

PLANNING AGREEMENT

Parties

of ##, New South Wales (**Council**)

and

of ##, New South Wales (**Developer**)

Background

- A. On, ##, the Developer made a Major Project Application to the Department of Planning and Infrastructure for Development Consent to carry out the Development on the Land.
- B. That Project Application was accompanied by an offer by the Developer to enter into this Agreement to make Development Contributions towards the Public Facilities if that Development consent was granted.

Operative Provisions

- 1 Planning agreement under the Act.**
The Parties agree that this Agreement is a planning agreement governed by Subdivision 2 of Division 6 of Part 4 of the Act.
- 2 Application of this Agreement**
[Drafting Note 2: Specify the land to which the Agreement applies and the development to which it applies]
- 3 Operation of this Agreement** [Drafting Note 3: Specify when the Agreement takes effect and when the Parties must execute the Agreement]

4 Definitions and interpretation

4.1 In this Agreement the following definitions apply:

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

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

Development means ##

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

Development Contribution means a monetary contribution, the dedication of land free of cost or the provision of a material public benefit.

GST has the same meaning as in the GST law.

GST Law has the meaning given to that term in A New Tax System (Goods and Service Tax) Act 1999 (Cth) and any other Act or regulation relating to the imposition or administration of the GST.

Instrument Change means ## Local Environmental Plan ##

Land means Lot ## DP ##, known as ##.

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

Public Facilities means ##.

Regulation means the Environmental Planning and Assessment Regulation 2000.

4.2 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) A reference in this Agreement to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
- (c) 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.
- (d) A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- (e) A reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- (f) A reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- (g) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
- (h) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- (i) 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.
- (j) A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- (k) References to the word 'include' or 'including' are to be construed without limitation.
- (l) A reference to this Agreement includes the agreement recorded in this Agreement.
- (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.
- (n) Any schedules and attachments form part of this Agreement.

5 Development Contributions to be made under this Agreement

[Drafting Note 5: Specify the development contributions to be made under the agreement; when they are to be made; and the manner in which they are to be made]

6 Application of the Development Contributions

6.1 [Specify the times at which, the manner in which and the public purposes for which development contributions are to be applied]

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

[Drafting Note 7: Specify whether and to what extent s94 and s94a apply to development the subject of this Agreement]

8 Registration of this Agreement

[Drafting Note 8: Specify whether the Agreement is to be registered as provided for in s93H of the Act]

9 Review of this Agreement

[Drafting note 9: Specify whether, and in what circumstances, the Agreement can or will be reviewed and how the process and implementation of the review is to occur]

10 Dispute Resolution

[Drafting Note 10: Specify an appropriate dispute resolution process]

11 Enforcement

[Drafting Note 11: Specify the means of enforcing the Agreement]

12 Notices

12.1 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 send in one of the following ways:

- (a) Delivered or posted to that Party at it's address set out below
- (b) Faxed to that Party at it's fax number set out below
- (c) Emailed to that Party at it's email address set out below

Council

Attention: ##

Address: ##

Fax Number: ##

Email: ##

Developer

Attention: ##

Address: ##

Fax Number: ##

Email: ##

12.2 If a Party gives the other Party 3 business days notice of a change of it's address or fax number, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or faxed to the latest address or fax number.

12.3 Any notice, consent, information, application or request is to be treated as given or made at the following time:

- (a) If it is delivered, when it is left at the relevant address.
- (b) If it is sent by post, 2 business days after it is posted.
- (c) If it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.

12.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

13 Approvals and consent

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.

14 Assignment and Dealings

[Drafting Note 14: Specify any restrictions on the Developer's dealings in the land to which the Agreement applies and the period during which those restriction apply]

15 Costs

[Drafting Note 15: Specify how the costs of negotiating, preparing, executing, stamping and registering the Agreement are to be borne by the Parties]

16 Entire Agreement

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

17 Further Acts

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.

18 Governing law and jurisdiction

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 no object to the exercise of jurisdiction by those courts on any basis.

19 Joint and individual liability and benefits

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.

20 No fetter

Nothing in this Agreement shall be constructed as requiring Council to do anything that would cause it to be in breach of any of it's obligations at law, and without limitation,

nothing shall be constructed as limiting or fettering in any way the exercise of any discretion or duty.

21 Representations and warranties

The parties represent and warrant that they have power to enter 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.

22 Severability

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. 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.

23 Modification

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.

24 Waiver

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. A waiver by a Party is only effective if it is in writing. 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.

25 GST

If any Party reasonably decides that it is liable to pay GST on a supply made to the other Party under this Agreement and the supply was not priced to include GST, then recipient of the supply must pay an additional amount equal to the GST on that supply.

Execution

Dated: ##

Executed as an Agreement: ##

Template explanatory note

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Explanatory Note

Draft Planning Agreement

Under s93F of the Environmental Planning and Assessment Act 1979

1. Parties

(Planning Authority)

(Developer)

2. Description of Subject Land

4. Summary of Objectives, Nature and Effect of the Draft Planning Agreement

5. Assessment of the Merits of the Draft Planning Agreement

The Planning Purposes Served by the Draft Planning Agreement

How the Draft Planning Agreement Promotes the Objects of the Environmental Planning and Assessment Act 1979

How the Draft Planning Agreement Promotes the Public Interest

For Planning Authorities:

- (a) Development Corporations – How the Draft Planning Agreement Promotes its Statutory Responsibilities.
- (b) Other Public Authorities – How the Draft Planning Agreement Promotes the Objects (if any) of the Act under Which it is Constituted.
- (c) Councils – How the Draft Planning Agreement Promotes the Elements of the Council's Charter
- (d) All Planning Authorities – Whether the Draft Planning Agreement Conforms with the Authority's Capital Works Program.

The impact of the Draft Planning Agreement on the public or Any Section of the Public

Other Matters

Signed and Dated by All Parties