
Planning Agreement

21-23 Victoria Avenue, Castle Hill Planning Proposal 4/2021/PLP

Explanatory Note

The Hills Shire Council (ABN 25 034 494 656) (**Council**)

Castlehill Spotlight Property 2 Pty Ltd (ACN 614 391 883) (**Developer**)

Prepared by:

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Planning Agreement

21-23 Victoria Avenue, Castle Hill Planning Proposal 4/2021/PLP

Explanatory Note

1 Introduction

- (1) This Explanatory Note has been prepared jointly between the parties in accordance with clause 205 of the *Environmental Planning & Assessment Regulation 2021 (NSW)*.
- (2) The purpose of this Explanatory Note is to provide a plain English summary to support the notification of a draft planning agreement (**Planning Agreement**) between the parties under s7.4 of the *Environmental Planning & Assessment Act 1979 (NSW)* (**EPA Act**).
- (3) This Explanatory Note is not to be used to assist in construing the Planning Agreement.

2 Parties to the Planning Agreement

The parties to the Planning Agreement are:

- (1) The Hills Shire Council (ABN 25 034 494 656) (**Council**).
- (2) Castlehill Spotlight Property 2 Pty Ltd (ACN 614 391 883) (**Developer**).

3 Description of the Subject Land

The Planning Agreement applies to the land comprising Lot 1 in DP 657013 and Lot 1 in DP 660382, known as 21-23 Victoria Avenue, Castle Hill and associated parts of Carrington Road (**Land**).

4 Description of the Development

- (1) The Planning Agreement relates to the Planning Proposal 4/2021/PLP to amend the *The Hills Local Environmental Plan 2019* (**Instrument Change**).
- (2) The Instrument Change involves:
 - (a) increasing the maximum height of buildings from 20 metres to RL 140.5; and
 - (b) increasing the maximum floor space ratio from 1:1 to 2.3:1.

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- (3) The development of the Land under the Instrument Change is for the purposes of a mixed-used development comprising of commercial and specialised retail with new public infrastructure for a linear park, footpath and roads (**Development**). The Development will also facilitate the dedication of land for future road widening of Carrington Road and intersection upgrade at Victoria Avenue and Carrington Road for the public benefit and at no cost to Council.

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

- (1) The **objective** of the Planning Agreement is to provide community infrastructure, amenities and resources to The Hills community by facilitating the delivery of development contributions consisting of the dedication of 675.5m² of Lot 1 in DP657013 for the public purpose of future road widening of Carrington Road, Castle Hill and an intersection upgrade at Victoria Avenue and Carrington Road, Castle Hill to be carried out by Council so that the community does not need to bear those costs (**Contribution**).
- (2) The **intent** of the Planning Agreement is to facilitate the provision of the Contribution by the Developer.
- (3) The Planning Agreement will be registered on the title of the Land.
- (4) Occupation Certificates with respect to the Development may be withheld until such time as the Contribution is made.
- (5) As the Contribution includes the dedication of land, in the event the Developer defaults under the Planning Agreement, then the Developer permits Council to compulsorily acquire that land for compensation in the amount of \$1.00.
- (6) The **nature** of the Planning Agreement is a contractual relationship between the Council and the Developer for the provision of the Contribution.
- (7) The **effect** of the Planning Agreement is that the Developer will provide the Contribution in the manner provided for by the Planning Agreement (as applicable) and as set out in Schedule 1.

6 Assessment of the merits of the Planning Agreement

6.1 The planning purposes served by the Planning Agreement

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

- (1) Provision of the Contribution to accommodate and meet the demands of future developments and to mitigate the potential impacts of the Development on existing infrastructure.

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- (2) The monitoring of the planning impacts of development on the Land.

6.2 How the Planning Agreement promotes the public interest

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

- (1) By providing certainty for the Developer and Council as to the provision of the Contribution directed towards community infrastructure within The Hills community.
- (2) The proper management, conservation and development of land.
- (3) The promotion and co-ordination of the orderly and economic use and development of Land to which the Planning Agreement applies.
- (4) The Planning Agreement will provide an opportunity for involvement and participation by members of the community in development assessment and are invited to make comment on the Planning Agreement.

6.3 How the Planning Agreement promotes Council's guiding principles

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

- (1) The exhibition of the Planning Agreement facilitates the involvement of members of the public in the consultation process for the Planning Agreement.
- (2) To plan strategically for the provision of effective and efficient services and regulation to meet the diverse needs of the local community.
- (3) To act fairly, ethically and without bias to the interests of the local community.
- (4) To recognise diverse local community needs and interests.
- (5) To have regard to the long term and cumulative effects of its decisions on future generations.
- (6) To engage in long-term strategic planning on behalf of the local community.
- (7) To bear in mind that it is the custodian and trustee of public assets and to effectively plan for, account for and manage the assets for which it is responsible.
- (8) The Planning Agreement makes it clear that Council has a statutory role as consent authority in relation to the development proposal and that the Planning Agreement is not intended to unlawfully influence the exercise of Council's regulatory functions.

