

## Palms Chullora

167 Hume Highway, Greenacre in the State of  
New South Wales being Lot 402, DP 631754

### **DRAFT PLANNING AGREEMENT**

Under s7.4 of the Environmental Planning and Assessment Act 1979

Canterbury-Bankstown City Council (ABN 45 985 891 846)

and

Palms (Chullora) Pty Limited (ACN 167 341 666)

February 2022

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## CONTACTS SHEET

### Council

Name	Canterbury-Bankstown Council
ABN	45 985 891 846
Address	66-72 Rickard Road, BANKSTOWN NSW 2200
Telephone	(02) 9707 9000
Email	<a href="mailto:council@cbc.city.nsw.gov.au">council@cbc.city.nsw.gov.au</a>
Representative	The General Manager

### Developer

Name	Palms (Chullora) Pty Limited
ACN	167 341 666
Address	GPO Box 5479 SYDNEY NSW 2001
Telephone	(02) 9251 6498
Email	<a href="mailto:warren@iriscapital.com.au">warren@iriscapital.com.au</a>
Representative	Warren Duarte Development Manager

## VOLUNTARY PLANNING AGREEMENT

Execution Date

Parties

Canterbury Bankstown Council (ABN 45 985 891 846) of 66-72 Rickard Road, BANKSTOWN NSW 2200 (Council)

and

Palms (Chullora) Pty Limited (ACN 167 341 666) of GPO Box 5479, SYDNEY NSW 2001 (Developer)

Together referred to as

The Parties

## BACKGROUND

A The Developer owns the land identified in Schedule 2 (Land). The Land is within the Canterbury-Bankstown LGA and the Bankstown Local Environmental Plan 2015 (LEP) applies to it.

B The Developer has sought to make amendments to the LEP with respect to the Land as provided for in the Planning Proposal.

Council has resolved for the following amendments to be made to the LEP to enable a mixed-use development on the Land.

- i. rezoning part of the Land from Zone B6 Enterprise Corridor to Zone RE1 Public Recreation.
- ii. amending the maximum building height to part 20 metres (six storeys), part 17 metres (five storeys) and part 11 metres (three storeys)
- iii. amending the depth of the 11m building height control adjacent to Hume Highway from 20 metres to 12 metres.
- iv. amending the maximum floor space ratio to 1.3:1 whilst applying a minimum floor space ratio of 0.3:1 for non-residential purposes.

C The Developer intends to submit a Development Application for the development of the Land, pursuant to the LEP amendment.

D The Developer has offered to enter into a Planning Agreement in accordance with section 7.4 of the Act in connection with the Planning Proposal.

E The Developer has offered to make Development Contributions in connection with carrying out of the Development pursuant to the LEP amendment in accordance with this Agreement

F The Development Contributions that the Developer has agreed to make pursuant to this Agreement and in accordance with the Council's Planning Agreement Policy 2020, are:

- i. The Developer will make a Development Contribution (Schedule 3) as a result of additional development potential based on a 50/50 basis of the increase of the value of the Land as detailed in Annexure 3 of this Agreement
- ii. The Developer will dedicate 600sqm of the Land which will be incorporated into Peter Reserve. The area is to be dedicated in perpetuity to be consolidated with Peter Reserve
- iii. The Developer will provide a new bus stop on Hume Highway as works-in-kind in consultation with the Transport for NSW, as Council has no jurisdiction over this work. The agreed value of this item is \$20,000.
- iv. The Developer will make a Monetary Contribution for the purpose of embellishment of Peter Reserve
- v. The Developer will make a Monetary Contribution towards a district level community and recreation facility.
- vi. The Developer will make a Monetary Contribution in accordance with Council's Affordable Housing Strategy, being 5% of the increased residential floor space towards affordable housing in the Council LGA. However, if the maximum uplift in residential net saleable area is not achieved, or is higher than those shown in Annexure 3 the amount payable under the Monetary Contribution by the Developer to Council will be proportionally adjusted to reflect the actual net residential saleable area achieved instead of the currently agreed amount shown in Schedule 3. In this regard, the total Developer

Credit estimated in Schedule 3 will need to be adjusted according to the final affordable housing contribution made by this agreement prior to the registration of the Strata Subdivision for the development with NSW Land Registry Services

vii. .

- G The Development Contributions that the Developer has agreed to make pursuant to this Agreement will be made when the benefit of the LEP amendments and any Development Consent with respect to the Land are taken up by the Developer.
- H The Parties agree that, as provided in Clause 7, the Development Contributions in Schedule 3 are payable only when Development Consent is granted and in accordance with timing in Schedule 3.
- I The Developer agrees to execute this Agreement within seven days following the Gazettal of the LEP amendment applying to this Land.
- J As provided in Clause 22.5, the Developer agrees that this Agreement is to remain registered on the title of the Land until such time as the completion of the Defects Liability Period for the Item of Work contemplated in this Agreement. Alternatively, the provision of a bank guarantee can be provided to Council for the value of the Item of Work in return for the release of the Agreement from the title of the Land.

## PART 1 – OPERATIVE PROVISIONS

### 1. Definitions and interpretation

#### 1.1 Definitions

The terms **Agreement** and **Deed** are used interchangeably herein in reference to this document.

In this Agreement, unless the context otherwise requires or permits, the following definitions apply:

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

**Agreement** means the Planning Agreement under which the Developer is required to make Development Contributions and includes any schedules, annexures and appendices to this Agreement

**Bond** being a bond held in and guaranteed by an Australian bank, being an authorised deposit taking institution under the Banking Act 1959 (Cth).

**Building Height** has the same meaning as in the LEP.

**Consent Authority** has the same meaning as in the Act.

**Construction Certificate** means a construction certificate within the meaning of section 6.4(a) of the Act.

**Contribution Value** means the estimated value of the Development Contributions as shown (subject to CPI) in Column 3 of Schedule 3.

**Cost** means a cost, charge, expense, outgoing, payment, fee or other expenditure of any kind.

**Council** means Canterbury-Bankstown Council

**Council's Affordable Housing Strategy** means Canterbury Bankstown Affordable Housing Strategy June 2020 as amended

**Council Land** means the land specified and described in Schedule 3, Column 2 upon which public benefits, outside of the Land, will be constructed.

**CPI** means the Consumer Price Index (Sydney All Groups) as published by the Australian Bureau of Statistics, or if that index ceases to exist, any other index agreed by the parties

**DCP** means Bankstown Development Control Plan 2015 and includes any development control plan applying to the Land that supersedes Bankstown Development Control Plan 2015

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

**Dedicated Land** means 600sqm of the Land which will be incorporated into Peter Reserve in perpetuity by the Developer to the Council.

