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10 November 2022

The General Manager
Penrith City Council
601 High Street
PENRITH NSW 2750

Attention: Warwick Winn

By Email

Dear Sir,

Proposed Voluntary Planning Agreement - Luddenham Road, Orchard Hills Planning Proposal

1. Introduction & background

The purpose of this letter is to request that Council negotiates a voluntary planning agreement ('**VPA**') under s7.4 of the *Environmental Planning & Assessment Act 1979* ('**EPA Act**') with HB+B Property Pty Ltd ('**HBB**')) and Atilol Holdings Pty Ltd ('**Atilol**') in connection with the Luddenham Road, Orchard Hills Planning Proposal ('**Planning Proposal**').

This letter addresses the matters set out in clause 4.2 of *Penrith Development Agreements Policy 2020* ('**Policy**') and some additional matters.

2. Proposed VPA

The details of the VPA, including the information required by the Policy, are provided below.

a. **Parties**

HB+B Property Pty Ltd ACN 604 992 458 ('**HBB**') (**Developer**)

Atilol Holdings Pty Ltd ACN 163 060 759 ('**Atilol**') (**Landowner**)

Penrith City Council

b. **Land**

Lot 1 DP 1099147 (221-227 Luddenham Rd, Orchard Hills) and Lot 242 DP 1088991 (289-317 Luddenham Rd, Orchard Hills) owned by Atilol ('**Land**').

The Land is shown edged in red in the survey plan titled '*PLAN OF DETAIL AND LEVELS OVER LOT 242 DP 1088991 AND LOT 1 DP 1099147 KNOWN AS No 221-227 & No 289-317 LUDDENHAM ROAD, ORCHARD HILLS*' prepared by LTS Surveyors, dated 29-04-2020 (Ref. 51007 001DT) appearing below.

c. **Planning Proposal**

Luddenham Road, Orchard Hills Planning Proposal (NSW Planning Portal Ref. No: PP2021-6708).

HBB lodged the Planning Proposal with the Council in August 2020.

The Planning Proposal, as lodged, applied to the Land.

The Planning Proposal seeks to amend *Penrith Local Environmental Plan 2010* ('**PLEP 2010**') to rezone the Land to enable the development of industrial warehouses across three stages on the Land as illustrated in a concept masterplan accompanying the Planning Proposal.

Additional land was included in the Planning Proposal at the Council's request.

The Council endorsed the Planning Proposal on 25 October 2021.

The Council submitted the Planning Proposal to the Department of Planning & Environment for gateway determination on 8 November 2021.

Gateway determination was made on 24 May 2022.

d. **Proposed development**

General description

The Development is known as the *Alspec Industrial Business Park* (AIBP) and is described below ('**Development**').

The Development will incorporate the following:

i. the construction of thirty-two (32) high-quality warehouse buildings across thirty-two (32) lots, each accompanied with an ancillary office, associated parking and business identification signage for legibility and easy way-finding,

ii. landscaping of internal estate roads including roundabouts, cul-de-sacs and entry roads for improved amenity,

iii. the construction of water quality and on-site detention basins,

iv. retention of the existing electricity easement benefiting Transgrid traversing the north-western corner of the Land,

v. retention of the existing C2 Environmental Conservation Zone in the north-western corner of the Land,

vi. setting aside an undeveloped southern portion of the Land of approximately 16.6ha in size for the future E2 Environmental Conservation Zone identified in the draft Cumberland Plain Conservation Plan (CPCP), and

vii. the subdivision of the Land into thirty-four (34) lots consisting of the following:

    a. thirty-two (32) lots for the construction of thirty-two (32) warehouse buildings (identified in above paragraph 'i'),

    b. one (1) lot for the internal road network to be dedicated to the Council, and

    c. one (1) lot for the residual land including the Outer Sydney Orbital, the existing C2 Environmental Conservation Zone (identified in above paragraph 'v') and the future E2 Environmental Conservation Zone (identified in above paragraph 'vi').

