



Planning Agreement

between

Sutherland Shire Council ABN 52 018 204 808

and

Fourways Motors (Bankstown) Pty Ltd ACN 000 236 984

and

AMK Projects Loftus Pty Ltd ACN 647 440 417

137-139 Loftus Ave Loftus

Sutherland Shire Council
Administration Centre
4-20 Eton Street
Sutherland NSW 2232
Locked Bag 17
Sutherland NSW 1499
Telephone: 9710 0333
Ref: CR23-666885
Document version: Execution 20.10.23..

This Deed is made this 3rd day of November 2023

PARTIES

Sutherland Shire Council a body politic under section 220 of the Local Government Act 1993, of 4-20 Eton Street, Sutherland in the State of New South Wales (**Council**)

and

Fourways Motors (Bankstown) Pty Ltd ACN 000 236 984 of 386 Princes Highway Rockdale NSW 2216 (**Developer**)

and

AMK Projects Loftus Pty Ltd ACN 647 440 417 of 386 Princes Highway Rockdale NSW 2216 (**Owner**)

BACKGROUND

1. The Developer has lodged the Development Application with Council in relation to the Land.
2. The Developer filed a class 1 appeal (the "**Appeal**") in the Land and Environment Court for deemed refusal of the Development Application and the Land and Environment Court (the "**Court**") gave the proceedings case number 2022/00326646.
3. The Developer has offered by way of letter dated 15 March 2023, to provide the Monetary Contribution before the issue of the Occupation Certificate for the Development in lieu of constructing traffic calming devices on Loftus Ave, Loftus or surrounding streets (the "**Letter**").
4. The Developer and the Council entered into an agreement under section 34(3) of the Land and Environment Court Act 1979 in relation to the Appeal (the "**s34 Agreement**") pursuant to which it was agreed that:
 - (a) the Appeal be upheld; and
 - (b) the Development Application be determined by a grant of consent subject to the conditions (the "**Conditions**"). The s34 Agreement was filed with the Court.
5. On 14 April 2023 the Court gave effect to the Agreement and ordered that the Appeal be upheld and that the Development Application be determined by a grant of consent subject to the Conditions (the "**Orders**").

6. Condition 17 of the Development Consent states:

17. Planning Agreement

A. Prior to Occupation

i) The proposal creates a need for traffic calming devices along Loftus Ave. In lieu of the Applicant constructing such devices the Applicant has offered via letter from Simpson Partners dated 15 March 2023 to contribute a monetary contribution via a Planning Agreement for the Council to construct traffic calming device along Loftus Ave, Loftus.

ii) The proponent shall enter into Planning Agreement with Sutherland Shire Council prior to the release of any occupation certificate generally in accordance with the Letter of Offer from Simpson Partners dated 15 March 2023.

7. The proposed Voluntary Planning Agreement was placed on public exhibition from 14 August 2023 to 10 September 2023.

8. On 19 September 2023 Council's Chief Executive Officer made a decision to enter into this Voluntary Planning Agreement under delegation dated 25 October 2021 issued under section 377 of the *Local Government Act 1993*.

9. The parties have agreed to proceed in the manner and on the terms and conditions set out in this Deed.

OPERATIVE PROVISIONS

1. DEFINITIONS AND INTERPRETATION

The following definitions apply unless the context otherwise requires:

Act	means the <i>Environmental Planning and Assessment Act 1979</i> (NSW).
Assign	as the context requires refers to any assignment, sale, transfer, disposition, declaration of trust over or other assignment of a legal and/or beneficial interest.
Authority	means (as appropriate) any: (1) federal, state or local government; (2) department of any federal, state or local government; (3) any court or administrative tribunal; or (4) statutory corporation or regulatory body.
Business Day	means a day other than a Saturday, Sunday, public holiday or bank holiday in New South Wales.

