

PLANNING AGREEMENT
346 - 350 OLD NORTHERN ROAD,
CASTLE HILL
THE HILLS SHIRE COUNCIL
CASTLERIDGE RETIREMENT VILLAGE PTY LTD

www.thehills.nsw.gov.au

THE HILLS
Sydney's Garden Shire



The Hills Shire Council

[INSERT DATE]

3 Columbia Court, Norwest NSW 2153
PO Box 7064, Norwest BC 2153 Phone (02) 9843 0555

**Planning Agreement
Summary Sheet**

Council	Name	The Hills Shire Council
	Address	3 Columbia Court Norwest, NSW 2153
	Telephone	(02) 9843 0555
	Facsimile	(02) 9843 0258
	Email	council@thehills.nsw.gov.au
	Representative	Mr Michael Edgar – General Manager
	Developer	Name
Address		Level 18, 9-13 Castlereagh Street, Sydney NSW 2000
Telephone		(02) 9035 3588 Mobile: 0437 577 209
Email		nathan.donn@levande.com.au
Representative		Nathan Donn
Land	346 - 350 Old Northern Road, Castle Hill (Lot 503 DP 1048808)	
Development Application	Not applicable	
Planning Proposal	PP-2021-5934 & 1/2021/PLP	
Works	See Schedule 3	
Monetary Contributions	See Schedule 4	
Security Amount	\$218,500	

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DRAFT

Planning Agreement

Dated

Parties

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

Castleridge Retirement Village Pty Ltd as trustee for the Rogan's Hill Retirement Village Trust ABN 50 597 053 534 of Level 18, 9 Castlereagh Street, Sydney New South Wales 2000 (Developer)

Background

- A. Council is the consent authority pursuant to the *Environmental Planning and Assessment Act 1979* (NSW) (**Act**) for the Proposed Development.
- B. The Developer is the owner of the Land and the Planning Proposal has been lodged in respect of the Land.
- C. Upon approval of the Planning Proposal, the Developer proposes to lodge Development Applications in respect of the Land to carry out the Proposed Development.
- D. If the Instrument Change occurs, the Developer is required to make Development Contributions in the nature of monetary contribution, and material public benefit (works-in-kind).

Operative provisions

1. Defined meanings

Words used in this document and the rules of interpretation that apply are set out and explained in the definitions and interpretation clause at the back of this Agreement.

2. Planning agreement under the Act

The Parties agree that this document is a planning agreement within the meaning of **subdivision 2, Division 7.1, Part 7** of the Act.

3. Application of this document

This document is made in respect of the Proposed Development and applies to the Land.

4. No restriction on Council's Powers

This Agreement or anything done under this Agreement:

- (a) is not to be taken as approval or consent by Council as a regulatory authority; and
- (b) does not in any way inhibit, deter or prejudice Council in the proper exercise of its functions, duties or powers,

pursuant to any legislation including the Act, the *Roads Act 1993* (NSW) and the *Local Government Act 1993* (NSW).

5. Operation of this Agreement

5.1 Until the planning agreement operates, this document constitutes:

- (a) the Developer's offer in connection with the Planning Proposal sought by the Developer for the purposes of making Development Applications in respect of the Land; and
- (b) the Developer's offer to enter into this agreement if the Instrument Change is made.

5.2 This Agreement operates only if:

- (a) the Instrument Change is made; and
- (b) the Parties execute this document.

5.3 This document provides for Development Contributions to be made with respect to the Proposed Development.

6. Monetary Contributions

6.1 Payment

The Developer must pay the Monetary Contribution in accordance with Schedule 4 of this Agreement and any other provision of this Agreement relating to Monetary Contributions. Payment of the Monetary Contribution may be made by cheque or electronic bank transfer to Council's nominated bank account.

6.2 Annual Increases

On each anniversary of the date of this document the Monetary Contribution applicable immediately prior to that anniversary will be increased by the same percentage as the annual percentage increase, if any, in the ABS Producer Price Index (Non-Residential Building Construction for NSW) #3020 most recently published prior to the relevant anniversary. The increased Monetary Contribution will be the Monetary Contribution in the subsequent 12 months.

6.3 Public Purpose

The Monetary Contribution is required for the funding of the construction of, or improvements to local infrastructure and public domain (including those specified in section 7.4(2) of the Act) as determined by the General Manager of Council from time to time and Council will apply the Monetary Contribution for those purposes.

7. Works

7.1 Obligation to Carry Out Works

7.1.1 The Developer is to carry out and complete the Works on the Land at the locations shown on the Location Plan.

7.1.2 The Developer's obligation under clause 7 exists irrespective of whether the Developer:

- (a) carries out the Works itself, or
- (b) enters into an agreement with another person under which the other person carries out the Works on the Developer's behalf.

7.1.3 Before the Developer commences the Footpath Works:

- (a) the Developer is to notify Council of its intention to prepare the plans and specifications;
- (b) within 10 Business Days of receiving notice, the Council must advise the Developer (acting reasonably) of any publicly released policy, standards or requirements of Council which the Council will require any detailed design and specification for the Footpath Works to comply with (**Council's Requirements**);
- (c) the Developer, at its own cost, is to prepare and submit to the Council or a person specified by the Council, detailed plans and specifications in relation to the item of Footpath Works that takes into account Council's Requirements and the Contribution Value.

7.1.4 The Developer is not to commence the Footpath Works unless the Council or the person specified by the Council has given the Developer written approval (acting reasonably) of the plans and specifications relating to the item. In considering the grant of approval, Council must:

- (a) take into account any Development Consent which applies to the Footpath Works and assess the detailed design in a manner consistent with that Development Consent (noting however that that Development Consent does not constitute approval under the terms of this Agreement); and
- (b) have regard to the Contribution Value for the Footpath Works such that Council cannot require changes to the designed design and specification that would cause the estimated cost to complete the Footpath Works to exceed the relevant Contribution Value except in the circumstances set out in Clause 7.1.6 below.