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

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

Schedule 1: Contribution

Development Contribution	Specifications	Time for Completion	Contribution Value
Dedication of the Designated Land (shown in Schedule 1 of the Planning Agreement)	675.5m ² of Lot 1 DP 657013 for the purposes of future road widening of Carrington Road, Castle Hill and intersection upgrade at Victoria Avenue and Carrington Road, Castle Hill.	Prior to the issue of an Occupation Certificate for the Development.	N/A



PLANNING AGREEMENT

21-23 Victoria Avenue, Castle Hill

Planning Proposal 4/2021/PLP

Between

THE HILLS SHIRE COUNCIL

And

**CASTLEHILL SPOTLIGHT PROPERTY 2 PTY LTD (ACN
614 391 883)**

[INSERT DATE]

The Hills Shire Council
3 Columbia Court, Norwest NSW 2153
PO Box 7064, Norwest 2153
Phone (02) 9843 0555

SUMMARY SHEET

Council	Name	The Hills Shire Council ABN 25 034 494 656
	Address	3 Columbia Court Norwest, NSW 2153
	Telephone	(02) 9843 0555
	Facsimile	(02) 9843 0258
	Email	council@thehills.nsw.gov.au
	Representative	General Manager
Developer	Name	Castlehill Spotlight Property 2 Pty Ltd ACN 614 391 883
	Address	Level 6, 111 Cecil Street, South Melbourne VIC 3205
	Telephone	
	Facsimile	Not applicable
	Email	travis@blueprintaustralia.com.au
	Representative	Travis Reid
Land	21-23 Victoria Avenue, Castle Hill (Lot 1 DP 657013 and Lot 1 DP 660382)	
Development	The Development of the Land permitted under the Instrument Change for the purposes of a mixed-use development comprising commercial and specialised retail with a new public infrastructure for a linear park, footpath and roads.	
Designated Land	See Schedule 2	
Works	Not applicable	
Monetary Contributions	Not applicable	
Application of s7.11 and s7.12 of the Act	See clause 10	
Enforcement	See clause 8	
Mechanism for dispute resolution	See clause 14	
No obligation to grant consent or exercise functions	See clause 4	
Planning instrument and development application	(a) The Developer has sought a change to an environmental planning instrument. Yes (b) The Developer has made, or proposes to make, a Development Application. Yes	

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

Dated [Insert]

Parties

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

Castlehill Spotlight Property 2 Pty Ltd ACN 614 391 883 of Level 6, 111 Cecil Street, South Melbourne VIC 3205 (**Developer**)

Background

- a) The Developer owns the land.
- b) The Developer has lodged the Planning Proposal in respect of the Land seeking the Instrument Change.
- c) Upon the Instrument Change being made, the Developer proposes to lodge a Development Application seeking Development Consent for the Development.
- d) If the Instrument Change occurs, and the Developer carries out the Development pursuant to a Development Consent, the Developer is required to make the Development Contributions in the nature of a land dedication free of cost to Council on and subject to the terms of this deed.
- e) The land dedication will be for a public purpose being the future road widening of Carrington Road, Castle Hill and intersection upgrade at Victoria Avenue and Carrington Road, Castle Hill, to be carried out by Council.

Operative provisions

1. Defined Meanings

Words used in this deed and the rules of interpretation that apply are set out and explained in clause 20.

2. Planning Agreement Under the Act

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

3. Application of this Deed

- 3.1. This deed is made in respect of the Instrument Change and applies to both the Land, the Instrument Change and the Development.
- 3.2. For the avoidance of doubt, this deed does not apply to, and does not require dedication of, the Designated Land in respect of Other Development carried out on the Land.

4. No Restriction on Council's Powers

- 4.1. The parties acknowledge that Council is a consent Authority with statutory rights and obligations pursuant to the terms of the Planning Legislation.
- 4.2. This deed or anything done under this deed:
 - 4.2.1. is not to be taken as approval or consent by Council as a regulatory Authority; and
 - 4.2.2. does not in any way operate to inhibit, deter or prejudice the power of Council to make any Law or the exercise by Council of any statutory functions, duties or powers,
pursuant to the Planning Legislation (**Discretion**).
- 4.3. No provision of this deed is intended to, or does, constitute any unlawful fetter on any Discretion. If, contrary to the operation of this clause, any provision of this deed is held by a court of competent jurisdiction to constitute an unlawful fetter on any Discretion, the parties agree:
 - 4.3.1. they will take all practical steps, including the execution of any further documents, to ensure the objective of this clause 4 is substantially satisfied;
 - 4.3.2. in the event that paragraph 4.3.1 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 deed has full force and effect; and
 - 4.3.3. to endeavour to satisfy the common objectives of the parties on relation to the provision of this deed which is held to be an unlawful fetter to the extent that it is possible having regard to the relevant court judgment.
- 4.4. Where the Law permits Council to contract out of a provision of that Law or gives Council power to exercise a Discretion, then if Council has in this deed contracted out of a provision or exercised a Discretion under this deed, then to the extent of this deed is not to be taken to be inconsistent with the Law.
- 4.5. Nothing in this deed will be deemed to impose any obligation on Council to exercise any of its functions under the Act in relation to the Instrument Change, the Land or the Development in a certain manner.