**Deed** means this document, including all Schedules and annexures

**Defect** means a defect with respect to any item in Schedule 3 which adversely affects the ordinary use and/or enjoyment of the particular item

**Defects Liability Period** is a period of twelve months which commences at Hand-Over

**Development** means any future development (as defined in the Act) of the Land the subject of the Gateway Determination and the LEP Amendment, which includes the Land, after Gazettal

**Development Application** has the same meaning as in the Act

**Development Consent** has the same meaning as in the Act

**Development Control Plan (DCP)** means the Bankstown Development Control Plan 2015 as amended from time to time

**Development Contribution** means a Monetary Contribution, the carrying out of the Item of Work, or the provision of any other material public benefit (including without limitation the provision of legal rights of access to the public in perpetuity over land), or any combination of them by the Developer, to be used for, or applied towards, a Public Purpose as set out in Schedule 3.

**Developer Credit** means the amount of credit outlined in Schedule 3 applied towards development contributions in relation to future Development Consents in connection to the Land

**Development Site** means the Land known as 167 Hume Highway, Greenacre in the State of New South Wales comprising Lot 402 of DP 631754 on which the Development is proposed to be carried out

**Existing Building** means the building on the site as at the date of the execution of this agreement

**Gateway Determination** means the determination issued by the NSW Department of Planning, Industry & Environment, dated 20 August 2021

**Gazettal** means the publication of the LEP Amendment on the NSW Legislation website under section 3.24 of the Act

**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 Services Tax) Act 1999 (Cth) and any other Act or regulation relating to the imposition or administration of the GST

**Hand-Over** means the handover of the Item of Work identified in in accordance with Clause 15 of this Agreement

**Hand-Over Date** means the date of handover of the Item of Work identified in Schedule 3 in accordance with this Agreement

**Inspection and Test Plan** has the same meaning as in the NSW Government Quality Management System Guidelines for Construction June 2005 (amended March 2012) and as subsequently amended

**Item of Work** the bus stop as per Schedule 3 save that where the description of the Work is inconsistent with any Development Consent then the description shall be taken to be modified to the extent necessary to be consistent with the Development Consent

**Land** means the land specified and described in

**LEP** means Bankstown Local Environmental Plan 2015 and includes any local environmental plan applying to the Land that supersedes Bankstown Local Environmental Plan 2015

**LEP Amendment** means the instrument to amend the LEP as explained in the Planning Proposal

**LGA means** local government area

**Loss** means any loss, claim, action, liability, damage, demands, cost, charge, which Council, its employees, officers, agents, contractors and workmen sustains, pays, suffers or incurs or is liable for arising in connection with the carrying out by the Developer of any Item of Work and the performance by the Developer of any obligation under this Agreement, including (but not limited to) reasonable legal and other expenses incurred in connection with investigating or defending any claim or action, whether or not resulting in any liability, and all amounts reasonably paid in settlement of any claim or action

**Minister** means the minister administering the Act unless otherwise specified

**Occupation Certificate** has the same meaning as in the Act

**Party** means a party to this Agreement, including their successors, agents, and assignees

**Planning Proposal** means the Planning Proposal dated February 2022 in relation to the Land, a copy of which is attached to this Agreement at Annexure 1.

**Principal Contractor** has the same meaning as in clause 293 of the Work Health and Safety Regulation 2017.

**Public Facilities** means a public amenity, a public service, a public facility, public land, public infrastructure, a public road, a public work, or any other act, matter or thing that meets a Public Purpose

**Public Purpose** means a public purpose as referred to in section 7.4(2) of the Act

**Rectification 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 Rectification Notice has been completed in accordance with the Rectification Notice



**Rectification Notice** means a notice in writing that identifies a Defect in an Item of Work and requires rectification of the Defect within the Defects Liability period

**Rectification Security** means a bond or bank guarantee for 10% of the Security Amount.

**Registered Certifier** means a person who is registered under the Building and Development Certifiers Act 2018 and whose registration is in force

**Regulation** means the Environmental Planning and Assessment Regulation 2000

**Section 4.55 or 4.56 Application** means an application to modify a development consent under section 4.55 or section 4.56 of the Act

**Security Amount** means the total value of Item of Works as listed under Column 3 of Schedule 3 under this Agreement

**Service Provider** has the same meaning as in the NSW Government Quality Management System Guidelines, December 2019

**Strata Plan** means a strata plan or strata plan of subdivision within the meaning of the Strata Schemes Act

**Strata Schemes Act** means the Strata Schemes (Freehold Development) Act 1973 (NSW)

**Works-As-Executed Records** means a plan setting out a record of construction completed to the Council's satisfaction, acting reasonably

## 1.2 Interpretation

In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:

- (a) The background of this Agreement, being the matters listed under the heading 'Background' above, is prepared and agreed to assist in the interpretation of this Agreement. Unless expressly provided for, the matters and things addressed under that heading are used to show the intent of the Parties when entering into this Agreement
- (b) Headings are inserted for convenience only and do not affect the interpretation of this Agreement.
- (c) A reference to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- (d) A reference to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST
- (e) A reference to a Business Day means a day other than a Saturday, Sunday or bank or public holiday in Sydney.
- (f) 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
- (g) A reference to time is local time in Sydney.
- (h) A reference 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.

- (i) A reference to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced
- (j) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
- (k) References to a person includes any other entity recognised by Law.
- (l) An expression importing a natural person includes any company, corporation, trust, partnership, joint venture, association, body corporate, statutory body or governmental agency.
- (m) 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.
- (n) 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
- (o) References to the word 'include' or 'including are to be construed without limitation
- (p) A reference to a party to this Agreement includes a reference to the personal representatives, legal representatives, agents and contractors of the party, and the party's successors and assigns substituted by novation
- (q) A reference to this Agreement includes the agreement recorded in this Agreement
- (r) Any schedules, attachments and annexures form part of this Agreement
- (s) Notes appearing in the Agreement are operative provisions of this Agreement
- (t) A reference in this Agreement to the name and number of a zone under Bankstown Local Environmental Plan 2015 includes a reference to an equivalent zone under any local environmental plan that supersedes the LEP

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

- 2.1 This Agreement constitutes a planning agreement within the meaning of s7.4 of the Act and facilitates the provision of Development Contributions for the Public Benefit

## **3 Application under this Agreement**

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

## **4 Status and operation of this agreement**

- 4.1 Clauses 22.1, 22.2, 22.3, 22.4 and 27.1 of this Agreement operate in accordance with background H.
- 4.2 The Parties agree that the balance of the terms of this Agreement are effective and binding on the parties if the amendment to the LEP proposed by the Planning proposal is gazetted.
- 4.3 Notwithstanding Clause 4.2, the Parties agree that the Developer is not bound by this Agreement to provide the Development Contributions (as set out in Schedule 3) unless:
  - 4.3.1 The LEP Amendment described in the Planning Proposal is gazetted; and

- 4.3.2 Development Consent is granted for the Development; and
- 4.3.3 The Development is physically commenced in accordance with section 4.53 of the Act, with the Development to be taken to have been physically commenced for the purposes of section 4.53 of the Act notwithstanding that a precondition to such commencement may not have been satisfied
- 4.4 This Agreement will remain in force until:
  - 4.4.1 It is terminated by operation of Law; or
  - 4.4.2 The Council requests the Minister to determine that the LEP Amendment not proceed in accordance with s3.35(4) of the Act and the Minister agrees to such request; or
  - 4.4.3 One month after all of the Developers obligations under this Agreement are performed or satisfied (including the Defects Liability Period).