Contributions Plan	means the <i>Sutherland Shire Section 7.11 Development Contributions Plan</i> or the <i>Sutherland Shire Section 7.12 Development Contributions Plan 2016</i> or such other replacement plan adopted by Council from time to time.
Development	means the development contemplated by the Development Application.
Development Application	means the development application DA22/0752 for the demolition for existing structures and construction of a childcare centre with basement parking at the Land.
Development Consent	means the development consent issued under the Act with respect to the Development Application. Development Consent No. DA22/0752 was issued by the Land and Environment Court on 14 April 2023.
GST Law	means <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth) and any other Act or regulation relating to the imposition or administration of the goods and services tax.
Land	means the whole of the land contained in Lots 756 and 757 in DP752064 (being the land commonly described as 137 and 139 Loftus Ave, Loftus). The Land includes any successor lot arising from the consolidation of Lots 756 and 757, whether or not the consolidation involves other land.
Law	means all legislation, regulations, by-laws, common law and other binding order made by any Authority.
Monetary Contributions	means the monetary contributions set out in Schedule 4.
Occupation Certificate	means an occupation certificate as defined in Division 6.3 of the Act.
Planning Legislation	means the Act, the <i>Local Government Act 1993</i> (NSW) and the <i>Roads Act 1993</i> (NSW).

2. INTERPRETATION

The following rules of interpretation apply unless the context requires otherwise:

clauses, annexures and schedules	a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this agreement. a reference to any thing includes a part of that thing
reference to statutes	a reference to any statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations proclamations, ordinances or by-laws varying, consolidating or replacing them, and a reference to a statute includes all regulations,

	proclamations, ordinances and by-laws issued after that statute;
singular includes plural	the singular includes the plural and vice versa.
person	<p>the word "person" includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body, trust, or association or any government agency, or other owner corporation, authority, government or government agency.</p> <p>a reference to a body, whether statutory or not, which ceases to exist or whose powers or functions are transferred to another body, is a reference to the body which replaces it or which substantially succeeds to its powers or functions.</p>
executors, administrators, successors	a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns.
dollars	Australian dollars, dollars, \$ or A\$ is a reference to the lawful currency of Australia.
calculation of time	if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day.
reference to a day	a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later.
reference to a group of persons	<p>a group of persons or things is a reference to any two or more of them jointly and to each of them individually.</p> <p>a covenant, an agreement or acknowledgment on the part of, or in favour of, two or more persons, binds them or enures to their benefit jointly and severally.</p>
meaning not limited	the words "include", "including", "for example" or "such as" are not used as, nor are they to be interpreted as, words of limitation, and, when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind.
next day	if an act under this agreement to be done by a party on or by a given day is done after 4.30pm on that day, it is taken to be done on the next day.
next Business Day	if an event must occur on a stipulated day which is not a Business Day then the stipulated day will be taken to be the next Business Day.
time of day	time is a reference to Sydney time.
headings	headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this agreement.

agreement	a reference to any agreement, Agreement or instrument includes the same as varied, supplemented, novated or replaced from time to time.
gender	a reference to a gender includes any gender.

3. APPLICATION AND OPERATION

3.1 Planning Agreement

This deed of agreement is a planning agreement:

- (1) within the meaning set out in s7.4 of the Act; and
- (2) governed by Subdivision 2 of Division 7.1 of Part 7 of the Act.

3.2 Application

This agreement applies to the Land and the Development.

3.3 Operation of agreement

- (1) This agreement operates from the date it is executed by all parties.
- (2) This agreement terminates:
 - (a) on the lapse of the Development Consent.
 - (b) on the declaration by a Court of competent jurisdiction that the Development Consent issued for the Development is invalid; or
 - (c) if the Development Consent is surrendered in accordance with s4.63 of the Act and the regulations.
- (3) Council may terminate this agreement:
 - (a) if the Developer or Owner being an individual, dies or becomes incapable because of unsoundness of mind to manage their own affairs; or
 - (b) if the Developer or Owner being a company, resolves to go into liquidation (or has a petition for its winding up presented and not withdrawn within 30 days after presentation, or otherwise goes into liquidation) or enters into any scheme or arrangement with its creditors under the relevant provisions of the Corporations Act 2001 or any similar legislation, or if a liquidator, receiver or receiver and manager or provisional liquidator is appointed, or if the company is deregistered. This does not negate, limit or restrict any rights or remedies of Council which would have been available at law or in equity had this clause not been included.

