

Dated

## Planning agreement

Parties

**Marrickville Council**

ABN 52 659 768 527

**SLC Campsie Pty Ltd**

ACN 143 352 238

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Our ref: 2795565

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## Planning agreement dated

**Parties**      **Marrickville Council** ABN 52 659 768 527  
of Administrative Centre, 2 Fisher Street, Petersham NSW 2049  
(**Council**)

**SLC Campsie Pty Ltd** ACN 143 352 238  
of Suite 2, Level 10, 139 Macquarie Street, Sydney NSW 2000  
(**Developer**)

## Introduction

- A**      On 15 August 2013 the Developer lodged the Development Application with Council seeking Development Consent to carry out the Development on the Land.
- B**      The Development Application was accompanied by an offer by the Developer to enter into this Agreement to make a Development Contribution if Development Consent was granted to the Development Application.
- C**      This Agreement describes the works and public benefits comprising the Development Contribution and provides for the manner in which, and the terms upon which, the Developer is to provide the Development Contribution.

## It is agreed

### 1 Definitions and interpretation

#### 1.1 Definitions

In this Agreement:

- (1)      **Act** means the *Environmental Planning and Assessment Act 1979* (NSW);
- (2)      **Agreement** means this document, including any schedule or annexure to it, signed by the parties;
- (3)      **Business Day** means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made;
- (4)      **Construction Certificate** means a compliance certificate within the meaning of section 109C(1)(b) of the Act to the effect that work completed in accordance with specified plans and specifications will comply with the requirements for the Development;
- (5)      **Compliance Certificate** means a compliance certificate within the meaning of section 109C(1)(a)(i) of the Act to the effect that work has been completed as specified in the certificate and complies with the plans and specifications for the Development;

- (6) **Confidential Information** means any information and all other knowledge at any time disclosed (whether in writing or 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 reasonably be considered to be of a confidential nature;
- (7) **Council's Discretion** means:
- (a) the Council's power to make any law; or
  - (b) the Council's exercise of any statutory power or discretion;
- (8) **Defects Liability Period** means the period of 12 months beginning on the date on which the Development Contribution has achieved practical completion;
- (9) **Development** means the development described in Item 2;
- (10) **Development Application** means Development Application No. DA201300375, being the development application (as defined in the Act) lodged by the Developer with Council on 15 August 2013 seeking Development Consent for the Development, as amended from time to time;
- (11) **Development Consent** means a development consent (as defined in the Act) which authorises the carrying out of the Development on the Land and any modification to a development consent and any subsequent development consent;
- (12) **Development Contribution** means the contribution described in clause 6.1;
- (13) **Development Contribution Works** means works comprising part of the Development Contribution, as described in Item 3 and in the locations shown on drawing VPA:001 and VPA:002 at Annexure B;
- (14) **Governmental Agency** means any government and any governmental body whether:
- (a) legislative, judicial or administrative;
  - (b) a department, commission, authority, tribunal, agency or entity;
  - (c) commonwealth, state, territorial or local;
- but does not include a governmental body in respect of any service or trading functions as distinguished from regulatory or fiscal functions;
- (15) **GST** has the same meaning as in the GST Law;

- (16) **GST Law** has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition or administration of the GST;
- (17) **JRPP** means a joint regional planning panel constituted under the Act;
- (18) **Land** means the land described in Item 1;
- (19) **Legislation** means the Act and the *Local Government Act 1993* (NSW);
- (20) **Party** means a party to this agreement, including their successors and assigns;
- (21) **Rectification Certificate** means a compliance certificate within the meaning of section 109C(1)(a)(v) of the Act to the effect that work the subject of a Rectification Notice has been completed as specified in the notice;
- (22) **Rectification Notice** means a written notice that identifies a breach of this Agreement in respect of any work required to be carried out by the Developer as a Development Contribution, containing sufficient detail of the work to be done to enable the Council to issue a Rectification Certificate and requiring the breach to be rectified within a reasonable specified time; and
- (23) **Regulation** means the *Environmental Planning and Assessment Regulation 2000*.

