



LEGACYPROPERTY

15 September 2022

General Manager  
The Hills Shire Council  
3 Columbia Court  
NORWEST NSW 2153

*Attention: Nicholas Carlton, Manager – Forward Planning*

Dear Nicholas,

**LETTER OF OFFER TO ENTER INTO A PLANNING AGREEMENT WITH THE HILLS SHIRE COUNCIL –  
PLANNING PROPOSAL – OLD NORTHERN ROAD & DERRIWONG ROAD, DURAL**

LegPro 73 Pty Ltd as trustee for LegPro 73 Unit Trust (**Legacy**) offers to enter into a Voluntary Planning Agreement (**VPA**) with The Hill Shire Council (**Council**) under section 7.4 of the *Environmental Planning and Assessment Act 1979 (EP&A Act)* in accordance with the terms of this Letter of Offer (**Offer**).

**1 The Land**

The VPA will apply to the following Land:

Address	Folio Identifier	Registered Proprietor
618 Old Northern Road, Dural	X/501233	LegPro 73 Pty Ltd
626 Old Northern Road, Dural	2/541329	LegPro 73 Pty Ltd
21 Derriwong Road, Dural	2/567995	LegPro 73 Pty Ltd
27 Derriwong Road, Dural	9/237576	LegPro 73 Pty Ltd
614 Old Northern Road, Dural	Y2/91653	Joseph Moussa and Josephine Moussa

The registered proprietor of 614 Old Northern Road has provided written consent for Legacy to include this property within the VPA.



## 2 Development

The VPA will be entered into in connection with a Planning Proposal (**Planning Proposal**) that seeks to amend *The Hills Local Environmental Plan 2019* to rezone the Land from RU6 Rural Transition to R2 Low Density Residential and SP2 Infrastructure.

The Planning Proposal envisages a development of 110 residential lots on the Land.

## 3 Public benefits offered under the VPA

The proposed public benefits offered under the VPA are detailed in Schedule 1 and summarised in the following table:

Item	Summary
OS1- Local open space OS2- Local open space	Dedication to Council and embellishment of 4,000sqm of land for use as a local park Dedication to Council and embellishment of 141sqm of land for use as a pedestrian link
Active open space	Provision of a monetary contribution to Council of \$363,305.80 towards active open space
LR1 - Traffic management	Land and works associated with Round Corner Bypass
Community facilities	Provision of a monetary contribution to Council of \$101,242.90 towards community facilities
B1 - Water management B2 - Water management	Dedication to Council and embellishment of two stormwater detention basins

## 4 Conditions of the VPA Offer

This offer is subject to:

1. Finalisation of an amendment to *The Hills Local Environmental Plan 2019* that gives effect to the Planning Proposal. Legacy reserves the right to amend this offer if the form of the Planning Proposal or LEP amendment varies from the Planning Proposal submitted to Council.
2. Future development consent allowing Legacy to undertake the residential subdivision and deliver the works that form part of the public benefits.



## 5 Execution of VPA

The VPA will be executed following endorsement from Council to:

- Finalise the Planning Proposal, and
- Enter into the VPA.

## 6 Operation

The VPA will operate from the commencement date of the amendment to *The Hills Local Environmental Plan 2019* that gives effect to the Planning Proposal.

## 7 Enforcement and security

Security will be provided through:

- registration of the VPA on title of the Land;
- inclusion of a clause allowing Council to compulsorily acquire land to be dedicated for \$1;
- restriction on the issue of relevant certificates under Part 6 of the EP&A Act prior to the relevant obligation(s) being satisfied.

## 8 Registration

On execution of the VPA Legacy will register the VPA on those titles of the Land that it is the registered proprietor.

The VPA will subsequently be registered on the title of the balance of the Land within 10 days of Legacy becoming the registered proprietor.

The VPA is to include a mechanism which allows for the VPA to be released from the Land in stages as relevant obligations under the VPA are satisfied.