## **5 Further agreements relating to this Agreement**

- 5.1 The Parties may, at any time and from time to time, enter into agreements relating to the subject-matter of this Agreement that are not inconsistent with this Agreement for the purpose of implementing this Agreement.

## **6. Application of sections 7.11, 7.12 and 7.24 of the Act to the Development**

- 6.1 This Agreement does not exclude the application of sections 7.11, 7.12 and 7.24 of the Act in respect of the Development.

## **PART 2 DEVELOPMENT CONTRIBUTIONS**

### **7 Provision of Development Contributions**

- 7.1 Schedule 3 has effect in relation to Development Contributions to be made by the Developer under this Agreement
- 7.2 The Developer is to make Development Contributions to Council in accordance with this Agreement.
- 7.3 Despite Clause 7.2, the Development Contributions identified in Schedule 3 are to be delivered if a Development Consent is granted.
- 7.4 The Monetary Contributions in Schedule 3 towards the embellishment of Peter Reserve and the district level community and recreation facility are payable 30 days after the land to increase the size of Peter Reserve is registered with the NSW Land Registry Service.

The Monetary Contribution towards affordable housing is payable following agreement by the Parties of the final value of the contribution based on the surveyed residential net saleable area which will occur prior to the registration of the Strata Subdivision for the development with NSW Land Registry Services.

7.5 The Development Contributions described as:

- i. the Item of Work) is to be completed prior to the issue of the final Occupation Certificate for the development; and
- ii. the Dedicated Land is to be dedicated no later than 12 months after the issue of the first Construction Certificate linked to the redevelopment of the subject site.

The Monetary Contributions as set out in Schedule 3 shall be indexed by the increase in the Consumer Price Index (All Groups Index) for Sydney as published by the Australian Bureau of Statistics at the quarter immediately prior to the payment.

7.6

- 7.7 The Parties expressly provide and agree that the Developer be solely responsible for the delivery of the Development Contributions and that the Contributions Value agreed on or as determined in accordance with this Agreement shall be the agreed value of delivery of those Development Contributions.

## 8 Application of Development Contributions

- 8.1 The Council is to apply each Development Contribution made by the Developer under this Agreement in Schedule 3 towards the Public Purpose for which it is made and otherwise in accordance with this Agreement.

## 9 Dedication of Land

- 9.1 The Developer will dedicate to the Council the Dedicated Land which must be free of structures and any contamination (if it exists), freed and discharged from all estates, interests, trusts, restrictions, dedications, reservations, easements (except for Council, rights, charges, rates and contracts in, over or in connection with the land, including but not limited to, municipal rates and charges, water rates and land tax, except as permitted by Council.
- 9.2 The obligation to dedicate the Dedicated Land will be taken to have been satisfied when a Certificate of Title is issued by NSW Land Registry Services for the expanded Peter Reserve identifying the Council as the registered proprietor of that land without encumbrances as required when that land is dedicated to Council by operation of the registration of a plan of subdivision in accordance with section 49 of the Local Government Act 1993.
- 9.3 The Dedicated Land must be dedicated or transferred to Council no later than 12 months after the issue of the first Construction Certificate linked to the redevelopment of the subject site.
- 9.4 The parties agree and acknowledge that the dedication of the Dedicated Land serves the public purpose and Council is to wholly utilise the Monetary Contribution made under this agreement towards embellishment of Peter Reserve as per Schedule 3.

## 10 Quality Management System for Design and Specification of an Item of Work

- 10.1 The Developer must engage a Service Provider for the design and specification of the bus stop detailed in Schedule 3, in consultation with the Transport for NSW and must ensure that the design and specification for the bus stop is in accordance with a Quality Management System, developed by the Service Provider in accordance with AS/NZS ISO 9000:2016, and certified by a third-party organisation accredited under a recognised product certification scheme in accordance with AS/NZS ISO 9001:2016 and consistent with the requirements of the Transport for NSW.

- 10.2 The Council is to provide the Developer with a list of preferred Service Providers within 7 days of any written request.

## **11 Carrying out of an Item of Work**

- 11.1 As a part of any Development Application foreshadowed by this Agreement, the Developer shall include the Works (or proportion thereof as per Clause 7.4 of this agreement) specified in Schedule 3 in any application for the Development of the Development Site and will produce a detailed design and specification for the Works in accordance with:
- 11.1.1 any reasonable lawful requirements and directions of the Council that are notified in writing to the Developer within any reasonable time before the Works are approved in accordance with this Agreement, and
  - 11.1.2 the conditions of any Development Consent granted in relation to an Item of Work.
- 11.2 Prior to any Development Application submitted in accordance with Clause 11.1, preliminary design plans are to be provided to Council for comment. The Developer shall allow the Council at least 28 days within which to provide comments and the Developer is to adopt such comments, as reasonable, when lodging the Application to the extent such comments are in accordance with the relevant Council or Service Provider specifications.
- 11.3 Prior to the issue of the final Occupation Certificate relating to any Development Consent, the Developer must carry out the Item of Work as specified in Schedule 3 and bring it to Practical Completion or engage its Service Provider to carry out the Item of Work and bring them to Practical Completion, to the reasonable satisfaction of the Council, in accordance with:
- 11.3.1 the detailed design and specification approved by the Council, including Transport for NSW.
  - 11.3.2 all applicable laws, including those relating to occupational health and safety
  - 11.3.3 the conditions of any Development Consent granted in relation to the carrying out of that Item of Work; and
  - 11.3.4 the conditions of the Development Consent relating to the Development.
- 11.4 Subject to the terms of this Agreement (including, but not limited to Clause 32), the Developer is to consult with the Transport for NSW for a provision of a bus stop along Hume Highway.

## **12 Quality Management System for Item of Work**

- 12.1 The Developer will implement/construct each Item of Work detailed in Schedule 3 in accordance with:
- 12.1.1 a Quality Management System developed by the Service Provider in accordance with AS/NZS ISO 9000:2016 and certified by a third-party organisation accredited under a recognised product certification scheme in accordance with AS/NZS ISO 9001:2016, or
  - 12.1.2 a project specific Quality Management Plan and Inspection and Test Plan developed by the Service Provider in accordance with the NSW Government Quality Management Guidelines December 2019 and approved by the Council.
- 12.2 The Developer must notify the Council within 5 Business Days of the issue of a corrective action request, non-conformance report or notice of non-conformance issued by the Council with respect to the Item of Work in accordance with the Agreement and/or any subsequent agreement and promptly undertake all reasonable corrective action with respect to such Item of Work as required by the Council.

