

Table of Contents

1.	Definitions and Interpretation.....	5
1.1	Definitions.....	5
1.2	Interpretation	9
2.	Community Benefits.....	10
2.1	Benefit to Community	10
2.2	Local Housing Strategy 2020	11
2.3	Sustainable Hornsby 2040	12
2.4	Walking and Cycling Strategy	12
3.	Requirements of Section 7.4 of the Act	13
3.1	Planning Agreement.....	13
3.2	Application of Agreement	13
3.3	Commencement of Agreement	13
3.4	Operation of this Agreement	13
3.5	No restriction on Council's Powers.....	13
4.	Registration of CBPA on Title.....	14
4.1	Acknowledgement	14
4.2	Registration of the CBPA	14
4.3	Removal from Register.....	15
4.4	No application to Stage 2 Land	15
5.	Caveat and restriction on dealings.....	15
5.1	Caveatable interest.....	15
5.2	Restriction on dealings	15
6.	Development Land.....	16
6.1	Development Land	16
6.2	Dedication and Transfer Land Development.....	17
6.3	Operation of the Dedication and Transfer Land	17
6.4	Limitation of use of Dedication and Transfer Land.....	17
7.	Monetary Contribution and Registered Proprietor Contribution.....	18
7.1	Application of sections 7.11, 7.13, 7.16 and 7.18 of the EPAA.....	18
7.2	Public Purpose	18
7.3	Overdue payments	19
7.4	Compounding	19
7.5	Interest on liability merged in judgment or order	19
7.6	Biodiversity credits.....	19

7.7	Procurement Process for Marymount Forest Conservation Reserve Infrastructure ...	20
8.	General Provisions	20
8.1	Service of Notices.....	20
8.2	Addresses for Service	20
8.3	Timing	21
8.4	Change of Address for Service	21
8.5	Party acting as Trustee	21
8.6	Cost and Duties	21
8.7	Goods and Services (GST) Tax	22
8.8	Dispute Resolution	22
8.9	Default	23
8.10	General Enforcement	23
8.11	Assignment.....	23
8.12	No fetter.....	24
8.13	Severability	24
8.14	Governing Law and Jurisdiction	24
8.15	Further Assurance	25
8.16	Counterparts.....	25
8.17	Amendments	25
8.18	Whole Agreement.....	25
8.19	Rights Not Affected by Failure to Enforce	25
	Annexure A.....	27
	Annexure B – Stage 1 Plan.....	29
	Annexure C – Stage 2 Plan.....	30
	Annexure D - Contributions Table	31

THIS AGREEMENT dated

2024

PARTIES

Hornsby Shire Council (ABN 20 706 996 972) of 296 Peats Ferry Road, Hornsby, New South Wales (**Council**)

Trustees of the Sisters of Mercy (Parramatta) (ABN 30 161 863 296) of 2-6 Victoria Road, Parramatta, New South Wales (**Registered Proprietor**)

SUMMARY SHEET

Council	Name: Hornsby Shire Council Address: 296 Peats Ferry Road Hornsby NSW 2077 T: 02 9847 6666 E: hsc@hornsby.nsw.gov.au Representative: General Manager
Registered Proprietor/Applicant	Name: Trustees of the Sisters of Mercy (Parramatta) Address: 2-6 Victoria Road Parramatta NSW 2150 T: 02 9683 2555 E: congregationbursar@parrasom.org.au Representative: Congregation Bursar
Land	Lot 2 DP 565458, commonly known as 36-56 David Road, Castle Hill NSW 2154
Development Application	DA/1022/2021
Dedication & Transfer Land	Marymount Forest being proposed Lot 100 being part of Lot 2/DP 565458 as a conservation reserve in the Stage 1 Plan; Tahlee Park Extension being proposed Lot 65 being part of Lot 2/DP 565458 as a public reserve in the Stage 2 Plan; and Roads and Infrastructure (as defined in clause 1.1).
Development Land	See clause 6
Monetary Contributions	See clause 7
Application of sec 7.4 of the Act	Yes
Registration	Yes
Restriction on dealings	Yes

INTRODUCTION

The Land comprises one parcel, formally identified as Lot 2 in Deposited Plan 565458 held in Certificate of Title Volume 12322, Folio 78, located in Castle Hill, in the Local Government Area of Hornsby, Parish of South Colah and County of Cumberland.

The current owners of the Land are the Trustees of the Sisters of Mercy (Parramatta) (**the Sisters**). The Land is known as the Marymount Mercy Centre and is located at 36-56 David Road, Castle Hill.

The proposed subdivision has been carefully planned by the Sisters to positively influence future development of the Land beyond the Sisters' ownership, and to separate and quarantine Marymount Forest so its protection is guaranteed in perpetuity for the benefit of the Community.

For over 60 years, the Sisters have been stewards of 36-56 David Road, Castle Hill (and known as the Marymount Site) and have ensured that the site has been cared for and maintained to the highest standard. Long before the Sydney Turpentine Ironbark Forest (**Marymount Forest**) was added to the Local Heritage Register, the Sisters have nurtured its growth and taken active steps to ensure its survival. *"We will enjoy and celebrate Earth's beauty and bounty and her many species. We will honour our duty to love and care for her and add to her well-being wherever possible"* (Sisters of Mercy Parramatta, 2016 Chapter Statement).

Over these 60 years, the expansion of the size of the Marymount Forest and other efforts in extensive tree plantings around the Land are testament to, and reflective of, the Sisters' value of care for the earth.

Through this Community Benefit Planning Agreement (**CBPA**), the Sisters wish to leave a positive legacy for current and future members of the local community. Extending beyond the dedication of the Marymount Forest and provision of maintenance and management funding, this CBPA provides enhancements which are consistent with the Sisters' values and the Sisters' traditional areas of concern, being:

- **Stewardship:** Recognising that the Sisters no longer have the capacity to maintain and manage the Land in the manner they have in the past, the Sisters are entering into this CBPA to ensure appropriate stewardship of the critical environmental areas of the Land is in place in perpetuity. This includes restrictions on the Title of the Marymount Forest conservation reserve.
- **Education:** The Sisters have worked with Council's Natural Resources team to enable appropriate access to the Marymount Forest as an educational opportunity for residents, schools, local groups and the wider community, with interpretive signage providing educative information on the local flora and conservation matters.
- **Spiritual Development:** Recognising that the beauty of creation is integral to spiritual development and renewal, as has always been central to the Marymount Mercy Centre, additional outdoor recreational areas are proposed to be dedicated to Council for the active and passive enjoyment of residents within the surrounding community. The dedication of land to double the size of the existing Tahlee Park and creation of pedestrian links through the site provides greater opportunities for the local community to enjoy the beauty and peace of several outdoor areas in addition to the Marymount Forest.
- **Equity:** The Sisters have worked closely with the Council's Parks, Trees & Recreation team to develop a design for the expanded Tahlee Park, which includes accessible pathways linking the existing park to the new expanded section to enable

access for all. The environmentally sensitive elevated accessible walkway within Marymount Forest will provide access to parts of the Marymount Forest whilst protecting the understorey and ensuring access is available for everyone, including those reliant on mobility aids.

These guiding principles have resulted in the following key decisions being made:

1. Marymount Forest shall be managed as a conservation reserve to provide an element of education on the flora and fauna in the Forest as well as a place for reflection and recreation, for the public benefit.
2. Tahlee Park Extension shall be dedicated as a public reserve for the public benefit.
3. The Community Title subdivision of the Balance Land into residential allotments and Mercy Park is reflective of, and in keeping with, the surrounding neighbourhood and in line with current zoning.