(4) **Consequences**

- (a) On the date of termination of this agreement, subject to the following sub-paragraphs, the Developer and Owner releases Council from any obligation to perform any term, or any liability arising out of, this agreement after the date of termination.
- (b) Termination of this agreement does not release either party from any obligation or liability arising under this agreement before termination.
- (c) If the Development has already been commenced and this agreement terminates under clause 3.3(b), then clauses 4 to 17 survive this agreement to ensure the provision of the Monetary Contributions.

3.4 Agreement not Confidential

The terms of this agreement are not confidential and this agreement may be treated as a public agreement and exhibited or reported without restriction by any party.

4. APPLICATION OF S7.11, S7.12 AND S7.24

4.1 Application

This agreement does not exclude the application of section 7.11 or section 7.12 and 7.24 of the Act to the Development or the Development Consent.

4.2 Consideration of Benefits

Section 7.11(6) of the Act does not apply to the Monetary Contributions that are to be carried out or provided pursuant to this agreement.

5. REGISTRATION OF THIS AGREEMENT

5.1 Registration

This agreement must be registered on the title of the Land pursuant to section 7.6 of the Act.

5.2 Obligations of the Developer and Owner

The Developer and Owner must:

- (1) do all things necessary to allow the registration of this agreement to occur, including but not limited to obtaining the consent of any mortgagee registered on the title of the Land and obtaining the agreement of the mortgagee to comply with the terms of this agreement if it takes possession of the land; and
- (2) pay any reasonable costs incurred by Council in undertaking that registration.

5.3 Caveat

- (1) The Developer and Owner acknowledge that this agreement creates a charge over the Land being a caveatable interest effective upon the date of this agreement and that Council may lodge a caveat to protect its interest in the Land with Land Registry

Services NSW. If requested by Council, the Developer and Owner must execute a form of consent to such lodgement. The Developer and Owner agree to not object to the lodgement of such caveat.

- (2) Council must, within fourteen (14) days following written notice from the Owner, consent to the registration of any dealing on the title of the Land which does not negatively impact on Council's interests under this agreement.

5.4 Removal from title of the Land

- (1) Council will do all things necessary to allow the Owner to remove the registration of this agreement and the caveat referred to above from the title of the Land where the Developer and Owner have:
- (a) provided all Monetary Contributions; and
 - (d) otherwise satisfied all of its obligations under this agreement.
- (2) The Developer and Owner must pay any reasonable costs incurred by Council in undertaking that discharge.

6. PROVISION OF CONTRIBUTIONS

6.1 Monetary Contributions

- a) The Developer and Owner must pay the Monetary Contributions by the times specified in Schedule 4. The amount of each Monetary Contribution will be increased by 3% annually calculated daily.

7. COMPLETION OF WORKS

Not used

8. DEFECTS LIABILITY

Not used

9. CONTAMINATION

Not used

10. WARRANTIES AND INDEMNITIES

10.1 Warranties

The Developer and Owner warrant to Council that:

- (1) it is able to fully comply with its obligations under this agreement;
- (2) it has full capacity to enter into this agreement; and
- (3) there is no legal impediment to it entering into this agreement, or performing the obligations imposed under it.

11. SECURITY

Not used

12. DISPUTE RESOLUTION

12.1 Notice of dispute

- (1) If a dispute between the parties arises in connection with this agreement or its subject matter (**Dispute**), then either party (**First Party**) must give to the other parties (**Second and Third Party**) a notice which:
 - (a) is in writing;
 - (b) adequately identifies and provides details of the Dispute;
 - (c) stipulates what the First Party believes will resolve the Dispute; and
 - (d) designates its representative (**Representative**) with the necessary authority to negotiate and resolve the Dispute.
- (2) The Second Party and Third Party must, within five (5) Business Days of service of the notice of dispute, provide a notice to the First Party designating as its representative a person with the necessary authority to negotiate and settle the Dispute (the representatives designated by the parties being together, the **Representatives**).

12.2 Conduct pending resolution

The parties must continue to perform their respective obligations under this agreement if there is a Dispute but will not be required to complete the matter the subject of the Dispute, unless the appropriate party indemnifies the other parties against costs, damages and all losses suffered in completing the disputed matter if the Dispute is not resolved in favour of the indemnifying party.

