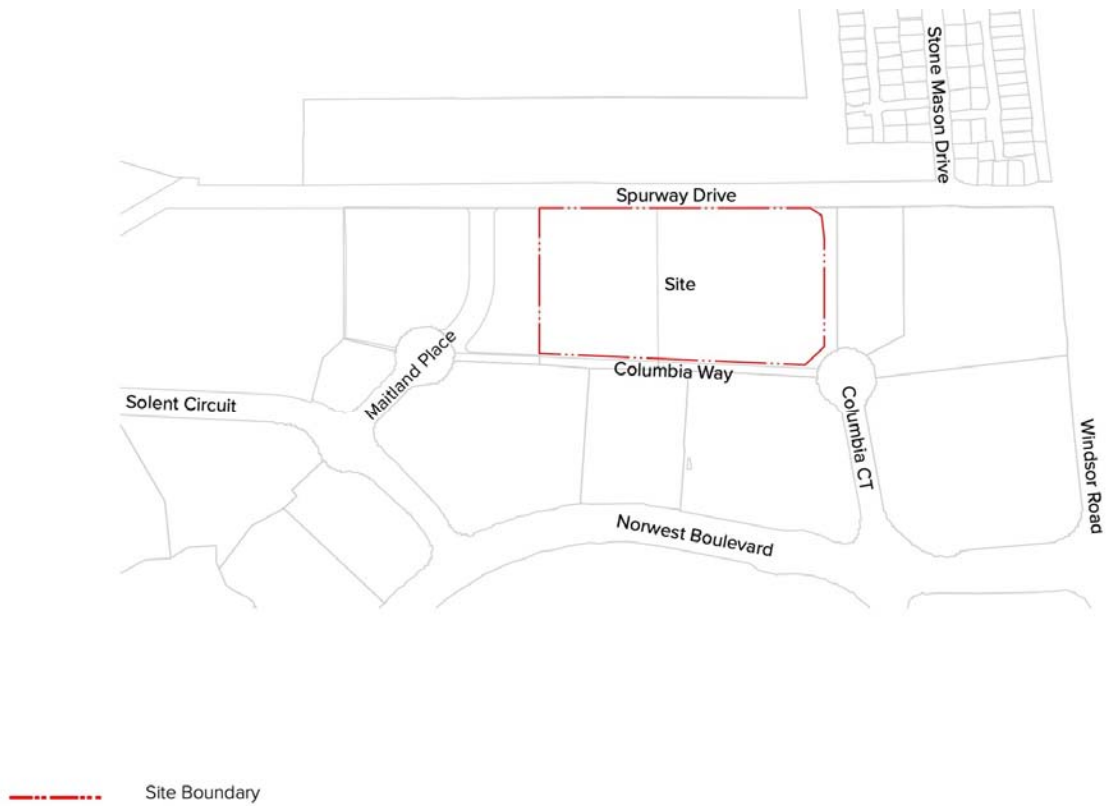
Option 2

| Column 1 Item | Column 2 Item of Works | Column 3 Timing | Column 4 Contribution Value |
|------------------|--|---|--------------------------------|
| 1 | Full road construction for the upgrade of Columbia Way, in accordance with Council's road design concept within Annexure B. | Prior to the grant of the first Occupation Certificate in respect of Stage 1 of the Proposed Development, as specified in the Staging Plan. | \$4,839,443.00 |
| 2 | Construction of a new local road along the eastern boundary of the site (i.e. 10 metre width) connecting Spurway Drive with Columbia Way, as illustrated in Figure 1 of Schedule 1 subject to the preparation of detailed designs, generally in accordance with Annexure B, and the conditions of any Development Consent. | Prior to the grant of the first Occupation Certificate in respect of Stage 4 of the Proposed Development, as specified in the Staging Plan. | \$755,000.00 |

Schedule 3 – Development Infrastructure Contribution

| Column 1 | Column 2 | Column 3 |
|---|--|---|
| Item | Time for Completion | Contribution Value |
| Stage 1 | Prior to the grant of the first Occupation Certificate in respect of Stage 1 of the Proposed Development specified in the Staging Plan. | The Development Infrastructure Contribution Rate for Stage 1. |
| Stage 2 | Prior to the grant of the first Occupation Certificate in respect of Stage 1 of the Proposed Development specified in the Staging Plan. | The Development Infrastructure Contribution Rate for Stage 2. |
| Stage 3 | Prior to the grant of the first Occupation Certificate in respect of Stage 1 of the Proposed Development specified in the Staging Plan. | The Development Infrastructure Contribution Rate for Stage 3. |
| Stage 4 | Prior to the grant of the first Occupation Certificate in respect of Stage 1 of the Proposed Development, specified in the Staging Plan. | The Development Infrastructure Contribution Rate for Stage 4. |
| Total Contribution for the Proposed Development | | The Development Infrastructure Contribution Rate |