## 1.2 Interpretation

- (1) In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:
  - (a) headings are inserted for convenience only and do not affect the interpretation of this Agreement;
  - (b) if the day on which any act, matter or thing is to be done under this Agreement is not a Business Day, the act, matter or thing must be done on the next Business Day;
  - (c) a reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars;
  - (d) a reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or reenactment, and any subordinate legislation or regulations issued under that legislation or legislative provision;
  - (e) a reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced;
  - (f) a reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement;
  - (g) an expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or Governmental Agency;

- (h) 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;
  - (i) a word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular;
  - (j) a reference to any gender denotes the other genders;
  - (k) references to the word 'include' or 'including' are to be construed without limitation;
  - (l) a thing includes the whole and each part of it separately;
  - (m) a reference to a Party to this Agreement includes a reference to the servants, agents and contractors of the party, and the party's successors and assigns; and
  - (n) A reference to an Item is to an item in Schedule 1;
  - (o) words or expressions used in clause 26, which have a particular meaning in the **GST law** (as defined in the GST Act, and also including any applicable legislative determinations and Australian Taxation Office public rulings) have the same meaning, unless the context otherwise requires.
- (2) A provision of this Agreement must not be construed to the disadvantage of a Party merely because that party was responsible for the preparation of the Agreement or the inclusion of the provision in the Agreement.

## **2 Planning agreement under the Act**

- 2.1 The parties agree that this Agreement is a planning agreement governed by Subdivision 2 of Division 6 of Part 4 of the Act.

## **3 Application of this Agreement**

- 3.1 This Agreement applies to the Land and to the Development.

## **4 Operation of this Agreement**

- 4.1 This document, when unsigned by the parties and attached to the Development Application for the Development lodged by the Developer with the Council, is an irrevocable offer from the Developer to the Council to enter into this Agreement if the Council grants Development Consent to the Developer on conditions acceptable to the Developer, in the Developer's absolute discretion.
- 4.2 This Agreement commences on the latest date on which any of the following occur:
- (1) each of the following occurs:
    - (a) the Council, JRPP or the Land and Environment Court, grants Development Consent on conditions acceptable to the Developer, in its absolute discretion;

- (b) public notice of the granting of the Development Consent has been given in accordance with the Act and the Regulation (if Development Consent is granted by the Council or JRPP);
    - (c) 3 months have elapsed since the date on which that public notice was given (unless this requirement is waived by the Developer by written notice to Council, in which case this subclause shall not apply); and
    - (d) the date the Developer notifies the Council in writing that it intends to commence the Development;
  - (2) any Class 4 action in respect of the validity of the Development Consent has been finally determined;
  - (3) the carrying out of any part of the Development is subject to a condition of that Development Consent, imposed under section 93I(3) of the Act, requiring this Agreement to be entered into; and
  - (4) all the parties have signed this Agreement.
- 4.3 The Council must notify the Development Consent in accordance with the Act and Regulations in a timely manner.

## **5 Confidentiality**

- 5.1 The terms of this Agreement are not confidential. This Agreement may be exhibited by either party.
- 5.2 Except as stated in this Agreement, Council must not and must not permit any of its officers, employees, agents, contractors or related companies to use or to disclose any Confidential Information to any person without the prior written consent of the Developer.
- 5.3 If requested by a party, the other party must:
- (1) not issue, publish or authorise any media release, advertisement or publicity concerning this Agreement without obtaining the prior written consent of the other party; and
  - (2) ensure that its officers, employees, agents, contractors and related companies do the same.
- 5.4 This clause 5 does not apply to any information which:
- (1) is generally available to the public (other than as a result of the wrongful disclosure by the Council); or
  - (2) is required to be disclosed by any law.

## **6 Development Contributions to be made under this Agreement**

- 6.1 The Developer must make the Development Contribution by:
- (1) carrying out the Development Contribution Works in accordance with this Agreement; and

- (2) dedicating two affordable housing units (1 x studio apartment and 1 x one bedroom apartment) in the location shown on drawing VPA:002 at Annexure "B" to this Agreement, to be managed by a recognized affordable housing provider.

6.2 In respect of the Development Contribution Works at clause 6.1(1):

- (1) if the Developer cannot negotiate access on reasonable terms to carry out the Development Contribution Works referred to in clause (f) in Item 3 within 6 months of the date of this Agreement with the relevant Government Agency, then the Developer's obligations in respect of the Development Contribution Works referred to in clause (f) in Item 3 cease to apply; and
- (2) if the Developer cannot negotiate access on reasonable terms to carry out the Development Contribution Works referred to in clause (e) in Item 3 within 6 months of the date of this Agreement with the owner of the land contained in folio 11/1184304, then the Developer's obligations in respect of the Development Contribution Works referred to in clause (e) in Item 3 cease to apply.