12.3 Further steps required before proceedings

Subject to clause 12.12 and except as otherwise expressly provided in this agreement, any Dispute must, as a condition precedent to the commencement of litigation, mediation under clause 12.5 or determination by an expert under clause 12.6, first be referred to the Representatives. The Representatives must endeavour to resolve the dispute within five (5) Business Days of the date a notice under clause 12.1 is served.

12.4 Disputes for mediation or expert determination

If the Representatives have not been able to resolve the Dispute, then the parties must use their best endeavours within five (5) Business Days to either refer the matter to mediation under clause 12.5 or expert determination under clause 12.6.

12.5 Disputes for mediation

- (1) If the parties agree in accordance with clause 12.4 to refer the Dispute to mediation, the mediation must be conducted by a mediator agreed by the parties and, if the parties cannot agree within five (5) Business Days, then by a mediator appointed by the President of the Law Society of New South Wales.
- (2) If the mediation referred to in paragraph (1) has not resulted in settlement of the Dispute and has been terminated, the parties may agree to have the matter determined by expert determination under clause 12.6.

12.6 Choice of expert

- (1) If the Dispute is to be determined by expert determination, this clause 12.6 applies.
- (2) The Dispute must be determined by an independent expert in the relevant field:
 - (a) agreed between and appointed jointly by the parties; or
 - (b) in the absence of agreement within five (5) Business Days after the date that the matter is required to be determined by expert determination, appointed by the President of the Law Society of New South Wales.
- (3) If the parties fail to agree as to the relevant field within five (5) Business Days after the date that the matter is required to be determined by expert determination, either party may refer the matter to the President of the Law Society of New South Wales for the time being whose decision as to the relevant field is final and binding on the parties.
- (4) The expert appointed to determine a Dispute:
 - (a) must have a technical understanding of the issues in dispute;
 - (b) must not have a significantly greater understanding of one party's business, functions or operations which might allow the other side to construe this greater understanding as a bias; and
 - (c) must inform the parties before being appointed of the extent of the expert's understanding of each party's business or operations and, if that information indicates a possible bias, then that expert must not be appointed except with the written approval of the parties.
- (5) The parties must promptly enter into an agreement with the expert appointed under this clause setting out the terms of the expert's determination and the fees payable to the expert.

12.7 Directions to expert

- (1) In reaching a determination in respect of a dispute under clause 12.6, the independent expert must give effect to the intent of the parties entering into this agreement and the purposes of this agreement.
- (2) The expert must:
 - (a) act as an expert and not as an arbitrator;
 - (b) not accept verbal submissions unless both parties are present;
 - (c) on receipt of a written submission from one party, ensure that a copy of that submission is given promptly to the other party;
 - (d) take into consideration all agreements, information and other material which the parties give the expert which the expert in its absolute discretion considers relevant to the determination of the Dispute;
 - (e) not be expected or required to obtain or refer to any other agreements, information or material (but may do so if the expert so wishes);
 - (f) issue a draft certificate stating the expert's intended determination (together with written reasons), giving each party ten (10) Business Days to make further submissions;
 - (g) issue a final certificate stating the expert's determination (together with written reasons); and

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- (h) act with expedition with a view to issuing the final certificate as soon as practicable.
 - (3) The parties must within the time period specified by the expert, give the expert:
 - (a) a short statement of facts;
 - (b) a description of the Dispute; and
 - (c) any other agreements, records or information which the expert requests.

12.8 Expert may convene meetings

- (1) The expert must hold a meeting with all of the parties present to discuss the Dispute. The meeting must be conducted in a manner which the expert considers appropriate. The meeting may be adjourned to, and resumed at, a later time in the expert's discretion.
- (2) The parties agree that a meeting under paragraph (1) is not a hearing and is not an arbitration.

12.9 Other courses of action

If:

- (1) the parties cannot agree in accordance with clause 12.3 to refer the matter to mediation or determination by an expert; or
- (2) the mediation referred to in clause 12.5 has not resulted in settlement of the dispute, the mediation has been terminated and the parties have not agreed to refer the matter to expert determination within five (5) Business Days after termination of the mediation,

then either party may take whatever course of action it deems appropriate for the purpose of resolving the Dispute.