5. Operation Of This Deed

This deed operates:

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

6. Designated Land

- 6.1. The Developer, at its cost, must dedicate the Designated Land to Council:
 - 6.1.1. in accordance with **Schedule 1** and **Schedule 2**; and
 - 6.1.2. free of any trusts, estates, interests, covenants and Encumbrances other than service infrastructure and easements (including but not limited to communication services) in existence at the time of dedication and those reasonably required by any authority and telecommunication service provider including in relation to the Development or as otherwise agreed in writing by Council.
- 6.2. The Developer must meet all reasonable costs (including legal and registration costs) associated with the dedication of the Designated Land in accordance with this clause 6, including any costs incurred by Council in relation to that dedication.

- 6.3. For the purpose of this deed, Designated Land is dedicated to Council:
- 6.3.1. **(Deposited Plan)** if the relevant land is dedicated for the purposes of a public road in a deposited plan registered at NSW Land Registry Services, when that plan is so registered; or
 - 6.3.2. **(Instrument of Transfer)** otherwise when the Developer delivers to Council:
 - a) a transfer of the relevant land in registrable form;
 - b) any consent required by an interested party in the relevant land; and
 - c) any document in registrable form which, when registered, will remove any Encumbrances other than those reasonably required by any authority including in relation to the Development registered on the title of that land.
- 6.4. Council must provide the Developer with a tax invoice for its reasonable expenses incurred in relation to the dedication of the Designated Land including its legal costs and disbursements on an indemnity basis (including any registration fees).
- 6.5. The Developer must pay to Council the amount invoiced for expenses under clause 6.4 within twenty eight (28) days of receipt of the invoice.
- 6.6. The Developer must pay Council on reasonable notice the stamp duty (if any) on the dedication of the Designated Land.
- 6.7. The total area of land to be dedicated by the Developer is 675.5m² and is to enable the orderly delivery of road widening and upgrades to Carrington Road and Victoria Avenue by Council.

7. Contamination

7.1. Definitions

For the purpose of this clause 7:

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

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

Contaminated means subject to Contamination.

Designated Land means the Designated Land as defined in clause 20, excluding any improvements, buildings or structures or services not owned by the Developer (such as infrastructure services owned by an authority).

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.

Relevant Standard means the standard suitable for the intended use of the Designated Land for public roads under the National Environment Protection (Assessment of Site Contamination) Measure 1999 (as amended 2013).

- 7.2. Suitability of the Designated Land for its intended purpose.

Prior to the dedication of Designated Land to Council, the Developer must, at its own cost:

- 7.2.1. engage a suitably qualified environmental consultant to investigate Contamination within the Designated Land;
- 7.2.2. if recommended by the consultant, prepare a remediation action plan that details the process by which the relevant land could be remediated and how the remediation will be validated to demonstrate the Designated Land meets the Relevant Standard; and
- 7.2.3. implement the remediation action plan and provide a validation report that includes a clear statement that the Designated Land meets the Relevant Standard.

8. Enforcement

8.1. Compulsory acquisition of the Designated Land

- 8.1.1. This clause 8.1 applies if the Developer has committed an Event of Default with respect the dedication of land under this deed.
- 8.1.2. The Developer consents to the compulsory acquisition of the Designated Lands:
 - a) in accordance with the Acquisition Act; and
 - b) on the terms set out in this clause 8.1.
- 8.1.3. If Council acquires the Designated Lands compulsorily in accordance with the Acquisition Act relying on this clause 8.1:
 - 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 Event of Default.
- 8.1.4. The parties agree that the provisions of this clause 8.1 are an agreement with respect to the compulsory acquisition of the Designated Land for the purpose of s30 of the Acquisition Act.
- 8.1.5. If Council:
 - a) acquires the Designated Land under paragraph (8.1.3); 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:
 - a) within ten (10) Business Days of demand for payment being made by Council; and
 - b) prior to the issue of the then next Occupation Certificate with respect to the Development.