6.3 Except as provided by clause 6.2, the Development Contribution must be provided prior to the issue of the final Occupation Certificate for the Development. For the avoidance of doubt, the parties agree that Interim Occupation Certificates may be issued prior to the provision of the Development Contribution.

6.4 The Developer offers to make the Development Contribution in substitution for any similar requirements which might otherwise be imposed as a condition of Development Consent.

## **7 Application of s94 and s94A of the Act to the Development**

7.1 This Agreement does not exclude the application of sections 94 and 94A of the Act to any Development Consent.

## **8 Work as condition of Development Consent**

### **8.1 Definitions**

In this clause 8:

- (1) **Certificate of Practical Completion** means a written notice from the Council to the Developer stating that the Contribution Item in respect of which the Council has received a Notice of Practical Completion has achieved Practical Completion on a specified date;
- (2) **Contribution Item** means each of the items listed as Development Contribution Works in Item 3;
- (3) **Notice of Practical Completion** means a written notice from the Developer to the Council which specifies that the Developer considers that a particular Contribution Item will achieve Practical Completion on a particular date, and includes a new Notice of Practical Completion served under clause 8.4(4)(a); and
- (4) **Practical Completion** means, in respect of a Contribution Item, the stage in the construction of the Contribution Item when construction is complete except for minor omissions and defects:
  - (a) which do not prohibit; or
  - (b) which may be rectified without prohibiting,



the Contribution Item from being reasonably used for its intended purpose.

## **8.2 Works**

The Developer must construct the Development Contribution Works:

- (1) in a proper and workmanlike manner; and
- (2) in accordance with the Construction Certificate.

## **8.3 Notice of Practical Completion**

The Developer must serve a Notice of Practical Completion on the Council for each Contribution Item it considers has achieved Practical Completion.

## **8.4 Council's response to Notice of Practical Completion**

- (1) The Council must inspect a Contribution Item within 14 days of receipt of a Notice of Practical Completion in respect of that Contribution Item.
- (2) Within 21 days of receiving a Notice of Practical Completion the Council must (acting reasonably):
  - (a) serve a Certificate of Practical Completion on the Developer; or
  - (b) serve a written notice on the Developer specifying:
    - (i) that the relevant Contribution Item has not achieved Practical Completion; and
    - (ii) the work the Council requires the Developer to carry out in order for the relevant Contribution Item to achieve Practical Completion.
- (3) If the Council does not comply with clause 8.4(2) the relevant Contribution Item is deemed to have been subject to a Certificate of Practical Completion on the date specified in the Notice of Practical Completion.
- (4) If the Council serves a notice on the Developer under clause 8.4(2)(b) the Developer must:
  - (a) carry out the work specified in the notice within a reasonable time and then serve on the Council a new Notice of Practical Completion; or
  - (b) serve a notice on the Council disputing the matters set out in the notice served under clause 8.4(2)(b).

## **8.5 Dispute resolution provisions apply**

If the Developer serves a notice on the Council under clause 8.4(4)(b), clause 10 applies.

# **9 Rectification of defects**

9.1 The Council may give the Developer a Rectification Notice during the Defects Liability Period.

9.2 The Developer must comply with a Rectification Notice at its cost.

- 9.3 When the Developer considers that it has complied with a Rectification Notice it may request the Council to issue a Rectification Certificate relating to the work the subject of the relevant Rectification Notice.
- 9.4 Within 14 days of receipt of the Developer's request under clause 9.3, the Council must:
- (1) issue a Rectification Certificate to the Developer if it is satisfied that the Developer has complied with the relevant Rectification Notice; or
  - (2) give the Developer notice of its decision to refuse to issue a Rectification Certificate containing sufficient detail of the reasons for its decision so as to inform the Developer of the work that needs to be done to enable the Council to issue a Rectification Certificate.
- 9.5 Without limiting any other right of the Developer, on receipt of a notice under clause 9.4(2), the Developer may obtain a Compliance Certificate from an accredited certifier, appointed by agreement between the parties acting reasonably, in relation to the work the subject of the Rectification Notice.
- 9.6 A Rectification Certificate or a Compliance Certificate referred to in clause 9.5 discharges the Developer from any further obligation to comply with a Rectification Notice.
- 9.7 If the Developer does not fully comply with a Rectification Notice, the Council may rectify the defect and may recover the reasonable cost of doing so as a debt due in a court of competent jurisdiction.