7.1.5 If within 20 Business Days of the date of submission referred to in para 7.1.3:

- (a) Council notifies the Developer in writing of its approval of the design and specification, the Developer must carry out and complete the Footpath Works in accordance with the approved design and specification; or
- (b) Council notifies the Developer in writing that it does not approve of the design and specification, Council must specify the reasons why approval is withheld and the Developer may elect to:

- (i) amend the design and specification and submit to Council the amended design and specification for approval by Council; or
- (ii) refer the relevant matter for dispute resolution in accordance with this Agreement.

7.1.6 Council cannot notify the Developer pursuant to paragraph 7.1.5 that it does not approve of the design and specification for the Footpath Works, unless the design and specification:

- (a) does not comply with the Development Consent for the Footpath Works; or
- (b) does not comply with Council Requirements,

and Council cannot require an amendment to the design or specification of the Footpath Works which would require any modification of a Development Consent, or which would cause the estimated cost to complete the Footpath Works to exceed the Contribution Value for the Footpath Works, unless a higher value is necessary to address the requirements of points (a) and (b) above.

7.1.7 If Council fails to notify the Developer in writing that it approves or does not approve of the design and specification within the time required under paragraph 7.1.5, then Council is deemed to have approved the relevant design and specification.

7.1.8 The Developer is to carry out and complete the Works in a good and workmanlike manner having regard to the intended purpose of the Works and otherwise to the satisfaction of Council (acting reasonably), in accordance with:

- (a) the Development Consents, and
- (b) in accordance with Australian Standards applicable to Works of the same nature as each aspect of the Works; and
- (c) all applicable laws, including those relating to occupational health and safety, and
- (d) this Agreement to the extent that it is not inconsistent with the relevant Development Consents or an applicable law, and
- (e) the written approval given under clause 7.1.4, and
- (f) in respect of the Offsite Roadworks, in accordance with the requirements of Transport for NSW.

7.1.9 In the event of an inconsistency between this Agreement and any relevant Development Consents or any applicable law, the Development Consent or the law prevails to the extent of the inconsistency.

7.1.10 It is the Developer's responsibility to ensure that everything necessary for the proper performance of its obligations under this Agreement is supplied or made available.

7.1.11 The provision of the Footpath Works is to be Handed-Over to the Council by:

- (a) not later than the Hand-Over Date for the Works, and
- (b) otherwise in accordance with this Agreement.

7.1.12 The Developer is to carry out and complete the Offsite Roadworks in accordance with all Transport for NSW requirements.

7.1.13 The Developer will bear the cost of the Offsite Roadworks, and will not be entitled to any reimbursement by Council should the Offsite Roadworks cost more than the Contribution Value for those works set out in Column 4 of Schedule 3.

8. Ownership of Works

8.1 Ownership of the works The Developer is to provide evidence of the Offsite Roadworks being carried out to the satisfaction of Transport for NSW within 10 days of the Hand-Over Date for the Offsite Roadworks.

8.2 On Hand Over the Developer must cause the legal title in the Footpath Works and all materials and components of the Footpath Works to pass to Council free of any charge or other interest. The Developer warrants that after Hand Over the Footpath Works are not subject to any security interest (as defined in the *Personal Property Securities Act 2009 (Cth)* (**PPSA**)) and any security interest noted in the Personal Property Securities Register has been discharged. The Developer indemnifies Council for all claims, costs, losses and expense Council may suffer arising from any breach of this warranty or any claim or action taken by any person in respect of any security interest (as defined in the PPSA) in the Footpath Works.

9. Determination of Value

9.1 For the purposes of this Agreement, the Parties acknowledge that the Contribution Value in relation to each Item of the Works is the amount specified in Schedule 3.

9.2 Subject to clause 7 and any Transport for NSW requested changes, if the Developer's actual cost of carrying out the Works, including any costs incurred pursuant to this Agreement, determined at the date on which the Works is Handed-Over to the Council, differs from the Contribution Value, then no party to this Agreement shall be entitled to claim credit or reimbursement, as the case may be, for the difference.

10. Access to the land and location of Works

10.1 The Developer is to permit the Council, its officers, employees, agents and contractors to enter the Land at any time, upon giving reasonable prior notice, in order to inspect, examine or test any of the Works.

10.2 The Developer must enable Council, its officers, employees, agents and contractors access to the location of the Works where this is not the Land, Council land or a public road, subject to satisfaction of induction and site safety protocols.

10.3 Council permits the Developer and its agents to free access to Council land including public roads, as reasonably necessary, to lodge applications in relation to and carry out the Works.

11. Protection of People, Property and the Environment

11.1 The Developer is to ensure in relation to the carrying out of the Works that:

- a) all necessary measures are taken to protect people, property and the Environment,
- b) unnecessary interference with the passage of people and vehicles is avoided;
- c) nuisances and unreasonable noise and disturbances are prevented; and
- d) all relevant laws and regulations with respect to water, air, noise and land pollution (including 'pollution incidents') as defined under the *Protection of the Environment Operations Act 1997* (NSW) are complied with.

12. Damage and Repairs to the Works

12.1 The Developer, at its own cost, is to repair and make good to the satisfaction of the Council any loss or damage to the Footpath Works from any cause whatsoever (except where and to the extent of damage that is caused by the negligent acts of Council) which occurs from commencement of the Footpath Works and prior to the date on which the Footpath Works is Handed-Over to the Council.

12.2 The Developer, at its own cost, is to repair any loss or damage to the Offsite Road Works as lawfully requested by Transport for NSW.

13. Variation of Works

13.1 The Works are not to be varied by the Developer, unless:

- 13.1.1 the Parties agree in writing to the variation (except if it relates to the Offsite Roadworks in which case Transport for NSW must agree in writing), and
- 13.1.2 any consent or approval required under the Act or any other law to the variation is first obtained, and
- 13.1.3 the Developer bears all of the Council's costs of and incidental to agreeing to and approving the variation (except if it relates to the Offsite Roadworks).

13.2 For the purposes of clause 13.1 a variation may relate to any matter in relation to the Works that is dealt with by this Agreement.

