



**HONES
LAWYERS**

Experts in Property & Planning Law

Our ref: GS:23215

17 June 2024

Hilltops Council
189 Boorowa Street
YOUNG NSW 2594
The General Manager

By email:

[\[REDACTED\]@hilltops.nsw.gov.au](mailto:[REDACTED]@hilltops.nsw.gov.au)

Copy to:

[\[REDACTED\]@hilltops.nsw.gov.au](mailto:[REDACTED]@hilltops.nsw.gov.au)

Dear General Manager

**Letter of offer to enter into a voluntary planning agreement—Amendment of the
*Hilltops Local Environmental Plan 2022***

1. We act for Apollo Fabrication Group Pty Ltd, Jackson Property Assets Pty Ltd atf Jack Property Investments Trust and Jackson SMSF Pty Ltd atf Jackson SMSF in relation to planning proposal PP2023/001 (also referenced as PP-2023-1336 by the Department of Planning, Housing and Infrastructure) (**planning proposal**).
2. The planning proposal seeks to amend the *Hilltops Local Environmental Plan 2022 (LEP)* to facilitate the expansion of the steel fabrication business at 2-20 Telegraph Road, Young, NSW, 2594 (**site**).
3. The terms of a draft voluntary planning agreement (**VPA**) have been negotiated and agreed with the Council pursuant to section 7.4 of the *Environmental Planning and Assessment Act 1979*.
4. Our clients have committed to undertaking works to parts of Telegraph and Murringo Road and provision of a BAL (Basic Left Turn) and CHR(S) (Channelised Right Turn – Short) lane treatments at the intersection of Telegraph Road and Murringo Road (including the relocation of power poles), in accordance with the drawings prepared by Arete Survey Solutions. The works include (without limitation):
 - (a) any necessary adjustments in the height or alignment (or both) of existing utilities (underground and overhead) including electrical, gas, water supply, sewer mains, and telecommunications;

Hones Lawyers Pty Ltd | ABN 56 605 835 041

Level 4, 66 Berry Street, North Sydney NSW 2060 | PO Box 1989, North Sydney NSW 2059

T +61 2 9929 3031 | F +61 2 9929 7071 | E reception@honeslawyers.com.au

W www.honeslawyers.com.au

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(b) the acquisition and dedication to Council of any land which is required to enable the works to be completed in accordance with the approved design which is not currently dedicated as a public road reserve; and

(c) the payment of all costs, fees and charges associated with the works,

(Road Reserve Upgrade Works).

5. The terms of the offer are that our clients will:

(a) commence and complete the Road Reserve Upgrade Works before obtaining any occupation certificate for any development at the site which is permissible as a result of the approval of the planning proposal or which benefits from a change to a development standard given effect through the planning proposal;

(b) however, any development on Lot 3 and Lot 4 in DP845187 in accordance with the existing development consents, or any storage and transportation development associated with and ancillary to Lot 3 and Lot 4 in DP845187, is permitted prior to the commencement of the Road Reserve Upgrade Works.

6. The already negotiated and agreed draft VPA sets out the above agreement in further detail.

7. Our clients have requested that the draft VPA be tabled alongside the planning proposal at Council's upcoming meeting, scheduled for 26 June 2024. It is submitted on behalf of our clients that the draft VPA will be mutually beneficial and will allow operations at the site to continue into the future.

8. We appreciate your prompt attention to this matter and look forward to a resolution.

Please do not hesitate to contact us if you have any questions, we otherwise look forward to your response.

Yours faithfully

HONES LAWYERS



Gavin Shapiro

Partner

Encl.

**PLANNING AGREEMENT relating to the amendment of the
Hilltops Local Environmental Plan 2022 for land at 2-20
Telegraph Road, Young, NSW, 2594**

2-20 TELEGRAPH ROAD, YOUNG, NSW, 2594

Hilltops Council (ABN 33 984 256 429) (**Council**)

Apollo Fabrication Group Pty Ltd (ABN 34 164 179 266) (**Developer**)

Jackson Property Assets Pty Ltd atf Jackson Property Investments Trust (ACN 605 803 521) & Jackson SMSF Pty Ltd atf Jackson SMSF (ACN 605 278 733)
(**Landowners**)

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**PLANNING AGREEMENT relating to the amendment of the
Hilltops Local Environmental Plan 2022 for land at 2-20
Telegraph Road, Young, NSW, 2594**

Parties to this Deed

Developer	Name	Apollo Fabrication Group Pty Ltd
	Address	10-12 Telegraph Road YOUNG NSW 2594
	ABN	34 164 179 266
	Contact Name	Caleb Jackson
	Contact email	caleb@apollofabrication.com.au
Landowners	Names	Jackson Property Assets Pty Ltd atf Jackson Property Investments Trust Jackson SMSF Pty Ltd atf Jackson SMSF
	Address	10-12 Telegraph Road YOUNG NSW 2594
	ACNs	605 803 521 605 278 733
	Contact Name	Caleb Jackson
	Contact email	caleb@apollofabrication.com.au
Council	Name	Hilltops Council
	Address	189 Boorowa Street YOUNG NSW 2594
	ABN	45 985 891 846
	Contact Name	General Manager
	Contact email	mail@hilltops.nsw.gov.au

Background

- A. The Developer has submitted the Planning Proposal to Council seeking an Instrument Change so that it can expand its steel fabrication operations at 2-20 Telegraph Road, Young, NSW, 2594.
- B. The Planning Proposal was accompanied by an offer by the Developer to enter into a planning agreement under the *Environmental Planning and Assessment Act 1979 (Act)* to make Development Contributions if the Instrument Change is made

- C. In accordance with section 7.4 of the Act, this Deed formalises the Council's acceptance of the offer made by the Developer.
- D. If approved, the Instrument Change will be published in the NSW Government Gazette.

Operative provisions

Part 1 – Preliminary

1 Definitions and Interpretation

1.1 In this Deed the following definitions apply:

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

Administration Levy means the charge paid by the Developer to Council in accordance with clause 9.1.

Approval includes approval, consent, licence, permission or the like.

Authority means any:

- (a) federal, state or local government;
- (b) a Minister of the Crown;
- (c) department of any federal, state or local government;
- (d) any court or administrative tribunal;
- (e) public authority established under any legislation; or
- (f) statutory corporation or regulatory body.

Claim includes a claim, demand, remedy, suit, injury, damage, loss, Cost, liability, action, proceeding or right of action.