Rationale for the proposed development

The current application seeks to ensure that any future residential use of the Land (as per the zoning) will not encroach on the heritage-listed forest (Marymount Forest) covering the eastern third of the land known as 36 – 56 David Road, Castle Hill.

The application seeks Development Consent for a two (2) stage subdivision of the Land as follows:

1. Torrens Title subdivision to create Lot 100 (Marymount Forest Conservation Reserve) and Lot 101 (Balance Land) (**Stage 1**). As part of Stage 1, Lot 100 (Marymount Forest Conservation Reserve) will be transferred to Council.
2. Community Title subdivision of Lot 101 (Balance Land) to create:
 - a. 63 residential lots (Lots 2-64) and Mercy Park (Lot 1), with Mercy Park to be maintained by the Community Association; and
 - b. Lot 65 (Tahlee Park Extension),**(Stage 2)**.

As part of Stage 2, the Roads and Infrastructure and Lot 65 (Tahlee Park Extension) will be dedicated to Council.

BACKGROUND

- A. Local Planning Panel is the consent authority pursuant to the *Environmental Planning and Assessment Act 1979* NSW (**Act**) for the proposed Development.
- B. The Council is required to assess the proposed Development prior to the granting of consent by the Local Planning Panel.
- C. The Registered Proprietor lodged the Development Application for a Torrens Title subdivision over the land being 36-56 David Road, Castle Hill, legally identified as Lot 2 in Deposited Plan 565458 held in Certificate of Title Volume 12322 Folio 78.
- D. Council has requested that the Development Application be amended to create a subdivision under Community Title Scheme, which will become part of Stage 2 of the Development.
- E. Through this Community Benefit Planning Agreement (**CBPA**), the Applicant is seeking to transfer the Marymount Forest to Council in Stage 1 and dedicate other open space allotments (Tahlee Park Extension and Roads and Infrastructure but excluding Mercy Park) to Council in Stage 2.
- F. As part of its development proposal, the Registered Proprietor offers to pay the Monetary Contribution as provided in **clause 7** of this CBPA.
- G. This CBPA does not exclude the application of section 7.11 of the Act to this Development Application.

OPERATIVE PROVISIONS

1. Definitions and Interpretation

1.1 Definitions

In this document, unless otherwise indicated by the context:

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

Agreement means this Community Benefit Planning Agreement and any schedules or annexures forming part of the agreement.

Balance Land means the proposed Lot 101 in the Stage 1 Plan, which will be subject to further Community Title subdivision under the Stage 2 Plan as part of Stage 2 of the Development, and which is included under Annexure B of this Agreement.

Business Day means Monday to Friday excluding public holidays in New South Wales.

Claims means all or any claims, proceedings, actions, rights of action, liabilities, damages, losses, remedies, expenses, fines and penalties (including associated expenses and legal costs on a full indemnity basis).

Commencement Date means the date in **clause 3.3**.

Community Association means the community association created pursuant to the *Community Land Development Act 2021* and *Community Land Development Regulation 2021* and upon the registration of the Stage 2 Plan with the NSW Land Registry Services.

Community Title Scheme has the same meaning as *community scheme* pursuant to section 5 of the *Community Land Development Act 2021 (No 6)*.

Consumer Price Index or CPI means:

- (a) the Consumer Price Index (All Groups) (Sydney) published from time to time in the Australian Statistician's Summary of Australian Statistics. If the Australian Statistician updates the reference base of the Consumer Price Index (All Groups) (Sydney) a conversion shall be made to preserve the intended continuity of calculation by using the appropriate arithmetical factor determined by the Australian Statistician; or
- (b) if the Consumer Price Index (All Groups) is discontinued or suspended:
 - (i) a replacement index agreed by the Parties which reflects fluctuations in the cost of living in Sydney; or
 - (ii) if the Parties do not agree on a replacement index, the CPI Index Number will be deemed to be 2%.

Council means Hornsby Shire Council.

Dedication and Transfer Lands means the following lots/parts of the Land to be dedicated or transferred to the Council for public benefit:

- (a) Marymount Forest (being proposed Lot 100 in the Stage 1 Plan), being part of Lot 2 DP 565458 as a conservation reserve;
- (b) Tahlee Park Extension (being proposed Lot 65 in the Stage 2 Plan) being part of the Balance Land (proposed Lot 101 in the Stage 1 Plan) as a public reserve; and
- (c) the Roads and Infrastructure.

Developer means the entity undertaking Stage 2.

Development means the proposed two staged subdivision of the Land consisting of:

- (a) **Stage 1** being:
 - (i) a Torrens Title subdivision of the Land into two lots being proposed Lot 100 (Marymount Forest Conservation Reserve) and proposed Lot 101 (Balance Land) in the Stage 1 Plan; and
 - (ii) the transfer of Marymount Forest Conservation Reserve to Council.
- (b) **Stage 2** being:
 - (i) the subdivision of the Balance Land (Lot 101) under Community Title Scheme into 63 residential lots (being proposed Lots 2-64 in the Stage 2 Plan), Mercy Park (being proposed community title Lot 1 in the Stage

2 Plan) and Tahlee Park Extension (being proposed Lot 65 in the Stage 2 Plan); and

- (ii) the construction and dedication of the Roads and Infrastructure and Tahlee Park Extension (Lot 65 in the Stage 2 Plan) to Council.

Development Application means DA/1022/2021 (which for the avoidance of doubt includes Stage 1 and Stage 2) in connection with the Development, including any minor amendments thereto (and excluding any modification applications pursuant to s4.55 of the Act)

Development Consent means development consent issued under the Act in respect of the Development Application.

GST has the meaning given in the GST Act.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Insolvency Event means, in relation to a person, any of the following events:

- (a) The person, being an individual, commits an act of bankruptcy;
- (b) The person becomes insolvent;
- (c) The person ceases, suspends or threatens to cease or suspend the conduct of a majority of its business, or disposes of or threatens to dispose of its assets, except for the purposes of a solvent reconstruction or amalgamation previously approved by Council;
- (d) The person is or states that it is, or under applicable legislation is taken to be, unable to pay its debts (other than as a result of a failure to pay a debt or claim that is the subject of a dispute in good faith), or stops or suspends, or threatens to stop or suspend, payment of all or a class of its debts;
- (e) A receiver, receiver and manager, administrator, controller or similar officer of any of the assets or the whole or any part of the undertaking of the person is appointed;
- (f) A resolution is passed by the person to appoint an administrator, or an administrator of the person is appointed;
- (g) An order is made to appoint a liquidator or a provisional liquidator of the person;
- (h) The person resolves to wind itself up or otherwise dissolve itself, or gives notice of its intention to do so, except for the purposes of a solvent reconstruction or amalgamation previously approved by the Council, or is otherwise wound up or dissolved;
- (i) An order is made that the person be wound up;
- (j) The person is, or makes a statement from which it may be reasonably inferred by the Council that the person is, the subject of an event described in section 459C(2) of the *Corporations Act 2001* (Cth);
- (k) The person assigns any of its property for the benefit of creditors or any class of them;

- (l) An order is made or a resolution is passed for the person to enter into any arrangement, compromise or composition with, or assignment for the benefit of, its creditors or any class of them, except for the purposes of a solvent reconstruction or amalgamation previously approved by the Council;
- (m) Any Security Interest becomes enforceable or is enforced against that person; the person's interest in or under this Agreement or in the subject matter of this Agreement becomes attached or is taken, in execution or under any legal process;
- (n) A distress, attachment or other execution is levied or enforced against that person in excess;
- (o) Any power of sale is exercised, or steps are taken to take possession of any assets of the person subject to a Security Interest;
- (p) Any step is taken to do anything listed in the above paragraphs; and
- (q) Any event that is analogous or has a substantially similar effect to any of the events specified in this definition in any jurisdiction.