13.3 If Council requests a variation to the Works after Council has given its written approval under clause 7, then the Council shall be liable to pay to the Developer an amount equal to the increase in the costs of completing the Works, which results from the variation requested by the Council.

13.4 Council shall repay the amount referred to in clause 13.3 to the Developer after the Works are complete, and within 28 days of receipt of:

- 13.4.1 a tax invoice for the amount claimed by the Developer; and
- 13.4.2 documentation which demonstrates to Council's satisfaction the increase in costs as a result of the variation requested by the Council.

14. Failure to Carry out and Hand-Over Works

- 14.1 The Developer is to give the Council not less than 30 days written notice of:
- 14.1.1 the date on which it proposes to Hand-Over any Footpath Works to the Council, being a date not later than the Hand-Over Date (**Completion Notice**).
- 14.2 The Council must inspect the Works set out in a Completion Notice within 10 Business Days of the receipt of that notice.
- 14.3 If Council fails to carry out an inspection required under paragraph 14.2 the Footpath Works referred to in the Completion Notice will be deemed to be Complete.
- 14.4 Within 20 Business Days of inspection of the Footpath Works set out in a Completion Notice the Council must provide notice in writing (**Rectification Notice**) to the Developer that the Footpath Works set out in the Completion Notice:
- (a) have been Completed; or
 - (b) have not been Completed, in which case the notice must also detail:
 - (i) those aspects of the works which have not been Completed; and
 - (ii) the work Council requires the Developer to carry out in order to rectify the deficiencies in those Works.
- 14.5 If Council does not provide the Developer with a Rectification Notice in accordance with paragraph 14.4, the Footpath Works set out in the Completion Notice will be deemed to have been Completed.
- 14.6 Where Council serves a Rectification Notice on the Developer where Council identifies that the Footpath Works are not Complete, the Developer must:
- (a) rectify the Footpath Works in accordance with that notice; and
 - (b) once rectified, it must serve upon the Council a new Completion Notice for the Footpath Works it has rectified.
- 14.7 Before the Footpath Works are Handed-Over to the Council, the Developer is to remove from the Land:
- 14.7.1 any rubbish or surplus material, and
 - 14.7.2 any temporary works, and
 - 14.7.3 any construction plant and equipment, relating to the carrying out of the Footpath Works as the case requires.
- 14.8 The Footpath Works are taken to be Handed-Over to the Council when the Council, acting reasonably, gives the Developer a Rectification Notice that the Footpath Works are Complete.
- 14.9 The Offsite Roadworks are taken to be Handed-Over when Transport for NSW confirms that the Offsite Roadworks are complete.

14.10 The Parties agree that the Hand-Over Date may be extended due to:

14.9.1 any Force Majeure Event,

14.9.2 any delays on the part of any government authority (including the Council) in granting any approval, consent, licence or permit necessary for the Works to be completed, or

14.9.3 any direction the Council gives extending the Hand-Over Date in respect of the Footpath Works or Transport for NSW in respect of the Offsite Roadworks.

14.11 If the Council considers that the Developer is in breach of any obligation under this Agreement relating to the carrying out of the Works, the Council must give the Developer a notice requiring (acting reasonably):

14.10.1 the breach to be rectified to the Council's satisfaction, or

14.10.2 the carrying out of the Works to immediately cease, except in relation to the rectification of the breach, and the breach to be rectified to the Council's satisfaction.

14.12 A notice given under clause 14.10 is to allow the Developer a reasonable period (and in any case not less than 28 days) to rectify the breach.

14.13 If the Developer fails to rectify the breach the subject of a notice given under clause 14.11, and no Dispute Notice has been issued in respect of that breach, the Council may:

14.12.1 call upon the Security given to Council in respect of the Item of Works, and

14.12.2 carry out and complete or make safe the Works.

14.14 For the purposes of clause 14.12.2:

14.13.1 the Developer must allow the Council, its servants, agents and contractors to enter the Land for the purpose of completing the Works, and

14.13.2 any difference between the amount of the Security called upon pursuant to clause 14.12.1, and the costs incurred by the Council in carrying out, completing, or making safe the Works, may be recovered by the Council from the Developer as a debt due in a court of competent jurisdiction.

15. **Works-As-Executed-Plan**

15.1 No later than 60 days after a Rectification Notice under clause 14.4(a) has been given, the Developer is to submit to the Council a full Works-As-Executed-Plan in respect of the Footpath Works the subject of the notice.

15.2 The Developer shall provide Council with Work-as-Executed Plan(s) including all appropriate certificates to verify that the Works have been carried out in accordance with relevant standards.

16. Rectification of Defects

- 16.1 During the Defects Liability Period the Council may give to the Developer a Defects Notice in relation to the Footpath Works specifying:
- 16.1.1 the Footpath Works requiring rectification,
 - 16.1.2 the action required to be undertaken by the Developer to rectify those Footpath Works, and
 - 16.1.3 the date on which those Footpath Works are to be rectified.
- 16.2 A Defects Notice must contain the following information:
- (a) the nature and extent of the Defect;
 - (b) the work Council requires the Developer to carry out in order to rectify the Defect; and
 - (c) the time within which the Defect must be rectified (which must be a reasonable time and not less than 10 Business Days).
- 16.3 The Developer must comply with a Defects Notice at its own cost according to the terms of the Notice.
- 16.4 The parties agree that Transport for NSW will be responsible for issuing defects notices in relation to the Offsite Roadworks and the Developer will comply with Transport for NSW's lawful requirements in relation to defects.
- 16.5 When the Developer considers that rectification is complete, the Developer may give to the Council a Defects Certificate relating to the Footpath Works the subject of the relevant Defects Notice.
- 16.6 A Defects Certificate discharges the Developer from any further obligation to comply with the relevant Defects Notice.
- 16.7 If the Developer does not comply with a Defects Notice and a Dispute Notice has not been issued, the Council may do all such things as are necessary to rectify the defect and may:
- 16.6.1 call upon the Security to meet its costs in rectifying the defect, and
 - 16.6.2 recover, as a debt due in a court of competent jurisdiction, any difference between the amount of the Security and the costs incurred by the Council in rectifying the defect.