12.10 Final determination of expert

The parties agree that the final determination by an expert will be final and binding upon them except in the case of fraud or misfeasance by the expert and unless either party commences proceedings within 28 days of receipt of the expert's final certificate and determination as referred to at 12.7(2)(g) above.

12.11 Costs

Each party must contribute equally to the expert's costs in making the determination.

12.12 Remedies available under the Act

This clause does not operate to limit the availability of any remedies available to Council under Divisions 9.5 and 9.6 of the Act.

12.13 Urgent relief

This clause does not prevent a party from seeking urgent injunctive or declaratory relief concerning any matter arising out of this agreement.

13. POSITION OF COUNCIL

13.1 Consent authority

The parties acknowledge that Council is a consent authority with statutory rights and obligations pursuant to the Planning Legislation and other laws.

13.2 Agreement does not fetter discretion

This agreement is not intended to operate to fetter:

- (1) the power of Council to make any Law; or
- (2) the exercise by Council of any statutory power, function or discretion (**Discretion**).

13.3 Severance of provisions

- (1) No provision of this agreement is intended to, or does, constitute any unlawful fetter on any Discretion. If, contrary to the operation of this clause, any provision of this agreement is held by a court of competent jurisdiction to constitute an unlawful fetter on any Discretion, the parties agree:
 - (a) they will take all practical steps, including the execution of any further agreements, to ensure the objective of this clause is substantially satisfied;
 - (b) in the event that paragraph (a) cannot be achieved without giving rise to an unlawful fetter on a Discretion, the relevant provision is to be severed and the remainder of this agreement has full force and effect; and
 - (c) to endeavour to satisfy the common objectives of the parties on relation to the provision of this agreement which is held to be an unlawful fetter to the extent that it is possible having regard to the relevant court judgment.
- (2) Where the Law permits Council to contract out of a provision of that Law or gives Council power to exercise a Discretion, then if Council has in this agreement contracted out of a provision or exercised a Discretion under this agreement, then to the extent of this agreement is not to be taken to be inconsistent with the Law.

13.4 No obligations

Nothing in this agreement will be deemed to impose any obligation on Council to exercise any of its functions under the Act in relation to the Development Consent, the Land or the Development in a certain manner.

14. GST

14.1 Definitions

In this clause 14 the terms "Taxable Supply", "GST", "Tax Invoice" and "Input Tax Credit" have the meaning given to them in the GST Law. Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this agreement are exclusive of GST.

14.2 Non-monetary supplies

Not used.

14.3 Supply expressed in terms of money

- (1) If GST is imposed on any supply made under or in accordance with this agreement, the Developer and Owner must pay to the Council an amount equal to the GST payable on or for the taxable supply.
- (2) If the Council is obliged to pay any GST on any supply made under or in accordance with this agreement, the Developer and Owner indemnifies the Council for the amount of any such payment is required to make.
- (3) The Developer and Owner will issue Tax Invoices as directed by Council.

14.4 Expenses and costs incurred

- (1) If any expenses or costs incurred by one party are required to be reimbursed by the other party under this agreement, then the amount of the reimbursement will be calculated as follows:
 - (a) the amount of the cost or expense incurred by the party seeking reimbursement will be initially calculated excluding any Input Tax Credit to which that party is entitled to claim.
 - (b) this amount initially calculated will be increased by the applicable rate of GST to equal a GST inclusive reimbursement amount and this amount will be paid by the party liable to make the reimbursement.
 - (c) the party being reimbursed will issue a Tax Invoice to the other at the GST inclusive reimbursement amount prior to being reimbursed.

14.5 Survival of clause

This clause 14 continues to apply after the expiration or termination of this agreement.

15. ACCESS TO LAND

Not used

16. LEGAL COSTS

The Developer and Owner must pay Council's reasonable legal costs and disbursements with respect to the preparation, negotiation, exhibition, formation, registration, implementation and enforcement of this agreement.

17. ADMINISTRATIVE AND INTERPRETIVE PROVISIONS

17.1 Notices

- (1) Any notice, consent or other communication under this agreement must be in writing and signed by or on behalf of the person giving it, addressed to the person to whom it is to be given and:
 - (a) delivered to that person or that person's address;
 - (b) sent by pre-paid mail to that person's address; or
 - (c) sent by email to that person's email address.