Complete or **Completed** means delivered or concluded in accordance with the requirements of the Works Provisions.

Confidential information means any information and all other knowledge at any time disclosed (whether in writing and orally) by the Parties to each other, or acquired by the Parties in relation to the other's activities or services which is not already in the public domain and which:

- (a) is by its nature confidential;
- (b) is designated, or marked, or stipulated by either Party as confidential (whether in writing or otherwise);
- (c) any party knows or ought to know is confidential; or
- (d) is information which may be reasonably considered to be of a confidential nature.

Crown Land means Lots 11 and 12 in DP1138027 and Lot 101 in DP12747909.

Dealing, in relation to the Land means, without limitation, selling, transferring, assigning, mortgaging, charging, encumbering or otherwise dealing with the Land.

Deed means this agreement and includes any schedules, annexures and appendices to this Deed.

Development has the same meaning as in s.1.5 of the Act.

Development Consent has the same meaning as in the Act.

Development Contribution means a monetary contribution, the dedication of land free of cost, the carrying out of works, or the provision of any other material public benefit which is required to be made under this Deed.

Defect means anything that adversely affects, or is likely to adversely affect, the appearance, structural integrity, functionality or use or enjoyment of a Work or any part of a Work.

Defects Liability Period means the period of 12 months commencing on the date of the Notice of Practical Completion.

Dispute means a dispute or difference between the Parties under or in relation to this Deed.

ELNO has the meaning given to that term in the Participation Rules

Equipment means any equipment, apparatus, vehicle or other equipment or thing to be used by or on behalf of the Developer in connection with the performance of its obligations under this Deed.

Event of Default means a material breach of this Deed.

Existing Facility means development on Lot 3 in DP845187 and Lot 4 in DP845187 in accordance with the Development Consents listed in Schedule 2.

Instrument Change means the amendment of *Hilltops Local Environmental Plan 2022* as a consequence of Planning Proposal PP2023/001 (also referenced as PP-2023-1336 by the Department of Planning, Housing and Infrastructure) which is given effect by the publication of the amending instrument in the NSW Government Gazette and will apply to the Land and the Crown Land.

Land means the land described in the table below and the Crown Land:

Address	Legal Description
2 Telegraph Road	Lot 1 DP736225
4 Telegraph Road	Lot 2 DP736225
10 Telegraph Road	Lot 3 DP845187
12 Telegraph Road	Lot 4 DP845187
12 Telegraph Road	Lot 1 in DP1277936
20 Telegraph Road	Lot 1171 DP754611
20 Telegraph Road	Lot 1154 DP754611
20 Telegraph Road	Lot 1199 DP754611

20 Telegraph Road	Lot 3 DP374948
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Notice of Practical Completion means a notice issued by the Council in accordance with cl.13.3.1

Maintain, in relation to a Work, means keep in a good state of repair and working order, and includes repair of any damage to the Work.

Maintenance Period means the period of 12 months commencing on the date of the Notice of Practical Completion.

Occupation Certificate has the same meaning as in the Act.

Participation Rules means the participation rules as determined by the Electronic Conveyancing National Law as set out in the *Electronic Conveyancing (Adoption of National Law) Act 2012 (NSW)*.

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

PEXA means Property Exchange Australia Ltd.

Planning Proposal means planning proposal PP2023/001 (also referenced as PP-2023-1336 by the Department of Planning, Housing and Infrastructure) which seeks to amend the *Hilltops Local Environmental Plan 2022* to facilitate an application for the expansion of a steel fabrication business on the Land and the Crown Land at 2-20 Telegraph Road, Young.

Practical Completion means the time when works required to be carried out under this Deed by the Developer are, in the opinion of the Council, substantially complete and any incomplete part or Defect is of a minor nature.

Rectification Notice means a notice in writing:

- (a) identifying the nature and extent of an incomplete part or Defect,
- (b) specifying the works or actions that are required to Rectify the incompleteness or Defect or the standard that the work to be rectified is required to meet
- (c) specifying the date by which or the period within which the Defect is to be rectified.

Rectify means rectify, remedy or correct.

Regulation means the *Environmental Planning and Assessment Regulation 2021*.

Road Reserve Upgrade Works means the works to widen parts of Telegraph Road and Murringo Road and provision of a BAL (Basic Left Turn) and CHR(S) (Channelised Right Turn – Short) lane treatments at the intersection of Telegraph Road and Murringo Road (including the relocation of power poles), in accordance with the drawings prepared by Arete Survey Solutions (Schedule 1). The works include (without limitation):

- (a) any necessary adjustments in the height or alignment (or both) of existing utilities (underground and overhead) including electrical, gas, water supply, sewer mains, and telecommunications;

- (b) the acquisition and dedication to Council of any land which is required to enable the works to be completed in accordance with the approved design which is not currently dedicated as a public road reserve; and
- (c) the payment of all costs, fees and charges associated with the works.

Trigger Development means any Development on the Land (but excluding the Existing Facility and storage and transportation Development associated with and ancillary to the Existing Facility) which is permissible as a result of the Instrument Change or which benefits from a change to a development standard given effect through the Instrument Change.

Works Provisions means the provisions in Schedule 1.

1.2 **Interpretation** - In the interpretation of this Deed, the following provisions apply unless the context otherwise requires:

- 1.2.1 **Headings** are inserted for convenience only and do not affect the interpretation of this Deed.
- 1.2.2 A reference in this Deed to a **business day** means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
- 1.2.3 If the day on which any act, matter or thing is to be done under this Deed is not a business day, the act, matter or thing must be done on the next business day.
- 1.2.4 A reference in this Deed to **dollars or \$** means Australian dollars and all amounts payable under this Deed are payable in Australian dollars.
- 1.2.5 A reference in this Deed to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST.
- 1.2.6 A reference in this Deed to any **law, legislation or legislative provision** includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- 1.2.7 A reference in this Deed to any **agreement, deed or document** is to that agreement, deed or document as amended, novated, supplemented or replaced.
- 1.2.8 A reference to a **clause, part, schedule or attachment** is a reference to a clause, part, schedule or attachment of or to this Deed.
- 1.2.9 An expression importing a **natural person** includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- 1.2.10 Where a **word or phrase is given a defined meaning**, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- 1.2.11 A word which denotes **the singular denotes the plural**, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.

