



ATTACHMENTS

GENERAL MEETING

**Wednesday 9 August 2023
at 6:30PM**



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CORPORATE SUPPORT DIVISION

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ATTACHMENT/S

REPORT NO. CS49/23

ITEM 3

- 1. HSC INVESTMENT SUMMARY REPORT JUNE 2023
(PRE-AUDIT)**
- 2. HSC BORROWINGS SUMMARY REPORT JUNE 2023
(PRE-AUDIT)**



Investment Summary Report
June 2023

ATTACHMENT 1 - ITEM 3

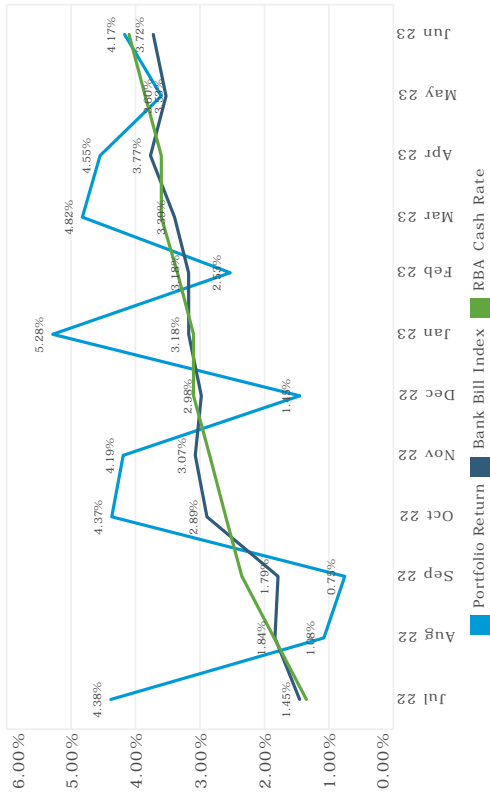
Hornsby Shire Council Executive Summary - June 2023



Investment Holdings

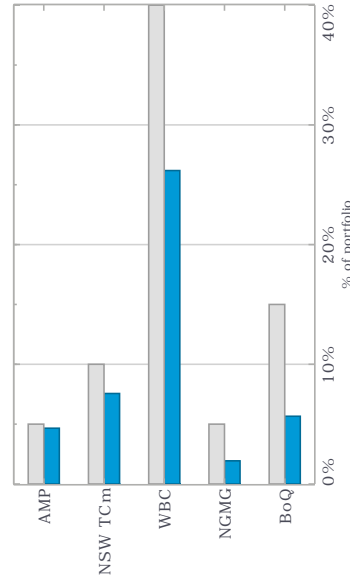
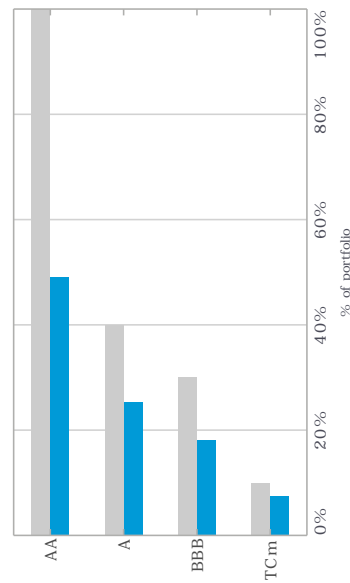
	Face Value (\$)	Current Value (\$)	Current Yield (%)	FYTD Yield (%)
Cash	33,321,501	33,321,501	4.1773	2.8629
Floating Rate Note	63,850,000	63,790,186	4.8481	3.4920
Floating Rate Term Deposits	60,000,000	60,185,215	5.1345	3.7629
Managed Funds	22,310,053	22,310,053	1.8557	6.0867
Term Deposit	115,630,900	116,908,894	3.9471	2.7607
	295,112,454	296,515,848	4.1695	3.4289