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- (2) A notice given to a person in accordance with this clause is treated as having been given and received:
 - (a) if delivered to a person's address, on the day of delivery if a Business Day, otherwise on the next Business Day;
 - (b) if sent by pre-paid mail, on the fourth Business Day after posting; and
 - (c) if sent by email to a person's email address and a confirmation of receipt can be retrieved, on the day it was sent if a Business Day, otherwise on the next Business Day.
 - (3) For the purpose of this clause the address of a person is the address set out in this agreement or another address of which that person may from time to time give notice to each other person.

17.2 Power of Attorney

Each attorney who executes this agreement on behalf of a party declares that the attorney has no notice of:

- (1) the revocation or suspension of the power of attorney by the grantor; or
- (2) the death of the grantor.

17.3 Governing law

The law in force in the State of New South Wales governs this agreement. The parties:

- (1) submit to the exclusive jurisdiction of the courts of New South Wales and any courts that may hear appeal from those courts in respect of any proceedings in connection with this agreement; and
- (2) may not seek to have any proceedings removed from the jurisdiction of New South Wales on the grounds of *forum non conveniens*.

17.4 Variations

Any amendments, variation or modification to or of, or consent to departure by any party from the terms of this agreement shall have no force or effect unless effected by an agreement executed by the parties.

17.5 Waivers

The failure to exercise or delay in exercising by any party of any right conferred by this agreement shall not operate as a waiver and the single or partial exercise of any right by that party shall not preclude any other or further exercise of that or any other right by that party. To avoid doubt, if a party exercises a particular right or power or enforces a particular remedy, this does not prevent them from also exercising or enforcing a different one whether separately or at the same time.

17.6 Remedies

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

17.7 Pre-Contractual Negotiation

This agreement expresses and incorporates the entire agreement between the parties in relation to its subject matter and all the terms of that agreement and supersedes and excludes any prior or collateral negotiation, understanding, communication, agreement representation or warranty by or between the parties in relation to that subject matter or any term of that agreement.

Neither party shall, after execution of this agreement, be entitled, as against the other party or other officers of any party, to bring suit on the basis of any verbal or written communications, representations, inducements, undertakings, agreements or arrangements except expressly as provided by this agreement.

17.8 Further Assistance

The Developer and Owner shall execute all agreements and perform all acts necessary to give full effect to this agreement.

17.9 Joint liability and benefit

Except as otherwise specified, any agreement, covenant, representation or warranty under this agreement by two or more persons binds them jointly and each of them individually, and any benefit in favour of two or more persons is for the benefit of them jointly and each of them individually.

17.10 Severability

Any provision of this agreement which is invalid or unenforceable in any jurisdiction is to be read down for the purposes of that jurisdiction, if possible, so as to be valid or enforceable, and is otherwise capable of being severed to the extent of the invalidity or enforceability, without affecting the remaining provisions of this agreement or affecting the validity or enforceability of that provision in any other jurisdiction.

17.11 Representations and warranties

Each party warrants that it has the authority to enter into this agreement and to comply with their obligations and that entry into this agreement will not result in the breach of any Law.

17.12 Third Parties

This agreement shall confer rights and benefits only upon a person expressed to be a party and not upon any other person.

17.13 Survival of terms

The terms of this agreement survive its termination to the extent permitted by law.

17.14 Independent legal advice

Each party acknowledges that there has been adequate opportunity to obtain independent legal advice as to the meaning and effect of this agreement before it was signed.

17.15 No fetter

Nothing in this agreement is intended to limit or fetter Council's proper performance of its statutory functions or duties and clauses are to be construed consistently with the proper exercise of those functions and duties.

17.16 No agency

This agreement does not create a relationship of agency between the parties. Neither party shall act or represent itself as acting on behalf of the other party.

17.17 No Merger

Nothing in this agreement merges, extinguishes, postpones, lessens or otherwise prejudicially affects any right, power or remedy that a party may have against another party or any other person at any time.

17.18 Consents and Approvals

Where this agreement gives Council a right or power to consent or approve in relation to a matter under this agreement, Council may withhold any consent or approval or give consent or approval conditionally or unconditionally. The Developer and Owner must comply with any conditions Council reasonably imposes on its consent or approval.