8.2. Developer must not deal with Designated Land

- 8.2.1. The Developer must not during the term of this deed sell, transfer, mortgage, charge or grant a lease or license or any other right of occupancy to any person over the Designated Land without first obtaining Council's consent in writing.
- 8.2.2. Council must act reasonably in refusing its consent or giving consent with conditions particularly where the Designated Land is not yet on its own lot.

8.3. Council may withhold Occupation Certificate

- 8.3.1. The Developer may only make, or cause, suffer or permit the making of, an application for an Occupation Certificate in respect of the Development if, at the date of the application, the Developer is not in breach of its obligation to make the Development Contribution under this deed.
- 8.3.2. Council may withhold the issue of an Occupation Certificate if, at the relevant time, the Developer is in breach of any obligation to make the Development Contribution under this deed until such time as:
 - a) the breach is rectified; or
 - b) security is provided by the Developer in respect of the Development Contribution to which the breach relates as required by Council.

9. Easements, Covenants and Restrictions on Title

- 9.1. Prior to any dedication of the Designated 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).
- 9.2. 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.

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

10.1. Application

This deed does not exclude the application of Section 7.11 or Section 7.12 of the Act to the Development.

10.2. Consideration of Benefits

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

10.3. Subdivision 4 of Part 7 of the Act

This deed does not exclude the application of Subdivision 4 of Part 7 of the Act to the Development.

11. Termination

11.1. Termination

- 11.1.1. This Agreement terminates in the following events:
 - a) The parties agree in writing to terminate the operation of this deed at any time.
 - b) Council serves notice on the Developer terminating this deed where the Developer has failed to comply with a notice issued in accordance with clause 13.
 - c) The Developer is subject to an Insolvency Event and Council serves a notice on the Developer terminating this deed.
 - d) Where Council reasonably forms the opinion that the instrument Change will not be made and serves a notice on the Developer terminating this deed.

11.2. Consequence of termination

Upon termination of this deed:

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

11.3. Determination

This deed will determine upon the Developer satisfying all the obligations imposed on it in full.

12. Private Certifiers

Where Council is not the certifying authority for any aspect of the Development the Developer must on the appointment of a private certifier provide a copy of this Agreement to the private certifier and must notify Council of that appointment.

13. Breach Notice and Rectification

13.1. Breach Notice

If the Developer breaches this deed, Council may serve a notice on the Developer (**Breach Notice**) specifying:

- 13.1.1. the nature and extent of the alleged breach;
- 13.1.2. if:
 - a) the breach is capable of being rectified other than by the payment of compensation, what Council requires the Developer to do in order to rectify the breach; or
 - b) the breach is not capable of being rectified other than by payment of compensation, the amount of compensation Council requires the Developer to pay in order to rectify the breach, and
- 13.1.3. the time within which Council requires the breach to be rectified, which must be a reasonable time in the circumstances having regard to the nature of the alleged breach and in any case, of not less than twenty eight (28) Business Days.

13.2. Events of Default

The Developer commits an Event of Default if it:

- 13.2.1. fails to comply with a Breach Notice within the time period pursuant to clause 13.1.3; or
- 13.2.2. becomes subject to an Insolvency Event.

13.3. Consequences of Events of Default

Where the Developer commits an Event of Default, Council may, in addition to any rights it has at Law:

- 13.3.1. carry out any work specified in the relevant Breach Notice itself; or
- 13.3.2. call on the security to the extent of any compensation claimed in a Breach Notice and not paid by the Developer.

14. Dispute resolution

14.1. Disputes

If there is any dispute, difference of opinion or failure to agree relating to or arising from this deed the process for resolving the dispute must occur in accordance with the process set out under this clause.

14.2. No legal proceedings

The Parties must not bring or maintain any action on any dispute (except for urgent injunctive relief to keep a particular position) until it has complied with this clause.

14.3. Notice of disputes

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

14.4. Negotiated resolution and selection of expert

14.4.1. 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 ten (10) Business Days of service of the Dispute Notice. Any resolution must be recorded in writing and signed by each nominated officer. By agreement, the nominated officers may employ the services of a mediator to assist them in resolving the dispute.

14.4.2. If the nominated officers are unable to resolve the dispute within ten (10) Business Days of service of the Dispute Notice they must endeavour to agree within the following ten (10) Business Day period to appoint an expert by agreement. That appointment must be recorded in writing and signed by each nominated officer.

14.4.3. If the nominated officers do not record the appointment of an expert within that following ten (10) Business Day period, the expert must be appointed, at the request of any party, by the President for the time being (or if none, the senior elected member) of the Law Society of New South Wales.

14.5. Qualifications of Expert:

The expert appointed to determine a dispute:

14.5.1. must have a technical understanding of the issues in dispute;

14.5.2. 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

14.5.3. 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.