## 9 Application of Section 7.11, 7.12 and 7.24 Contributions

The VPA will exclude the application of Section 7.11 of the EP&A Act to the future development of the Land.

The VPA will not exclude the application of Section 7.12 of the EP&A Act to the future development of the Land.

The VPA will exclude the application of Section 7.24 of the EP&A Act to the future development of the Land.



## **10 Summary of requirements referred to in section 7.4 of the EP&A Act**

Schedule 2 provides a summary of those matters referenced at section 7.4 of the EP&A Act and how these are to be addressed in the VPA.

## **11 Legal costs**

Each party is to pay its own legal and other costs incurred relating to the preparation of the VPA.

## **12 Other matters**

The VPA will include a provision to the effect that the VPA does not limit or fetter in any way the exercise of any statutory discretion or duty imposed on the Council.

The VPA will include administrative provisions relating to:

- notices;
- entire agreement;
- governing law and jurisdiction – in this case New South Wales;
- the process for amending the VPA;
- waiver; and
- execution of the VPA in counterparts.

## **13 Limitation of liability**

The VPA will contain the limitation of liability clause contained in Schedule 3.

We look forward to progressing this VPA with Council. Please contact Mike Williams on 0414 5022 36 or via email [mwilliams@legacyproperty.com.au](mailto:mwilliams@legacyproperty.com.au) if you have any questions in relation to this offer.

Yours sincerely,

**Matthew Hyder**  
Chief Executive Officer

Schedule 1: Contributions



## Proposed Contributions

Item	Description/Public Purpose	Values			Timing
		Land*	Works	Monetary	
OS1 - Local open space	Dedication of a maximum 4,000sqm of land at no cost to Council and embellishment as local open space in accordance with concept design	\$2,000,000	\$573,720	N/A	Prior to or in conjunction with a Subdivision Certificate for any Final Lots within Stage 1.
OS2 - Local open space	Dedication of 141sqm of land at no cost to Council and embellishment as a pedestrian link	\$70,500	\$45,600	N/A	Prior to or in conjunction with a Subdivision Certificate for any Final Lots within Stage 2.
Active open space	Provision of a monetary contribution of \$3,302.78 per residential lot	N/A	N/A	\$363,306	Paid progressively with any subdivision certificate creating a final residential lot
LR1 - Traffic management	Dedication of a maximum 13,223sm of land forming a 32m road reservation through the site for the future Round Corner Bypass.	\$6,611,500	N/A	N/A	Prior to or in conjunction with a Subdivision Certificate for any Final Lots within Stage 2
	Construction of 21.5m wide collector road within this road reservation, including two roundabouts, kiss n drop lane adjacent to Dural Public School and widened verges to accommodate future expansion	N/A	\$4,549,240	N/A	
Community facilities	Provision of a monetary contribution of \$920.39 per residential lot	N/A	N/A	\$101,243	Paid progressively with any subdivision certificate creating a final residential lot
WB1 - Water management	Dedication of approximately 1,206sqm of land at no cost to Council and embellishment works for southern detention basin (subject to detailed design).	\$603,000	\$872,720	N/A	Prior to or in conjunction with a Subdivision Certificate for any Final Lots within Stage 1.
WB2 - Water management	Dedication of approximately 1,453sqm of land at no cost to Council and embellishment works for western detention basin (subject to detailed design) and	\$726,500	\$1,309,080	N/A	Prior to or in conjunction with a Subdivision Certificate for any Final Lots within Stage 2.
<b>Totals</b>		<b>\$10,011,500</b>	<b>\$7,350,360</b>	<b>\$464,549</b>	