17. Cost of Works carried out by the Council

- 17.1 The Parties acknowledge and agree that where, in accordance with this Agreement, the Council incurs a cost in carrying out, completing or rectifying a Defect in the Footpath Works, the Council may recover from the Developer in a court of competent jurisdiction its full costs, including costs determined in accordance with clause 17.2.
- 17.2 The Council's costs of carrying out, completing or rectifying the Footpath Works in accordance with this Agreement include, but are not limited to:
- 17.2.1 the reasonable costs of the Council's servants, agents and contractors reasonably incurred for that purpose,
 - 17.2.2 all fees and charges necessarily or reasonably incurred by the Council in order to have the Works carried out, completed, made safe or rectified, and
 - 17.2.3 without limiting the generality of the preceding sub-clause, all legal costs and expenses reasonably incurred by the Council, by reason of the Developer's failure to comply with this Agreement.

18. Indemnity and Insurance

- 18.1 The Developer is to take out and keep current to the satisfaction of the Council the following insurances in relation to the Works from the date the Works commence up until the relevant date of Hand-Over to Council:
- 18.1.1 contract works insurance, noting the Council as an interested party, for the full replacement value of the Works (including the cost of demolition and removal of debris, consultants' fees and authorities' fees), to cover the Developer's liability in respect of damage to or destruction of the Works,
 - 18.1.2 public liability insurance for at least \$20,000,000 for a single occurrence, which covers the Council, the Developer and any subcontractor of the Developer, for liability to any third party,
 - 18.1.3 workers compensation insurance as required by law, and
 - 18.1.4 any other insurance required by law.
- 18.2 If the Developer fails to comply with clause 18.1, the Council may effect and keep in force such insurances and pay such premiums as may be necessary for that purpose and the amount so paid shall be a debt due from the Developer to the Council and may be recovered by the Council as it deems appropriate including:
- 18.2.1 by calling upon the Security provided by the Developer to the Council under this Agreement, or
 - 18.2.2 recovery as a debt due in a court of competent jurisdiction.
- 18.3 The Developer is not to commence to carry out the Works unless it has first provided to the Council satisfactory written evidence of all the insurances specified in clause 18.1.

19. Provision of Security

19.1 This clause does not apply if:

19.1.1 the Summary Sheet at the front of this Agreement contains the words "Not Applicable" in relation to the Security Amount, or

19.1.2 the Council, by notice in writing to the Developer, has otherwise waived compliance by the Developer with this clause.

19.2 Subject to subclause 19.3, the Developer is not to commence the:

(a) Footpath Works unless it has given the Security to the Council; or

(b) Offsite Roadworks unless it has given the Security (or an equivalent amount) to the Council or Transport for NSW.

19.3 The amount of the Security is to be equivalent to the cost to complete the Works plus a contingency of 15% which on the date of this Agreement is the amount specified in the Summary Sheet after the words 'Security Amount'. If Transport for NSW requires in respect of the Offsite Roadworks a security amount to be lodged for the benefit of Transport for NSW, then the Developer is only obliged to provide to Council any gap in the security amount.

19.4 In the event of any failure by the Developer to perform the Works in the timeframe and in the manner provided in this Agreement, Council:

(a) must provide 14 days' notice to the Developer of its intention to call upon the Security provided to Council with reasons as to why; and

(b) may call on the Security provided to Council for any amount payable to Council upon considering any submissions by the Developer in response to the notice of intent referred to in sub-clause (a) above .

19.5 If the Council calls on the Security provided to Council in accordance with this Agreement, the Council may, by notice in writing to the Developer, require the Developer to provide a further Security in an amount that, when added to any unused portion of any existing Security, does not exceed the amount of the Security the Council is entitled to hold under this clause.

19.6 On each anniversary of the date of this Agreement the amount of the Security will be increased by the same percentage as the annual percentage increase (if any) in the Producer Price Index most recently published prior to the relevant anniversary.

19.7 The Developer must at the request of Council increase the amount of the Security held by Council to the amount of the Security to be provided under this Agreement.

20. Application of s7.11 and s7.12 of the Act

20.1 This Agreement does not exclude the operation of section 7.11 and section 7.12 of the Act in relation to the Development Application(s) for the Proposed Development (including in respect of any modification to any Development Consents granted in respect of the Proposed Development).

20.2 The Development Contributions that the Developer must make pursuant to this Agreement are in addition to any development contributions under section 7.11 or

section 7.12 of the Act that the Developer must pay in relation to any Development Applications and Development Consents granted for the Proposed Development.

20.3 .Benefits under this Agreement are not to be taken into consideration in determining a development contribution under section 7.11 or section 7.12 of the Act.

21. Termination

21.1 Planning Proposal

This Agreement will terminate in the event that the Instrument Change is not made in accordance with the Planning Proposal.

21.2 Development Consents

If Development Consent is granted by the Council with respect to the Development Application(s) in respect of the Proposed Development, this document terminates with respect to that particular Development Consent:

- (a) on the lapse of the Development Consent; or
- (b) on the formal surrender of the Development Consent; or
- (c) on the final determination by a Court of competent jurisdiction issuing a declaration that the Development Consent is invalid.

21.3 Bankruptcy & Insolvency

This Agreement will immediately terminate if:

- (a) any company officer of the Developer becomes subject of bankruptcy proceedings or becomes a bankrupt.
- (b) the Developer becomes subject of external administration or insolvency proceedings.

22. Consequences

22.1 On the date of complete termination or date of rescission of this document, subject to the following sub-paragraphs each party releases each other from any obligation to perform any term, or any liability arising out of, this document after the date termination.

22.2 Any unapplied Monetary Contribution, bond or Bank Guarantee that has been provided to Council will be refunded to the Developer as soon as practicable after the date of termination.

22.3 Termination or rescission of this document does not release either party from any obligation or liability arising under this document before termination or rescission.