### **13 Access to the Land**

- 13.1 The Council is to permit the Developer to enter and occupy the Council Land for the purpose of enabling the Developer to carry out works in Schedule 3 under this Agreement
- 13.2 The Developer is to permit Council, its officers, employee, agents and contractors to enter the Land at any time, upon giving reasonable prior notice, in order to inspect, examine or test any items discussed in Schedule 3 of this Agreement.
- 13.3 The Developer must take reasonable steps to limit the loss of access and/or amenity by the community to the Council Land.

### **14 Protection of people and property**

- 14.1 In addition to clause 13 above, the Developer is to ensure to the fullest extent reasonably practicable in relation to the carrying out of any Work that:
  - 14.1.1 all necessary measures are taken to protect people and property, and
  - 14.1.2 unnecessary interference with the passage of people and vehicles is avoided, and
  - 14.1.3 nuisances and unreasonable noise and disturbances are prevented, and
  - 14.1.4 all relevant laws are complied with.
- 14.2 The Developer also agrees to be the Principal Contractor for the Item of Work and Council authorises the Developer, for the purposes of clause 293(2) of the Work Health and Safety Regulation 2017, to have management or control of the Council Land insofar as the Works are concerned and to discharge the duties of a Principal Contractor in that regard.

### **15 Hand-Over of Item of Work**

- 15.1 The Developer must, at least 20 business days prior to the proposed Hand-Over, submit to the Council the Works-as-Executed Records and written notice for an Item of Work on which it proposes to Hand-Over the Item of Work.
- 15.2 Council acting reasonably can, within 20 Business Days of receipt of the notice under Subclause 15.1:
  - 15.2.1 request information (in addition to the Works-as-Executed Records) that is relevant to the Practical Completion of the Item of Work and delay the Hand-Over of the Item of Work until the Developer has provided the additional information requested to Council's reasonable satisfaction, or
  - 15.2.2 determine that the Item of Work has not met the design and specification approved by Council and issue a Rectification Notice implemented as pursuant to Clause 16
- 15.3 An Item of Work is deemed to be Handed Over upon the submission to Council of the Works-as-Executed Records and written notice for an Item of Work and the Developer has complied with any Rectification Notice in relation to any such Item of Work as required under Clause 16
- 15.4 Following Hand Over, the Council is responsible for the maintenance of all items listed under Schedule 3 save in respect of Clauses 15.2.2 and 16

### **16 Rectification of Defects**

- 16.1 During the Defects Liability Period only, the Council may give to the Developer a Rectification Notice.
- 16.2 The Developer must comply with a Rectification Notice at its own cost.

- 16.3 The Developer must comply with the Rectification Notice within a period of time that is reasonable having regard to the practical performance of works required to be performed by the Rectification Notice, but not less than 3 months from the date the Developer receives the Rectification Notice
- 16.4 When the Developer considers that rectification is complete, the Developer must give to the Council a Rectification Certificate relating to the Item of Work the subject of the relevant Rectification Notice and submit to the Council the Works-as- Executed Records.
- 16.5 Council acting reasonably can, within 20 Business Days of receipt of the certificate under Subclause 16.4,
- 16.5.1 request information (in addition to the Works-as-Executed Records) that is relevant to the notice under Subclause 16.1 until the Developer has provided the additional information requested to Council's reasonable satisfaction, or
- 16.5.2 determine that the Item of Work has not meet the design and specification approved by Council and issue a further Rectification Notice implemented as pursuant to this Clause.
- 16.6 If the Developer does not comply with a Rectification Notice within the time provided at Subclause 16.3, the Council may do such things as are necessary to rectify the Defect and may recover, as a debt due and owing in a court of competent jurisdiction, any reasonable cost incurred by the Council in rectifying the Defect.
- 16.7 Before the Council may rectify any Defect in accordance with Subclause 16.6, it must:
- 16.7.1 Notify the Developer in writing of its intention to exercise its right pursuant to Subclause 16.6;
- 16.7.2 Provide the Developer a further 30 days to comply with the Rectification Notice (or such lesser timeframe as Council reasonably considers appropriate only in circumstances involving public health and safety risks) or provide some other response in writing
- 16.7.3 Reasonably consider the content of any other written response provided by the Developer provided in that 30 day period (or such lesser timeframe as specified)
- 16.8 Save for during the Defects Liability Period, the Council may not give to the Developer a Rectification Notice or require the Developer to perform rectify any Defect or seek the costs of any rectification from the Developer

## **PART 3 OTHER PROVISIONS**

### **17 Indemnity and insurance**

- 17.1 This clause applies until the expiration of the Defects Liability Period only.
- 17.2 The Developer indemnifies Council from and against all Loss, except to the extent that any Loss is caused or contributed to by the deliberate or negligent act or omission of Council, its employees, officers, agents, contractors and workmen
- 17.3 The Developer is to take out and keep current to the reasonable satisfaction of Council the following insurances in relation to Work required to be carried out by the Developer under this Agreement up until the Work is taken to have been completed in accordance with this Agreement:
- 17.7.1 contract works insurance; noting Council as an interested party, for the full replacement value of the Works (including the cost of demolition, removal of debris, and remediation, consultants' fees and authorities' fees), to cover the Developer's liability in respect of damage to or destruction of the Works,
- 17.7.2 public liability insurance for at least \$20,000,000 for a single occurrence, which covers Council, the Developer and any subcontractor of the Developer, for liability to any third party
- 17.7.3 workers compensation insurance as required by law, and

17.7.4 any other insurance required by law.

- 17.4 If the Developer fails to comply with Clause 17.3, 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 Council and payable within 30 days after providing an invoice and which may be recovered as a liquidated debt due in a court of competent jurisdiction.
- 17.5 The Developer is not to commence to carry out any Work unless it has first provided to Council satisfactory written evidence of all the insurances specified in Clause 17.3.
- 17.6 Evidence of currency of all insurances shall be provided upon reasonable request by Council.

## **18 Developer to provide Security**

- 18.1 The Parties agree that the obligation to carry out the Item of Work to be carried out by the Developer pursuant to Clause 12 will be secured by a Bond, equal to 25% of the value of the applicable Item of Work under this Agreement, which the Developer will provide to the Council prior to the issue of the Construction Certificate. .
- 18.2 The Bond may not be requested, and no Bond may be retained by the Council until after the foreshadowed Development Consent for the Development is granted by the Council and the Developer gives Council notice of its intention to commence development pursuant to section 6.6(2)(e) of the Act and the Development is physically commenced as provided in section 4.53 of the Act
- 18.3 The Developer acknowledges that the Council or other Consent Authority may impose conditions of Development Consent on the Development under section 4.17 of the Act specifying that the Security Amount as it relates to the Item of Work is to be provided in accordance with Schedule 3
- 18.4 The Parties agree in respect of the Item of Work identified in Schedule 3 that, where Council is the Registered Certifier, it may withhold the issue of the relevant Occupation Certificate (as appropriate) until such time as the identified Item of Work is completed.