Development Masterplan

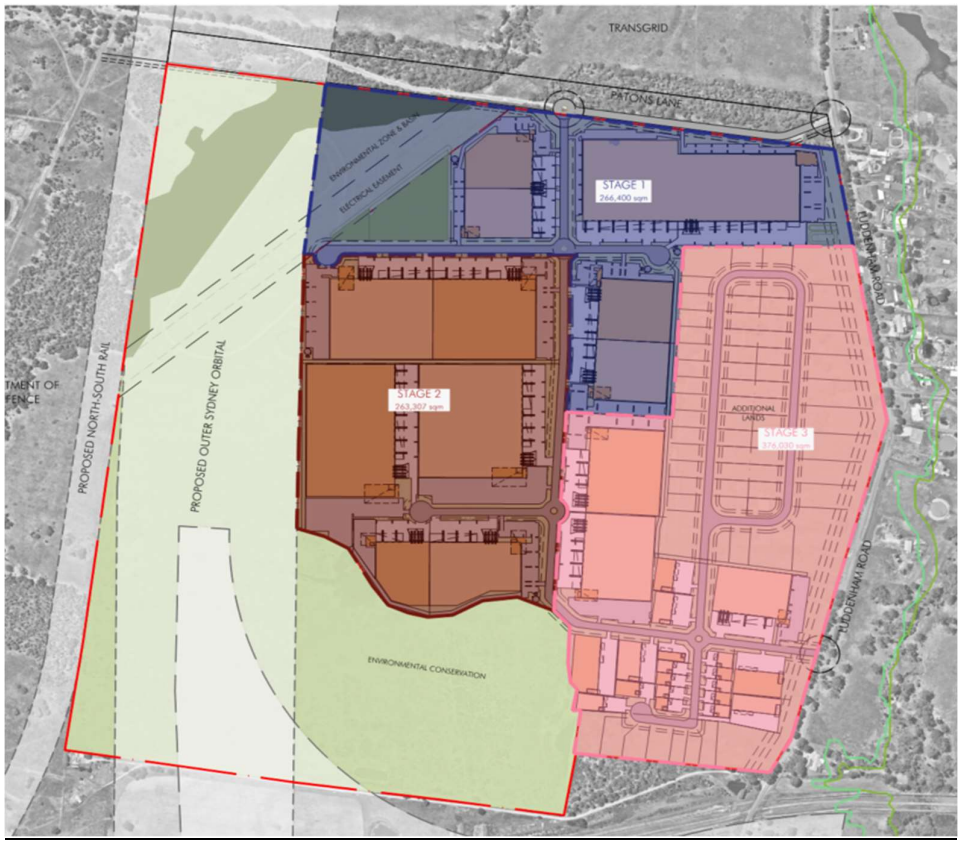
The Development will be carried out in accordance with a Masterplan, depicted in the following drawing 11178_SK022k-1 titled '*Alspec Industrial Business Park Luddenham Road, Orchard Hills* – NSW *Updated Masterplan*' prepared by Nettleton Tribe, dated February 2022:

Staging of Development

The Development will be carried out in three (3) stages.

Stage 3 incorporates the additional land to the Planning Proposal at the Council's request.

The staging of the Development is shown in the following Staging Plan titled '04 Masterplan Stages' shown on Page 26 of the '*Alspec Industrial Business Park - Masterplan Report'* prepared by Nettleton Tribe, dated February 2022:



e. **Consent of Landowner**

See the **attached** letter from Atilol Holdings Pty Ltd to the Council dated 23 March 2022.

f. **Contributions & benefits**

The VPA will provide for the following development contributions and benefits to be provided by HBB and Atilol:

Contribution / Benefit	Description / Details	Timing	Contribution Value $
Monetary Contributions			
Nil	N/A	N/A	N/A
Dedication of Land to Council			
Widening of Luddenham Road	As shown in drawing 11178_SK069d titled 'Land Deidication (sic.) Plan' prepared by Nettleton Tribe and dated October 2022 contained in the Masterplan for the Alspec Industrial Business Park, Luddenham Road, Orchard Hills - NSW	Within three (3) months after the issuing of an Occupation Certificate for the development approved by the consent granted to the Stage 1 State Significant Development Application.	$5,700,000.00
Works-in-kind			
Upgrade of Patons Lane from Luddenham Road through to the new western estate entry roundabout that provides access into the Land	As shown in drawing 11178_SK072d titled ' Works in Kind Plan' prepared by Nettleton Tribe and dated October 2022 contained in the Masterplan for the Alspec Industrial Business Park, Luddenham Road, Orchard Hills – NSW	Completion prior to the issuing of an Occupation Certificate for the development approved by the consent granted to the Stage 1 State Significant Development Application.	The combined contribution value of the upgrade of Patons Lane and the new roundabout at the estate entry on Patons Lane and the construction of the new intersection at the primary site access on Luddenham Rd shown immediately below is $10,370,000.00
Construction of one (1) new roundabout	As shown in drawing	Completion prior to the issuing of	The combined contribution value

at the estate entry on Patons Lane and one (1) new intersection at the primary site access on Luddenham Rd to the satisfaction of Council and TfNSW	11178_SK072d titled ' Works in Kind Plan' prepared by Nettleton Tribe and dated October 2022 contained in the Masterplan for the Alspec Industrial Business Park, Luddenham Road, Orchard Hills – NSW	an Occupation Certificate for the development approved by the consent granted to the Stage 1 State Significant Development Application.	of the construction of the new roundabout at the estate entry on Patons Lane and the new intersection at the primary site access on Luddenham Rd and the upgrade of Patons Land shown immediately above is $10,370,000.00
Construction of an intersection at the secondary site access to the satisfaction of Council and TfNSW	As shown in drawing 11178_SK072d titled ' Works in Kind Plan' prepared by Nettleton Tribe and dated October 2022 contained in the Masterplan for the Alspec Industrial Business Park, Luddenham Road, Orchard Hills - NSW	1 January 2026	$2,500,000.00
Other Benefits			
Provision of road access to the 'Additional Lands' in the Eastern and Southern parts of the Land shown shaded light green on drawing 11178_SK022k-1 titled '*Alspec Industrial Business Park Luddenham Road, Orchard Hills* – NSW *Updated Masterplan*' prepared by Nettleton Tribe, dated February 2022 appearing on page 4, above.			