- 1.2.12 References to the word '**include**' or '**including**' are to be construed without limitation.
- 1.2.13 A reference to **this Deed** includes the agreement recorded in this Deed.
- 1.2.14 A reference to **a Party to this Deed** includes a reference to the employees, agents and contractors of the Party, the Party's successors and assigns.
- 1.2.15 A reference to '**dedicate**' or '**dedication**' in relation to land is a reference to dedicate or dedication free of cost.
- 1.2.16 Any schedules, appendices and attachments form part of this Deed.
- 1.2.17 Notes appearing in this Deed are operative provisions of this Deed.

2 Planning agreement under the Act

- 2.1 This Deed is a planning agreement governed by Subdivision 2 of Division 7.1, Part 7 of the Act.

3 Application of this Deed

- 3.1 This Deed applies to the Land, and any Trigger Development.

4 Date upon which this Deed takes effect

- 4.1 This Deed takes effect upon completion of all of the following:
- 4.1.1 the Instrument Change is approved; and
 - 4.1.2 the Deed is executed by all Parties.
- 4.2 The obligations of the Developer to make the Development Contribution (being the Road Reserve Upgrade Works) only arise if Development Consent is granted for any Trigger Development.

5 Warranties

- 5.1 The Parties warrant to each other that they:
- 5.1.1 have full capacity to enter into this Deed, and
 - 5.1.2 are able to fully comply with their obligations under this Deed.

6 Further agreements

- 6.1 The Parties may, at any time and from time to time, enter into agreements relating to the subject-matter of this Deed that are not inconsistent with this Deed for the purpose of implementing this Deed.

7 Surrender of right of appeal, etc.

- 7.1 The Parties are not to commence or maintain, or to cause or procure the commencement or maintenance of any proceedings in any Court or tribunal or similar body appealing against, or questioning the validity of

this Deed, or an Approval relating to the Instrument Change in so far as the subject-matter of the proceedings relates to this Deed.

Part 2 – Development Contributions - General

8 Development Contributions to be made under this Deed

- 8.1 Subject to cl. 4.2, the Developer is required to undertake the Road Reserve Upgrade Works.
- 8.2 The Road Reserve Upgrade Works must comply with any Approval, including under s.138 of the Roads Act 1993 and any Development Consent under the Act.
- 8.3 The Road Reserve Upgrade Works must be Completed prior to:
 - 8.3.1 Obtaining an Occupation Certificate for any Trigger Development which require the grant of an Occupation Certificate.
 - 8.3.2 In any other case, carrying out any Trigger Development.
- 8.4 For the avoidance of doubt:
 - 8.4.1 if the Developer obtains an Occupation Certificate for any Trigger Development before completing the Road Reserve Upgrade Works then the Developer is still required to complete the Road Reserve Upgrade Works; and
 - 8.4.2 the Developer must undertake the Road Reserve Upgrade Works required under this Deed whether or not the cost of doing so exceeds any cost estimate for any works relating to the Contributions that may have been provided to or by Council.

9 Administration Levy

- 9.1 Within 30 days of the execution of this Deed by both Parties, the Developer agrees to pay Council a levy, being a fixed amount of \$5,000 towards the cost to Council of administering this Deed.

10 Application of Development Contributions

- 10.1 The Council will accept the Road Reserve Upgrade Works as a contribution towards the public purpose for which it is made and otherwise in accordance with this Deed.

11 Application of s7.11, s7.12 and s7.24 of the Act to Development

- 11.1 This Deed does not exclude the application of s7.11 of the Act to the Land or any Development Consent, including any Development Consent granted for Trigger Development.
- 11.2 This Deed does not exclude the application of s7.12 of the Act to the Land or any Development Consent including any Development Consent granted for Trigger Development).

- 11.3 This Deed does not exclude the application of s7.24 of the Act to the Land or any Development Consent, including any Development Consent granted for Trigger Development.
- 11.4 Benefits under this Deed are not to be taken into consideration when determining a Development Contribution under s7.11 of the Act in relation to any Development Consent granted in relation to the Land.

Part 3 – Carrying out of Road Reserve Upgrade Works

12 Amendment to Road Reserve Upgrade Works

- 12.1 The Parties may, by written agreement, vary the Works Provisions without amending this Deed.
- 12.2 Without limiting clause 12.1, the Developer may make a written request to the Council to approve a variation to the Works Provisions to enable it to comply with the requirements of any Approval.

13 Works Provisions

- 13.1 Once the Developer considers that the Road Reserve Upgrade Works have achieved Practical Completion, the Developer is to provide a notice to the Council confirming that the works have been carried out and completed in accordance with the requirements of this Deed.
- 13.2 On receipt of a notice under clause 13.1, the Council may, at its discretion, inspect the Road Reserve Upgrade Works to verify Practical Completion. Any such inspection is to take place within 28 Business Days of the date the notice is received (or such other time as agreed between the parties).
- 13.3 If the Council carries out an inspection under clause 13.2 then, within 14 Business Days of that inspection, the Council must:
 - 13.3.1 issue a notice confirming Practical Completion; or
 - 13.3.2 give the Developer a notice to the effect that the Road Reserve Upgrade Works are incomplete or contain a Defect which must be rectified. The Developer must then address the matter specified in the notice and submit a further notice in accordance with 13.1.
- 13.4 The Road Reserve Upgrade Works are taken to have been Completed and handed over to the Council on the date the Notice of Practical Completion is issued, following which, the Defects Liability Period and Maintenance Period shall immediately commence.
- 13.5 The Developer must have obtained the Notice of Practical Completion for the Road Reserve Upgrade Works before the Developer applies for a final Occupation Certificate for any Trigger Development.

14 Approvals for the Road Reserve Upgrade Works

- 14.1 Before the Developer seeks to obtain an Occupation Certificate for any of the Trigger Development, it must:

- 14.1.1 lodge a complete and compliant application under s138 of the *Roads Act 1993* (NSW) for the Road Reserve Upgrade Works at least six months' prior to obtaining the Occupation Certificate; and
- 14.1.2 lodge a complete and compliant development application seeking consent for the Road Reserve Upgrade Works under the Act.
- 14.2 Subject to clause 14.3, no Occupation Certificate may be issued for a Trigger Development until the Notice of Practical Completion for the Road Reserve Upgrade Works has been issued.
- 14.3 Should the Council either:
 - 14.3.1 fail to determine a lawful application under s138 of the *Roads Act 1993* (NSW) for the Road Reserve Upgrade Works; or
 - 14.3.2 fail to determine a development application under the Act for the Road Reserve Upgrade Works,within six months of the lodgement of the application by the Developer under clause 14.1, then the restriction on the granting of an Occupation Certificate under clause 14.2 shall not apply. This clause does not apply to any delay which is caused by the Developer or a third party or arises due to circumstances outside the reasonable control of the Council.
- 14.4 Nothing in this clause 14, or any other clause of this Deed, shall prevent the Developer from carrying out any development which is not a Trigger Development, or obtaining an Occupation Certificate in respect of the same, at any time.

