



Voluntary Planning Agreement

between

Sutherland Shire Council ABN 52 018 204 808

and

..... ACN

<Address>

Sutherland Shire Council
Administration Centre
4-20 Eton Street
Sutherland NSW 2232
Locked Bag 17
Sutherland NSW 1499
Telephone: 9710 0333
Ref: CR.....
Version: 30.3.21

This Deed is made thisday of.....2021

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

.....
.....
.....
.....**(Developer)**

BACKGROUND

1. The Developer is the registered proprietor of the Land.
2. The Developer has lodged the following Development Application with Council:
 - (a) DA.../.....for.....
.....
.....”, in
relation to the Land.
3. On Development Consent No. DA.../.....was issued in relation to DA.../.....by the South Sydney Local Planning Panel **OR** Council. Condition states:

“.....”
4. The Developer has offered by way of letter dated, to provide the Contributions if the Development is undertaken.
5. On Council resolved (Report No.):
 - 1.....
 - 2.....
 - 3.....
 - 4.....

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).
Acquisition Act	means the <i>Land Acquisition (Just Terms Compensation) Act 1991</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: <ol style="list-style-type: none">(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.
Bank Guarantee	means the bank guarantee(s) from a major Australian bank required to be provided to Council by the Developer under this agreement as set out in Schedule 8.
Business Day	means a day other than a Saturday, Sunday, public holiday or bank holiday.
Claim	against any person any allegation, action, demand, cause of action, suit, proceeding, judgement, debt, damage, loss, cost, expense or liability howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise.
Complete, Completed Completion	means completed in accordance with the requirements of this agreement.
Contributions	means the provision of the Works (Schedule 3), the making of the Monetary Contributions (Schedule 4) and the dedication of the Designated Lands by the Developer (Schedule 5) in accordance with this agreement.
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.

Defects Liability Period	means two (2) years commencing on the date of Completion of relevant Item of Work
Designated Land	means part of the Land identified on the plans attached at Schedule 6 intended to be dedicated or transferred to Council.
Development	means the development contemplated by the Development Application.
Development Application	means the development application DA...../.....for
Development Consent	means the development consent issued under the Act with respect to the Development Application. Development Consent No. DA.../.....was issued in relation to DA.../.....by the South Sydney Local Planning Panel OR Council on
Encumbrance	means an interest or power: <ul style="list-style-type: none"> (1) reserved in or over an interest in any asset, including items of land or real property; (2) created or otherwise arising in or over any interest in any asset under any mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, title retention, conditional sale agreement, hire or hire purchase agreement, option, restriction as to transfer, use or possession, easement, subordination to any right of any other person and any other encumbrance or security interest, trust or bill of sale; or (3) by way of security for the payment of a debt or other monetary obligation or the performance of any obligation.
EPA	means the NSW Environment Protection Authority.
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.
Item of Work	means an individual item of the Works as set out in Schedule 3.
Land	means the whole of the land contained in Lot.....

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).
Subdivision Certificate	means a subdivision certificate as defined in Division 6.4 of the Act.
Works	means the works specified or described in Schedule 3.

2. INTERPRETATION

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

clauses, annexures and schedules	<p>a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this agreement.</p> <p>a reference to any thing includes a part of that thing</p>
reference to statutes	<p>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;</p>
singular includes plural	<p>the singular includes the plural and vice versa.</p>
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	<p>a particular person includes a reference to the person’s executors, administrators, successors, substitutes (including persons taking by novation) and assigns.</p>

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 [and the adjoining public land known as.....].

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.
- (3) Council may terminate this agreement:
 - (a) if the Developer being an individual, dies or becomes incapable because of unsoundness of mind to manage their own affairs; or
 - (b) if the Developer 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 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; or
 - (c) on the declaration by a Court of competent jurisdiction that the Development Consent issued for the Development is invalid; or
 - (d) if the Development Consent is surrendered in accordance with s4.63 of the Act and the regulations; or
 - (e) if the Developer does not effect the dedication of the Designated Land in accordance with clause 6.1 within 2 years of the date of this agreement.
- (4) Consequences
 - (a) On the date of termination of this agreement, subject to the following subparagraphs, the Developer releases Council from any obligation to perform any term, or any liability arising out of, this agreement after the date of termination.