14.6. Assistance to the Expert

14.6.1. Once the Expert has been appointed (**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.

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

14.7. Directions to expert

14.7.1. In reaching a determination in respect of a dispute, the independent expert must give effect to the intent of the parties entering into this deed and the purposes of this deed.

14.7.2. The expert must:

- a) act as an expert and not as an arbitrator;
- b) not accept verbal submissions unless both parties are present;
- c) on receipt of a written submission from one party, ensure that a copy of that submission is given promptly to the other party;
- d) 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;
- e) 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);
- f) 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;
- g) issue a final certificate stating the expert's determination (together with written reasons); and
- h) act with expedition with a view to issuing the final certificate as soon as practicable.

14.7.3. 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.

14.8. Expert may commission reports

14.8.1. Subject to paragraph 14.10.2:

- 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 14.

14.8.2. The parties must approve the costs of those advisers or consultants in writing prior to the expert engaging those advisers or consultants.

14.9. Expert may convene meetings

14.9.1. 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.

14.9.2. The parties agree that a meeting under paragraph 14.9.1 is not a hearing and is not an arbitration.

14.10. Expert's decision

14.10.1. 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.
- 14.10.2. Subject to this clause 14, the Expert may conduct the determination of the Dispute in any way it considers appropriate but the Expert may, at its discretion, have regard to the Australian Commercial Disputes Centre's guidelines for expert determination of disputes or such other guidelines as it considers appropriate.
- 14.10.3. The Expert's decision is final and binding on the parties.
- 14.10.4. The Expert must act as an expert and not as an arbitrator.
- 14.11. Expert's costs
 - 14.11.1. 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.
 - 14.11.1. If any independent expert does not award costs, each party must contribute equally to the expert's costs in making the determination.
 - 14.11.2. In determining the apportionment of costs the Expert may have regard to what the Expert, in its reasonable opinion, considers to be a lack of good faith or a failure to use reasonable endeavours by any party in assisting the Expert or resolving the dispute between the parties' nominated officers as required by this clause.
- 14.12. Confidentiality of information provided in dispute resolution process
 - 14.12.1. The parties agree, and must procure that Expert agree as a condition of his or her appointment:
 - a) subject to paragraph 14.12.2, to keep confidential all documents, information and other material disclosed to them during or in relation to the Expert determination;
 - b) not to disclose any confidential documents, information and other material except to a party or adviser or consultant who has signed a confidentiality undertaking; or if required by Law or any Authority to do so; and
 - c) not to use confidential documents, information or other material disclosed to them during or in relation to the Expert determination for a purpose other than the Expert determination.
 - 14.12.2. 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 Expert during the Expert determination relating to a possible settlement of the dispute;
 - b) admissions or concessions made by a party during the 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 Expert determination unless such information, documents or facts would be discoverable in judicial or arbitral proceedings.

14.13. Remedies and relief

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

14.14. Continual performance

Each Party must continue to perform its obligations under this deed while any dispute is being determined under this clause.

15. Registration of deed on Title

15.1. Registration of this deed

This deed must be registered on the title to the Land pursuant to section 7.6 of the Act prior to the Instrument Change being made.

15.2. Obligations of the Developer

15.2.1. The Developer, at its own expense, must take all practical steps to:

- a) lodge this deed with the Registrar-General as soon as reasonably practicable after this deed is executed but in any event, no later than 60 days after the date of execution of this deed;
- b) address any requisition issued by the Registrar-General in relation to this deed or registration of this deed as soon as reasonably practicable after receiving a requisition; and
- c) ensure this deed is registered on the title for the Land as soon as reasonably practicable after this deed is lodged for registration.

15.2.2. The Developer, at its own expense, will use all reasonable endeavours after this deed is executed, 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;
- b) the execution of any documents; and
- c) the production of the relevant title documentation,
to enable the registration of this deed in accordance with clause 15.2.1.

15.3. Council will provide all reasonable and prompt assistance to enable registration.

15.4. Discharge from the Register

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

- 15.4.1. the Designated Land has been dedicated to Council; and
- 15.4.2. if this deed is terminated or otherwise comes to an end for any other reason.

16. Costs

The Developer must pay or reimburse to Council, Council's reasonable costs associated with the negotiation, preparation, exhibition, legal review, execution, enforcement, and registration on, and removal of this deed from, the title of the Land within twenty eight (28) Business Days of a written demand by Council for such payment.

17. GST

If any payment made by one party to any other party under or relating to this deed 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 deed. Unless otherwise expressly stated, prices or other sums payable or consideration to be provided under or in accordance with this deed are exclusive of GST.