Annexure 1 – Location Plan



Annexure 2 – Staging Plan

| Column 1 | Column 2 |
|----------|---|
| Stage | Description |
| Stage 1 | Stage 1 of the Proposed Development, anticipated to comprise an 11 storey building including 16,603 square metres of gross floor area and the construction of the Columbia Way road upgrade and dedication, in accordance with Schedule 1, Schedule 2, and Annexure B, as generally located in Figure 2. |
| Stage 2 | Stage 2 of the Proposed Development, anticipated to comprise a 7 storey building including 6,955 square metres of gross floor area, as generally located in Figure 2. |
| Stage 3 | Stage 3 of the Proposed Development, anticipated to comprise a 7 storey building including 9,550 square metres of gross floor area and the construction and dedication of a new road link connecting Columbia Court and Spurway Drive, in accordance with Schedule 1, Schedule 2, and Annexure B, as generally located in Figure 2. |
| Stage 4 | Stage 4 of the Proposed Development, anticipated to comprise a 15 storey building including 22,770 square metres of gross floor area, as generally located in Figure 2. |
| Stage 5 | Stage 5 of the Proposed Development, anticipated to comprise an 11 storey building including 15,638 square metres of gross floor area, as generally located in Figure 2. |

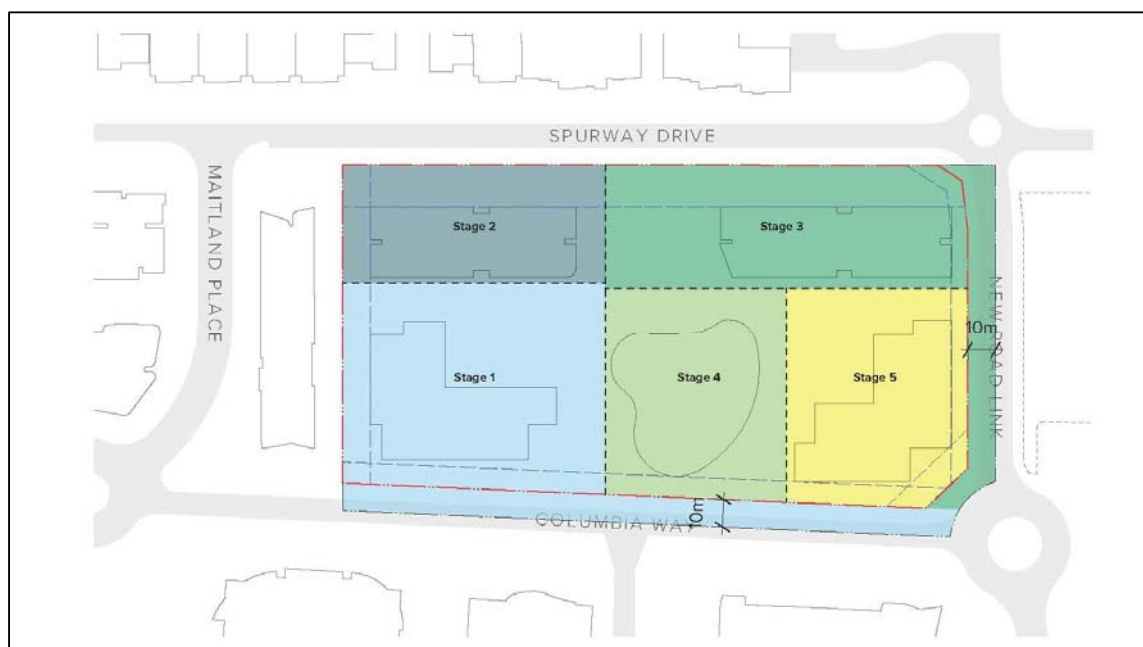


Figure 2: Staging Plan

Execution Page

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

General Manager

Mayor

Print Name

Print Name

Witness

Print Name

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

Secretary/Director

Director

Print name

Print name

CAVEAT
Prohibiting Recording of a Dealing or Plan
or Granting of a Possessory Application
New South Wales
Section 74F Real Property Act 1900

Leave this space clear. Affix additional pages to the left-hand corner.