## **10 Force majeure – unforeseen events causing delay**

- 10.1 In this clause 10, **Prescribed Event** means any of the following events:
- (1) act of God;
  - (2) war, terrorism, riot, insurrection, vandalism or sabotage;
  - (3) strike, lockout, ban, limitation of work or other industrial disturbance; or
  - (4) law, rule or regulation of any government or Governmental Agency, and executive or administrative order or act of general or particular application;
  - (5) fire;
  - (6) lightning;
  - (7) storm or other adverse weather conditions;
  - (8) explosion;
  - (9) civil commotion;
  - (10) national emergency (whether in fact or law);
  - (11) martial law;
  - (12) sabotage;
  - (13) power surge or failure;

- (14) breakdown of plant, machinery or equipment;
- (15) shortage of labour, transportation, fuel, power or plant, machinery, equipment or material,

which:

- (16) is unforeseen by the Affected Party;
- (17) is beyond the control of the Affected Party; and
- (18) occurs without the fault or negligence of the Affected Party.

10.2 If a Party (**Affected Party**):

- (1) is prevented from or delayed in performing an obligation (other than to pay money) by a Prescribed Event;
- (2) as soon as possible after the Prescribed Event occurs, notifies the other party of full particulars of:
  - (a) the Prescribed Event;
  - (b) the effect of the Prescribed Event on performance of the Affected Party's obligations;
  - (c) the anticipated period of delay; and
  - (d) the action (if any) the Affected Party intends to take to mitigate or remove the effect and delay; and
- (3) promptly and diligently acts to mitigate or remove the Prescribed Event and its effect;

then:

- (4) the obligation is suspended during, but for no longer than, the period the Prescribed Event continues and such further period as is reasonable in the circumstances; and
- (5) if the Affected Party is prevented from or delayed in performing the obligation by the Prescribed Event for at least 60 days, any party may by notice to the other Party terminate this Agreement.

10.3 The Party which is not the Affected Party must use reasonable endeavours to remove or mitigate the Prescribed Event and its effects.

10.4 Nothing in clause 10.2(3) or clause 10.3 obliges either party to settle any strike, lockout, ban, limitation of work or other industrial disturbance.

## 11 Dispute resolution

11.1 If a dispute arises in connection with this Agreement, a Party to the dispute must give to the other party or Parties to the dispute notice specifying the dispute and requiring its resolution under this clause 11 (**Notice of Dispute**).

11.2 A director or general manager of each Party must confer within 3 days after the Notice of Dispute is given to try to resolve the dispute.

- 11.3 If the dispute is not resolved within 7 days after the Notice of Dispute is given to the other party or Parties (**First Period**), the dispute is by this clause submitted to mediation. The mediation must be conducted in New South Wales. The Institute of Arbitrators and Mediators Australia Mediation Rules (at the date of this Agreement) as amended by this clause 11 apply to the mediation, except where they conflict with this clause 11.
- 11.4 If the Parties have not agreed upon the mediator and the mediator's remuneration within 7 days after the First Period:
- (1) the mediator is the person appointed by; and
  - (2) the remuneration of the mediator is the amount or rate determined by;
- the Chair of the NSW Chapter of the Institute of Arbitrators and Mediators Australia (**Principal Appointor**) or the Principal Appointor's nominee, acting on the request of any party to the dispute.
- 11.5 The Parties must pay the mediator's remuneration in equal shares. Each Party must pay its own costs of the mediation.
- 11.6 If the dispute is not resolved within 28 days after the appointment of the mediator (**Second Period**), either Party may by written notice to the other party require the dispute to be submitted to expert determination.
- 11.7 The provisions of the Institute of Arbitrators & Mediators Australia Expert Determination Rules as published by The Institute of Arbitrators and Mediators Australia (to be found on its website [www.iama.org.au](http://www.iama.org.au)) apply to the expert determination, except to the extent that there are inconsistent provisions in this Agreement.
- 11.8 Despite anything in this clause 11, a party at any time may commence court proceedings in relation to any dispute or claim arising under or in connection with this Agreement where that party seeks urgent interlocutory relief.
- 11.9 Despite the reference of a dispute to expert determination under this clause 11, the Parties must continue to perform their obligations under this Agreement. In the award, the expert may make any appropriate adjustment for the performance of obligations under this Agreement since the Notice of Dispute was given.
- 11.10 Subject to clause 11.8, a party must not commence or maintain a court action or proceeding upon a dispute in connection with this Agreement until the dispute has been referred to an expert and determined under this clause 11.
- 11.11 This clause 11 continues in force even where the Agreement has been fully performed, terminated or rescinded or where the parties or any of them have been discharged from the obligation to further perform the Agreement for any reason.
- 11.12 This clause 11 applies even where the Agreement is otherwise void or voidable.
- 11.13 The Parties must:
- (1) keep confidential any information or documents disclosed under this clause; and
  - (2) only use any information or documents disclosed under this clause to attempt to resolve the dispute.