Part 4 – Review, Monitoring and Dispute Resolution

15 Review of Deed

- 15.1 If either Party is of the opinion that any change of circumstance has occurred, or is imminent, that materially affects the operation of this Deed the Party may request a review of the whole or any part of this Deed.
- 15.2 For the purposes of clause 15.1, the relevant changes include (but are not limited to) any change to a law that restricts or prohibits or enables the Council or any other Authority to restrict or prohibit any aspect of the Instrument Change.
- 15.3 If a review is requested in accordance with clause 15.1, the Parties are to use all reasonable endeavours, in good faith, to agree on and implement appropriate amendments to this Deed.
- 15.4 If this Deed becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties agree to use all reasonable endeavours to ensure that an enforceable agreement of the same or similar effect to this Deed is entered into.
- 15.5 A failure by a Party to agree to take action requested by the other Party as a consequence of a review referred to in clause 15.1 (but not 15.4)

is not a Dispute for the purposes of this Deed and is not a breach of this Deed.

- 15.6 If the Parties agree to amend this Deed under this clause 15, any such amendment must be in writing and signed by the Parties and exhibited in accordance with the Act and Regulation.

16 Monitoring and Reporting

- 16.1 The Developer acknowledges that the Council may continuously monitor compliance with the Developer's obligations under this Deed.
- 16.2 The Developer must provide an annual report to Council on or before 31 July each year which:
- 16.2.1 identifies the value of works contributed in the last financial year; and
 - 16.2.2 reports on its compliance with the provisions of this Deed in the previous financial year.
- 16.3 The annual report is to be in such a form and to address such further matters as required by the Council from time to time and notified to the Developer and be prepared in a clear manner.

17 Notation on Planning Certificate

- 17.1 The Developer acknowledges that the Council may, pursuant to s10.7(5) of the Act make a notation on a planning certificate within the meaning of the Act in respect of the Land stating that the Land is subject to this Deed.

18 Dispute resolution – expert determination

- 18.1 This clause applies to a Dispute between any of the Parties to this Deed concerning a matter arising in connection with this Deed that can be determined by an appropriately qualified expert if the Parties to the Dispute agree that it can be so determined.
- 18.2 A Dispute to which this clause applies is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 18.3 If a notice is given under clause 18.2, the Parties are to meet within 10 business days of the notice in an attempt to resolve the Dispute.
- 18.4 If the Dispute is not resolved within a further 20 business days, the Dispute is to be referred to the President of the NSW Law Society to appoint an expert for expert determination.
- 18.5 The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.
- 18.6 Each Party is to bear its own costs arising from or in connection with the appointment of the expert and the expert determination.
- 18.7 The Parties are to share equally the costs of the President, the expert, and the expert determination.

19 Dispute Resolution - mediation

- 19.1 This clause applies to any Dispute arising in connection with this Deed other than a Dispute to which clause 18 applies.
- 19.2 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 19.3 If a notice is given under clause 19.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 19.4 If the Dispute is not resolved within a further 20 business days, the Parties are to mediate the Dispute 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.
- 19.5 If the Dispute is not resolved by mediation within a further 20 business days, or such longer period as may be necessary to allow any mediation process which has been commenced to be completed, then the Parties may exercise their legal rights in relation to the Dispute, including by the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.
- 19.6 Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.
- 19.7 The Parties are to share equally the costs of the President, the mediator, and the mediation.
- 19.8 Nothing in this clause 19, or in clause 18, shall be taken to prevent either Party commencing proceedings seeking urgent interlocutory relief or a declaration.

20 Defects Liability and Maintenance

- 20.1 The Developer must Maintain the Road Reserve Upgrade Works for the duration of the Maintenance Period.
- 20.2 The Developer must provide a bank guarantee in favour of the Council within 60 days of the issue of the Notice of Practical Completion from an institution, and on terms, reasonably acceptable to the Council in the sum of \$150,000 (the **Defects Liability Security**).
- 20.3 During the Defects Liability Period, the Council may give the Developer a Rectification Notice.
- 20.4 Save for a Rectification Notice the subject of a Dispute, if the Developer fails to comply with a Rectification Notice, the Council (after providing a minimum of 7 additional days' notice) may, acting reasonably:
 - 20.4.1 access and use the Defects Liability Security;
 - 20.4.2 step-in and carry out the work required by the notice; and
 - 20.4.3 use any land owned or controlled by the Developer and any Equipment on such land for that purpose.
- 20.5 If, the Council accesses and utilises the Defects Liability Security to carry out works under this clause and, at the completion of those works, any part of the Defects Liability Security accessed by the Council remains unspent, the Council is to provide the remaining security to the Developer within 28 days.

- 20.6 If, the Council gives a Rectification Notice to the Developer and that notice is disputed then:
- 20.6.1 the Council may, at its discretion, and after giving 7 days notice, step in and carry out some or all of the work the subject of the disputed Rectification Notice and may access any part of the Land necessary to enable it to do so;
- 20.6.2 If the outcome of the dispute is determined predominantly in the Council's favour and the Council has carried out works under 20.6, the Council may then access and utilise the Defects Liability Security to re-imburse the Council for the costs incurred in undertaking those works or recover those costs from the Developer as a debt due and payable, or both.
- 20.7 Any additional costs incurred by the Council in connection with it undertaking works the subject of a Rectification Notice may be recovered by the Council from the Developer as a debt due and payable in a court of competent jurisdiction.
- 20.8 If the Council calls on the Defects Liability Security, the Council may, by notice in writing to the Developer, require the Developer to provide a further Bank Guarantee in an amount that, when added to any unused portion of any existing Defects Liability Security, does not exceed the amount of the Bank Guarantee the Council is entitled to hold under cl. 20.2.
- 20.9 For the purpose of this clause, the Council's costs of complying with a Rectification Notice include, but are not limited to:
- 20.9.1 the costs of the Council's employees, agents and contractors reasonably incurred for that purpose,
- 20.9.2 all fees and charges necessarily or reasonably incurred by the Council in remedying the breach, and
- 20.9.3 all legal costs and expenses reasonably incurred by the Council, by reason of the breach.
- 20.10 Nothing in this clause 20 prevents the Council from exercising any rights it may have at law or in equity in relation to a Defect, including but not limited to seeking relief in an appropriate court.