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- (b) Termination of this agreement does not release either party from any obligation or liability arising under this agreement before termination.
 - (c) If the Designated Land has been transferred to Council and this agreement is then terminated, clauses 4 to 17 survive this agreement to ensure the provision of the 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 AND S7.12A

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 Development Consent No. 19/0472.

4.2 Consideration of Benefits

Section 7.11(6) of the Act does not apply to the 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

The Developer 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 acknowledges 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 must execute a form of consent to such lodgement. The Developer agrees to not object to the lodgement of such caveat.

5.4 Removal from title of the Land

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

6. PROVISION OF CONTRIBUTIONS

6.1 Designated Land

- (1) The Developer must dedicate or transfer the Designated Land to Council:
 - a) free of any charges, trusts, estates, interests, covenants and Encumbrances, including free of any rates, charges, water rates, and land tax;
 - b) in accordance with the times and requirements in Schedule 5; and
 - c) at no cost to Council.
- (2) The Developer must meet all costs associated with the dedication of the Designated Lands in accordance with paragraph (1), including any costs incurred by Council in relation to that dedication.
- (3) Council must do all things reasonably necessary to enable the Developer to comply with paragraph (1).

6.2 Works

The Developer, at its cost, must:

- (1) if necessary, obtain any consents, approvals or permits required by a relevant Authority, for the conduct of the Works;
- (2) carry out and complete each Item of Work in accordance with the times and requirements in Schedule 3;
- (3) carry out and complete the Works:
 - (a) in accordance with the requirements of, or consents issued, by any Authority;
 - (b) in accordance with the reasonable requirements of Council and any applicable Development Consent;
 - (c) in a proper and workmanlike manner complying with current industry practice and standards, including applicable Australian standards;
 - (d) in such a manner that public property or the environment do not sustain any damage during the course of or as a result of construction of the Works;
 - (e) in such a manner that Council's assets or public safety or the environment is not put at risk; and
 - (f) in such a manner that at completion the Works will be fit for its intended purposes and structurally adequate.

6.3 Monetary Contributions

- a) The Developer 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.
- b) To avoid doubt, the Monetary Contributions are not refundable if this agreement is terminated or the Developer does not proceed with the development authorised under the Development Consent.
- c) Council is not required to sign, nor is bound by this agreement, until the Monetary Contributions have been paid by the Developer in accordance with Schedule 4.

7. COMPLETION OF WORKS

7.1 Issue of Completion Notice

- d) If the Developer considers that an Item of Work is Complete it must serve a notice on Council within fourteen (14) days of Completion of that item which:
 - (1) is in writing; and
 - (2) specifies the date on which the Developer believes the Works were Completed.
- e) The Completion Notice must be accompanied by a certificate from an appropriately qualified and practicing structural or civil engineer, (or other expert at the reasonable discretion of Council) certifying that:
 - (1) The Item of Work is complete, fit for its intended purposes and is structurally adequate.
 - (2) The Item of work has been built in accordance with the plans and specifications at Schedule 3.
- f) The Completion Notice must be accompanied by any warranties and maintenance manuals for the Item of Work.
- g) Council must inspect the Item of Work within twenty-eight (28) days of receipt of a Completion Notice and the documents referred to above.

7.2 Notice by Council

Within the earlier of:

- (1) twenty-one (21) days of inspecting the Item of Work set out in a Completion Notice; or
- (2) twenty-eight (28) days from the receipt of the Completion Notice,

Council must provide notice in writing to the Developer that the relevant Item of Work:

- (3) has been Completed; or
- (4) has not been Completed, in which case the notice must also detail:
 - (a) those aspects of the Item of Work which have not been Completed; and
 - (b) the work Council requires the Developer to carry out in order to rectify those deficiencies.

7.3 Deemed Completion

If Council does not provide the Developer with notice within the times specified in clause 7.2, the Item of Work subject of a Completion Notice will be deemed to have been Completed on the date nominated in the Completion Notice.