## 12 Enforcement

- 12.1 The Developer has agreed to provide security to the Council for the performance of the Developer's obligations under this Agreement, by providing to Council within 7 days of the commencement of this Agreement an unconditional bank guarantee in the amount of \$75,000.
- 12.2 From the date of commencement of this Agreement until the date that the Developer has provided the Development Contribution in full, the Council will be entitled to retain the bank guarantee.
- 12.3 Council shall promptly return the bank guarantee to the Developer at the end of the Defects Liability Period.

## 13 Notices

- 13.1 Any notice, consent, information, application or request that must or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:

- (1) delivered or posted to that Party at its address set out below;
- (2) faxed to that Party at its fax number set out below; or
- (3) emailed to that Party at its email address set out below.

(a) **Council**

Attention: The General Manager

Address: Administrative Centre, 2 Fisher Street, Petersham NSW 2049

Fax Number: (02) 9335 2029

Email: [council@marrickville.nsw.gov.au](mailto:council@marrickville.nsw.gov.au)

(b) **Developer**

Attention: Anthony Rice

Address: Suite 2, Level 10, 139 Macquarie Street, Sydney NSW 2000

Fax Number: (02) 8113-5334

Email: [anthonyrice@Stamford.com.au](mailto:anthonyrice@Stamford.com.au)

- 13.2 If a Party gives the other Party 3 Business Days' notice of a change of its address, fax number or email address, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted, faxed or emailed to the latest address or fax number.
- 13.3 Any notice, consent, information, application or request is to be treated as given or made at the following time:
- (1) if it is sent by post, 2 Business Days after it is posted;

- (2) if sent by facsimile or email before 5pm on a Business Day at the place of receipt, on the day and at the time it is sent (as recorded on the sender's equipment) and otherwise at 9am on the next Business Day at the place of receipt; or
- (3) if otherwise delivered before 5pm on a Business Day at the place of delivery, upon delivery, and otherwise on the next Business Day at the place of delivery.

13.4 Despite clause 13.3:

- (1) a facsimile is not treated as given or received unless at the end of the transmission the sender's facsimile machine issues a report confirming the transmission of the number of pages in the Notice;
- (2) an email message is not treated as given or received if within 2 hours after the time sent the sender receives an automated message that the email has not been delivered; and
- (3) a facsimile or email message is not treated as given or received if it is not received in full and in legible form and the addressee notifies the sender of that fact within 2 hours after the transmission ends or by 11am on the Business Day on which it would otherwise be treated as given and received, whichever is later.

13.5 Any Notice by a party may be given and may be signed by its solicitor.

## 14 Approvals and consent

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

## 15 Assignment and dealings

- 15.1 The Developer may assign or otherwise deal with this Agreement with the prior written consent of every other party (Consenting Party), which consent must not be unreasonably withheld.
- 15.2 A Consenting Party is required to give its consent under clause 15.1 if:
- (1) the Developer gives the Consenting Party at least 10 Business Days' notice of the proposed assignment;
  - (2) the proposed assignee executes a deed with the parties under which:
    - (a) the proposed assignee agrees to perform all of the obligations of the Developer under this Agreement which have not already been performed by the Developer;
    - (b) the proposed assignee is bound by this Agreement as if the proposed assignee were named in this Agreement in place of the Developer; and
    - (c) the Developer is released from its obligations under this Agreement;
  - (3) the Developer pays all expenses (including legal costs on a solicitor and own client or full indemnity basis, whichever is greater) incurred by the Consenting

Party in investigating the proposed assignee or in connection with the proposed assignment.