Part 5 – Enforcement and Consequences of Non-Compliance

21 Default in Performance and Step-in Rights

- 21.1 If the Developer has committed an Event of Default the Council may give a written notice to the Developer:
- 21.1.1 specifying the nature and extent of the breach,
- 21.1.2 requiring the Developer to Rectify the breach if it reasonably considers it is capable of rectification, and
- 21.1.3 specifying the period within which the breach is to be rectified, being a period that is reasonable in the circumstances.
- 21.2 If the Developer fails to comply with a notice given under clause 21.1 relating to the carrying out of work under this Deed, the Council may

step-in and remedy the breach and may enter, occupy and use any land owned or controlled by the Developer and any Equipment on such land for that purpose.

- 21.3 Any costs incurred by the Council in remedying a breach in accordance with clause 21.2 may be recovered by the Council as a debt due in a court of competent jurisdiction.
- 21.4 For the purpose of clause 21.3, the Council's costs of remedying a breach the subject of a notice given under clause 21.1 include, but are not limited to:
 - 21.4.1 the costs of the Council's employees, agents and contractors reasonably incurred for that purpose,
 - 21.4.2 all fees and charges necessarily or reasonably incurred by the Council in remedying the breach, and
 - 21.4.3 all legal costs and expenses reasonably incurred by the Council, by reason of the breach.
- 21.5 Nothing in this clause 21 prevents the Council from exercising any rights it may have at law or in equity in relation to a breach of this Deed by the Developer, including but not limited to seeking relief in an appropriate court.

22 Enforcement in a court of competent jurisdiction

- 22.1 Subject to clauses 18 to 19, the Parties may enforce this Deed in any court of competent jurisdiction.
- 22.2 Subject to clauses 18 to 19, nothing in this Deed prevents:
 - 22.2.1 a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Deed or any matter to which this Deed relates, or
 - 22.2.2 the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Deed or any matter to which this Deed relates.

23 Conditions of Consent

- 23.1 The Developer acknowledges that Council may impose a condition on any Development Consent granted in relation to the Trigger Development requiring this Deed to be complied with.

Part 6 – Registration & Restriction on Dealings

24 Registration of this Deed

- 24.1 With the exception of the Crown Land, this Deed must be registered on the certificates of title for the Land pursuant to s7.6(1) of the Act.
- 24.2 The Developer warrants that it has obtained the consent of the Landowners for this Deed to be registered on the title of the Land (except the Crown Land).
- 24.3 Within 28 days of the commencement of this Deed, the Developer is to deliver to the Council, for execution,:

- 24.3.1 an instrument in registrable form requesting registration of this Deed on the title to the Land (except the Crown Land) duly executed by the registered proprietor of the Land, and
 - 24.3.2 the written irrevocable consent of each person referred to in s7.6(1) of the Act to that registration.
- 24.4 The Developer must register this Deed within 60 days of receiving a duly executed request form from the Council.
- 24.5 The Council must do such other things as are reasonably necessary to enable the registration this Deed to occur electronically through PEXA or another ELNO.
- 24.6 The Council agrees that the registration of this Deed can be removed from the title to any part of the Land if:
 - 24.6.1 the part of the Land is a lot to be sold to end-purchasers or otherwise created for separate occupation and disposition and which is not intended to be further subdivided;
 - 24.6.2 in relation to any other part of the Land, once the Developer has completed its obligations under this Deed to the reasonable satisfaction of the Council or this Deed is terminated or otherwise comes to an end for any other reason.

25 Restriction on Dealings

- 25.1 The:
 - 25.1.1 Landowners are not to sell or transfer the Land, other than a lot to be sold to end-purchasers or otherwise created for separate occupation and disposition and which is not intended to be further subdivided, or
 - 25.1.2 Developer is not to assign the Developer's rights or obligations under this Deed, or novate this Deed,to any person unless:
 - 25.1.3 the Landowner/Developer has, at no cost to the Council, first procured the incoming purchaser or assignee to enter into a novation deed on terms reasonably satisfactory to the Council under which the incoming purchaser or assignee agrees to perform the Landowner/Developer's obligations under this Deed, and
 - 25.1.4 the Council has given written notice to the Landowner/Developer stating that it reasonably considers that the purchaser, transferee, assignee or novatee, is reasonably capable of performing its obligations under this Deed, and
 - 25.1.5 the Developer is not in breach of this Deed, and
 - 25.1.6 the Council otherwise consents to the transfer, assignment or novation, such consent not to be unreasonably withheld.
- 25.2 Subject to clause 25.3, the Developer acknowledges and agrees that it remains liable to fully perform its obligations under this Deed unless and until it has complied with its obligations under clause 25.1.
- 25.3 Clause 25.1 does not apply in relation to any sale or transfer of the Land if this Deed is registered on the title to the Land at the time of the sale.

Part 7 – Indemnities & Insurance

26 Risk

- 26.1 The Developer performs this Deed at its own risk and its own cost.

27 Release

- 27.1 The Developer releases the Council from any Claim it may have against the Council arising in connection with the performance of the Developer's obligations under this Deed except if, and to the extent that, the Claim arises because of the Council's negligence or default.

28 Indemnity

- 28.1 The Developer indemnifies the Council from and against all Claims that may be sustained, suffered, recovered or made against the Council arising in connection with the performance of the Developer's obligations under this Deed except if, and to the extent that, the Claim arises because of the Council's negligence or default.