18. Assignment

18.1. Restriction on Assignment

Other than in accordance with this clause 18, the Developer must not Assign any part of the Land or any of their rights or obligations under this deed without the consent of Council (acting reasonably) and provided that:

- 18.1.1. the Developer is not in breach of any of its obligations under this deed; and
- 18.1.2. this deed has been registered on the title of the Land.

18.2. Procedure for Assignment

If the Developer wishes to Assign any part of the Land and/or its rights and obligations under this Deed, then the Developer must at no cost to Council, procure the execution by the assignee of a deed of assignment where the assignee agrees to be bound by the terms of this deed.

18.3. Exempt Transfers

- 18.3.1. Clause 18.1 and 18.2 do not apply where the Developer transfers:
 - a) any part of the Land it owns to another party comprising an Associated Entity of the Developer or to Council in accordance with this deed; and
 - b) and the requirements under clause 18.1 have been complied with.
- 18.3.2. The Developer must notify Council in writing:
 - a) Twenty (20) Business Days prior to any transfer under clause 18.3.1 identifying the part of the Land that is to be transferred and the proposed transferee; and
 - b) Five (5) Business Days after the transfer has taken place, confirming any changes to representatives of the Developer for the purposes of this deed.

19. General

19.1. Notices

- 19.1.1. Any notice, consent or other communication under this deed 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 email to that person's address.
- 19.1.2. 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; and
- c) 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.

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

19.2. Cooperation

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

19.3. Governing law and jurisdiction

19.3.1. This deed is governed by and construed under the law in the State of New South Wales.

19.3.2. Any legal action in relation to this deed against any party or its property may be brought in any court of competent jurisdiction in the State of New South Wales.

19.3.3. Each party by execution of this deed irrevocably, generally and unconditionally submits to the nonexclusive 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 deed and may not seek to have any proceedings removed from the jurisdiction of New South Wales on the grounds of *forum non conveniens*.

19.4. Amendments

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

19.5. Third parties

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

19.6. Obligation to act in good faith

The parties must at all times:

19.6.1. cooperate and use their best endeavours to profitably and professionally give effect to their rights and obligations set out in this deed;

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

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

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

19.7. Entire Agreement

This deed:

19.7.1. expresses and incorporates the entire agreement between the parties in relation to its subject matter, and all the terms of that agreement; and

- 19.7.2. 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.

19.8. Further assurance

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

19.9. Continuing performance

- 19.9.1. The provisions of this deed do not merge with any action performed or document executed by any party for the purposes of performance of this deed.

- 19.9.2. Any representation in this deed survives the execution of any document for the purposes of, and continues after, performance of this deed.

- 19.9.3. Any indemnity agreed by any party under this deed:

- a) constitutes a liability of that party separate and independent from any other liability of that party under this deed or any other agreement; and
- b) survives and continues after performance of this deed.

19.10. Waivers

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

19.11. Remedies

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

19.12. Counterparts

This deed 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 deed 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 deed.

19.13. Party acting as trustee

If a party enters into this deed as trustee of a trust, that party and its successors as trustee of the trust will be liable as trustee of the trust. The party warrants that at the date of this deed:

- 19.13.1. 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;
- 19.13.2. 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 deed on behalf of the trust and that this deed 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
- 19.13.3. 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.

19.14. Representations and warranties

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

19.15. Severability

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. 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.

19.16. Developer's warranties

The Developer warrants to Council that it is:

- 19.16.1. legally and beneficially entitled to the Land;
- 19.16.2. able to fully comply with its obligations under this deed;
- 19.16.3. it has full capacity to enter into this deed; and
- 19.16.4. there is no legal impediment to it entering into this deed, or performing the obligations imposed under it.

20. Definitions and interpretation

In this deed unless the context otherwise requires:

Acquisition Act	means the <i>Land Acquisition (Just Terms Compensation) Act 1991</i> (NSW).
Act	means the <i>Environmental Planning and Assessment Act 1979</i> (NSW).
Assign	as the context requires refers to any assignment, sale, transfer, disposition, declaration of trust over or other assignment of a legal and/or beneficial interest.
Associated Entity	has the same meaning as in section 50AAA of the <i>Corporations Act 2001</i> (Cth).
Authority	means (as appropriate) any: <ul style="list-style-type: none">(1) federal, state or local government;(2) department of any federal, state or local government;(3) any court or administrative tribunal; or(4) statutory corporation or regulatory body.
Business Day	means a day that is not a Saturday, Sunday, public holiday or bank holiday in New South Wales.
Designated Land	means the land marked "Land Acquisition Area" in Schedule 1 .
Development Application	has the same meaning as the Act.
Development	means any development of the Land permitted under the Instrument Change for the purposes of a mixed-use development comprising commercial and specialised retail with new public infrastructure for a linear park, footpath and roads and does not include Other Development
Development Consent	has the same meaning as the Act.
Development Contribution	means the dedication of the Designated Land.
Encumbrance	means an interest or power: <ul style="list-style-type: none">a) reserved in or over an interest in any asset;b) arising under, or with respect to, a Bio-Banking Agreement;c) 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; ord) by way of security for the payment of a debt or other monetary obligation or the performance of any obligation.