7.4 Effect of Council notice

- (1) Where Council serves notice on the Developer pursuant to clause 7.2(4), the Developer must:
 - (a) rectify the deficiencies in that item in accordance with that notice within a reasonable time (not being less than fourteen (14) days from the date it is issued by Council); or
 - (b) serve a notice on Council that it disputes the matters set out in the notice.
- (2) Where the Developer:
 - (a) serves notice on Council in accordance with paragraph 7.4(1)(b) the dispute resolution provisions of this agreement apply; or
 - (b) rectifies the Works in accordance with paragraph 7.4(1)(a) it must serve upon Council a new Completion Notice for the Works it has rectified (**New Completion Notice**).

7.5 New Completion Notice

The provisions of clauses 7.1 to 7.4 (inclusive) apply to any New Completion Notice issued by the Developer.

8. DEFECTS LIABILITY

8.1 Defects Notice

- (1) Where any Item of Work is Complete and defects arise or are discovered in that item which:
 - (a) adversely affects the ordinary use and/or enjoyment of that item; or
 - (b) will require maintenance or rectification works to be performed on it at some time in the future as a result of the existence of the defect,

(**Defect**) Council may issue a notice to the Developer (**Defects Notice**) concerning that Item of Work but only during the Defects Liability Period.
- (2) A Defects Notice must contain the following information:
 - (a) the nature and extent of the Defect;
 - (b) the work Council requires the Developer to carry out in order to rectify the Defect; and
 - (c) the time within which the Defect must be rectified by the Developer (which must be a reasonable time and not less than fourteen (14) days).

8.2 Developer to rectify Defects

- (1) The Developer must rectify the Defects contained within a Defects Notice prior to the date specified in that notice.

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- (2) The Developer must follow the procedure set out in clause 7 in respect of the completion of the rectification of any Defect as if a reference in that clause to an Item of Work is a reference to the relevant Defect.

8.3 Access to Designated Land

If the Developer is required to access, use and occupy any part of the Designated Land for the purpose of discharging its obligations under clause 7 or 8 after the relevant land has been dedicated or transferred to Council, Council will grant a fee free licence to the Developer:

- (1) in relation to the relevant Designated Land; and
- (2) for such period,

in accordance with the terms of the Licence at Schedule 2.

8.4 Right of Council to step-in

Council may, at its absolute discretion, enter upon the Land or Designated Land for the purpose of rectifying a Defect set out in the Defects Notice where the Developer has failed to comply with a Defects Notice, but only after giving the Developer fourteen (14) days written notice of its intention to do so. Council is not required to give notice in an emergency, or a threat to public safety or the environment.

8.5 Consequence of step-in

If Council elects to exercise the step-in rights granted to it under clause 8.4 then:

- (1) Council may:
 - (a) enter upon any part of the Land or Designated Land reasonably required to exercise those step-in rights; and
 - (b) rectify the relevant Defects in accordance with the Defects Notice,
- (2) the Developer must not impede or interfere with Council in exercising those rights; and
- (3) Council may claim any costs incurred by it in doing so from the Developer as a liquidated debt.

8.6 Costs of Council

Where Council exercises its step-in rights under clause 8.5, it may:

- (1) call upon the Bank Guarantees provided by the Developer pursuant to clause 11 to meet any costs for which the Developer is liable under clause 8.5(3); and
- (2) recover as a debt due in a court of competent jurisdiction any difference between the amount of the Bank Guarantees and the costs incurred by Council in rectifying the Defects.

9. CONTAMINATION

9.1 Definitions

For the purpose of this clause:

Contaminant means any air pollution, water pollution, waste, any substance which harms or is likely to harm (whether directly or indirectly) the environment or the health and safety of any person, or petrol contamination, or the presence of residual hydrocarbons under any soil, whether a solid, liquid or gas.

Contamination means the existence in, on, over or under any land, improvement or waters of any Contaminant, or any material, gas, substance, liquid, chemical or biological material, mineral or other physical matter which would, if present on the Land or Designated Land may result in an Authority issuing a notice, direction or order under an Environmental Law or which would constitute a violation of any Environmental Law.

Contaminated means subject to Contamination.