PRIVACY NOTE: Section 31B of the Real Property Act 1900 (RP Act) authorises the Registrar General to collect the information required by this form for the establishment and maintenance of the Real Property Act Register. Section 96B RP Act requires that the Register is made available to any person for search upon payment of a fee, if any.

STAMP DUTY

Office of State Revenue use only

(A) TORRENS TITLE

| |
|--|
| |
|--|

(B) REGISTERED DEALING

Number

Torrens Title

(C) LODGED BY

Document
Collection
Box

Name, Address or DX, Telephone, and Customer Account Number if any

MARSDENS LAW GROUP
Level 1, 49 Dumaresq Street, Campbelltown NSW 2560
Tel: (02) 4626 5077

Reference (optional): JRT:RJM:446577

CODE

X

(D) REGISTERED PROPRIETOR

| |
|--|
| |
|--|

Postcode:

(E) CAVEATOR

THE HILLS SHIRE COUNCIL

3 Columbia Court
Norwest NSW 2153

Postcode: 2153

(F) NAME AND ADDRESS IN NEW SOUTH WALES FOR SERVICE OF NOTICE ON THE CAVEATOR

*This **must** be a street address.* If desired, a Document Exchange box in NSW may be provided **in addition**.

C/- Marsdens Law Group, Solicitors
Level 1, 49 Dumaresq Street
Campbelltown NSW

Postcode: 2560

Document Exchange Box in NSW (additional):

*Note: if the caveator's name or address for service of notices changes, the Department of Lands, Land and Property Information Division, **must** be notified on form 08CX.*

(G) ACTION PROHIBITED

List by number only the items in Schedule 2 prohibited by this caveat

1, 2, 4 and 7

(H) The caveator claims to be entitled to the estate or interest in the above Land specified in Schedule 1 by virtue of the Instrument set out in that schedule and prohibits the Registrar General from taking, with respect to the Land, the action specified above unless the caveator has consented in writing or this caveat has lapsed or been withdrawn.

WARNING: care should be exercised in completing a caveat form. An insupportable caveat may be challenged in the Supreme Court; damages may be awarded for lodging a caveat without justification; and penalties could be imposed for a breach of the Oaths Act 1900 and section 117 of the Real Property Act 1900. Furthermore failure to observe the requirements of section 117 of the Real Property Act 1900 and regulations 7 and 8 of the current Real Property Regulation may make the caveat invalid.

(I) **SCHEDULE 1 Estate or interest claimed**

| | | |
|---|------|--|
| Nature of the estate or interest in the Land | | |
| Equitable interest pursuant to clause 6 of the Planning Agreement entered into between GTL Properties Pty Ltd and the Caveator in relation to the Land. | | |
| By virtue of the instrument referred to below | | |
| Nature of Instrument | Date | Parties |
| Voluntary Planning Agreement (VPA) | | GTL Properties Pty Ltd and The Hills Shire Council |
| By virtue of the facts stated below | | |
| The VPA grants a caveatable interest to the Caveator with respect to the above Land. | | |

(J) **SCHEDULE 2 Action prohibited by this caveat**

1. The recording in the Register of any dealing other than a plan affecting the estate or interest claimed by the caveator and set out in Schedule 1.
2. The registration or recording of any plan other than a delimitation plan affecting the estate or interest claimed by the caveator and set out in Schedule 1.
3. The registration of delimitation plan ¹ No.
4. The granting of any possessory application ² with respect to the land referred to above.
5. The recording in the register of any dealing affecting the estate or interest of which the caveator is registered proprietor.
6. The granting of an application to extinguish the _____ created by _____
7. The recording in the Register of a writ affecting the estate or interest claimed by the caveator and set out in Schedule 1.

(K) **STATUTORY DECLARATION³**

- I, _____ solemnly and sincerely declare that -
1. To the best of my knowledge, information and belief the caveator has a good and valid claim to the estate or interest set out in Schedule 1.
 2. This caveat does not require the leave of the Supreme Court or the endorsed consent of the registered proprietor

I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Oaths Act 1900 and I certify this caveat to be correct for the purposes of the Real Property Act 1900.