LRS means NSW Land Registry Services, or as it is otherwise known from time to time.

Land and Development Land means the land to which the Development relates, being 36-56 David Road, Castle Hill, legally identified as Lot 2 in Deposited Plan 565458 held in Certificate of Title Volume 12322 Folio 78.

Local Planning Panel means a panel consisting of four members: a chair, two independent expert members and a community representative as legislated by the *Environmental Planning and Assessment Act 1979* (NSW).

Marymount Forest and **Marymount Forest Conservation Reserve** means proposed Lot 100 in the Stage 1 Plan, being part of Lot 2 DP 565458 to be transferred to Council as a conservation reserve.

Mercy Park means the proposed community title Lot 1 in the Stage 2 Plan consisting of approximately 5289 sqm, being part of the Balance Land (proposed Lot 101).

Monetary Contribution means any monetary contribution referenced in the Act and as described in **clause 7**; and is in respect of Stage 2 of the Development only and is separate to the Registered Proprietor Contribution. No monetary contribution will be payable with respect to Stage 1 of the Development.

Prescribed Rate means the rate prescribed from time to time under the *Uniform Civil Procedure Rules 2005* as the rate of interest on judgement debts plus 2%, calculated daily and compounded on the last day of each month.

Registered Proprietor means the registered proprietor of the land from time to time, at the date of this CBPA being the Sisters and includes any future Registered Proprietor on title.

Registered Proprietor Contribution means the payments limited only to be made by the Registered Proprietor in accordance with clause 7.2(c)(v) of this document.

Regulation means the *Environmental Planning and Assessment Regulation 2000* (NSW).

Roads and Infrastructure means the public roads shown on the Stage 2 Plan, and infrastructure located within such public roads, to be dedicated to Council for public benefit and shown on the civil plans prepared by Diversi Consulting Drawings DA009 (Rev G), DA010 (Rev H), DA011 (Rev F), DA012 (Rev F), DA013 (Rev F), DA014 (Rev F), DA015 (Rev F), DA016 (Rev G), DA025 (Rev H), DA026 (Rev I) and DA027 (Rev A).

Security Interest means:

- (a) any mortgage, pledge, lien, charge or other preferential right, trust arrangement, agreement or arrangement of any kind given or created by way of security, including a security interest (as defined in the *Personal Property Securities Act 2009* (Cth)); and
- (b) any agreement to create or grant any arrangement described in paragraph (a).

Sisters means the Trustees of the Sisters of Mercy (Parramatta).

Stage 1 Plan means the 'stage 1 – master plan' plan of proposed subdivision of the Land (Lot 2 in Deposited Plan 565458), a draft copy of which is annexed to this Agreement as Annexure B (any final version must not significantly derogate from the draft copy annexed hereto).

Stage 2 Plan means the 'stage 2' plan of proposed community title subdivision of the Balance Land (Lot 101), being a further subdivision of the Land (Lot 2 in Deposited Plan 565458), a draft copy of which is annexed to this Agreement as Annexure C (any final version must not significantly derogate from the draft copy annexed hereto).

Stage 2 Land means the residential lots created following receipt of Subdivision Certificate and in accordance with the Stage 2 Plan.

Subdivision Certificate means as defined in the Act, being a certificate that authorises the registration of a plan of subdivision under Part 23 of the Conveyancing Act 1919 (NSW).

Tahlee Park Extension means the proposed Lot 65 in the Stage 2 Plan being part of the Balance Land (Lot 101) to be dedicated to Council as a public reserve.

Transfer means the LRS transfer form for the transfer of the land from the Applicant to the Council/Developer, where required.

Value means the agreed value of the Dedication and Transfer Land.

1.2 Interpretation

In this document, unless otherwise indicated by the context:

- (a) words importing the singular include the plural and vice versa;
- (b) headings are for convenience only and do not affect interpretation of this document;
- (c) a reference to a clause, paragraph, schedule or annexure is a reference to a clause, paragraph or schedule of or annexure to this document;
- (d) a reference to "\$" is to Australian dollars;

- (e) an expression importing a natural person includes a body corporate, partnership, joint venture or association;
- (f) a reference to a statute or regulation includes all amendments, consolidations or replacements thereof;
- (g) a reference to a party to a document includes that party's successors and permitted assigns;
- (h) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this document;
- (i) a covenant, agreement, representation or warranty on the part of or in favour of two or more persons binds them or is for the benefit of jointly and severally;
- (j) 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; and
- (k) a reference to a body, whether statutory or not:
 - (i) which ceases to exist; or
 - (ii) 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.

2. Community Benefits

2.1 Benefit to Community

The following have been identified as how the Land, including the Dedication and Transfer Land and the Development, will benefit the community far beyond a usual planning agreement.

- (a) Environmental conservation / protection and education:
 - (i) Creation of Marymount Conservation Reserve as a discrete lot to be protected through transfer of ownership to Council at no cost;
 - (ii) Provision of funding for capital works and ongoing maintenance of the Marymount Conservation Reserve enabling appropriate educational opportunities for the local community through provision of signage and the elevated walkway (to be constructed by the Council) whilst protecting Marymount Conservation Reserve trees and understorey;
 - (iii) Adopting the use of alternative methods such as tunnelling boring and breathable materials in the undertaking of proposed civil and other works in Stage 2, to protect existing tree roots in accordance with arborist recommendations approved in the Development Consent; and
 - (iv) Provision of indicative building envelopes that demonstrate capacity to maximise protection of existing trees within residential lots.
- (b) Open space for community enjoyment (in addition to the Marymount Forest Conservation Reserve):

- (i) Effectively doubling the size of the existing Tahlee Park through the provision of the Tahlee Park Extension of 3315sqm; and
 - (ii) Provision of an accessible pathway within Council's existing Tahlee Park connecting to the Tahlee Park Extension, to enable universal access.
- (c) Public domain upgrades with the locality:
- (i) Widening of David Road and installation of pedestrian refuge improving pedestrian access and safety for the local community;
 - (ii) Provision of an accessible pathway in Council's existing Tahlee Park; and
 - (iii) Creation of pedestrian and cycle linkages to and from the subdivision for the local community.
- (d) The provision of additional housing and open space recreational areas that will cater for existing and future population growth and an ageing demographic structure of the area and the broader community.

The parties have agreed that an elevated boardwalk type design will provide the best level of universal accessibility as well as preserving the tree roots and protecting the ecologically significant fauna in the area. The Council is to seek quotations from suitably qualified companies (and show these quotations to the Registered Proprietor) to design an environmentally sensitive route for the walkway through the Marymount Forest which will have minimal impact on the significant tree routes and environmentally sensitive areas of the bushland.

In addition, Council's Local Housing Strategy 2020, Sustainable Hornsby 2040 and Walking and Cycling Strategy support the overall scope of the 2 staged subdivision.