## **19 Release and return of security**

- 19.1 The Council is to release the Bond to the Developer referred to in clause 18.1 as soon as practical following Hand-Over, but may retain the Rectification Security (which can be provided by the Developer as a new bond or bank guarantee in exchange for a full release of the Bond) until the end of the Defects Liability Period.

If Council incurs a cost in rectifying a Defect in the Item of Work, it may draw on the Rectification Security or alternatively, the cost shall be a liquidated debt due and payable by the Developer to Council within 30 days after the production of an invoice and which may be recovered by Council from the Developer in a court of competent jurisdiction.

- 19.2 For the purpose of clause 19.2, Council's costs of rectifying a Defect in the Item of Work includes, but is not limited to:
- 19.2.1 the reasonable costs of Council's officers, personal representatives, agents and contractors reasonably incurred for that purpose,
- 19.2.2 all fees and charges necessarily or reasonably incurred by Council in order to have the Item of Work rectified, and



- 19.2.3 without limiting clause 16.6, all legal costs (assessed on an indemnity basis) and expenses reasonably incurred by Council, by reason of the Developer's failure to comply with this Agreement.

## **20 Enforcement**

- 20.1 Without limiting any other provision of this Agreement, the Parties may enforce this Agreement in any Court of competent jurisdiction.
- 20.2 For the avoidance of doubt, nothing in this Agreement prevents:
- 20.2.1 a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Agreement or any matter to which this Agreement relates, or
- 20.2.2 the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Agreement or any matter to which this Agreement relates.

## **21 Dispute resolution**

- 21.1 If a party claims a dispute has arisen under this Agreement (Claimant) it must give written notice to the other party (Respondent) stating the matters in dispute.
- 21.2 Within 14 days after receiving a Claim Notice the Parties must, in good faith, seek to resolve the dispute by, at a minimum, meeting via persons with sufficient authority to resolve the dispute
- 21.3 If the dispute is not resolved within 7 days after the representatives have met, either party may, within 48 hours thereafter, give notice calling for determination of the dispute (Dispute Notice). Otherwise, the Dispute is taken to have been waived by the Claimant
- 21.4 The Dispute Notice shall be submitted to an expert in accordance with, and subject to, Resolution Institute Expert Determination Rules and determined accordingly.
- 21.5 No proceedings other than those seeking urgent interlocutory or declaratory relief may be commenced or maintained until such time as the requirements of this clause 21 have been met.
- 21.6 Each party must continue to perform its obligations under this Agreement notwithstanding the existence of a dispute.

## **22 Registration**

- 22.1 The parties agree to register this Agreement on the title of the Land so that it is binding on and enforceable against all owners of the Land from time to time as if each owner for the time being had entered into this Agreement.
- 22.2 The Developer must at its Cost take all practical steps reasonably necessary to and must procure:
- 22.2.1 the consent of each person who:
- (a) has an interest or estate in the Land registered under the Real Property Act 1900 [NSW]; or
- (b) is seized or possessed of an estate or interest in the Land; and
- 22.2.2 the execution of any documents.
- 22.2.3 the production of the relevant certificates of title; and
- 22.2.4 the lodgement and registration of this Agreement on the title to the Land within twenty-eight (28) days after Gazettal.

- 22.3 The Council must promptly do all things reasonably required by the Developer and provide all necessary consents in order to enable the Developer to comply with its obligations under Clause 22.2.
- 22.4 The Developer must use all reasonable endeavours to obtain such registration as soon as practicable after the date of this agreement and must promptly after registration deliver to the Council a title search of the Land confirming registration of this Agreement
- 22.5 In relation to release and discharge of this Agreement by Council, the Council agrees that:
- 22.5.1 this Agreement is to remain registered on the title of the Land until the completion of the defects liability period and the fulfilment of all requirements of this Agreement have been met;
  - 22.5.2 alternatively, the provision of a bank guarantee can be provided to Council for the value of the Item of Work in return for the release of the Agreement from the title of the Land;
  - 22.5.3 that upon the Developer having discharged its obligations pursuant to Clause 22.5.1 hereof:
    - (a) if so requested by the Developer, the Council will within 28 days thereafter do all things reasonably required at its cost to secure the withdrawal or deletion of the registration of this Agreement from the title to the Land or return of the bank guarantee in 22.5.2; and
    - (b) if so requested by the Developer, to provide to the Developer (or such other person authorised to act on its behalf) a letter prepared on Council's letterhead, confirming that the Developer has fully discharged its obligation under this Agreement

## **23 Assignment and dealings**

- 23.1 Subject to Clause 23.2, the Developer may:
- 23.1.1. if the Developer is the owner of the Land, transfer the Land to any person, or
  - 23.1.2. assign, transfer, dispose or novate to any person the Developer's rights or obligations under this Agreement.
- 23.2 The matters required to be satisfied for the purposes of Clause 23.1 are as follows:
- 23.1.1 the Developer has, at no cost to Council, first procured the execution by the person to whom the Developer's rights or obligations under this Agreement are to be assigned or novated, of an agreement in favour of the Council on terms satisfactory to Council acting reasonable, and
  - 23.1.2 Council, by notice in writing to the Developer, has stated that evidence satisfactory to Council has been produced to show that the assignee or novate, is reasonably capable of performing its obligations under the Agreement, and
  - 23.1.3 the Developer is not in breach of this Agreement;
  - 23.1.4 the Council will not suffer any actual and substantial loss or erosion of its rights under this Agreement
  - 23.1.5 the community will not suffer any actual and substantial loss or erosion of the benefits that will be provided to it by this Agreement; and
  - 23.1.6 Council is provided sufficient evidence to reasonably satisfy it that the transferee, assignee or novate is reasonably capable of performing its obligations under the Agreement.
- 23.3 Notwithstanding this clause the Developer may enter into a contract for sale, and may sell and transfer to a transferee part of the Land forming a strata lot on a proposed Strata Plan, without compliance with this clause.