Environmental Law means all planning, environmental or pollution laws and any regulations, orders, directions, ordinances or requirements, permissions, permits, licences issued under those laws or instruments.

9.2 Warranty and indemnity

The Developer warrants that:

- (1) other than as disclosed in writing to Council prior to the formation of this agreement, the Land and Designated Land is not Contaminated; and
- (2) in relation to any notices or orders issued under any Environmental Law, and the requirements of the EPA and any other relevant Authority, the Developer indemnifies and keeps indemnified Council against all liability for and associated with all Contamination present in, on or under the Land and Designated Land as at the date of dedication or transfer of the Designated Land to Council in accordance with this agreement.

- 9.3 The indemnity under this clause continues to apply after the expiry or termination of this agreement.

10. WARRANTIES AND INDEMNITIES

10.1 Warranties

The Developer warrants 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.

10.2 Indemnity

The Developer releases Council from and indemnifies Council in relation to any Claim arising from or in connection with the carrying out of the Works and making of the Contributions. The indemnity is reduced proportionally to the extent that any such Claim is a direct result of the negligent act or omission of Council. The indemnity and release under this clause continues to apply after the expiry or termination of this agreement.

11. SECURITY

11.1 Prohibition

Neither party may Assign their rights under this agreement without the prior written consent of the other party.

11.2 Assignment of Land

The Developer must not Assign its interest in the Land, unless:

- (1) Council consents to the Assignment; and
- (2) the proposed assignee enters into an agreement to the satisfaction of Council under which the assignee agrees to be bound by the terms of this agreement with respect to the relevant part of the Land being Assigned.

11.3 Compulsory acquisition of the Designated Land

- (1) The Developer consents to the compulsory acquisition of the Designated Land:
 - (a) in accordance with the Acquisition Act; and
 - (b) on the terms set out in this clause.
- (2) Council may only acquire the Designated Land compulsorily in accordance with the Acquisition Act if the Developer is in default of this agreement with respect to the dedication or transfer of that land under this agreement.
- (3) If Council acquires the Designated Land compulsorily in accordance with the Acquisition Act:
 - (a) the Developer agrees that the compensation payable to it on account of that acquisition under the Acquisition Act is \$1.00; and
 - (b) Council must endeavour to complete that acquisition within twenty-four (24) months of the relevant default.
- (4) The parties agree that the provisions of this clause are an agreement with respect to the compulsory acquisition of the Designated Land for the purpose of s30 of the Acquisition Act.

11.4 Delivery to Council of Bank Guarantee

- (1) The Developer must deliver to Council an unconditional bank guarantee(s) from a major Australian bank (Bank Guarantee) as follows:
 - (a) in a form acceptable to Council;
 - (b) in the amount and as described in Schedule 8; and
 - (c) without an expiry date.

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- (2) The Bank Guarantee must be provided to Council when the Developer returns to Council this original executed agreement in duplicate. Council is not required to sign, nor is bound by this agreement, until the Bank Guarantees have been provided to Council in accordance with the requirements of this clause 11.4 (1) & (2).

11.5 Council may call on Bank Guarantee

- (1) If the Developer does not comply with the terms of this agreement, Council may issue the Developer with a notice requiring the Developer to rectify the relevant default within seven (7) days from the date of that notice. Council is not required to provide notice in an emergency or an imminent threat of environmental harm or a threat to public safety or if Council's assets or public safety or the environment is risk.
- (2) If the Developer fails to comply with a notice issued under paragraph (1) to the reasonable satisfaction of Council, or if a notice is not required, Council may, without limiting any other avenues available to it, call on the relevant Bank Guarantee to the extent necessary to reimburse Council for any costs incurred by it in rectifying the relevant default of the Developer.

11.6 Top up of Bank Guarantee

Within fourteen (14) days of being requested to do so by Council the Developer must ensure that the amount secured by any Bank Guarantee is increased by 3% per annum.

11.7 Security during Defects Liability Period

- (1) Upon the completion of an Item of Work and the commencement of the Defects Liability Period, Council must return any Bank Guarantees held by it with respect to the relevant Item of Work.
- (2) In exchange, the Developer must provide the Council with one (1) or more Bank Guarantees in a form acceptable to Council for the amounts set out in Schedule 8.