2.2 Local Housing Strategy 2020

Some of the key housing issues and priorities identified in Council's Local Housing Strategy 2020 support the development. For example, the Housing Strategy identified more housing needed to cater for the estimated population growth by 2036. The Strategy also provided the following priorities:

- (a) **Hornsby's Liveable Priority number 1:** Protecting the character of the Shire's low-density neighbourhoods.
- (b) **Hornsby's Liveable Priority number 4:** Aligning the delivery of local infrastructure and public domain improvements with current and future growth.
- (c) **Hornsby's Liveable Priority number 5:** Protecting, conserving, and promoting our natural, built and cultural heritage.
- (d) **Hornsby's Liveable Priority number 6:** Providing housing in the right locations that meets the needs of our community with regard to housing type and mix, design, sustainability, affordability and safety.

The Dedication and Transfer Land will specifically address priority number 5 by preserving the local character and the natural environment to ensure the Shire's bushland retains the features which make it such a great place to live for the local community.

2.3 Sustainable Hornsby 2040

The Dedication and Transfer Land will support the community's environmental goals as outlined in the Sustainable Hornsby 2040 document published online by the Council.

Biodiversity management including the protection and enhancement of tree cover across the shire as well as increasing walking and cycling participation is in the top 5 priorities as chosen by the community.

The Sisters' goal is to ensure the Development has the highest regard to the environment and ongoing sustainability, particularly through the protection and/or appropriate replacement of trees throughout the dedication land.

This Development supports Council's priority in its Sustainable Hornsby document by mitigating the environmental effects of population growth by increasing parklands, pedestrian access to amenities and public transport as well as the protection of parkland.

2.4 Walking and Cycling Strategy

Section 6.2.4 says *"to support walking and cycling as a day-to-day choice for short trips, it is important to provide new facilities that make active transport more accessible with improved safety. Where possible, walking and cycling should have their own spaces that are not shared with other transport models."*

The Dedication and Transfer Land has been designed with this in mind. There will be greater pedestrian access through Tahlee Park, providing greater access for the communities to utilise walking and cycling as a means of transport to local and essential amenities.

The priorities as set out in Council's Walking and Cycling Strategy that support the Dedication and Transfer Land and the overall development include:

- (a) Build wide, accessible footpaths in public domain/housing strategy precincts connecting to key community facilities.
- (b) Build footpaths that link to bushwalking tracks utilising footpath connections or signage systems.
- (c) Build footpaths that assist people of all levels of ability to access key community facilities and natural areas.
- (d) Improve connections to public transport nodes, local facilities (ie shops) utilising improved path networks and or way finding signage.

The Dedication and Transfer Land will promote the principles of Council as set out in the Walking and Cycling Strategy currently published at <https://www.hornsby.nsw.gov.au/council/forms-and-publications/publications/strategies-and-plans>

3. Requirements of Section 7.4 of the Act

3.1 Planning Agreement

- (a) The parties agree that this Agreement is made as a Planning Agreement pursuant to section 7.4 of the Act and goes beyond this with the significant public benefit of the Development.
- (b) Annexure A of this Agreement, being the Explanatory Note, summarises the requirements for planning agreements under section 7.4 of the Act and the way this Agreement addresses those requirements.
- (c) The parties acknowledge and agree that, in accordance with section 4.15 of the Act, the terms of this Agreement must be considered by any consent authority when determining a Development Application for the Development, or any part of the Development.

3.2 Application of Agreement

- (a) The land in which this Agreement applies is the Land as defined in **clause 1**.
- (b) The development to which this Agreement applies is the Development as modified, excluding the dedication and transfer land.
- (c) This Agreement provides restrictions on future use and development of the dedication and transfer land for the public benefit.

3.3 Commencement of Agreement

This Agreement will commence on and from the date it is executed by all parties.

3.4 Operation of this Agreement

- (a) Until this planning agreement operates, it is acknowledged and agreed that this Agreement is in the terms generally of an offer made by the Registered Proprietor in connection with the Development Application for the Development Land.
- (b) The Community Benefit Planning Agreement (**CBPA**) operates only if:
 - (i) the carrying out of the Development is subject to a condition imposed under section 7.7 of the Act requiring this planning agreement to be entered into, and
 - (ii) the planning agreement is entered into as required by the condition in accordance with clause 203 of the Regulation.
- (c) This document also provides for contributions to be made and how it is to be made with respect to the Development Consent that comprises the Development. Each contribution must be delivered no later than the timeframe specified in the contributions table at Annexure D however the Registered Proprietor may complete and deliver a contribution item earlier than the timeframe specified in the contributions table.

3.5 No restriction on Council's Powers

This Agreement or anything done under this Agreement;

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

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

4. Registration of CBPA on Title

4.1 Acknowledgement

- (a) The parties agree that the Community Benefit Planning Agreement (**CBPA**) is to be registered on the title of the Land under section 7.6 of the Act.
- (b) Once the CBPA has been registered by the Registrar-General under section 7.6 of the Act, the CBPA will become binding on, and is enforceable against the Registered Proprietor, as if each registered proprietor for the time being had entered into this Agreement.

4.2 Registration of the CBPA

- (a) The Registered Proprietor agrees to procure the registration of this Agreement under the *Real Property Act 1900* (NSW) in the relevant folios of the Register of the Land in accordance with section 7.6 of the Act.
- (b) The Registered Proprietor, at its own expense, must:
 - (i) procure the lodgement of this Agreement with the Registrar General as soon as reasonably practicable after this Agreement comes into operation, but in any event, no later than 10 Business Days after that date;
 - (ii) procure the registration of this Agreement by the Registrar General in the relevant folios of the Register for the Land as soon as reasonably practicable after this Agreement is lodged for registration; and
 - (iii) provide documentary evidence that the registration of this Agreement has been completed to Council within 5 Business Days of receiving confirmation that the registration has occurred.
- (c) The Registered Proprietor, at its own expense, must take all practical steps, and otherwise do anything that the Council reasonably requires to procure:
 - (i) the consent of each person who:
 - (A) has an estate or interest in the relevant Land registered under the *Real Property Act 1900* (NSW); or
 - (B) is seized or possessed of an estate or interest in the Land,
 - (ii) an acceptance of the terms of this Agreement and an acknowledgement in writing from any existing mortgagee in relation to the relevant Land that the mortgagee will adhere to the provisions of

this Agreement if it takes possession of the Land as mortgagee in possession,

- (iii) the execution of any documents; and
- (iv) the production of the relevant duplicate certificates of title,

to enable the registration of this Agreement in accordance with this clause 4.2.

- (d) The Registered Proprietor consents to the registration of the Agreement in accordance with this clause 4.2.

4.3 Removal from Register

The Council will provide a release and discharge of this Agreement so that it may be removed from the folios of the Register for the Land (or any part of it) provided the Council is satisfied the Registered Proprietor has duly fulfilled its obligations under this Agreement, and is not otherwise in default of any of the obligations under this Agreement.

4.4 No application to Stage 2 Land

The Council acknowledges and agrees that despite any provision to the contrary, this Agreement shall not be registered on the titles to Stage 2 Land being sold by the Developer in Stage 2 of the Development, subject to the Registered Proprietor having fully complied with its obligations under this Agreement.

5. Caveat and restriction on dealings

5.1 Caveatable interest

- (a) The Registered Proprietor acknowledges that the rights under this Agreement give Council a caveatable interest in the Land and consents to the Council registering such a caveat. Any such caveat is to be withdrawn by Council at its cost on registration of this Agreement on title to the Land.