## **24 Review of this Agreement**

- 24.1 The Parties agree to review this Agreement every 2 years, and otherwise if either Party is of the opinion that any change of circumstance has occurred, or is imminent, that materially affects the operation of this Agreement.
- 24.2 For the purposes of this clause, the relevant changes include (but are not limited to) any change to a law that restricts or prohibits or enables Council or any other planning authority to restrict or prohibit any aspect of the Development.
- 24.3 For the purposes of addressing any matter arising from a review of this Agreement referred to in this clause the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Agreement.
- 24.4 If this Agreement becomes illegal, unenforceable or invalid as a result of any change to a law, the parties agree to do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Agreement is entered into
- 24.5 A failure by a Party to agree to take action requested by the other party as a consequence of a review referred to in this Clause is not a dispute for the purposes of Clauses 21 and is not a breach of this Agreement

## **25 Notices**

- 25.1 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.
- 25.1.1 delivered or posted to that Party at its address set out in the 'Contacts Sheet'
- 25.1.2 emailed to that Party at its email address set out in the 'Contacts Sheet'.
- 25.2 If a Party gives the other Party 3 days notice of a change of its address or email address, any notice, consent, information, application or request is only given or made by that other party if it is delivered, posted or emailed to the latest address or email address.
- 25.3 Any notice, consent, information, application or request is to be treated as given or made at the following time:
- 25.3.1 If it is delivered, when it is left at the relevant address.
- 25.3.2 If it is sent by post, 2 business days after it is posted
- 25.3.3 Emailed to that party at its email address set out above.
- 25.4 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 sent, it is to be treated as having been given or made at the beginning of the next business day.

## **26 Approvals & Consents**

- 26.1 Except as otherwise set out in this Agreement, or as required by any statutory obligations, a Party may not unreasonably give or withhold an approval or consent to be given under this Agreement or as a part of the Planning Proposal or as part of the Development Proposal.
- 26.2 A Party is obliged to give its written reasons upon request for giving or withholding consent or for giving consent subject to conditions.

## **27 Costs**

- 27.1 Each party shall bear its own costs of preparing, negotiating, executing and stamping this Agreement, and any document related to this Agreement, including but not limited to survey, legal or stamp duty costs, determined as payable by each Party.

## **28 Entire Agreement**

- 28.1 This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with.
- 28.2 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.

## **29 Further acts**

- 29.1 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.

## **30 Governing law and jurisdiction**

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

## **31 Joint and individual liability and benefits**

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

## **32 No fetter**

- 32.1 Nothing in this Agreement shall be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

## **33 Representations and warranties**

- 33.1 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.

### **34 Severability**

- 34.1 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.
- 34.2 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.

### **35 Modification**

- 35.1 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.

### **36 Waiver**

- 36.1 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.
- 36.2 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.
- 36.3 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.

### **37 Rights Cumulative**

- 37.1 Except as expressly stated otherwise in this Agreement, the rights to a Party under this Agreement are cumulative and are in addition to any other rights of that Party.

### **38 GST**

- 38.1 Consideration does not include GST
- 38.1.1 Any consideration expressed in this Agreement is unless otherwise specified GST exclusive and does not include any amount for, or on account of, GST.
- 38.2 GST Payable
- 38.2.1 If any supply under or in connection with this Agreement constitutes a taxable supply made for GST exclusive consideration, the supplier may, subject to issuing a tax invoice, recover from the recipient of the supply an amount on account of the GST payable in respect of that taxable supply (GST Amount).
- 38.2.2 The GST Amount is:
- (a) equal to the value of the supply calculated in accordance with the GST Act multiplied by the applicable GST rate; and
  - (b) payable at the same time and in the same manner as any monetary consideration for the supply concerned but no later than the end of the tax period to which the GST payable on the relevant taxable supply is attributable under the GST Act.

- 38.2.3 The supplier of a taxable supply made under or in connection with this Agreement must issue a tax invoice for the supply in accordance with the GST Act to the recipient of the supply

**38.3 Reimbursement**

- 38.3.1 Despite any other provision of this Agreement, any amount payable under or in connection with this Agreement, which is calculated by reference to a cost, expense or amount paid or incurred by a Party, will be reduced by an amount equal to any input tax credit to which that party, or the representative member of a GST Group of which the party is a member, is entitled in respect of that cost, expense or amount.
- 38.3.2 In relation to clause 38.3.1 any request for payment, if required, must be made in writing.

**38.4 Defined GST term**

- 38.4.1 Words and expressions used in this clause 38 have the meaning given to them in the GST Act.

**39 Effect of Schedules**

- 39.1 Each Party agrees to comply with any terms contained in the Schedules to this Agreement as if those terms were included in the operative part of the Agreement.

## SIGNING PAGE

Date

Executed as an Agreement

Signed, sealed and delivered by the Developer  
(ACN 167 341 666) in accordance with section 127  
of the Corporations Act 2001

.....

Signature of director

.....

(Print) Full Name

Signed for and on behalf of Canterbury-Bankstown  
Council in the presence of:

.....

Signature of witness

.....

Signature of General Manager

.....

(Print) Full Name

.....

(Print) Full Name

## Schedule 1

Requirements under section 7.4 of the Act

The parties acknowledge and agree that the table set out below provides for certain terms, conditions and procedures for the purpose of the deed complying with the Act.

Subject and subsection of the Act	Planning Agreement
<b>Planning instrument and/or Development Application – Section 7.4(1)</b>	
The Developer has:	
(a) Sought a change to an environmental planning instrument	Yes
(b) Made, or proposes to make a Development Application	Yes
(c) Entered into an agreement with, or are otherwise associated with, a person to whom paragraph (a) or (b) applies	No
<b>Description of the land to which the planning Agreement applies – Section 7.4(3)(a)</b>	Land as defined in Clause 1, Schedule 2 of the Agreement
<b>Description of change to the environmental planning instrument to which the agreement applies – Section 7.4 (3) (b)</b>	<p>Makes the following provisions to the Land:</p> <ul style="list-style-type: none"> <li>rezoning part of the Land from Zone B6 Enterprise Corridor to Zone RE1 Public Recreation;</li> <li>amending the maximum building height to part 20 metres (six storeys), part 17 metres (five storeys) and part 11 metres (three storeys);</li> <li>amending the depth of the 11m building height control adjacent to Hume Highway from 20 metres to 12 metres;</li> <li>amending the maximum floor space ratio to 1.3:1 whilst applying a minimum floor space ratio of up to 0.3:1 for non-residential purposes.</li> </ul>
<b>The scope, timing and manner of delivery of contribution required by the Planning Agreement – Section 7.4(3)(c)</b>	See Schedule 3
<b>Applicability of section 7.11 of the Act – Section 7.4(3)(d)</b>	See clause 6 of this agreement



<b>Applicability of section 7.12 of the Act</b> – Section 7.4(3)(d)	See clause 6 of this agreement
<b>Applicability of section 7.24 of the Act</b> – Section 7.4(3)(d)	See clause 6 of this agreement
<b>Mechanism for dispute resolution</b> – Section 7.4(3)(f)	See clause 21 of this agreement
<b>Enforcement of the Planning Agreement</b> – Section 7.4(3)(g)	See clause 20 of this agreement
<b>Registration of the Planning Agreement</b> – Section 7.6	See clause 22 of this agreement
<b>No obligation to grant consent or exercise functions</b> – Section 7.4(9)	See clause 26 of this agreement