- 15.3 On receipt on the deed referred to in clause 15.2(2) the Council must execute the deed so that the Developer is released from its obligations under this Agreement.

## **16 Costs**

- 16.1 Each Party must pay its own costs and outlays connected with the negotiation, preparation and execution of this Agreement.
- 16.2 The Developer must pay all stamp duty and other government imposts payable in connection with this Agreement and all other documents and matters referred to in this Agreement when due or earlier if requested in writing by the Council.

## **17 Entire agreement**

- 17.1 Subject to clause 17.2, this Agreement:
- (1) is the entire agreement and understanding between the Parties on everything connected with the subject matter of this Agreement; and
  - (2) supersedes any prior agreement or understanding on anything connected with that subject matter.
- 17.2 The explanatory note prepared in relation to this Agreement under clause 25E(1) of the *Environmental Planning and Assessment Regulation 2000* (NSW) must not be used to assist in construing this Agreement.

## **18 Further acts**

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

## **19 Governing law and jurisdiction**

- 19.1 This Agreement is governed by the law of New South Wales. The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The Parties will not object to the exercise of jurisdiction by those courts on any basis.

## **20 Joint and individual liability and benefits**

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

## **21 No fetter**

- 21.1 The parties:
- (1) acknowledge that the Council and the JRPP are each a consent authority, having statutory rights and obligations under the Legislation;

- (2) do not intend this Agreement to fetter Council's or the JRPP's Discretion.
- 21.2 If, contrary to the parties' intention, any provision in this Agreement is held by a court of competent jurisdiction to constitute an unlawful fetter on Council's or the JRPP's Discretion:
- (1) the parties must take all practical steps, including the execution of any further documents, to ensure that the objective of this clause 21 is substantially satisfied; and
  - (2) if clause 21 cannot be achieved without unlawfully fettering Council's or the JRPP's Discretion, the relevant provision is severed and the rest of this Agreement remains in force.
- 21.3 If:
- (1) the Legislation permits the Council to contract out of a provision of that Legislation or gives the Council power to exercise Council's Discretion; and
  - (2) the Council has in this Agreement contracted out of a provision or exercised Council's Discretion, then to that extent this Agreement is to be regarded as consistent with the Legislation.

## **22 Representations and warranties**

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

## **23 Severability**

- 23.1 If a clause or part of a clause of this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way.
- 23.2 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 Agreement, but the rest of this Agreement is not affected.

## **24 Modification**

- 24.1 No modification of this Agreement will be of any force or effect unless it is in writing and signed by the Parties to this Agreement.

## **25 Waiver**

- 25.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.
- 25.2 A waiver by a Party is only effective if it is in writing.
- 25.3 A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It 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.



## **26 Goods and services tax**

- 26.1 The parties believe that there is no GST liability in respect of the grant of the Development Consent by Council or the payment or provision of the Development Contribution because the Development Consent is a non-monetary contribution and:
- (a) it is not consideration for the grant of the Development Consent by Council in accordance with section 82-10(1) of the GST Act; and
  - (b) the grant of the Development is not consideration for the supply of the non-monetary Development Contribution under section 82-5 of the GST Act.
- 26.2 Despite clause 26.1, to the extent that the Commissioner of Taxation, a court or tribunal determines that any supply made under or in connection with this Agreement is a taxable supply, the GST exclusive consideration otherwise to be paid or provided for that taxable supply is increased by the amount of any GST payable in respect of that taxable supply and that amount must be paid at the same time and in the same manner as the GST exclusive consideration is otherwise to be paid or provided. A party's right to payment under this clause is subject to a valid tax invoice being delivered to the recipient of the taxable supply.

## Schedule 1

### Item 1      **Land**

- (a)      The land contained in certificates of title: 1/715815;
- (b)      Auto consol 10256-163;
- (c)      1/587480;
- (d)      11/563564;
- (e)      A/443420;
- (f)      B/443420;
- (g)      C/443420;
- (h)      2/774830;
- (i)      1/633309;
- (j)      3/512916;
- (k)      1/804112;
- (l)      1/797072;
- (m)      12/1184304,

as shown shaded pink in the plan annexed and marked "Annexure A", and known as 6-26 Grove Street and 60-64 Constitution Road, Dulwich Hill,

and

includes, to the extent required for the Development Contribution Works, Constitution Road, Grove Street and the Railway Corridor.