11.8 Return of Bank Guarantee

Council must return the remaining Bank Guarantees (if any) to the Developer within 30 days from the expiration of the Defects Liability Period for the last Item of Work that is Completed.

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 (**Second 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.

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- (2) The Second 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.

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- (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
 - (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.

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- (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 with 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, the Designated 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

- (1) The parties agree that any non-monetary supplies made by one party to the other pursuant to this agreement (including Works and the dedication of land) will be exempt from GST pursuant to Division 82 of the GST Law.
- (2) However, if GST is imposed on any non-monetary supplies made under or in accordance with this agreement, the Developer must pay to the Council an amount equal to the GST payable on or for the taxable supply.
- (3) If the Council is obliged to pay any GST on any non-monetary supply made under or in accordance with this agreement, the Developer indemnifies the Council for the amount of any such payment is required to make.
- (4) The Developer will issue Tax Invoices as directed by Council.

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 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 indemnifies the Council for the amount of any such payment is required to make.
 - (3) The Developer 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

15.1 Application of clause

This clause applies if the Developer accesses, uses and/or occupies any land owned by Council in performing its obligations or exercising its rights under this agreement (**Necessary Access**).

15.2 Terms of Licence

The terms of Schedule 2 apply to any Necessary Access, subject to Council providing written consent to the Necessary Access.

16. LEGAL COSTS

The Developer 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.
 - (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 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 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

The Developer irrevocably nominates and appoints Council to be the lawful attorney of the Developer generally to execute and perform any act, matter or thing relative to this agreement as fully and effectually as the Developer. The Developer agrees to ratify and confirm all things that the attorney may lawfully do or cause to be done. Council may only act as the Developer's attorney after Council exercises its rights under clause 8.4 or 11.5.

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 Attorney, Council's Chief Executive Officer pursuant to Power of Attorney

.....
Chief Executive Officer – Manjeet Kaur Grewal

Date:.....

I certify that I am an eligible witness and that the Attorney signed this Deed in my presence.

**I certify that I have known the Attorney for at least 12 months OR *I have not known the Attorney for at least 12 months, but I have confirmed the Attorney's identity by sighting an original identification document and the document I relied on was _____*

***Cross out text which does not apply (Omit ID number of document)**

Signature of Witness: _____

Name of Witness: _____

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

Executed by(the Developer)

ACN in accordance with section 127 of the *Corporations Act* 2001:

Date: _____

Signature: _____

Print Name: _____

Director

Signature: _____

Print Name: _____

Director and/or Secretary

SCHEDULE 1: REQUIREMENTS UNDER SECTION 7.4 OF THE ACT

Requirement Under The Act	This Agreement
<p>Planning instrument and/or development application – (Section 7.4(1))</p> <p>The Developer has:</p> <p>(a) sought a change to an environmental planning instrument.</p> <p>(b) made, or proposes to make, a Development Application.</p> <p>(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.</p>	<p>(a) No/Yes</p> <p>(b) No/Yes</p> <p>(c) No/Yes</p>
<p>Description of land to which this agreement applies – (Section 7.4(3)(a))</p>	<p>See clause 1.</p>
<p>Description of change to the environmental planning instrument to which this agreement applies – (Section 7.4(3)(b))</p>	
<p>Application of section 7.11 of the Act – (Section 7.4(3)(d))</p>	<p>See clause 4.1.</p>
<p>Applicability of section 7.12 of the Act – (Section 7.4(3)(d))</p>	<p>See clause 4.1.</p>
<p>Applicability of section 7.24 of the Act – (Section 7.4(3)(d))</p>	<p>See clause 4.1.</p>
<p>Consideration of benefits under this agreement if section 7.11 applies – (Section 7.4(3)(e))</p>	<p>See clause 4.2.</p>
<p>Mechanism for Dispute resolution – (Section 7.4(3)(f))</p>	<p>See clause 12.</p>
<p>Enforcement of this agreement (Section 7.4(3)(g))</p>	<p>See clause 11.</p>
<p>No obligation to grant consent or exercise functions – (Section 7.4(9))</p>	<p>See clause 13.</p>
<p>Registration of this agreement</p> <p>The parties agree that this agreement will be registered.</p>	<p>See clause 5.</p>