Environment	has the same meaning as set out in the Dictionary to the Protection of the Environment Operations Act 1997 (NSW).
Event Default	of has the meaning ascribed to it in clause 13.2.
GST	means any tax, levy, charge or impost implemented under the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth) (GST Act) or an Act of the Parliament of the Commonwealth of Australia substantially in the form of, or which has a similar effect to, the GST Act;
Insolvency Event	<p>means the happening of any of the following events:</p> <ul style="list-style-type: none"> a) Application which is not withdrawn or dismissed within fourteen (14) days is made to a court for an order or an order is made that a body corporate be wound up. b) An application which is not withdrawn or dismissed within fourteen (14) days is made to a court for an order appointing a liquidator or provisional liquidator in respect of a body corporate or one of them is appointed, whether or not under an order. c) Except to reconstruct or amalgamate while solvent, a body corporate enters into, or resolves to enter into, a scheme of arrangement, agreement of company arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them. d) A body corporate resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so, except to reconstruct or amalgamate while solvent or is otherwise wound up or dissolved. e) A body corporate is or states that it is insolvent. f) As a result of the operation of section 459F (1) of the Corporations Act 2001 (Cth) (Corporations Act), a body corporate is taken to have failed to comply with a statutory demand. g) A body corporate is or makes a statement from which it may be reasonably deduced that the body corporate is, the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act. h) A body corporate takes any step to obtain protection or is granted protection from its creditors, under any applicable legislation or an administrator is appointed to a body corporate. i) A person becomes an insolvent under administration as defined in section 9 of the Corporations Act or action is taken which could result in that event. j) A receiver, manager or receiver and manager is appointed to the Company. k) A claim is filed in a court against a person that is not defended, released or otherwise settled within twenty eight (28) days of the date of its filing at the court.

	l) Anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.
Instrument Change	means amendments to the LEP (as it relates to the Land) to the land zone height of building and floor space ratio controls and in accordance with the Planning Proposal.
Land	means land at 21-23 Victoria Avenue, Castle Hill (Lot 1 DP 657013 and Lot 1 DP 660382).
Law	means all legislation, regulations, by-laws, common law and other binding order made by any Authority.
LEP	Means The Hills Local Environmental Plan 2019.
Location Plan	means the plan contained in Schedule 1 .
Occupation Certificate	has the same meaning as in the Act.
Other Development	means any current or future development on the Land which does not rely upon the Instrument Change in order for it to be able to be carried out on the Land.
Planning Legislation	means the Act, the <i>Local Government Act 1993</i> (NSW) and the <i>Roads Act 1993</i> (NSW).
Planning Proposal	means Planning Proposal 4/2021/PLP to amend <i>The Hills Local Environmental Plan 2019</i> as it relates to the Land to increase the maximum height of buildings and increase the maximum floor space ratio.
Regulation	means the <i>Environmental Planning and Assessment Regulation 2021</i> (NSW).
Subdivision Certificate	has the same meaning as in the Act.
Summary Sheet	means the summary sheet at the start of this deed.