23. Private Certifiers

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

24. Notices

- 24.1 Any notice to or by a party under this document must be in writing and signed by the sender or, if a corporate party, an authorised officer of the sender.
- 24.2 Any notice may be served by delivery in person or by post or email to the address or number of the recipient specified in the Summary Sheet or most recently notified by the recipient to the sender.
- 24.3 Any notice is effective for the purposes of this document upon delivery to the recipient or if sent by email it is taken to have been received on the date when the sending party's email has been successfully transmitted.

25. Breach Notice and Rectification

- 25.1 If the Developer is, in the opinion of Council, in breach of a material obligation under this document, Council may provide written notice of the breach to the Developer and require rectification of that breach within a reasonable period of time (**Breach Notice**).
- 25.2 Unless there are compelling reasons to extend or abridge the period of time permitted for rectification, a reasonable period of time is taken to be fourteen days from receipt of written notification of the breach.
- 25.3 If the breach is not rectified within the time specified in the Breach Notice, or otherwise agreed between the Parties or if a Dispute Notice is not issued within this period, Council may rectify the breach as the agent of the Developer and at the risk of the Developer. The Developer must pay all reasonable costs incurred by the Council in remedying the breach.

26. Dispute resolution

26.1 Disputes

If there is any dispute, difference of opinion or failure to agree relating to or arising from this document that dispute must be referred for determination under this clause.

26.2 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 been referred and determined as provided in this clause.

26.3 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**).

26.4 Negotiated resolution and selection of expert

- (a) 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 seven 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.

- (b) If the nominated officers are unable to resolve the Dispute within seven days of service of the Dispute Notice they must endeavour within the following seven-day period to appoint an expert by agreement. That appointment must be recorded in writing and signed by each nominated officer.
- (c) If the nominated officers do not record the appointment of an expert within that second seven 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.

26.5 Assistance to the Expert

- (a) Once the Expert has been appointed (**the Expert**), the Parties must:
 - (i) each use their best endeavours to make available to the Expert all information the Expert requires to settle or determine the Dispute; and
 - (ii) ensure that their employees, agents or consultants are available to appear at any hearing or enquiry called by the Expert.
- (b) The Parties may give written submissions to the Expert but must provide copies to the other Parties at the same time.

26.6 Expert's decision

- (a) The decision of the Expert must:
 - (i) be in writing and give reasons; and
 - (ii) 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.
- (b) 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.
- (c) The Expert's decision is final and binding on the Parties.
- (d) The Expert must act as an expert and not as an arbitrator.

26.7 Expert's costs

- (a) 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.
- (b) 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.

26.8 Continual performance

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

27. Caveat

- (a) The Council may, at any time after the date of this document, register a caveat over the Land preventing any dealing with the Land that is inconsistent with this document. Provided that the Council complies with this clause 29, the Developer must not object to the registration of this caveat
- (b) As caveator, the Council must do all things reasonably required to promptly consent to the registration of:
 - (A) any plan of consolidation or plan or subdivision;
 - (B) any dealing required by this document or the Development Consent;
 - (C) any other dealing where there has been compliance (if required) with this document; and
 - (D) the transfer of any part of the Land to an Assignee of the Developer where there has been compliance with this document.
- (c) The parties agree that any caveat lodged by Council as contemplated in this Agreement will be registered in such a way so to not prohibit the registration or deregistration of leases.

27.2 Removal of Caveat

Provided the Developer is not in breach of any of its obligations under this document, Council must promptly do all things reasonably required at the request of the Developer to procure the removal of any caveat from the certificate of title of the Land where the Development Contributions have been made including completion of the Works and no other money is owing to Council under this document.

27.3 Registration Expenses of Caveat

The Developer must pay Council's reasonable expenses including registration fees, any stamp duty, legal costs and disbursements, for the registration of any caveat and the subsequent removal of the caveat.

28. **Costs**

28.1 The Developer is to pay to the Council, the Council's reasonable costs, associated with the negotiation, preparation, exhibition, legal review and execution of this Agreement within 21 days of a written demand by the Council for such payment and issue of a tax invoice.

29. **GST**

If any payment made by one party to any other party under or relating to this document constitutes consideration for a taxable supply for the purposes of GST or any similar tax, the amount to be paid for the supply will be increased so that the net amount retained by the supplier after payment of that GST is the same as if the supplier was not liable to pay GST in respect of that supply. 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 document.

30. **General**

30.1 **Assignment**

- (a) A party must not transfer any right or liability under this document without the prior written consent of each other party, except where:
 - (i) clause 30.2 has been complied with;
 - (ii) this document provides otherwise; or
 - (iii) the transfer relates to the lease, purchase or mortgage of a completed Dwelling and where this agreement has been complied with as relevant up until the date of that transaction and only in circumstances where the Monetary Contribution for the Dwelling has been received by Council
- (b) Any purported dealing in breach of this clause is of no effect.

30.2 **Transfer of Land**

- (a) The Developer may not transfer, assign or dispose of the whole or any part of its right, title or interest in the Land (present or future) or in the Proposed Development to another person (**Transferee**) unless before it sells, transfers or disposes of that right, title or interest:
 - (i) The Transferee delivers to the Council a novation deed signed by the Transferee in a form as is acceptable to the Council containing provisions under which the Transferee agrees to comply with all the outstanding obligations of the Developer under this agreement;
 - (ii) Any default under any provisions of this agreement has been remedied or waived by the Council, on such conditions as the Council may determine, and
 - (iii) The Developer and the Transferee pay the Council's reasonable costs in relation to the assignment.
- (b) In the event that the Developer enters into a contract for the sale of the Land the subject of the Development Consent, the Developer (as vendor) shall disclose to the purchaser the existence of this Agreement.

- (c) This clause 30.2 does not apply in the circumstances to which clause 30.1(a)(iii) refer.

30.3 Governing law and jurisdiction

- (a) This document is governed by and construed under the law in the State of New South Wales.
- (b) Any legal action in relation to this document against any party or its property may be brought in any court of competent jurisdiction in the State of New South Wales.
- (c) Each party by execution of this document irrevocably, generally and unconditionally submits to the non-exclusive jurisdiction of any court specified in this provision in relation to both itself and its property.