\* Based on a value of \$500/sqm

**Schedule 2: Summary of Requirements (Section 7.4)**

Subject and subsection of the Act	Planning Agreement
<b>Planning instrument and/or Development Application – Section 7.4(1)</b>  The Landowners have:  (a) Sought a change to an environmental planning instrument  (b) Made, or propose to make a Development Application  (c) Entered into an agreement with, or are otherwise associated with, a person to whom paragraph (a) or (b) applies	   <input type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No</b>  <input type="checkbox"/> <b>Yes</b> <input type="radio"/>  <input type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No</b>
<b>Description of the land to which the Planning Agreement applies – Section 7.4(3)(a)</b>	Refer to Letter of Offer.
<b>Description of the change to the environmental planning instrument or development to which the Planning Agreement applies – Section 7.4(3)(b)</b>	The VPA relates to the proposed amendment of <i>The Hills Local Environmental Plan 2019</i> .  The Planning Proposal seeks to amend <i>The Hills Local Environmental Plan 2019</i> to rezone from RU6 Rural Transition to R2 Low Density Residential and SP2 Infrastructure (Local Road Widening), with the intent to permit a subdivision creating 110 residential lots.
<b>The scope, timing and manner of delivery of contributions required by the Planning Agreement applies – Section 7.4(3)(c)</b>	Refer Schedule 1.
<b>Application of section 7.11 of the Act – Section 7.4(3)(d)</b>	The VPA <b>excludes</b> the application of section 7.11 of the EP&A Act to the Land and any subsequent development.

<b>Application of section 7.12 of the Act –</b> Section 7.4(3)(d)	The application of section 7.12 of the EP&A Act is <b>not excluded</b> .
<b>Application of section 7.24 of the Act –</b> Section 7.4(3)(d)	The application of section 7.24 of the EP&A Act is <b>excluded</b> .
<b>Whether the benefits are or not to be taken into consideration in determining a development contribution under section 7.11 –</b> Section 7.4(3)(e)	N/A  The VPA excludes the application of section 7.11 of the EP&A Act.
<b>Mechanism for dispute resolution –</b> Section 7.4(3)(f)	A standard dispute resolution mechanism and relevant clauses shall be incorporated into the VPA, including but not limited to:  (a) Written notice of dispute (b) Attempt to resolve (c) Mediation (d) Court proceedings
<b>Enforcement of the Planning Agreement by a suitable means –</b> Section 7.4(3)(g)	A standard enforcement mechanism and relevant clauses shall be incorporated into the VPA, including but not limited to the developer providing security to the planning authority for the performance of the developer's obligations under the VPA by providing:  (a) The registration of the VPA on each certificate of title where Legacy is currently the registered proprietor; (b) Registration of the VPA on the titles of the balance on the Land on Legacy becoming the registered proprietor; (c) restriction on the issue of relevant certificates under Part 6 of the EP&A Act prior to the relevant obligation(s) being satisfied; and



	(d) inclusion of a mechanism which allows Council to compulsorily acquire land to be dedicated for \$1.
<b>Registration of the Planning Agreement - Section 7.6</b>	The VPA will include an obligation which requires the VPA, at the developer's cost, to be registered on each title of the Land.

### **Schedule 3: Limitation of Liability Clause**

(1) Definitions

In this clause:

- (a) Trust means the LegPro Orchard Hills Unit Trust; and
- (b) Trust Deed means the trust deed establishing the Trust.

(2) Limitation of Liability

- (a) The Developer warrants that:
  - (i) it enters into this deed in its capacity as trustee of the Trust and in no other capacity; and
  - (ii) it is empowered by the terms of the Trust Deed or any other instrument constituting the Trust to enter into this deed in accordance with its provisions; and
  - (iii) it is entitled to be indemnified out of the assets of the Trust in respect of the obligations and liabilities assumed by it under the terms of this deed.
- (b) The Council acknowledges and agrees that, despite any other provision of this deed, any liability or obligation of the Developer arising under or in connection with this deed can only be enforced to the extent to which they are entitled to be, and are in fact, indemnified for that liability or obligation out of the assets of the Trust. This includes without limitation any representation, warranty or conduct by the Developer.
- (c) Clause 1(b) does not apply to any liability or obligation of the Developer to the extent there is a reduction in their ability to be indemnified for that liability or obligation out of the assets of the Trust as a result of the Developer's fraud, negligence or breach of trust.