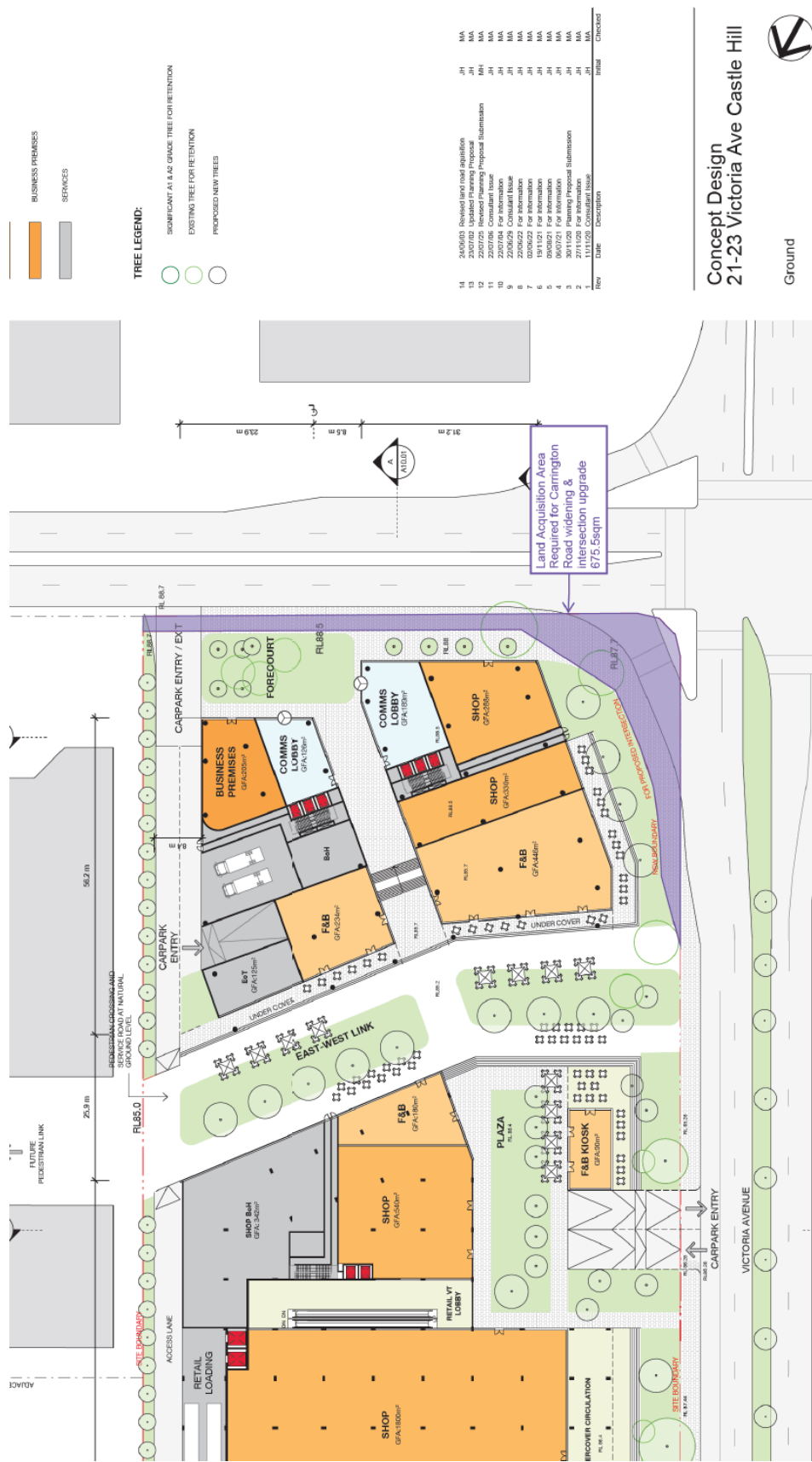
21. Interpretation

In this deed unless the context otherwise requires:

- a) clause and subclause headings are for reference purposes only;
- b) the singular includes the plural and vice versa;
- c) words denoting any gender include all genders;
- d) reference to a person includes any other entity recognised by law and vice versa;
- e) where a word or phrase is defined its other grammatical forms have a corresponding meaning;
- f) any reference to a party to this deed includes its successors and permitted assigns;
- g) any reference to a provision of an Act or Regulation is a reference to that provision as at the date of this deed;
- h) any reference to any agreement or document includes that agreement or document as amended at any time;

- i) the use of the word includes or including is not to be taken as limiting the meaning of the words preceding it;
- j) the expression at any time includes reference to past, present and future time and the performance of any action from time to time;
- k) an agreement, representation or warranty on the part of two or more persons binds them jointly and severally;
- l) an agreement, representation or warranty on the part of two or more persons is for the benefit of them jointly and severally;
- m) reference to an exhibit, annexure, attachment or schedule is a reference to the corresponding exhibit, annexure, attachment or schedule in this deed;
- n) reference to a provision described, prefaced or qualified by the name, heading or caption of a clause, subclause, paragraph, schedule, item, annexure, exhibit or attachment in this deed means a cross reference to that clause, subclause, paragraph, schedule, item, annexure, exhibit or attachment;
- o) when a thing is required to be done or money required to be paid under this deed on a day which is not a Business Day, the thing must be done, and the money paid on the immediately following Business Day; and
- p) reference to a statute includes all regulations and amendments to that statute and any statute passed in substitution for that statute or incorporating any of its provisions to the extent that they are incorporated.

Schedule 1 – Location Plan and Designated Lands Plan



Schedule 2 – Designated Land

Column 1	Column 2	Column 3	Column 4
Address of Land	Legal Description	Timing of Dedication	Contribution Value
21 Victoria Avenue, Castle Hill	Part of Lot 1 DP 657013 as shown on the plan contained in Schedule 1 .	Prior to the issue of an Occupation Certificate for the Development.	N/A

Execution Page

Executed as a deed

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

General Manager

Mayor

Print Name

Print Name

Witness

Print Name

Signed, sealed and delivered by the Developer
in accordance with s127 of the Corporations
Act 2001 (Cth):

Director/Secretary (Signature)

Director (Signature)

Print Name

Print name