### Schedule 3

## Development Contributions

Column 1	Column 2	Column 3	Column 4
<b>Part A- Dedicated Land</b>			
Item	Public Benefit	Agreed Contribution Value	Timing of Dedication
Dedicated Land	Dedication of 600sqm of land to increase the size of Peter Reserve	\$660,000.00	No later than 12 months after the issue of the first Construction Certificate linked to the redevelopment of the subject site.
<b>Part B – Item of Work</b>			
Item	Public Benefit	Agreed Contribution Value	Timing of completion
Bus Stop	Work-in -kind for a provision of a new Bus stop on Hume Highway in consultation with Transport for NSW	\$20,000	Prior to the issue of the final Occupation Certificate for the development
<b>Part C – Monetary Contributions</b>			
Item	Public Benefit	Agreed Contribution Value	Timing of Payment
Public Park Embellishment	Monetary contribution towards embellishment of Peter Reserve	\$75,000.00	30 days after the Dedicated Land is registered with NSW Land Registry Service
Affordable Housing	Monetary contribution to be applied towards the provision of affordable housing in accordance with the methodology applied in Annexure 3 of this Agreement	\$201,361.00	Prior to the registration of the Strata Subdivision for the development with NSW Land Registry Services
District level Community and Recreation Facility	Monetary Contribution towards the provision of a district level	\$80,000.00	30 days after the Dedicated Land is registered with NSW Land Registry Service

	community and recreational facility		
<b>DEVELOPMENT CONTRIBUTIONS</b>			
Total amount of Development Contributions made by the Developer		<b>\$1,036,361.00</b>	
<b>Minus 50% of the increase of the value of the Land as a result of the LEP amendment which is to be contributed by the Developer based on the agreed increase of value of the Land by the Parties being \$2,047,415.00 as a result of the LEP Amendment to the Land</b>		<b>\$1,023,708.00</b>	
			<b>TIMING OF CREDIT</b>
<b>DEVELOPER CREDIT</b>		<b>\$12,654.00</b>	To be applied in accordance with Clause 6 of this Agreement and towards Development Contributions required by future Development Consents applying to the Land.

## **ANNEXURE1 – PLANNING PROPOSAL**

**Note:** The concept plans are not reflective of the final development on the site. Any future DA is required to be assessed under the EP&A Act 1979.

**Note:** Planning Proposal (February 2022) is being exhibited as a separate document in accordance with the Gateway Determination requirements, for the purposes of this exhibition.

Draft

## **ANNEXURE 2– EXPLANATORY NOTE RELATING TO THIS AGREEMENT**

**Note:** Explanatory note for this agreement is being exhibited as a separate document for the exhibition of this Planning Proposal in accordance with the Gateway Determination requirements.

Draft

### **ANNEXURE 3 - LAND VALUE CALCULATION FOR THIS AGREEMENT**

The value uplift calculation is detailed in Hill PDA Peer Review, November 2021 (currently on exhibition as a separate document). The Calculation was later adjusted as detailed on Council letter dated 28 November 2021 (Annexure 3B) and as noted on the extract from Hamptons Property Services email dated 17 November 2021 (Annexure 3C)

#### **3A. Hill PDA Peer Review Value Uplift Analysis, November 2021**

**Note:** This is currently being exhibited as a separate document on Council website.

Draft

### 3B. Council letter dated 28 November 2021



28 November 2021

Kristy Hodgkinson  
Hampton Property Services  
PO Box 954  
Edgecliff NSW 2027

Emailed to: [Kristyh@hamptonspropertyservices.com.au](mailto:Kristyh@hamptonspropertyservices.com.au)

Dear Ms Hodgkinson,

#### **Council Response to Revised Draft Planning Agreement Planning Proposal for 167 Hume Highway, Greenacre**

##### **Introduction**

I refer to the revised letter of offer provided by Hamptons Property Services on behalf of Iris Capital dated 17 November 2021 ("**Offer**") together with subsequent supporting documentation provided to Council including a 'VPA Analysis Clarifications' prepared by Atlas Urban Economics dated 8 November 2021 ("**Valuation**") in support of the Palms Hotel Planning Proposal ("**PP**") at 167 Hume Highway, Greenacre ("**Land**").

##### **Summary**

While Council appreciates the submission of a revised offer in response to Council's previous letter, For the reasons outlined below, Council does not consider that the Offer is adequate nor in a form that could be recommended for approval by the elected body. Whilst, of course, an offer is essentially voluntary, Council requests that the Offer be modified to address the issues addressed below.

##### **Analysis**

The Offer identifies the following public benefits for provision to Council:

1. Dedication of land and embellishment
2. New bus stop
3. Contribution to District-level facility
4. Contribution to affordable housing

##### **Item1: Land Dedication**

Council is content with the size and shape of the land (approx. 600m<sup>2</sup>) proposed to be dedicated as has been described in previous correspondence ("**Dedication Land**").





Council does not, however, accept that the value of the Dedication Land as identified in the Valuation is accurate.

Council maintains its position that the valuation of the Dedication Land must be at market value, unimproved and at its current B6 Enterprise Corridor zoning. Council does not agree with the approach in the Offer to value the Dedication Land based on the value of an adjoining R2 Low Density Residential Zoned landholding (27 Peter Crescent).

The value of the Dedication Land as stated in Council's previous letter was \$838,200. On review of the Offer, Council accepts that the Dedication Land (approx. 600m<sup>2</sup>) can be valued on a 90%/10% land use split using the \$1,150/m<sup>2</sup> and \$650/m<sup>2</sup> residential and commercial rates provided in the Offer. Using these rates the value of the dedicated land is \$660,000 as calculated below:

**Table 1: Council's Dedication Land valuation calculation**

	Area	\$/sqm	Value
<b>90% residential</b>	540m <sup>2</sup>	\$1,150	\$621,000
<b>10% commercial</b>	60m <sup>2</sup>	\$650	\$39,000
<b>Total area (Dedication Land)</b>	600m <sup>2</sup>	n/a	\$660,000

Based on the above calculation of the Dedicated Land, the table below provides Council's position on the total payment to Council resulting from the valuation in Table 1.

**Table 2: Total payment to Council according to Council's Dedication Land valuation**

<b>Council claim for affordable housing (see below) and uplift</b>	\$1,225,068
<b>Less:</b>	
Value of the park	\$660,000
<b>Payment to Council</b>	\$565,068
<b>Less:</b>	
Park embellishment^	\$75,000
Bus stop	\$20,000
District facility	\$10,000
<b>Total payment to Council* (excluding affordable housing &amp; Section 7.11/7.12 Development Contributions)</b>	<b>\$460,068</b>

Notes:

\*Council will not accept the offsetting of Section 7,11/7.12 Development Contributions against the public benefits in the Planning Agreement.