g. **Applicable contributions plan**

Penrith Section 7.12 Citywide Development Contributions Plan for Non-Residential Development dated 27 Oct 2021 applies to the proposed development.

h. **Whether the agreement excludes (wholly or in part) or does not exclude the application of section 7.11, 7.12 or 7.24 to the development**

The application of:

i. section 7.11 of the EPA Act to the development is excluded.

ii. section 7.12 of the EPA Act is not excluded.

iii. section 7.24 of the EPA Act is <u>not</u> excluded.

i. **If section 7.11 is not excluded, whether benefits under the agreement are or are not to be taken into consideration in determining a development contribution under section 7.11**

N/A

j. **Dispute resolution**

i. **Non-technical matters**. If a dispute arises between the parties with respect to a non-technical matter, the parties to the dispute agree to resolve the dispute through mediation in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and are to request the President of the Law Society to select a mediator.

ii. **Technical matters**. If a dispute arises between the parties with respect to a technical matter, such as a valuation or engineering matter, the parties to the dispute agree to resolve the dispute through expert determination by an appropriately qualified expert appointed by agreement between the parties.

k. **Security for enforcement of agreement**

i. **Monetary contributions**. HBB will provide a security bond or bank guarantee equal to the full amount of monetary contributions.

ii. **Land dedication**. Prior to the issuing of a subdivision certificate for the subdivision of the Land.

iii. **Works**. HBB will provide a security bond or bank guarantee to the Council equivalent to 125% of the value of the works to be carried out under the VPA. The security bond will be provided prior to the issuing of the first construction certificate for the works.

l. **Registration of agreement**

Atilol consents to registration of the VPA on the title to the Land and will use its reasonable endeavours to obtain the consent to registration of all relevant persons referred to in s7.6(1) of the EPA Act.

m. **Costs of VPA**

HBB will meet the reasonable legal costs of the Council in negotiating, preparing and executing the VPA.

HBB will meet the reasonable costs of the Council of valuing land required to be dedicated or works required to be carried out under the VPA.

n. **Capability to deliver and experience in delivering infrastructure**

HBB has previously delivered the following infrastructure projects:

i. Distribution Drive Extension (Mamre West) $1.3M – Works include road extension works including civil and retaining, council road extension, extension of services and neighbouring property private access. Works were completed 2021.

ii. Channel Works (Mamre West) $1.2M – Works include channel realignment works including cutting in of new channel, access road and revegetation before filling in redundant channel with earth material. Works were completed 2019.

iii. Snackbrands HV (Mamre West) $2.4M – Works including trench, lay and back fill High Voltage (HV) reticulation works for 3km from large user to Mamre Zone sub. Works were completed 2019.

iv. Mamre Road/Distribution Drive intersection works $1.8M – Works include a signalised intersection as main access to a new estate and upgrade portion of existing RMS owned and operated Mamre Road property frontage. Works were complete 2018.

v. First Estate Main Works (Mamre West) $21M – Works include bulk earthworks, storm water, internal roads and extension of surrounding mains services to the estate. Works were completed 2018.

vi. Lot 6 HV extension (Mamre West) $650K – Works include trench, lay and back fill High Voltage reticulation (VH) of nearby electrical feeder and a new substation. Works were completed 2020.

vii. Abbott Road Slip Lane (Seven Hills) $180K – Works include civil road works to RMS owned road to facilitate slip lane access and diversion islands to manage incoming and outgoing traffic generated by the development. Works were complete 2016.

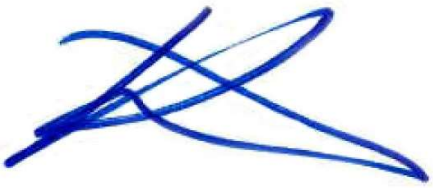
viii. Station Rd/Park Road Intersection Upgrade.(Seven Hills) $750k – Works include full road upgrade of existing council owned road, a signalised intersection and street scaping. Works were complete 2016.

ix. WSPT works (multiple) project $4.5M Project and Development Management services by secondment to Western Sydney Parklands for multiple properties. Services ongoing since 2010.

o. **Risks associated with the offer**

HBB acknowledges the following potential risks associated with the offer:

Risk	Bearer	Mitigation
Approval delays	Jointly by HBB and the Council	Built in contingency period to account for potential delays
Delivery delays	HBB	Built in contingency period to account for potential delays
Additional costs	HBB	
Change of landowner	HBB	Registration of VPA on title
Landowner withdraws consent	HBB	Registration of VPA on title
Change of developer	Atilol	



Kurt Beckhaus

Managing Director

HB+B Property Pty Ltd