5.2 Restriction on dealings

- (a) The Registered Proprietor (being the registered proprietor at the time of execution of this Agreement) is not to:

- (i) sell or transfer the Land or any part of it, or
- (ii) assign the Registered Proprietor's rights or obligations under this Agreement, or novate this Agreement,

to any person unless:

- (A) the Registered Proprietor has, at no cost to the Council, first procured the execution by the person to whom the Land, or part thereof, is to be sold or transferred or the Registered Proprietor's rights or obligations under this Agreement are to be assigned or novated, of an Agreement in favour of the Council on terms reasonably satisfactory to the Council, and

- (B) the Council has given written notice to the Registered Proprietor stating that it reasonably considers that the purchaser, transferee, assignee or novatee, is reasonably capable of performing its obligations under this Agreement, and
 - (C) the Registered Proprietor is not in breach of this Agreement, and
 - (D) the Council otherwise consents to the transfer, assignment or novation, such consent not to be unreasonably withheld.
- (b) Subject to clause 1.1(c), the Registered Proprietor acknowledges and agrees that it remains liable to fully perform its obligations under this Agreement unless and until it has complied with its obligations under clause 5.2(a).
 - (c) Clause 5.2(a) does not apply in relation to any sale or transfer of the Land (or any part of it) if this Agreement is registered on the title to the Land at the time of the sale and does not apply to any sale or transfer of Land by the Developer of Stage 2 Land of the Development, subject to the Registered Proprietor having fully complied with its obligations under this Agreement.
 - (d) Notwithstanding clause 5.2(c), the Registered Proprietor is to give written notice to Council of any sale or transfer of the land that occurs after this Agreement is registered on title to the land, and notice is to be given within 10 business days of the sale or transfer occurring. Details is to also taken to include contact details of the incoming registered proprietor.

6. Development Land

6.1 Development Land

- (a) The land to which the Development relates, is located at 36-56 David Road, Castle Hill, and is identified as Lot 2 in Deposited Plan 565458 held in Certificate of Title Volume 12322 Folio 78.
- (b) The Development Application seeks Development Consent for a two-stage subdivision of the Land to allow the Marymount Forest and Tahlee Park Extension to be transferred to Council independently of the Community Title residential subdivision component of the development. To this end:
 - (i) Stage 1 will involve a Torrens Title subdivision of the existing allotment into Lot 100 (Marymount Forest) and Lot 101 (Balance Land) shown in the Stage 1 Plan, with Marymount Forest (Lot 100) to be transferred to Council; and
 - (ii) Stage 2 will involve:
 - (A) a subdivision of Lot 101 (Balance Land) under Community Title to create the Tahlee Park Extension (Lot 65 in the Stage 2 Plan), 63 residential lots (numbered 2 to 64 in the Stage 2 Plan) and Mercy Park (Lot 1 in the Stage 2 Plan), with Mercy Park to be maintained by the community association in accordance with a Community Management Statement; and

- (B) the dedication of the Roads and Infrastructure and Tahlee Park Extension (Lot 65) to Council.

6.2 Dedication and Transfer Land Development

- (a) Subject to receipt of Development Consent on terms acceptable to the Registered Proprietor, the Registered Proprietor wishes to dedicate or transfer the following lots/parts of the Land to the Council for public benefit under Torrens title:
 - (i) Marymount Forest consisting of approximately 2.389 hectares of land, shown as Lot 100 in the Stage 1 Plan;

Split into 2 community benefits:
 - (A) The transfer of title (Torrens Title Lot to the ownership of Council as a conservation reserve); and
 - (B) The provision of funding for the infrastructure and maintenance of the conservation reserve.
 - (ii) Tahlee Park Extension consisting of approximately 3315 sqm, shown as Lot 65 in the Stage 2 Plan; and
 - (iii) The Roads and Infrastructure (in Stage 2 Plan).

6.3 Operation of the Dedication and Transfer Land

- (a) The Registered Proprietor must at its cost transfer to Council:
 - (i) the Dedication and Transfer Land; and
 - (ii) The subdivision of the Land (which for the avoidance of doubt will involve the transfer of Marymount Forest as part of Stage 1 and the dedication of Tahlee Park Extension and the Roads and Infrastructure to Council as part of Stage 2.
- (b) After the Dedication and Transfer Land is transferred to Council, Council will use the Dedication and Transfer Land for public purposes being the provision of public open space, enhance pedestrian accessibility and amenity improvements and drainage.
- (c) The Registered Proprietor must do all things necessary to effect the transfer of the Land to Council, including in circumstances of a requisition from LRS.

6.4 Limitation of use of Dedication and Transfer Land

The parties agree not to use the Dedication and Transfer Land for any other purpose other than a public area for public access and benefit through environmental conservation/protection, access to amenities, open space and premium views of the area.

7. Monetary Contribution and Registered Proprietor Contribution

7.1 Application of sections 7.11, 7.13, 7.16 and 7.18 of the EPAA

For the purpose of Part 7 of the EPAA, this document does not exclude the operation of Part 7, Subdivision 3 of the Act in relation to the Development Application(s) for the proposed Development.

7.2 Public Purpose

- (a) The Monetary Contribution received by the Council pursuant to section 7.11 of the Act for the Development Consent is required for the funding of the construction of improvements to the public domain in the vicinity of the Land as determined by the General Manager of the Council from time to time and Council will apply the Monetary Contribution for those purposes.
- (b) The Monetary Contribution provided under section 7.11 of the Act is separate and in addition to the Registered Proprietor Contribution payable to the Council in accordance with this Agreement to be held in perpetuity for the ongoing maintenance and development of the Marymount Forest Conservation Reserve.
- (c) The Parties agree that subject to granting of Development Consent by Council for the Development involving the subdivision of:
 - (i) Lot 2 DP 565458 (Land) into proposed Lot 100 (Marymount Forest) and Lot 101 (Balance Land); and
 - (ii) proposed Lot 101 (Balance Land) into Lot 65 (Tahlee Park Extension) and 63 residential lots numbered 2 to 64 and Lot 1 (Mercy Park) under Community Title with Lot 65 (Tahlee Park Extension) and the Roads and Infrastructure to be dedicated to Council,

on terms and conditions acceptable to the Registered Proprietor, then the Registered Proprietor shall:
 - (iii) as part of Stage 1, transfer Lot 100 (Marymount Forest) to Council as Marymount Forest Conservation Reserve to be held by Council in perpetuity, within 14 Business Days of receipt of the Subdivision Certificate associated with Stage 1;
 - (iv) as part of Stage 2, dedicate:
 - (A) Lot 65 (Tahlee Park Extension) to Council as a public reserve; and
 - (B) the Roads and Infrastructure to Council for public purposes;within 14 Business Days of receipt of the Subdivision Certificate associated with Stage 2.
 - (v) no later than receipt of the construction certificate for Stage 2, pay to Council (and subject to a prior receipt of a tax invoice from Council) the Registered Proprietor's Contribution as follows:
 - (A) an amount of \$750,000 as a contribution toward the provision of elevated boardwalk, pathway infrastructure, educational

signage, and ancillary works to be erected by Council within the Marymount Forest Conservation Reserve (the Registered Proprietor is not required to contribute any amount in excess of the \$750,000 regardless of the actual cost of such works); and

- (B) a further amount of \$918,000 to be held by Council in trust to cover the cost of on-going conservation and maintenance of the Marymount Forest Conservation Reserve for a period of 20 years from the date of transfer (the Registered Proprietor is not required to contribute any amount in excess of the \$918,000 regardless of the actual cost of the conservation and maintenance).