^Alternatively, Council will consider deliver of the embellishment works as 'works in kind' subject to the Council's final design requirements.



#### Item 2: Embellishment to Peter Reserve

The Offer proposes to contribute \$50,000 towards embellishment of the Dedicated Land. Council's previous letter advised a basic embellishment of Peter Reserve would cost approximately \$75,000.

Council maintains its position that the works outlined in our previous letter attributed to this cost should be delivered by the proponent. The delivery of the park embellishment may be delivered as a 'works in kind' arrangement.

It is appropriate that the Offer be amended to either reflect the Council's value of \$75,000 or the item is stipulated as 'works in kind' subject to the final design requirements of Council.

#### Item 3: New Bus Stop

Council is content with the Offer of a new bus stop subject to the costs remaining fixed at \$20,000, as stated in our previous letter.

#### Item 4: Contribution to District-Level Facility

Could acknowledges the proposed \$10,000 contribution towards a district level facility.

For comparison, the Chullora Marketplace planning proposal at 353-355 Waterloo Road, Greenacre finalised in July 2021 did not increase the maximum Floor Space Ratio (FSR) of 1:1, and rather, imposed a minimum non-residential FSR of 0.35:1 within the maximum 1:1 FSR. The executed Planning Agreement for that planning proposal included a \$348,000 contribution towards a district level facility.

Council requests a larger contribution in light of the above.

#### Item 5: Affordable Housing and Residential GFA Uplift arising from the PP

The Offer includes an affordable housing contribution of \$201,361 to be paid in kind. Council accepts the calculation of the affordable housing being a total of 24m<sup>2</sup> based on 5% of 473.45m<sup>2</sup>.

Council agrees with the 90%/10% split of residential versus non-residential floor space, as the premise for calculating uplift in the Offer.

The residential and commercial rates as stated in the Offer, \$1,150/m<sup>2</sup> and \$650/m<sup>2</sup> are accepted by Council. Council has used these figures in the Dedication Land valuation calculation (see Table 1).

#### Item 6: Rezoning of part Peter Reserve to B6

Consistent with Council's resolution of 25 August 2020, Council has not endorsed the rezoning of approximately 17m<sup>2</sup> of Peter Reserve to B6 Enterprise Zone. This will need to be deleted from the Draft PA.



As discussed at our meeting on 15 November 2021, the draft site specific DCP will include setback provisions that would accommodate the proposed building footprint adjacent to an enlarged Peter Reserve subject to achieving compliance with all other relevant building controls in the DCP. While this matter is dealt with in the DCP, Council should not be taken as endorsing the proponent's concept development scheme. As you would appreciate, the assessment of any such scheme will be subject of a separate unfettered statutory assessment process under the *Environmental Planning and Assessment Act 1979*.

### **Conclusion**

Council appreciates the revised Offer that responds to matters raised by Council in our previous letter. However, for reasons expressed above, Council requests that Iris Capital modify its Offer to accord with the matters raised. In essence, the Offer falls well short of the value that would be reasonable for the Proponent to provide as a public benefit having regard to the uplift that the planning proposal provides.

Council advises that it does not intend to proceed with exhibition of the planning proposal until the draft Planning Agreement is deemed acceptable to Council.

Please contact me on 02 9707 9806 or [Patrick.Lebon@cbc.city.nsw.gov.au](mailto:Patrick.Lebon@cbc.city.nsw.gov.au) if you require clarification of the above matter.

Yours sincerely,

Patrick Lebon  
**Coordinator Strategic Assessments**

### 3C. Extract from Hamptons Property Services email dated 17 November 2021

#### *Affordable housing*

For the purpose of calculating the affordable housing contribution, this is based on a 90%/10% split of residential versus non-residential floor space, as the starting premise for calculating uplift (being what is achievable under the existing planning controls). As per the advice from Atlas, it is clear that on other sites with the same zoning, the floor space outcomes are generally in that range and thus, as the starting position for calculating uplift, are appropriate. The calculations that we have arrived at for this purpose are based on the following areas:

Current site area and planning controls:

Site Area = 11,744m<sup>2</sup>

Residential Area @0.9:1 = 10,570m<sup>2</sup>

Proposed planning controls:

Site Area = 11,127m<sup>2</sup>

Residential area @1:1 = 11,127m<sup>2</sup>

Additional residential area = 11,127m<sup>2</sup> – 10,570m<sup>2</sup>

= 557m<sup>2</sup>

Nett Saleable Area @85% = 473.45m<sup>2</sup>

5% of NSA = 24m<sup>2</sup>

NSA Value = \$8,500/m<sup>2</sup>

Contribution value = \$201,361.

#### **Notes:**

#### **Calculating any required adjustment to the affordable housing contribution:**

Agreed residential GFA under current controls = 10,569.6 m<sup>2</sup>

Theoretical residential GFA uplift from Planning proposal = 11,127 m<sup>2</sup>

Theoretical residential NSA uplift from planning proposal (efficiency GFA to NSA agreed at 85%) = 9,458 m<sup>2</sup>

Residential GFA uplift from rezoning = 557.4 m<sup>2</sup>

Efficiency factor applied to determine NSA = 85%

Maximum NSA area uplift from rezoning = 473.8m<sup>2</sup>

NSA uplift to affordable Housing is 5% = 23.68 m<sup>2</sup>

Rate per m<sup>2</sup> applied (this rate is fixed) = \$8,500

Theoretical payment for affordable housing = \$201,361

#### **If the full GFA uplift from the rezoning is not achieved, then the affordable housing contribution will be determined pursuant to the following example:**

Assume the actual residential NSA uplift measured by survey is shown in the strata plans as 9,150 m<sup>2</sup>

The residential NSA uplift = 308 m<sup>2</sup> (Theoretical residential NSA (9,458 m<sup>2</sup>) - Actual residential NSA (9,150 m<sup>2</sup>))

NSA uplift to affordable Housing is 5% = 15.4 m<sup>2</sup>

Rate per m<sup>2</sup> applied (this rate is fixed) = \$8,500

Actual payment for affordable housing = \$130,900

**GFA means** the gross floor area means the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes—

(a) the area of a mezzanine, and

(b) habitable rooms in a basement or an attic, and

(c) any shop, auditorium, cinema, and the like, in a basement or attic,

but excludes—

- (d) any area for common vertical circulation, such as lifts and stairs, and
- (e) any basement—
  - (i) storage, and
  - (ii) vehicular access, loading areas, garbage and services, and
- (f) plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and
- (g) car parking to meet any requirements of the consent authority (including access to that car parking), and
- (h) any space used for the loading or unloading of goods (including access to it), and
- (i) terraces and balconies with outer walls less than 1.4 metres high, and
- (j) voids above a floor at the level of a storey or storey above.

**NSA means** the net saleable internal floor area exclusively allocated to a residential unit