29 Insurance

- 29.1 Before commencing any of the Road Reserve Upgrade Works, the Developer is to take out and keep current to the satisfaction of the Council the following insurances in relation to Road Reserve Upgrade Works required to be carried out by the Developer under this Deed up until the Road Reserve Upgrade Works are taken to have been Completed in accordance with this Deed:
- 29.1.1 contract works insurance, noting the Council as an interested party, for the full replacement value of the Road Reserve Upgrade 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 Road Reserve Upgrade Works,
 - 29.1.2 public liability insurance for at least \$20,000,000.00 for a single occurrence, which covers the Council, the Developer and any subcontractor of the Developer, for liability to any third party,
 - 29.1.3 workers compensation insurance as required by law, and
 - 29.1.4 any other insurance required by law.
- 29.2 If the Developer fails to comply with clause 29.1, the Council may effect and keep in force such insurances and pay such premiums as may be necessary for that purpose and the amount so paid shall be a debt due from the Developer to the Council and may be recovered by the Council as it deems appropriate including:
- 29.2.1 recovery as a debt due in a court of competent jurisdiction.
- 29.3 The Developer is not to commence to carry out any work relating to the Road Reserve Upgrade Works unless it has first provided to the Council satisfactory written evidence of all of the insurances specified in clause 29.1.

Part 8 – Other Provisions

30 Confidentiality

- 30.1 This agreement is a public document and its terms are not confidential.
- 30.2 The parties acknowledge that:
 - 30.2.1 Confidential Information may have been supplied to some or all of the Parties in negotiations leading up to the making of this agreement; and
 - 30.2.2 the Parties may disclose to each other further Confidential Information in connection with the subject matter of this agreement.
- 30.3 Subject to clauses 30.4 and 30.5, each Party agrees:
 - 30.3.1 not to disclose any Confidential Information received before or after the making of this agreement to any person without the prior written consent of the Party who supplied the Confidential Information; or
 - 30.3.2 to take all reasonable steps to ensure all Confidential Information received before or after the making of this agreement is kept confidential and protected against unauthorised use and access.
- 30.4 A Party may disclose Confidential Information in the following circumstances:
 - 30.4.1 in order to comply with the law, or the requirements of any Authority; or
 - 30.4.2 to any of their employees, consultants, advisers, financiers or contractors to whom it is considered necessary to disclose the information, if the employees, consultants, advisers, financiers or contractors undertake to keep the Confidential Information confidential.
- 30.5 The obligations of confidentiality under this clause do not extend to information which is public knowledge other than as a result of a breach of this clause.

31 Notices

- 31.1 Any notice, consent, information, application or request that is to or may be given or made to a Party under this Deed is only given or made if it is in writing and sent in one of the following ways:
 - 31.1.1 delivered or posted to that Party at its address, or
 - 31.1.2 emailed to that Party at its email address.
- 31.2 For the purposes of this clause a Party's address and email address are as noted under '**Parties to this Deed**'.
- 31.3 If a Party gives the other Party 3 business days' notice of a change of its address or email, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or emailed to the latest address.
- 31.4 Any notice, consent, information, application or request is to be treated as given or made if it is:

- 31.4.1 delivered, when it is left at the relevant address,
 - 31.4.2 sent by post, 2 business days after it is posted, or
 - 31.4.3 sent by email and the sender does not receive a delivery failure message from the sender's internet service provider within a period of 24 hours of the email being sent.
- 31.5 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

32 Approvals and Consent

- 32.1 Except as otherwise set out in this Deed, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Deed in that Party's absolute discretion and subject to any conditions determined by the Party.
- 32.2 A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

33 Costs

- 33.1 The Developer is to pay to the Council the Council's costs of preparing, negotiating, executing and stamping and registering this Deed, and any document related to this Deed within 5 business days of a written demand by the Council for such payment. However, the costs for which the Developer is liable under this clause shall be limited to a maximum of \$5,000.
- 33.2 The Developer is also to pay to the Council the Council's reasonable costs of enforcing this Deed within 5 business days of a written demand by the Council for such payment.

34 Entire Deed

- 34.1 This Deed contains everything to which the Parties have agreed in relation to the matters it deals with.
- 34.2 No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Deed was executed, except as permitted by law.

35 Further Acts

- 35.1 Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to effect, perfect or complete this Deed and all transactions incidental to it.

36 Governing Law and Jurisdiction

- 36.1 This Deed is governed by the law of New South Wales.
- 36.2 The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them.

- 36.3 The Parties are not to object to the exercise of jurisdiction by those courts on any basis.

37 Joint and Individual Liability and Benefits

- 37.1 Except as otherwise set out in this Deed:
- 37.1.1 any agreement, covenant, representation or warranty under this Deed by 2 or more persons binds them jointly and each of them individually, and
 - 37.1.2 any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

38 No Fetter

- 38.1 The parties acknowledge that Council is a consent authority with statutory rights and obligations pursuant to the Act.
- 38.2 This deed is not intended to operate, and shall not be construed as operating to fetter, in any unlawful manner:
- 38.2.1 the power of Council to make any law; or
 - 38.2.2 the exercise by Council of any statutory power, discretion or duty.
- 38.3 Nothing in this Deed shall be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law.

39 Illegality

- 39.1 If this Deed or any part of it becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties are to co-operate and use reasonable endeavours to ensure that an enforceable agreement of the same or similar effect to this Deed is entered into.

40 Severability

- 40.1 If a clause or part of a clause of this Deed 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.
- 40.2 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 Deed, but the rest of this Deed is not affected.

41 Amendment

- 41.1 No amendment of this Deed will be of any force or effect unless it is in writing and signed by the Parties to this Deed in accordance with section 203 of the Regulation.

42 Waiver

- 42.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Deed, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.
- 42.2 A waiver by a Party is only effective if it:
- 42.2.1 is in writing,
 - 42.2.2 is addressed to the Party whose obligation or breach of obligation is the subject of the waiver,
 - 42.2.3 specifies the obligation or breach of obligation the subject of the waiver and the conditions, if any, of the waiver,
 - 42.2.4 is signed and dated by the Party giving the waiver.
- 42.3 Without limitation, a waiver may be expressed to be conditional on the happening of an event, including the doing of a thing by the Party to whom the waiver is given.
- 42.4 A waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given and is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.
- 42.5 For the purposes of this Deed, an obligation or breach of obligation the subject of a waiver is taken not to have been imposed on, or required to be complied with by, the Party to whom the waiver is given.

43 GST

- 43.1 In this clause:
- Adjustment Note, Consideration, GST, GST Group, Margin Scheme, Money, Supply and Tax Invoice** have the meaning given by the GST Law.
- GST Amount** means in relation to a Taxable Supply the amount of GST payable in respect of the Taxable Supply.
- GST Law** has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- Input Tax Credit** has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a Party includes an Input Tax Credit for an acquisition made by that Party but to which another member of the same GST Group is entitled under the GST Law.
- Taxable Supply** has the meaning given by the GST Law excluding (except where expressly agreed otherwise) a supply in respect of which the supplier chooses to apply the Margin Scheme in working out the amount of GST on that supply.
- 43.2 Subject to clause 43.4, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Deed, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- 43.3 Clause 43.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.