17.19 Construction

No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this agreement or any part of it.

17.20 Explanatory note

Whilst the parties note their agreement to the explanatory note provided in Schedule 7 to this agreement, the explanatory note is not to be used to assist in construing this agreement.

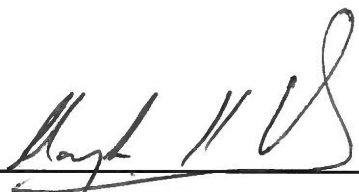
17.21 Power of Attorney

Not used.

THE PARTIES AGREE TO THE PRECEDING TERMS AND CONDITIONS OF THIS
VOLUNTARY PLANNING AGREEMENT (BEING A DEED OF AGREEMENT)

EXECUTED AS A DEED

Executed by Sutherland Shire Council by its Chief Executive Officer pursuant to delegated authority
dated 25 October 2021 issued under section 377 of the *Local Government Act 1993*



Chief Executive Officer
Manjeet Kaur Grewal

Date: 63/11/2023

*I certify that I am an eligible witness and that the Chief Executive Officer signed this Deed in my presence.
I certify that I have known the Chief Executive Officer for at least 12 months.*

Signature of Witness: 

Name of Witness: Laura Moore

Address of Witness: C/- 4-20 Eton Street, Sutherland, NSW

Executed by Fourways Motors (Bankstown) Pty Ltd ACN 000 236 984 in accordance with section 127 of the *Corporations Act 2001*

Date:

27/10/23


Signature:



Name: Anthony Keogh

Director

Signature:



Name: Michael Keogh

Director and Secretary

Executed by AMK Projects Loftus Pty Ltd ACN 647 440 417 (Owner) in accordance with section 127 of the *Corporations Act 2001*

Date:

27/10/23

Signature:



Name: Michael Keogh

Director

Signature:



Name: Anthony Keogh

Director and Secretary

SCHEDULE 1: REQUIREMENTS UNDER SECTION 7.4 OF THE ACT

Requirement Under The Act	This Agreement
Planning instrument and/or development application – (Section 7.4(1)) The Developer has: (a) sought a change to an environmental planning instrument. (b) made, or proposes to make, a Development Application. (c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.	(a) No (b) Yes (c) No
Description of land to which this agreement applies – (Section 7.4(3)(a))	See clause 1.
Description of change to the environmental planning instrument to which this agreement applies – (Section 7.4(3)(b))	Not applicable
Application of section 7.11 of the Act – (Section 7.4(3)(d))	See clause 4.1.
Applicability of section 7.12 of the Act – (Section 7.4(3)(d))	See clause 4.1.
Applicability of section 7.24 of the Act – (Section 7.4(3)(d))	See clause 4.1.
Consideration of benefits under this agreement if section 7.11 applies – (Section 7.4(3)(e))	See clause 4.2.
Mechanism for Dispute resolution – (Section 7.4(3)(f))	See clause 12.
Enforcement of this agreement (Section 7.4(3)(g))	See clause 5.
No obligation to grant consent or exercise functions – (Section 7.4(9))	See clause 13.
Registration of this agreement The parties agree that this agreement will be registered.	See clause 5.

SCHEDULE 2: TERMS OF LICENCE

Not applicable.

SCHEDULE 3: THE WORKS

Not applicable, there are no Works to be carried out under this agreement.

SCHEDULE 4: THE MONETARY CONTRIBUTIONS

The Developer or Owner is to pay to Council \$25,000 (GST not applicable) before the issue of any Occupation Certificate in relation to the Development.

SCHEDULE 5: DEDICATION OF THE DESIGNATED LAND BY THE DEVELOPER

Not applicable, there is no Land to be dedicated under this agreement.

SCHEDULE 6: THE PLANS SHOWING THE DESIGNATED LAND

Not applicable, there is no Land to be dedicated under this agreement.

SCHEDULE 8: THE BANK GUARANTEES

Not applicable.

SCHEDULE 7: THE EXPLANATORY NOTE

Explanatory Note under clause 205 of the Environmental Planning and Assessment Regulation 2021

Exhibition of draft Voluntary Planning Agreement

Lots 756 and 757 in DP752064 (being commonly known as 137 and 139 Loftus Ave, Loftus).