30.4 Amendments

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

30.5 Third parties

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

30.6 Pre-contractual negotiation

This document:

- (a) expresses and incorporates the entire agreement between the Parties in relation to its subject matter, and all the terms of that agreement; and
- (b) 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.

30.7 Further assurance

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

30.8 Continuing performance

- (a) The provisions of this document do not merge with any action performed or document executed by any party for the purposes of performance of this document.
- (b) Any representation in this document survives the execution of any document for the purposes of, and continues after, performance of this document.
- (c) Any indemnity agreed by any party under this document:
 - (i) constitutes a liability of that party separate and independent from any other liability of that party under this document or any other agreement; and

- (ii) survives and continues after performance of this document.

30.9 **Waivers**

Any failure by any party to exercise any right under this document 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.

30.10 **Remedies**

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

30.11 **Counterparts**

This document may be executed in any number of counterparts, all of which taken together are deemed to constitute one and the same document.

30.12 **Party acting as trustee**

32.12.1 The Developer enters into this agreement only in its capacity as the responsible entity of the Rogan's Hill Retirement Village Trust ABN 50 597 053 534 (**Rogan's Hill Trust**) and in no other capacity. .

32.12.2 A liability arising under or in connection with this Agreement is limited and can be enforced against the Developer only to the extent to which the liability can be satisfied out of the property of Rogan's Hills Trust and for which the Developer is actually indemnified.

32.12.3 This limitation of liability applies despite any other provisions of this agreement and extends to all liability and obligations of the Developer in any way connected with any representation, warranty, conduct, omission related to this Agreement. This limitation of liability shall not apply to the extent and in the event of the Developer's fraud, negligence or breach of trust resulting in it not being indemnified out of the assets of Rogan's Hills Trust.

32.12.4 Nothing releases the Developer from any liability in its personal capacity. The Developer warrants that at the date of this document:

- (a) all the powers and discretions conferred by the deed establishing the Rogan's Hill Trust are capable of being validly exercised by the Developer as trustee and have not been varied or revoked and the trust is a valid and subsisting trust;
- (b) the Developer 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 Agreement on behalf of the trust and that this Agreement 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;
- (c) no restriction on the Developer'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.

30.13 Representations and warranties

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

30.14 Severability

If a clause or part of a clause of this document 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 document, but the rest of this agreement is not affected.

31. Definitions and interpretation

In this document unless the context otherwise requires:

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

Assign means any assignment, sale, transfer, disposition, declaration of trust over or other assignment of legal and/or beneficial interest.

Assignee means an entity that the Developer proposes to Assign the rights or liabilities of this document to.

Bank Guarantee means a written guarantee without a time limit acceptable to Council issued by an Australian Bank.

Business Day means a day that is not a Saturday, Sunday, public holiday or bank holiday in New South Wales.

Completed means completed in accordance with this Agreement.

Construction Certificate has the same meaning as in the Act;

Contribution Value means the amount specified in Column 4 of Schedule 3.

Defect means any material defect which either:

- (a) adversely affects the ordinary use and/or enjoyment of the relevant Works; or
- (b) will require maintenance or rectification works to be performed on them at some time in the future as a result of the existence of the defect.

Defects Certificate means a compliance certificate within the meaning of section 6.4(e) of the Act to the effect that work the subject of a Defects Notice has been completed in accordance with the notice.

Defects Notice means a notice in writing that identifies a Defect in a work and requires rectification of the Defect within a specified period of time.

Defects Liability Period means the period specified in Column 3 of Schedule 3 in relation to the Works specified in Column 1 of that Schedule commencing on the date a Rectification Notice under clause 14.4(a) has been given.

Development Application is a development application, within the meaning of the Act, that relates to the Proposed Development.

Development Consent is a development consent, within the meaning of the Act, that relates to the Proposed Development and does not include a complying development certificate.

Development Contributions means a monetary contribution and the provision of a material public benefit including the Works, or a combination of any of them.

Dwelling means a room, or suite of rooms, occupied or used, or so constructed or adapted, as to be capable of being occupied or used, as a separate domicile to be erected on the Land as part of the Proposed Development and excludes a refurbished or renovated existing dwelling.

Environment has the same meaning as set out in the Dictionary to the *Protection of the Environment Operations Act 1997* (NSW).

Footpath Works means that Item of the Works numbered 2 in Schedule 3.

Force Majeure Event means any event or circumstance, or a combination of events or circumstances:

- (a) which arises from a cause beyond the reasonable control of a party, including:
 - (i) an act of God,
 - (ii) strike, lockout, other industrial disturbance or labour difficulty,
 - (iii) war (declared or undeclared), act of public enemy, blockade, revolution, riot, insurrection, civil commotion,
 - (iv) lightning, storm, flood, fire, earthquake, explosion, epidemic, quarantine
 - (v) embargo, unavailability of any essential equipment or materials, unavoidable accident, lack of transportation, or
 - (vi) anything done or not done by or to a person, except the party relying on force majeure;
- (b) which the Developer takes all reasonable precautions to protect itself against, and uses all reasonable endeavours to mitigate the consequences of (which does not require the Developer to settle a labour dispute if, in the Developer's opinion, that is not in its best interests); and
- (c) which the Developer notifies the Council of, as soon as practicable after becoming aware of the event or circumstance.

GST means any tax, levy, charge or impost implemented under the *A New Tax System (Goods and Services Tax) Act 1999* (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;

Hand-Over means the hand-over to the Council or Transport for NSW as the case may be of the Works in accordance with this Agreement.

Hand-Over Date means the date specified in Column 2 of Schedule 3 in relation to the Works specified in Column 1 of that Schedule corresponding to that date, subject to any extension of that date.

Instrument Change means the publication in the NSW Government Gazette of an amendment to *The Hills Local Environmental Plan 2019* as it relates to the Land and as proposed in the Planning Proposal.

Item of Works means an item of the Works.

Land means Lot 503, DP 1048808 known as 346 - 350 Old Northern Road, Castle Hill.