Made and subscribed at in the State of New South Wales
on in the presence of:

| | |
|--|---|
| Signature of witness: | Signature of declarant: |
| Name of witness: | Capacity of declarant if other than the caveator: |
| Address of witness: | |
| Qualification of witness: <input type="checkbox"/> Justice of Peace <input type="checkbox"/> Practising Solicitor <input type="checkbox"/> Other qualified witness [specify] | |

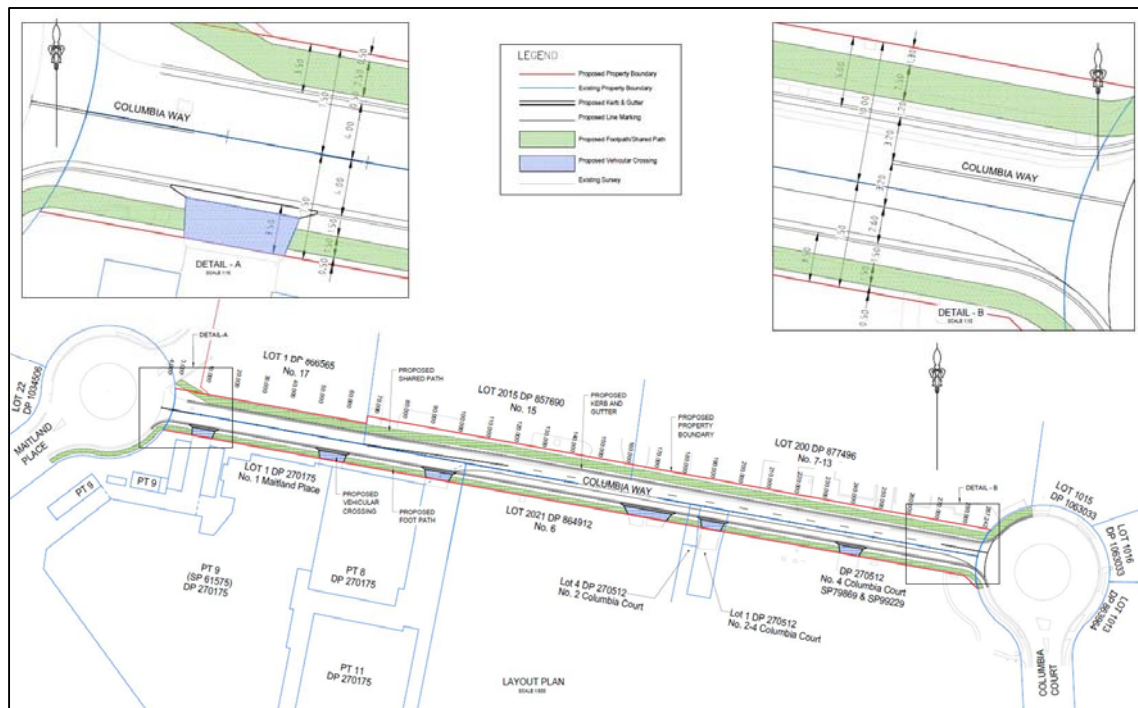
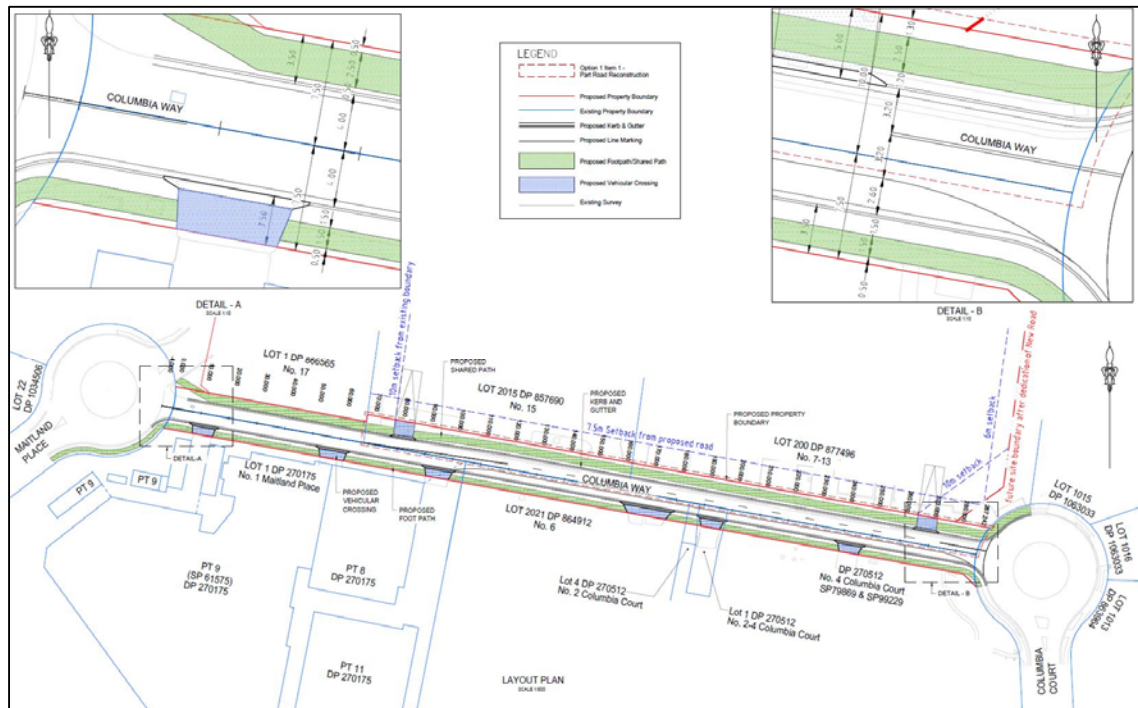
(L) **CONSENT OF THE REGISTERED PROPRIETOR of the estate or interest affected by the caveat (section 74F Real Property Act 1900)**