### Item 2      **Development**

The development of the Land as described in section 5 of the Statement of Environmental Effects prepared by Urbis dated August 2013 and lodged with Council as part of the Development Application, as amended, which includes:

- (a)      Demolition of existing industrial buildings on site;
- (b)      Remediation of industrial land, where necessary;
- (c)      Construction of four residential buildings varying in height from four to eight storeys comprising 249 apartments;
- (d)      Construction of associated landscaping;
- (e)      Construction of two levels of underground parking with 270 car parking spaces and storage areas;

- (f) Construction of internal road access from Hill Street and Grove Street; and
- (g) Inclusion of one retail tenancy opening onto a plaza (Arlington Square), immediately adjacent to the future Arlington Light Rail Stop.

Item 3

**Development Contribution Works**

- (a) public domain works and landscaping to part of Constitution Road including paving, bollards and street trees;
- (b) concrete paving to the western side of Grove Street along the pedestrian footpath;
- (c) new street tree plantings along the western side of Grove Street;
- (d) removal of the single existing street light at the end of Constitution Road to allow the construction of Arlington Square and replacement with a new public lighting pole;
- (e) the resurfacing of the right of way with Andrews Meats (being the land contained in folio 11/1184304) accessed from Hill Street; and
- (f) Greenway landscaping and embellishment to provide new vegetation and potential fauna habitat adjacent to the railway line,

as identified and in the locations shown on Drawing numbers VPA:001 and VPA:002 which are annexed at Annexure "B".

**Executed** as an agreement.

Signed for and on behalf of **Marrickville Council** by its authorised representative in the presence of:

.....  
Signature of witness

.....  
Signature of authorised representative

.....  
Name of witness  
(BLOCK LETTERS)

.....  
Name of authorised representative  
(BLOCK LETTERS)

.....  
Address of witness

Signed sealed and delivered for and on behalf of **SLC Campsie Pty Ltd** by its attorney Anthony Rice under power of attorney number Book 4649 No 927 in the presence of:

.....  
Anthony Rice

.....  
Signature of witness

.....  
Name of witness (BLOCK LETTERS)

.....  
Address of witness

**Annexure A:** Plan showing lots and areas (Item 1 of Schedule 1)

**Annexure B:** Drawings VPA:001 and VPA:002 showing the location of the Development Contribution Works, and of the affordable housing units (Item 3 of Schedule 1, and Clause 6.1)

**Draft Planning Agreement**  
**Marrickville Council and SLC Campsie Pty Ltd**  
**Explanatory Note**

**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**) prepared under Subdivision 2 of Division 6 of Part 4 of the *Environmental Planning and Assessment Act 1979* (the **Act**).

This explanatory note has been prepared jointly by the parties as required by clause 25E of the *Environmental Planning and Assessment Regulation 2000* (the **Regulation**).

**Parties to the Planning Agreement**

The parties to the Planning Agreement are Marrickville Council (the **Council**) and SLC Campsie Pty Ltd (the **Developer**).

**Description of the Subject Land**

The Planning Agreement applies to those parts of the land comprising the following certificates of title (the **Land**):

12/1184304

1/715815

11/563564

1/633309

A/443420

B/443420

C/443420

1/797072

1/587480

3/512916

1/804112

2/774830

Auto-Consol 10256-163 (This title contains Lots 1 and 2 in DP81275, Lot 1 DP104551 and Lot 2 DP104552)

and known as 6-26 Grove Street and 60-64 Constitution Road, Dulwich Hill, and includes, to the extent required, Constitution Road, Grove Street and the Railway Corridor.