7.3 Overdue payments

- (a) The Registered Proprietor agrees to pay interest to the Council on any amount payable by it under this Agreement from when it becomes due for payment, during the period that it remains unpaid, on demand or at times determined by the Council, calculated on daily balances. The rate to be applied to each daily balance is the Interest Rate.

7.4 Compounding

- (a) Interest which is not paid when due for payment may be capitalised by the Council at intervals which the Council determines from time to time or, if no determination is made, then on the first day of each month. Interest is payable on capitalised interest at the rate and in the manner referred to in this Clause 7.

7.5 Interest on liability merged in judgment or order

- (a) If a liability under this Agreement becomes merged in a judgment or order, then the Registered Proprietor agrees to pay interest to the Council on the amount of that liability as an independent obligation. This interest accrues from the date the liability becomes due for payment both before and after the judgment or order until it is paid, at a rate that is the higher of the rate payable under the judgment or order and the rate referred to in this Clause 7.
- (b) For the avoidance of doubt, if a liability under this Agreement becomes merged in a judgment or order then the Developer will only be required to pay either interest payable under the judgment or order or interest calculated under this Clause 7 but not both.

7.6 Biodiversity credits

- (a) Provided that, to the extent that the Sisters are or shall be entitled to credits in relation to the biodiversity conservation of fauna and/or flora within the Marymount Forest Conservation Reserve¹ in relation to the Development Consent, then the Sisters shall remain as the sole entity entitled to receive such credits whether or not assigned or granted after the Marymount Forest Conservation Reserve is transferred to Council.
- (b) Provided further that in recognition of the significant public benefit accruing from the transfer of the Marymount Forest Conservation Reserve and associated funding, Council shall use its best endeavours as may be

¹ From the Biodiversity Credits Supply Fund managed by the NSW Department of Planning and Environment or from such other body charged with granting of such credits.

necessary to support the Sisters to secure payment of such biodiversity credits.

7.7 Procurement Process for Marymount Forest Conservation Reserve Infrastructure

For the purposes of provision of pathway infrastructure, educational signage and ancillary works referred to in **clause 7.2** above:

- (a) Council has a formal process for seeking offers for the supply of goods or services whereby an invitation is extended, and offers are made and considered, according to a set of pre-determined assessment criteria, prior to the creation of a contract for the supply of the goods or services.
- (b) The legislative requirements for tendering by the Council are prescribed by section 55 of the *Local Government Act 1993* and by the *Local Government (General) Regulation 2021*. However, other legislation is also relevant to council operations and activities involved in tendering, procurement and contracts. The Council and the Registered Proprietor will comply with the legislative requirements throughout its procurement process and in accordance with the '*Tendering Guidelines for NSW Local Government*' as published from time to time by the Department of Premier and Cabinet (Local Government).
- (c) The parties will undertake a competitive procurement process for the extent of works as agreed between the parties proposed at **clause 7.2(c)(v)(A)** above. This process includes sourcing at least three written quotes from suitably qualified companies for the proposed works and evaluating those quotes in accordance with Council's pre-determined assessment criteria.

8. General Provisions

8.1 Service of Notices

A notice or other communication required or permitted to be given by one party to another must be in writing and:

- (a) delivered personally;
- (b) left or sent by pre-paid mail to:
 - (i) the address of the addressee specified in this document; or
 - (ii) the registered office of any party to be served which is a company; or
- (c) sent by email to the email address provided in **clause 8.2** or as otherwise notified to the party sending the email.

8.2 Addresses for Service

The mail and email address of each party for the purpose of service of notices is:

Council

Name: Hornsby Shire Council

Address: 296 Peats Ferry Road
Hornsby NSW 2077

T: 02 9847 6666

E: hsc@hornsby.nsw.gov.au

Representative: General Manager

Registered Proprietor/Applicant Name: Trustees of the Sisters of Mercy
(Parramatta)

Address: 2-6 Victoria Road
Parramatta NSW 2150

T: 02 9683 2555

E: congregationbursar@parrasom.org.au

8.3 Timing

A notice or other communication is taken to have been given (unless otherwise proved):

- (a) if mailed, on the third Business Day after posting; or
- (b) if sent by email, when the senders email program confirms the email was sent.

8.4 Change of Address for Service

A party may change its address for service by giving notice of that change in writing to the other parties.

8.5 Party acting as Trustee

If a party enters into this Agreement as trustee of a trust, that party and its successors as trustee of the trust will be liable under this agreement in its own right and as trustee of the trust. Nothing releases the party from any liability in its personal capacity, the party warrants that at the date of this agreement:

- (a) all the powers and discretions conferred by the deed establishing the trust are capable of being validly exercised by the party as trustee and have not been varied or revoked and the trust is a valid and subsisting trust;
- (b) the party is the sole trustee of the trust and has full and unfettered power under the term of the deed establishing the trust to enter into and be bound by this agreement on behalf of the trust and that this document is being executed and entered into as part of the due and proper administration of the trust and for the benefit of the beneficiaries of the trust;
- (c) no restriction on the party's right of indemnity out of or lien over the trust's assets exists or will be created or permitted to exist and that right will have priority over the right of the beneficiaries to the trust's assets.

8.6 Cost and Duties

- (a) All stamp duties and governmental charges arising out of or incidental to this document are the responsibility of and payable by the Council.
- (b) The Council agrees to provide LRS with all financial information to the extent that it is required to satisfy the stamp duty authority in each relevant

jurisdiction as to the calculation of the stamp duty payable (if any) in respect of this document.

- (c) Council must pay its own legal costs and disbursements in connection with the negotiation, preparation, execution, carrying into effect, enforcement and release and discharge of this Agreement, including the costs of obtaining any legal advice in connection with this Agreement,
- (d) Council must pay the costs and expenses incurred by Council in connection with the advertising and exhibition of this Agreement in accordance with the Act.
- (e) Council must bear its own administrative fees in connection with the administration of this Agreement.

8.7 Goods and Services (GST) Tax

- (a) Except where express provision is made to the contrary all amounts or other consideration payable by any party under this Agreement represent the value of any taxable supply for which payment is to be made.
- (b) If a party makes a taxable supply in connection with this Agreement for a consideration which represents its value, then the recipient of the taxable supply must also pay at the same time, and in the same manner as the value is otherwise payable, the amount of any GST payable in respect of the taxable supply.
- (c) A party's right to payment under this clause is subject to a valid tax invoice being delivered to the recipient.

8.8 Dispute Resolution

If a dispute arises out of or relates to this Agreement, a party must not commence any court or other proceedings relating to the dispute unless it has first complied with the following procedure:

- (a) the party claiming that a dispute has arisen must give written notice to the other party specifying the:
 - (i) nature of the Dispute;
 - (ii) alleged basis of the Dispute; and
 - (iii) position which the party issuing the Notice of Dispute believes is correct.
- (b) receipt of that notice by that other party, the parties must endeavour in good faith to resolve the dispute using informal dispute resolution techniques such as mediation, expert evaluation, arbitration or similar methods agreed by them;
- (c) if the parties do not agree within 20 Business Days of receipt of the notice (or such further period as the parties agree in writing) as to:
 - (i) the dispute resolution method and procedures to be adopted;
 - (ii) the timetable for all steps in those procedures; and

- (iii) the selection and compensation of the independent person required for such method,

the parties must mediate the dispute in accordance with the Mediation Rules of the Law Society of New South Wales. The President of the Law Society of New South Wales or the President's nominee or a Community Justice Centre will select the mediator and determine the mediator's remuneration.