Location Plan means the plan contained in Schedule 1.

Monetary Contributions means the monetary development contributions required to be paid to the Council as specified in Schedule 4.

Occupation Certificate has the same meaning as in the Act.

Offsite Roadworks means that Item of the Works numbered 1 in Schedule 3.

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

Planning Proposal means planning proposal PP-2021-5934 & 1/2021/PLP.

Producer Price Index means the Producer Price Index for NSW published by the Australian Bureau of Statistics.

Proposed Development means any redevelopment of the Land that relies on the Instrument Change to be approved and for the avoidance of doubt excludes renovation or refurbishment of the existing dwellings on the Land but includes any redevelopment of the Land that would result in the total number of dwellings on the Land to be more than 136 dwellings.

Regulation means the *Environmental Planning and Assessment Regulation 2021* (NSW).

Security means a Bank Guarantee or bond in favour of the Council on terms satisfactory to the Council, or such other form of security as the Council may require in its absolute discretion.

Works means the works specified or described in Column 1 of Schedule 3 and includes any Item of Works and any part of any Item of Works.

Works-As-Executed-Plan means detailed plans and specifications of the completed Works.

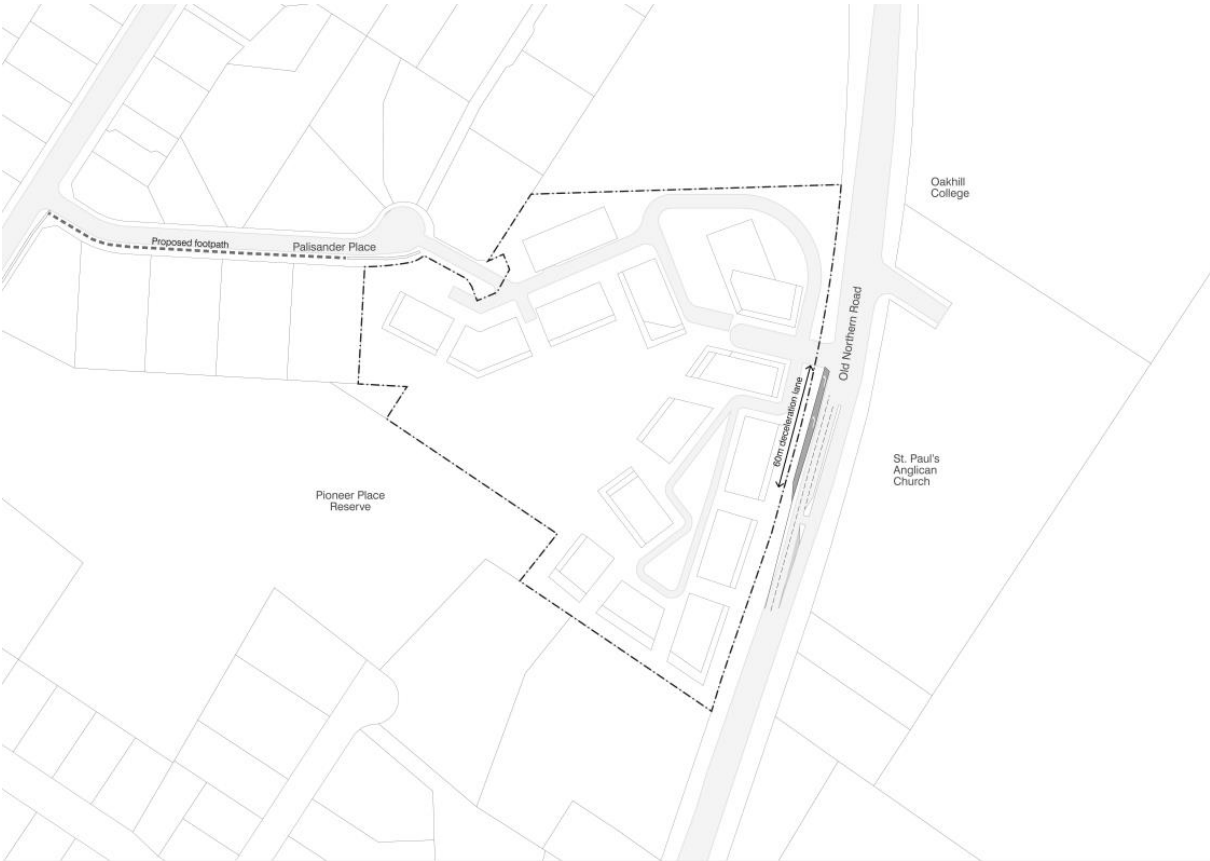
31.2 Interpretation

In this document 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 document 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 document;
- (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 document;
- (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 document 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 document 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



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Schedule 2 – Proposed Amendment of The Hills Local Environmental Plan 2019

A Planning Proposal has been prepared which seeks to amend *The Hills Local Environmental Plan 2019* (LEP 2019) to:

- Include 'Seniors Housing' as an additional permitted use on the Land under Schedule 1 of LEP 2019 and associated Additional Permitted Uses Map
- Increase the Maximum building height development standard to range from 0 to 22m.
- introduce a maximum Floor Space Ratio development standard of 0.83:1 to the Land.