Planning Agreement

The purpose of this Explanatory Note is to provide a summary to support the notification of a draft voluntary Planning Agreement (**the Planning Agreement**) under Section 7.4 of the *Environmental Planning and Assessment Act 1979* (**the Act**).

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

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

Parties

Fourways Motors (Bankstown) Pty Ltd ACN 000 236 984 (**the Developer**) has made an offer to Sutherland Shire Council (**the Council**) to enter into a voluntary Planning Agreement, in connection with a Development Application relating to the land.

Description of subject land

The land to which the Planning Agreement applies is described as Lots 756 and 757 in DP752064 (being commonly known as 137 and 139 Loftus Ave, Loftus (**the Land**)).

Description of the Development Application to which the Planning Agreement applies

The development application to which the Planning Agreement relates is a proposal for the demolition of existing structures and construction of a childcare centre with basement parking on the Land (**the Development**).

Summary of Objectives, Nature and Effect of the Planning Agreement

The Planning Agreement will require the provision of the carrying out of the following dedications for public infrastructure and improvements in Sutherland.

The Planning Agreement will require a \$25,000 (GST not applicable) monetary contribution towards constructing traffic calming devices on Loftus Ave, Loftus.

The above contributions are made in connection with a proposed development of the Land.

Assessment of the Merits of the Planning Agreement

How the Planning Agreement Promotes the Objects of the Act and the public interest

The draft Planning Agreement promotes the following objectives of the *Environmental Planning and Assessment Act 1979*:

- the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,
- the orderly and economic use and development of land,
- good design and amenity of the built environment,
- increased opportunity for community participation in environmental planning and assessment.

The draft Planning Agreement promotes the public interest by the recoupment of some of the cost of constructing traffic calming devices on Loftus Ave, Loftus after Council has finalised its strategy for traffic calming devices and other measures on Loftus Avenue, Loftus.

The Planning Purposes served by the Planning Agreement

The monetary contribution will be used to construct traffic calming devices on Loftus Ave, Loftus after Council has finalised its strategy for traffic calming devices and other measures on Loftus Avenue, Loftus

How the Planning Agreement promotes the objectives of the *Local Government Act 1993* and the elements of the Council's Charter (now section 8A)

By enabling Council to provide public infrastructure and facilities, the Planning Agreement is consistent with the following guiding principles of councils, set out in section 8A of the *Local Government Act 1993*:

- Councils should provide strong and effective representation, leadership, planning and decision-making.
- Councils should carry out functions in a way that provides the best possible value for residents and ratepayers.
- Councils should 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.
- Councils should manage lands and other assets so that current and future local community needs can be met in an affordable way.
- Councils should consider the long term and cumulative effects of actions on future generations.
- Councils should actively engage with their local communities, through the use of the integrated planning and reporting framework and other measures.

Whether the Planning Agreement conforms with the Council's Capital Works Program

The Planning Agreement is satisfactory having regard to Council's Capital Works Program ('CWP') because it allows time for Council to finalise its strategy for traffic calming devices and other measures on Loftus Avenue, Loftus (**the Strategy**) including undertaking relevant community consultations in relation to the Strategy. Council had been in the process of determining the Strategy for traffic calming devices and other measures on Loftus Avenue, Loftus independent of the development application for the Development and had engaged expert consultants to assist Council in this regard. Council has assessed that the Development creates a need for traffic calming devices along Loftus Ave, however, as Council has yet not finalised the Strategy, Council does not yet want such traffic calming devices to be installed. Council has assessed the cost to install traffic calming needed by the Development to be \$25,000. The Strategy will take into account the fact the Development has been approved on the Land and the need for traffic calming devices along Loftus Ave created by the Development. Council will now be better able to prepare an overall strategy for traffic calming devices and other measures on Loftus Avenue, Loftus and, with the \$25,000 contribution made in accordance with the Planning Agreement, Council expects to be no worse off in relation to the costs of the implementation of the Strategy had the Development not occurred.

Whether the Planning Agreement specifies that certain requirements must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued

The Planning Agreement requires the Developer to pay to Council \$25,000 before the issue of the occupation certificate in relation to the Development.

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