Nothing in this **clause 8.8** will prejudice the right of a party to institute proceedings to enforce payment due under this Agreement or to seek urgent injunctive or declaratory relief in respect of a dispute or any matter arising under this Agreement.

8.9 Default

- (a) In the event a party considers another party has failed to perform and fulfil an obligation under this Agreement, it may give notice in writing to the other party (**Default Notice**) giving all particulars of the matters in respect of which it considers default has occurred and by such notice require the default to be remedied within a reasonable time not being less than 21 days.
- (b) In determining a reasonable time, regard must be had to both the nature of the default and the work or other action required to remedy it and whether or not the continuation of the default constitutes a public nuisance or raises other circumstances of urgency or emergency, imposes an undue delay on performance of this Agreement, or imposes upon the Developer additional financial burdens.
- (c) If a party disputes the Default Notice it may refer the dispute to dispute resolution under clause 11 of this Agreement.

8.10 General Enforcement

- (a) Without limiting any other remedies available to the parties, this Agreement may be enforced by any party in any Court of competent jurisdiction.
- (b) Nothing in this Agreement prevents:
 - (i) a party from bringing proceedings in the Land and Environment Court to enforce any aspect of this agreement or any matter to which this agreement relates; and
 - (ii) the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Agreement or any matter to which this Agreement relates.

8.11 Assignment

- (a) The Registered Proprietor must not assign or deal with any right under this agreement without the prior written consent of Council, which must not be unreasonably withheld. For the avoidance of doubt it is noted that, the sale or transfer of any part of the Land by the Registered Proprietor is not considered assigning or dealing with any right under this Agreement and so such sale or transfer does not require the consent of the Council where such consent is not otherwise required under this Agreement.
- (b) Any change of ownership or control (as defined in section 50AA of the Commonwealth Corporations Act 2001) of a party (excluding the Council)

shall be deemed to be an assignment of this Agreement for the purposes of this clause.

- (c) Any purported dealing in breach of this clause is of no effect.

8.12 No fetter

- (a) Discretion

This Agreement is not intended to operate to fetter, in any manner, the exercise of any statutory power or discretion of the Council, including, but not limited to, any statutory power or discretion of the Council relating to the Development Application or any other application for Development Consent (all referred to in this Agreement as a "Discretion").

- (b) No fetter

No provision of this Agreement is intended to constitute any fetter on the exercise of 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 a fetter on any Discretion, the parties agree:

- (c) They will take all practical steps, including the execution of any further documents, to ensure the objective of this clause is substantially satisfied,
- (d) In the event that (a) cannot be achieved without giving rise to a fetter on the exercise of a Discretion, the relevant provision is to be severed and the remainder of this Agreement has full force and effect, and
- (e) To endeavour to satisfy the common objectives of the parties in relation to the provision of this Agreement which is to be held to be a fetter on the extent that is possible having regard to the relevant court judgment.
- (f) Planning Certificates

The Developer acknowledges that Council may, at its discretion, include advice on any planning certificate issued under section 10.7 of the Act that this Agreement affects the Land.

8.13 Severability

- (a) If any clause or part of a clause of this document is invalid, illegal, unlawful or otherwise being incapable of enforcement, that clause or part of a clause will be deemed to be severed from this document and of no force and effect but all other clauses and parts of clauses of this document will nevertheless prevail and remain in full force and effect and be valid and fully enforceable.
- (b) No clause or part of a clause of this document will be construed to be dependent upon any other clause or part of a clause unless so expressed.

8.14 Governing Law and Jurisdiction

- (a) This document is governed by the laws of New South Wales.

- (b) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales.

8.15 Further Assurance

Each party will from time to time do all things (including executing all documents) necessary or desirable to give full effect to this document.

8.16 Counterparts

This document may be executed in any number of counterparts each of which will be an original, but such counterparts together will constitute one and the same instrument and the date of the document will be the date on which it is executed by the last party.

8.17 Amendments

This document may not be varied except in writing signed by all of the parties.

8.18 Whole Agreement

- (a) This document embodies the whole agreement between the parties relating to the subject matter of this document and supersedes any and all oral and written negotiations and communications by or on behalf of any of them.
- (b) The parties have not, in entering into this document, relied upon any warranty representation or statement, whether oral or written, made or published by any other party or any person on behalf of any other party or otherwise in connection howsoever with the subject matter of this document, except such as are expressly provided herein and subject thereto have relied entirely upon their own enquiries relating to the subject matter of this document.
- (c) The parties agree that to the extent that each of them may exclude any warranties or conditions which might otherwise be implied in connection with this document or the subject matter of this document by any competent legislation, then each party expressly excludes from application all such implied warranties and conditions.

8.19 Rights Not Affected by Failure to Enforce

The failure of either party at any time to enforce any of the provisions of this document or any rights in respect hereto or to exercise any election herein provided will not be a waiver of such provisions, rights or elections or affect the validity of this document.

EXECUTED as an Agreement

Signed on behalf of **Hornsby Shire Council**
ABN 20 706 996 972 by its authorised
delegate pursuant to section 377 of the Local
Government Act 1993 in the presence of:

Signature of witness

Signature of authorised delegate

Name of witness

Name of authorised delegate

**THE COMMON SEAL of Trustees of the
Sisters of Mercy (Parramatta) ABN 30
161 863 296** was hereunto affixed in
pursuance of a resolution passed at a
meeting of the said Body Corporate and this
document is signed by the Congregation
Leader and two other members thereof all
of whose signatures are set opposite
hereto:

Congregation Leader
Name (please print):

Member
Name (please print):

Member
Name (please print):