Schedule 3 – The Works (Clause 7)

Column 1	Column 2	Column 3		Column 4
Items of Works	Hand-Over Date	Defects Period	Liability	Contribution Value
Item 1 - Offsite Roadworks - up to 60 metre left-turn deceleration lane to TfNSW requirements on Old Northern Road and associated works	Prior to issue of the Occupation Certificate for the 120 th Dwelling in the Proposed Development.	12 months		\$100,000
Item 2 - Footpath Works- Provision of a 1.2 metre wide concrete footpath along the southern side of Palisander Place from the rear entry gate to the existing concrete footpath in First Farm Drive.	Prior to issue of the Occupation Certificate for the 120 th Dwelling in the Proposed Development.	12 months		\$90,000

Schedule 4 – Monetary Contributions

1. Monetary Contribution amounts

1.1 The Monetary Contribution payable is set out below.

Column 1	Column 2	Column 3
Description	Timing of payment	Contribution
Monetary contribution towards upgrade of Palisander Place Reserve.	In accordance with clause 2 of this Schedule	\$180,000
Monetary contribution towards infrastructure to deliver a public benefit as determined by Council	In accordance with clause 2 of this Schedule	\$510,000
Total monetary contribution		\$690,000

2. The timing of the Monetary Contribution payments

a. Pro Rata Payment

- i. The Parties acknowledge that the Proposed Development may be undertaken in a number of stages, with the construction of individual buildings authorised by separate Construction Certificates.
- ii. The Monetary Contribution is to be paid on a pro rata basis prior to the issue of each Construction Certificate for construction of the buildings comprising the Proposed Development.
- iii. The proportion of the Monetary Contribution payable at each relevant Construction Certificate will be calculated in accordance with the below formula:

$$b = \frac{ya}{x}$$

Where:

a = Monetary Contribution

b = proportion of Monetary Contribution payable in connection with the Construction Certificate

x = total number of Dwellings in the Development Consent

y = number of Dwellings to be constructed under the Construction Certificate

- iv. Once the number of Dwellings for the Proposed Development is known, the parties agree that there will be a re-calculation of the Monetary Contribution where 'x' in the formula in iii. above will be substituted with the actual number of newly approved Dwellings. If there is a shortfall of Monetary Contribution the Developer will pay that shortfall to Council prior to issue of the final Construction Certificate.

Execution Page

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

Executed by Castleridge Retirement Village Pty
Ltd ACN 002 753 326 in accordance with s127
of the *Corporations Act 2001* (Cth):

Secretary/Director

Director

Print name

Print name

EXPLANATORY NOTE TO VOLUNTARY PLANNING AGREEMENT

DEVELOPMENT OF 346-350 OLD NORTHERN ROAD, CASTLE HILL LOT 503 DP 1048808

Background

The purpose of this Explanatory Note is to provide a plain English summary to support the notification of draft voluntary Planning Agreement (**Planning Agreement**) under s7.4 of The Environmental Planning and Assessment Act 1979 (NSW) (Act).

This Explanatory Note has been prepared jointly between the parties as required by clause 205 of the Environmental Planning and Assessment Regulation 2021 (**Regulation**)

This Explanatory Note is not to be used to assist in constructing the Planning Agreement.

Parties

- (a) **The Hills Shire Council**
- (b) **Castleridge Retirement Village Pty Ltd as trustee for the Rogan's Hill Retirement Village**

Description of the Land to which this Planning Agreement applies

The Planning Agreement applies to the land contained in Lot 503 DP 1048808, known as 346-350 Old Northern Road, Castle Hill NSW 2154 (Land).

Description of the Development to which the Planning Agreement Applies

Castleridge Retirement Village Pty Ltd as trustee for the Rogan's Hill Retirement Village (**the Developer**) intends to lodge one or more Development Applications for the **Proposed Development** described in Schedule 2.

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

The objective of the proposed Planning Agreement is to record the terms of the offer made by the developer and its obligations (if the Planning Agreement is entered into with the Council) to:

- pay the monetary contribution to Council; and
- to carry out works in kind

(Developer Contributions)

The **objective** of the Planning Agreement is to require the Developer to undertake the Contributions to ensure that the Developer contributes to the implementation of dedication and works required and that existing communities do not bear those costs.

The **nature** of the Planning Agreement is a contractual relationship between the Council and the Developer for undertaking the Contributions.

The **effect** of the Planning Agreement is that the Developer Parties will undertake the Contributions in the manner provided for by the Planning Agreement (as applicable).

Identification as to whether the proposed Planning Agreement specifies that certain requirements must be complied with before a constructions certificate is issued

The development to which the Planning Agreement applies includes the Developer's offer to make Development Contributions in the form of the:

- (a) monetary contributions (as described in Schedule 4)
- (b) works (as described in Schedule 3)

Assessment of the Merits of the proposed Planning Agreement and Impact on the Public

The Agreement provides contributions that will enhance the delivery of local infrastructure and public amenities promoting public interest. The proposed Agreement provides Council flexibility in both the timing of the provision of public infrastructure and its response to public infrastructure requirements.

Identification of how the proposed Planning Agreement promotes the public interest

The proposed Agreement promotes the public interest by offering monetary contributions to be applied toward the augmentation and delivery of local infrastructure and public amenities. In doing so, the proposed Agreement aims to ensure optimum local infrastructure and public amenities are provided in parallel with the Proposed Development.

Identification of how the proposed Planning Agreement promotes elements of the Council's charter under the Local Government Act 1993

The Planning Agreement promotes the Council's charter under section 8 of the *Local Government Act 1993* as follows:

- (a) The Explanatory Note is prepared for the purpose of keeping the community informed about its activities and to ensure that its decision making is transparent.
- (b) To manage land and other assets so that current and local community needs can be met in an affordable way
- (c) To plan strategically, using the integrated planning and reporting framework, for the provision of effective and efficient services and regulation to meet the diverse needs of the local community.
- (d) Providing strong and effective representation, leadership, planning and decision making
- (e) To act fairly without bias in the interests of the local community.
- (f) To recognise diverse local community needs and interests.
- (g) To have regard to the long term and cumulative effects of actions on future generations.
- (h) To engage in long-term strategic planning on behalf of the local community.

Identification of the planning purpose served by the proposed Planning Agreement and whether the proposed Planning Agreement provides for a reasonable means of achieving that purpose

The proposed Agreement promotes the social and economic welfare of the community. The proposed Agreement provides a reasonable means of achieving this through development contributions that:

1. provide flexibility for Council to be agile in their response to local infrastructure and public amenity requirements;
2. offset growing local infrastructure and public amenity needs throughout the local community;
3. ensure local communities remain strong, healthy and prosperous; and
4. in achieving the above, promote the public interest of the local community.

Identification of whether the agreement conforms with the Council's capital works program

The planning agreement conforms with Councils capital works program.