SCHEDULE 2: TERMS OF LICENCE

1. DEFINITIONS

For the purposes of this Schedule 2:

- (1) the **Land** is the land being accessed under the Licence;
- (2) the **Licence** means the licence of the Land to which this Schedule applies;
- (3) the **Licensee** is the party accessing the Land; and
- (4) the **Licensor** is the owner of the Land.

2. LICENCE

2.1 Personal Rights

- (1) The Licence is personal to the Licensee.
- (2) The Licensee may not encumber, assign or transfer (either directly or indirectly) the Licence without the prior written consent of the Licensor.
- (3) The Licensor may refuse the granting of consent under paragraph (2) without reason and at its absolute discretion.

2.2 Leasehold interest

- (1) This licence does not grant to the Licensee a leasehold interest in the Land. The parties agree that:
 - (a) the Licence does not confer exclusive possession of the Land on the Licensee;
 - (b) the Licensee may not exclude the Licensor, its officers, employees and invitees from:
 - (i) entry onto the Land; and/or
 - (ii) the performance of any works on the Land.
- (2) the Licensee does not have any right to quiet enjoyment of the Land; and
- (3) the Licensee will not at any time seek to enforce an interest in the Land in competition with the interest held by the Licensor.

3. COMPLIANCE WITH AUTHORITIES

3.1 No warranty as to suitability for use

The Licensee acknowledges and agrees that the Licensor has not made any representation or warranty to the Licensee regarding the suitability of the Land for the purposes of the Licensee.

3.2 Compliance with the terms of the consents

The Licensee must comply with the requirements of all Authorities and the Licensor in relation to its access to the Land and the conduct of any activities on it by the Licensee.

3.3 Compliance with directions from Authorities

The Licensee must comply with all notices, directions, orders or other requests served upon itself or the Licensor and which arise from the conduct of any activities on the Land by the Licensee.

3.4 Obtaining further consents

- (1) If the Licensee requires further consents to conduct activities on the Land it must:
 - (a) make such applications itself; and
 - (b) bear all costs incurred by it in relation to obtaining the relevant consent.
- (2) The Licensor agrees that it will, where required, sign all authorities reasonably required by the Licensee to make any application to any Authority.

4. LIMITATION OF THE LICENSOR'S LIABILITY

4.1 Insurances

- (1) The Licensee must effect and keep current and in force the following policies of insurance:
 - (a) Broadform Public Liability Insurance policy with a reputable insurance company approved by the Licensor in an amount of \$20,000,000 for any one occurrence in respect of any liability for:
 - (i) personal injury or death of any person; and
 - (ii) loss or damage to property.
 - (b) Workers compensation insurance under the *Workers Compensation Act 1987* covering all persons employed or deemed to be employed by the Licensee in connection with the conduct of the activities on the Land by the Licensee;
 - (c) A comprehensive policy of motor vehicle insurance or an unlimited third party property insurance policy in respect of all motor vehicles used in the performance of the activities on the Land by the Licensee; and
 - (d) A contractor's risk policy of insurance in respect of all plant and equipment (including unregistered motor vehicles) used in the conduct of the activities on the Land by the Licensee.
- (2) The policies referred to in paragraphs (1)(a), (1)(c) and (1)(d) must note the interest of the Licensor.

4.2 Inspection of insurance

- (1) The Licensee must produce at the renewal of each policy a certificate of currency issued by the insurer establishing that the policy is valid.
- (2) The Licensor may carry out random audits to verify insurances held by the Licensee. The Licensee will assist in any audit and provide evidence of the terms and currency of the insurance policies wherever requested by the Licensor.

4.3 Cancellation of insurance

If any policy is cancelled either by the Licensee or the insurer the Licensor must notify the Licensor immediately.

4.4 Risk

The Licensee uses and occupies the Land at its own risk.