- 43.4 No additional amount shall be payable by the Council under clause 43.2 unless, and only to the extent that, the Council (acting reasonably and in accordance with the GST Law) determines that it is entitled to an Input Tax Credit for its acquisition of the Taxable Supply giving rise to the liability to pay GST.
- 43.5 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Deed by one Party to the other Party that are not subject to Division 82 of the *A New Tax System (Goods and Services Tax) Act 1999*, the Parties agree:
- 43.5.1 to negotiate in good faith to agree the GST inclusive market value of those Supplies prior to issuing Tax Invoices in respect of those Supplies;
- 43.5.2 that any amounts payable by the Parties in accordance with clause 43.2 (as limited by clause 43.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 43.6 No payment of any amount pursuant to this clause 43, and no payment of the GST Amount where the Consideration for the Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided a Tax Invoice or Adjustment Note as the case may be to the recipient.
- 43.7 Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a Party, must exclude the amount of any Input Tax Credit entitlement of that Party in relation to the relevant cost, expense or other liability.
- 43.8 This clause continues to apply after expiration or termination of this Deed.

44 Explanatory Note

- 44.1 The Appendix contains the Explanatory Note relating to this Deed required by s205 of the Regulation.
- 44.2 Pursuant to s205(5) of the Regulation, the Parties agree that the Explanatory Note is not to be used to assist in construing this Deed.

45 Electronic Execution

- 45.1 Each Party:
- 45.1.1 consents to this Deed being signed by electronic signature by the methods set out in clause 45.3;
- 45.1.2 agrees that those methods validly identify the person signing and indicates that person's intention to sign this Deed;
- 45.1.3 agrees that those methods are reliable as appropriate for the purpose of signing this Deed, and
- 45.1.4 agrees that electronic signing of this Deed by or on behalf of a Party by those methods indicates that Party's intention to be bound.
- 45.2 If this Deed is signed on behalf of a legal entity, the persons signing warrant that they have the authority to sign.

- 45.3 For the purposes of clause 45.1, the methods are:
- 45.3.1 insertion of an image (including a scanned image) of the person's own unique signature onto the Deed; or
 - 45.3.2 insertion of the person's name onto the Deed; or
 - 45.3.3 use of a stylus or touch finger or a touch screen to sign the Deed, provided that in each of the above cases, words to the effect of 'Electronic signature of me, [insert full name], affixed by me, or at my direction, on [insert date]' are also included on the Deed; or
 - 45.3.4 use of a reliable electronic signing platform (such as DocuSign or AdobeSign) to sign the Deed; or
 - 45.3.5 as otherwise agreed in writing between the Parties

Schedule 1: Road Reserve Upgrade Works

DRAFT

PRELIMINARY DESIGN OF PROPOSED
ROAD UPGRADE



BOUNDARIES NOT SURVEYED

PRELIMINARY



CONTACT BEFORE YOU DIG PRIOR TO COMMENCING ANY EXCAVATION WORKS



SCALE 1:600

SCHEDULE OF QUANTITIES			
TYPE	ITEM	LENGTH	COLOUR
KERB AND GUTTER	SA	49.0 m	
	SB	206.5 m	
	SUBSOIL	317.9 m	
PAVEMENT	SURFACE AREA	4703 m ²	
LINEMARKING	EDGE (EI)	1066 m	
	LANE LINE	47.1 m	
	PAINTED MEDIAN OUTLINE	337.4 m	
	DOUBLE BARRIER	131.5 m	
	SEPARATION LINE	198.7 m	
	TURNING LINE	164.4 m	
	CONTINUITY LINE	78.8 m	
	GIVEWAY LINE	54.1 m	
	TURNING ARROWS	9	
STORMWATER	CHEVRON	160.2 m ²	
	KERB INLET PITS	6	
	JUNCTION PITS	10	
	GULLY / SUMP PIT	1	
	HEADWALL	1	
	375 RCP PIPE & SUBSOIL	310 m	
ELECTRICAL SERVICE	450 RCP PIPE & SUBSOIL	158 m	
	POWER POLE	1	
	UNDERGROUND PIPES & CABLE	95 m	

4	STORMWATER AND KERB AMENDED	17/11/2023	G.D	SURVEY/ARETE
3	PAVEMENT AMENDED	16/11/2023	G.D	SURVEY/ARETE
2	PAVEMENT, STORMWATER AND KERBS AMENDED	14/11/2023	G.D	SURVEY/ARETE
1	VEHICLE AMENDED AND QUANTITIES ADDED	25/07/2023	G.D	SURVEY/ARETE
0	DRAFT PLAN ISSUED TO CLIENT	02/07/2023	G.D	SURVEY/ARETE
No.	DESCRIPTION	DATE	NAME	DEPT/COMPANY
AMENDMENTS				

ARÊTESURVEYSOLUTIONS

PO BOX 143
Canowindra NSW 2804
Australia

T 02 6344 1558
E admin@aretesurvey.com.au

DRAWN G. DOHERTY	SURVEYED G. DOHERTY
DATE 02/07/2023	DATE 23/05/2023
SCALES (A1)	SCALES (A3)
HORIZONTAL: 1:300	HORIZONTAL: 1:600
VERTICAL:	VERTICAL:
This drawing remains the property of ARETE and may not be used for any other purpose than for that which the drawing is supplied. It must not be copied, reproduced or disclosed to a third party without the written consent of ARETE.	