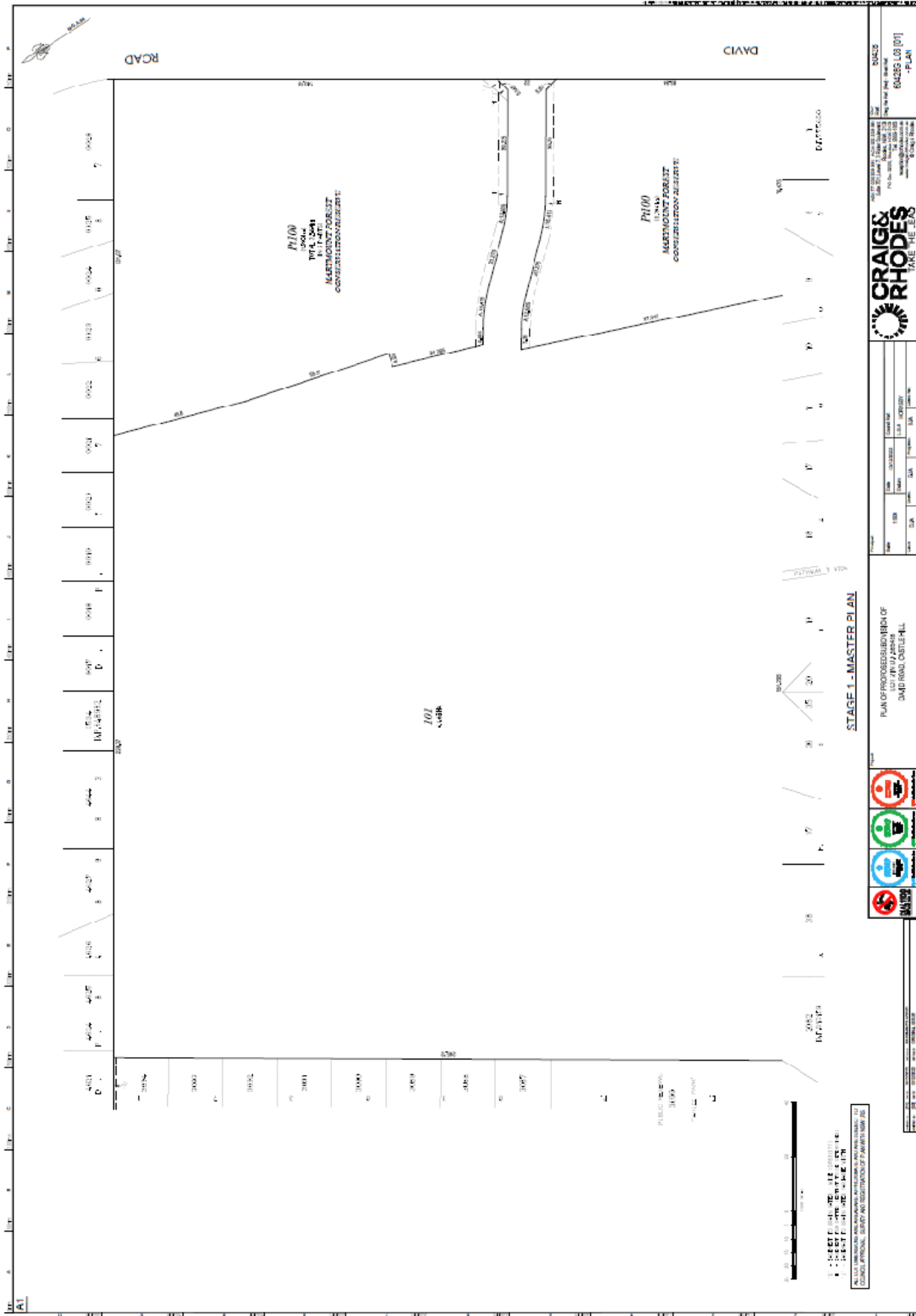
Annexure A

Environment Planning and Assessment Act 1979

Requirements of a Planning agreement	Clause addressing
<p>Section 7.4(1)</p> <p>Requires the developer seeking the planning agreement to dedicate land free of cost, pay a monetary contribution OR provide any other material public benefit, or any combination of them, to be used for or applied toward a public purpose</p>	<p>Registered Proprietor Contribution – clause 7.</p> <p>Dedication and Transfer Land as defined throughout the Agreement, but names specifically:</p> <ul style="list-style-type: none"> (a) Tahlee Park Extension; (b) Marymount Forest; and (c) The Roads and Infrastructure.
<p>Section 7.4(2)(a) – (f)</p> <p>A public purpose includes (without limitation) any of the following:</p> <ul style="list-style-type: none"> (a) the provision of (or the recoupment of the cost of providing) public amenities or public services; (b) the provision of (or the recoupment of the cost of providing) affordable housing; (c) the provision of (or the recoupment of the cost of providing) transport or other infrastructure relating to land; (d) the funding of recurrent expenditure relating to the provision of public amenities or public services, affordable housing or transport or other infrastructure; (e) the monitoring of the planning impacts of development; (f) the conservation or enhancement of the natural environment. 	<p>The public purpose are set out in clause 2.</p>
<p>Section 7.4(3)(a)</p> <p>A description of the land to be provided.</p>	<p>Summary sheet and Annexures where plans will be inserted.</p>
<p>Section 7.4(3)(b)(i)-(ii)</p> <p>A description of the change to the environmental planning instrument that the agreement applies, OR a description of the development to which the agreement applies.</p>	<p>Entire agreement.</p>
<p>Section 7.4(3)(c)</p> <p>The nature and extent of the provision to be made by the developer under the agreement, the time or times by which the provision is to be made and the manner by which the provision is to be made.</p>	<p>Entire Agreement.</p>

Requirements of a Planning agreement	Clause addressing
<p>Section 7.4(3)(d)</p> <p>In the case of developments, whether the agreement excludes (wholly or part) or does not exclude the application of s 7.11, 7.12 or 7.24.</p>	Clause 7
<p>Section 7.4(3)(e)</p> <p>If agreement does not exclude the application of section 7.11 to the development, the planning agreement must include whether benefits under the agreement are or are not to be taken into consideration in determining a development contribution under section 7.11.</p>	Benefits under this Agreement must be taken into consideration in determining a development contribution under s. 7.11 of the Act.
<p>Section 7.4(3)(f)</p> <p>Must include a mechanism for dispute resolution under the agreement.</p>	Clause 8.8.
<p>Section 7.4(3A)</p> <p>A planning agreement cannot exclude the application of section 7.11 or 7.12 in respect of development unless consent authority for the development or the Minister is a party to the agreement.</p>	See clause 7.
<p>Section 7.11(1) – (1)(b)</p> <p>If a consent authority is satisfied that development for which development consent is sought will or is likely to require the provision of or increase the demand for public amenities and public services within the area the consent authority may grant the development consent subject to a condition requiring:</p> <p>(a) The dedication of land free of cost; or</p> <p>(b) The payment of a monetary contribution, or both</p>	For the council to determine but also provided in clause 7 – Registered Proprietor Contribution.
<p>Section 7.12(1) –(2)</p> <p>A consent authority may impose, as a condition of development consent, a requirement that the applicant pay a levy of the percentage, authorised by a contributions plan, of the proposed cost of carrying out the development.</p> <p>A consent authority cannot impose as a condition of the same development consent a condition under this section as well as a condition under section 7.11.</p>	Clause 7 – for the council to decide also. BDAR re biodiversity credits.

Annexure B – Stage 1 Plan



Annexure D - Contributions Table

COLUMN 1	COLUMN 2	COLUMN 3	COLUMN 4
Item No / Details	Public Purpose	Timing	Estimated Contribution Value \$
A. Dedication of Land			
1. Local Open Space Marymount Forest consisting of approximately 2.389 hectares of land, shown as Lot 100 in the Stage 1 Plan	Public Open Space (Conservation Reserve)	Within 14 Business Days of receipt of the Subdivision Certificate associated with Stage 1	
2. Local Open Space Tahlee Park Extension consisting of approximately 3315 sqm, shown as Lot 65 in the Stage 2 Plan; and	Public Open Space (Public Recreation)	Within 14 Business Days of receipt of the Subdivision Certificate associated with Stage 2	
3. Local Road The Roads and Infrastructure (in Stage 2 Plan).	Roads and traffic management	Within 14 Business Days of receipt of the Subdivision Certificate associated with Stage 2	
B Registered Proprietor Contribution			
1. An amount of \$750,000 as a contribution toward the provision of elevated boardwalk, pathway infrastructure, educational signage, and ancillary works to be erected by Council within the Marymount Forest Conservation Reserve	Public recreation and infrastructure	No later than receipt of the construction certificate for Stage 2.	\$750,000

<p>2. An amount of \$918,000 to be held by Council in trust to cover the cost of on-going conservation and maintenance of the Marymount Forest Conservation Reserve for a period of 20 years.</p>	<p>Public recreation and infrastructure</p>	<p>No later than receipt of the construction certificate for Stage 2.</p>	<p>\$918,000</p>
---	---	---	------------------

C Section 7.11 Contributions (Stage 2)

<p>1. An amount to be disclosed in development consent conditions</p>	<p>In accordance with Council policy</p>	<p>No later than receipt of Subdivision Certificate for Stage 2.</p>	
---	--	--	--