## Description of the Proposed Development

On 15 August 2013 the Developer lodged Development Application No. DA2013000375 with Council (the **Development Application**). The Development Application sought development consent for development on the Land described as follows:

The development of the Land as described in section 5 of the Statement of Environmental Effects prepared by Urbis dated August 2013 and lodged with Council as part of the Development Application, as amended, which includes:

- (a) Demolition of existing industrial buildings on site;
- (b) Remediation of industrial land, where necessary;
- (c) Construction of four residential buildings varying in height from four to eight storeys comprising 249 apartments;
- (d) Construction of associated landscaping;
- (e) Construction of two levels of underground parking with 270 car parking spaces and storage areas;
- (f) Construction of internal road access from Hill Street and Grove Street; and
- (g) Inclusion of one retail tenancy opening onto a plaza (Arlington Square), immediately adjacent to the future Arlington Light Rail Stop,

(the **Proposed Development**).

## Summary of Objectives, Nature and Effect of the Planning Agreement

In connection with the Proposed Development, the parties have agreed to enter into the Planning Agreement.

The terms of the Planning Agreement require the Developer to:

- (1) carry out certain works comprising:
  - (a) public domain works and landscaping to part of Constitution Road including paving, bollards and street trees;
  - (b) concrete paving to the western side of Grove Street along the pedestrian footpath;
  - (c) new street tree plantings along the western side of Grove Street;
  - (d) removal of the single existing street light at the end of Constitution Road to allow the construction of Arlington Square and replacement with a new public lighting pole;
  - (e) the resurfacing of the right of way with Andrews Meats (being the land contained in folio 11/1184304) accessed from Hill Street;
  - (f) Greenway landscaping and embellishment to provide new vegetation and potential fauna habitat adjacent to the railway line; and
- (2) dedicate two affordable housing units (1 x studio apartment and 1 x one bedroom apartment) to be managed by a recognized affordable housing provider,

together, the **'Development Contribution'**.



The Development Contribution is to be provided to Council prior to the issue of the final Occupation Certificate for the Development , except as provided for in clause 6.2 of the Planning Agreement.

## **Assessment of Merits of Planning Agreement**

### **The Planning Purpose of the Planning Agreement**

In accordance with section 93F(2)(c) of the Act, the Planning Agreement has the following public purposes:

- (a) the provision of affordable housing;
- (b) the provision of transport or other infrastructure relating to land; and
- (b) the conservation or enhancement of the natural environment.

The Council and the Developer have assessed the Planning Agreement and both hold the view that the provisions of the Planning Agreement provide a reasonable means of achieving the public purposes set out above.

### **How the Planning Agreement Promotes the Public Interest**

The Planning Agreement promotes the public interest by requiring the Developer to carry out a range of works for public purposes that will have a public benefit by improving public domain areas associated with the Land, and surrounding area generally. Furthermore by dedicating two units for affordable housing, the Developer is positively contributing to creating housing opportunities for a wider range of people.

The Planning Agreement promotes the public interest in achieving the action area priorities of the Marrickville Community Strategic Plan – Our Place Our Vision 2023, by

- (a) Delivering on the community need to build partnerships to supply increased affordable, liveable housing;
- (a) Providing an accessible and well-connected footpath that promotes the greenway network; and
- (b) Providing significant public domain works and landscaping to Constitution Road including paving, bollards and street trees to create an attractive public domain interface with the new Light Rail station.

### **How the Planning Agreement Promotes the Objects of the Act**

The Planning Agreement promotes the objects of the Act by:

- (a) promoting and co-ordinating the orderly and economic use and development of the Land which has been identified by Council as a major urban renewal precinct;
- (b) delivering a range of streetscape and roadwork improvements to be carried out for public purposes; and
- (c) the provision of two affordable housing units to contribute toward the social and community welfare of the community.

## **How the Planning Agreement Promotes the Elements of the Council's Charter**

The Planning Agreement promotes the elements of Council's Charter under Section 8 of the Local Government Act 1993 (NSW) by assisting Council to:

- provide adequate, equitable and appropriate services and facilities for the community and to ensure that those services and facilities are managed efficiently and effectively;
- properly manage, develop, protect, restore, enhance and conserve the environment of the area for which it is responsible, in a manner that is consistent with and promotes the principles of ecologically sustainable development; and
- effectively plan for, account for and manage the assets for which it is responsible.

### **Conformity with the capital works program**

[COUNCIL TO INSERT DETAILS]

### **Requirements relating to Construction and Occupation Certificates**

The Planning Agreement provides that the Development Contribution must be provided to Council prior to the issue of the final Occupation Certificate for the Development , except as provided for in clause 6.2 of the Planning Agreement.