REGISTERED SURVEYOR UNDER SURVEYING AND SPATIAL INFORMATION ACT 2002 No. 83	
CLIENT:	APOLLO FABRICATION GROUP PTY LTD

PLAN OF PROPOSED INTERSECTION UPGRADE
TELEGRAPH ROAD AND MURRINGO ROAD
YOUNG NSW 2594
LGA: HILLTOPS

FILE No. 23061	SHEET No. 2 OF 2 SHEETS	DRAWING No. 23061-INTERSECTION_DESIGN	AMEND. 4	SHEET SIZE A1
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Schedule 2: Development Consents for Existing Facility

<u>10 Telegraph Road (12/1138027 & 3/845187)</u>		
DA Number	Description	Date of Consent
2011/DA-00106	To make alterations to the existing industrial premises for use as a steel fabrication business, involving the erection of a colourbond workshop, installation of a spray booth and grit blasting shed and storage container, and the replacement of signage.	26/09/2012
2011/DA-00106.1	MODIFICATION: To provide a twelve (12) month extension (from the date of this consent) for compliance with Conditions 21 to 33 (relating to access, roadworks and car parking)	13/08/2015
2011/DA-00106.2	MODIFICATION: To remove the reference to Lot 12 DP 1138027 from Conditions 55 and 56.	30/05/2018
2019/DA-00035	Industrial - alterations and additions to existing steel fabrications premises	16/10/2019
2019/DA-00035.01	General Industry (MODIFICATION amend hours of operation)	22/03/2022
DA2021/0299	Office Premises – temporary office building	13/01/2022
<u>12 Telegraph Road (4/845187)</u>		
DA Number	Description	Date of Consent
1999/DA-00078	To connect to existing premises to Council's sewer	28/5/1999
2001/DA-00121	To erect a steel frame colourbond shed to be used for the manufacturing of heavy equipment	27/09/2001
2002/DA-00048	To change the use of the retail shop to a showroom, office and spare parts storage depot to retail heavy machinery parts and equipment.	18/03/2002
2005/DA-00156	To re-activate Development Application 2001/121, being to erect a steel frame colorbond shed to be used for the manufacturing of heavy equipment.	31/08/2005
DA2021/0198	Industrial Alterations and Additions - (work shop and office building)	27/10/2021

Execution

Executed as a Deed

Dated:

Executed on behalf of the Council

General Manager

Witness

Mayor

Witness

Executed on behalf of the Developer in accordance with s127(1) of the *Corporations Act 2001 (Cth).*

Name/Position

Name/Position

Executed on behalf of the Landowners in accordance with s127(1) of the *Corporations Act 2001 (Cth).*

Name/Position

Name/Position

APPENDIX: EXPLANATORY NOTE

For the purposes of *Environmental Planning and Assessment Regulation 2021* (section 205) in respect of a draft Planning Agreement under s7.4 of the *Environmental Planning and Assessment Act 1979*.

1. Introduction

The purpose of this explanatory note is to provide a plain English summary to support the notification of the draft planning agreement (the planning agreement).

This explanatory note explains what the planning agreement is proposing how it delivers a public benefit and an assessment of the merits of it..

This explanatory note is not to be used to assist in construing the agreement.

2. The parties to this planning agreement are:

Hilltops Council; and

Apollo Fabrication Group Pty Ltd as the developer; and

Jackson Property Assets Pty Ltd and Jackson SMSF Pty Ltd as landowners.

3. The land subject to the planning agreement is:

Address	Legal Description
2 Telegraph Road	Lot 1 DP736225
4 Telegraph Road	Lot 2 DP736225
10 Telegraph Road	Lot 3 DP845187
12 Telegraph Road	Lot 4 DP845187
12 Telegraph Road	Lot 1 in DP1277936
20 Telegraph Road	Lot 1171 DP754611
20 Telegraph Road	Lot 1154 DP754611
20 Telegraph Road	Lot 1199 DP754611
20 Telegraph Road	Lot 3 DP374948

A map of the subject land is attached to this explanatory note.

Will the planning agreement be registered on the subject land titles?

Yes.

4. Description of the proposed change to the environmental planning instrument

The amendment of *Hilltops Local Environmental Plan 2022* as a consequence of Planning Proposal as PP-2023-1336 by the Department of Planning, Housing and Infrastructure (PP2023/001 as referenced by Council).

Planning Instrument provision	Current	Proposed
Land Use Zoning	R1 General Residential, RU4 Primary Production Small Lots and RE1 Public Recreation	E4 General Industrial
Minimum Lot Size	700m2 2 hectares	Nil
Terrestrial Biodiversity Map	Portions of Land identified	Revised Mapping across the Land
Riparian Corridor Map	Portions of Land identified	Revised mapping across the Land

5. Objectives, nature and effect of the planning agreement

The objectives of the planning agreement are to provide for an intersection upgrade (comprising road widening and ancillary works) to the intersection of Telegraph Road and Murringo Road, Young, in connection with the proposed rezoning of land from rural to industrial through an amendment to the Hilltops Local Environmental Plan 2022.

The effect of the planning agreement is that the Developer will be required to provide a public benefit in the form of the Road Reserve Upgrade Works if it also seeks to carry out development which is permissible as a result of the proposed change to the Hilltops LEP or which benefits from a change to a development standard given effect through the change to the Hilltops LEP (Trigger Development).

The Developer will not be required to undertake the Road Reserve Upgrade Works if it is only carrying out development which is already approved to take place on the land listed above (the Existing Facility) or if it carries out development for the purpose of storage and transportation associated with and ancillary to the Existing Facility.

Will the contributions be in the form of land, works or a monetary contribution?

The contributions required by the planning agreement will be provided in the form of works in kind.

Will the contributions be provided in addition to or in lieu of other contributions?

No, the contributions required by the planning agreement will not be provided in lieu of contributions which may otherwise become payable under the Council's contributions plan for any future development.

When will the contributions be provided?

The Contributions required by the planning agreement will be provided before an Occupation Certificate is issued for any Trigger Development.

6. Assessment of the merits of the planning agreement

Is the planning agreement in the public interest?

What is the impact, positive or negative, of the planning agreement on the public or any section of the public?

The planning agreement is considered to be in the public interest and anticipated to have a positive impact by providing for road upgrade works that accommodate the industrial use of additional land in Young and providing certainty to the community about how the road infrastructure impacts of the Planning Proposal will be addressed.

The road reserve upgrade works will also improve safety for the public who use the intersection.

Whilst persons who live in the vicinity may experience impacts during construction, no ongoing negative impacts on the public or part of the public have been identified in connection with the works required under this agreement.

How does the planning agreement conform with the planning authority's capital works program, if any?

The works are not included in, but are not inconsistent with, the Council's capital works program.

Does the planning agreement specify that certain requirements must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued?

Yes, the contribution works must be completed before Occupation Certificates can be granted to Trigger Development.

Subject Land Maps



Figure 1 Subject Land – Aerial Imagery of Subject Land



Figure 2: Subject Land – 2-20 Telegraph Road, Young