I, the registered proprietor named at letter (D), for the purposes of section 74F(6) Real Property Act 1900 only, consent to this caveat.

Signature of registered proprietor:

1. A plan defining the boundaries of land in a limited folio of the Register. See Part IVB Real Property Act 1900.
2. An application made by a person claiming title to land by virtue of adverse possession. See Part VIA Real Property Act 1900.
3. As the Department of Lands may not be able to provide the services of a justice of the peace or other qualified witness, the statutory declaration should be signed and witnessed prior to lodgment of the form at Land and Property Information Division.

Annexure B – The Works



**EXPLANATORY NOTE
DRAFT VOLUNTARY PLANNING AGREEMENT
PLANNING PROPOSAL FOR 7-15 COLUMBIA WAY, NORWEST
PROPOSED COMMERCIAL DEVELOPMENT**

Background

The developer has lodged a Planning Proposal with Council for land at 7-15 Columbia Way, Norwest. The redevelopment of the site will contribute to the long term employment growth within the Norwest Strategic Centre and facilitate jobs growth within the Shire. The proposal has strategic merit, as it aligns with Council's vision for the Norwest Strategic Centre being a high density employment centre for the Shire.

The proposal will enable Norwest to fulfil its role as a specialised commercial office precinct within Greater Sydney. Upon approval of the Planning Proposal, the developer proposes to lodge a development application with the Council for the site.

The developer has offered to enter into the Planning Agreement in connection with the Planning Proposal to specify that development contributions be made to Council in association 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 draft Planning Agreement is to record the terms of the offer made by the Developer and its obligations to facilitate the road upgrade of Columbia Way and dedication of associated land within the subject site, and the construction and dedication of a new road link connecting Columbia Court to Spurway Drive. The Developer is also required to provide monetary contributions which will be used by Council to provide infrastructure in the area.

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

The Planning Agreement provides for contributions by the developer and at the times set out in Schedules 1 - 3 of the Planning Agreement. The payable monetary contribution amount is based on a fair and reasonable percentage of the cost of development (2.8%) for each Stage as determined as part of future Development Applications. The cost of constructing the Columbia Way road upgrade and new road link between Columbia Court and Spurway Drive will offset the total payable monetary contribution. These contributions have been entered into to provide the Developer and the Council cert certainty of the infrastructure works (and contributions towards the delivery of future infrastructure) required to service the particular needs of the Proposed Development and locality.

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, consistent with the Greater Sydney Region Plan, Central City District Plan, Council's Local Strategic Planning Statement and The Hills Corridor Strategy. The Planning Agreement supports the delivery of infrastructure required to meet traffic concerns and future commercial employment business needs resulting in significant public benefit and amenity.

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

The Planning agreement promotes the Council's charter under section 8 of the *Local Government Act 1993* by providing adequate, equitable and appropriate services and facilities for the community and to ensure that those services and facilities are managed

efficiently and effectively. The Planning Agreement further keeps the local community informed of Council's activities.

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

The Planning Agreement provides a reasonable means of achieving and securing outcomes envisaged by The Hills Local Environmental Plan 2019 and The Hills Development Control Plan 2012 by identifying the rate of payment and timing to ensure the public benefits secured by the Planning Agreement meet the increased demand for public facilities within the Norwest Strategic Centre resulting from the development.

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

The Planning Agreement will assist in providing for local needs and infrastructure, noting that Council has not yet accounted for development of this scale in the existing contributions framework.