4.5 Indemnity

The Licensee releases and indemnifies the Licensor against any Claim (of whatever nature) made in respect of or arising out of the Licensee's use and/or occupation of the Land. The release and indemnity under this clause continues to apply after the expiry or termination of this agreement.

4.6 Rectification

The Licensee must repair any damage caused by the Licensee's use of the Land as directed and to the satisfaction of the Licensor. If the Licensee does not rectify such damage the Licensor may carry out such repair works as it deems necessary and recover the cost of doing so as a liquidated debt from the Licensee. The Licensor may also have recourse to the Bank Guarantees in this regard.

SCHEDULE 3: THE WORKS

1. First Item of Work:

[insert details of The Works here]

2. Second Item of Work:

[insert details of The Works here]

3. Third Item of Work:

[insert details of The Works here]

OR

Not Applicable

DRAFT

SCHEDULE 4: THE MONETARY CONTRIBUTIONS

1. The Developer is to pay to Council \$..... (GST not applicable) upon the execution of this agreement.

OR

1. The Developer is to pay to Council \$..... (GST not applicable) within 14 days of the date that the Development Application is approved.

OR

Not Applicable

DRAFT

SCHEDULE 5: DEDICATION OF THE DESIGNATED LAND BY THE DEVELOPER

1. The Developer will take all steps necessary to dedicate or transfer the Designated Land to Council.

2. The dedication or transfer of the Designated Land to Council must take place within 14 days of the:
 - (a) issue of any Occupation Certificate in relation to the Development; or
 - (b) the creation of a lot of land (either strata or Torrens lot) for the Designated Land,whichever is the earlier.

OR

2. The dedication or transfer of the Designated Land to Council must take place within 14 days of a demand by Council for such transfer.

OR

Not Applicable

SCHEDULE 6: THE PLANS SHOWING THE DESIGNATED LAND

(Plan to be inserted)

OR

Not applicable

DRAFT

SCHEDULE 7: THE EXPLANATORY NOTE

Explanatory Note under clause 25E of the Environmental Planning & Assessment Regulation 2000

Exhibition of draft Voluntary Planning Agreement

Lots known as<address>

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 25E of the *Environmental Planning and Assessment Regulation 2000 (the Regulations)*.

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

Parties

..... (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 (**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
.....
.....
.....
.....
.....
.....
.....
.....
.....
.....
.....

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 and monetary contributions for public infrastructure and improvements in <suburb>.

- (i);and
- (ii);and
- (iii)

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 providing public amenities and public infrastructure improvements in <suburb> (or the recoupment of the cost of providing these services).

The Planning Purposes served by the Planning Agreement

The monetary contribution will be used to embellish the

The land will be dedicated increase the size of the existing Council public park at.....

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’) by the construction of additional public amenities. These public improvements are outside of the scope of Council’s immediate Capital Works Program but have been necessitated by the development and their cost will be borne by the Developer. As the public improvements will have a nil net cost to Council and align with strategic objectives for <suburb>, the proposed improvements are considered to generally conform with the intent of Council’s Capital Works Program.

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 following:

- The Developer is to pay to Council within 14 days of the date that development consent is issued in relation to the Development Application.
- The Developer is not permitted to implement any development consent arising from the approval of DA..... until and unless the Designated Land has been transferred to Council.

SCHEDULE 8: THE BANK GUARANTEES

1. The Developer must provide the following Bank Guarantees under clause 11.4:

(a) Bank guarantee in relation to the First Item of Work –
\$ (figure to be inserted)

(b) Bank guarantee in relation to the Second Item of Work –
\$ (figure to be inserted)

(c) Bank guarantee
\$ (figure to be inserted)

2. The Developer is to provide the following Bank Guarantees under clause 11.7 in exchange for the Bank Guarantees set out at (a) and (b) above:

(a) Bank guarantee in relation to the First Item of Work –-
Defects Liability
\$ (figure to be inserted)

(b) Bank guarantee in relation to the Second Item of Work –-
Defects Liability
\$ (figure to be inserted)

3. All Bank Guarantees must:

- be from a major Australian bank,
- be in a form acceptable to Council,
- not have an expiry date, and
- be unconditional.