Investment Performance



Investment Policy Compliance

Individual Institutional Exposures



Total Credit Exposure

Term to Maturities

	Face Value (\$)	Policy Max*
Between 0 and 0.25 years	123,371,501	42%
Between 0.25 and 1 years	73,580,900	25%
Between 1 and 2 years	12,700,000	4%
Between 2 and 5 years	85,460,053	29%
	295,112,454	50%

* Council always retains the flexibility to invest as short as required by internal requirements or the economic outlook



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Hornsby Shire Council Investment Holdings Report - June 2023



Cash Accounts						
	Face Value (\$)	Current Rate (%)	Institution	Credit Rating		Current Value (\$)
	5,102,889.23	4.0000%	Bendigo and Adelaide Bank	BBB+		5,102,889.23
	5,253,870.45	4.5500%	AMP Bank	BBB		5,253,870.45
	6,146,055.17	4.5500%	Westpac Group	AA-		6,146,055.17
	6,701,180.12	4.2000%	Bank of Queensland	BBB+		6,701,180.12
	10,117,505.65	3.8316%	Macquarie Bank	A+		10,117,505.65
	33,321,500.62	4.1773%				33,321,500.62
Managed Funds						
	Face Value (\$)	Current Rate (%)	Institution	Credit Rating	Funds Name	Current Value (\$)
	22,310,052.91	1.8557%	NSW T-Corp (MT)	TCm	Medium Term Growth Fund	22,310,052.91
	22,310,052.91	1.8557%				22,310,052.91
Term Deposits						
Purchase Date	Maturity Date	Term Days	Face Value (\$)	Current Rate (%)	Institution	Credit Rating
5-Apr-23	5-Jul-23	91	5,000,000.00	4.5000%	Macquarie Bank	A+
3-May-23	5-Jul-23	63	3,000,000.00	4.1500%	Bendigo and Adelaide Bank	BBB+
12-Jan-23	12-Jul-23	181	4,000,000.00	4.0300%	Suncorp Bank	A+
10-May-23	9-Aug-23	91	3,000,000.00	4.6800%	Suncorp Bank	A+
17-May-23	16-Aug-23	91	3,000,000.00	4.6800%	Suncorp Bank	A+
22-Aug-22	22-Aug-23	365	50,000.00	3.0000%	Westpac Group	AA-
24-May-23	23-Aug-23	91	3,000,000.00	4.6800%	Suncorp Bank	A+
1-Oct-20	4-Oct-23	1098	5,000,000.00	0.9500%	Bank of Queensland	BBB+
18-Jan-23	18-Oct-23	273	5,000,000.00	4.4900%	National Australia Bank	AA-
19-Apr-23	18-Oct-23	182	4,000,000.00	4.9000%	AMP Bank	BBB
26-Jun-23	26-Dec-23	183	80,900.00	3.3000%	Westpac Group	AA-
23-Feb-22	21-Feb-24	728	5,000,000.00	1.8000%	National Australia Bank	AA-
28-Feb-23	28-Feb-24	365	5,000,000.00	5.0200%	Commonwealth Bank of Australia	AA-
						5,084,583.56



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Hornsby Shire Council Investment Holdings Report - June 2023



Purchase Date	Maturity Date	Term Days	Face Value (\$)	Current Rate (%)	Institution	Credit Rating	Book Value (\$)	Current Value (\$)
1-Mar-23	1-Mar-24	366	4,000,000.00	4.8800%	Westpac Group	AA-	4,000,000.00	4,065,244.93
19-Mar-19	6-Mar-24	1814	10,000,000.00	3.0000%	Rabobank Australia	A+	10,000,000.00	10,084,657.53
19-Mar-19	13-Mar-24	1821	9,000,000.00	3.0000%	Rabobank Australia	A+	9,000,000.00	9,076,191.78
14-Mar-23	14-Mar-24	366	5,000,000.00	4.7500%	ING Bank (Australia)	A	5,000,000.00	5,070,924.66
19-Apr-23	17-Apr-24	364	4,500,000.00	4.9500%	AMP Bank	BBB	4,500,000.00	4,544,550.00
2-Jun-23	3-Jun-24	367	5,000,000.00	5.1000%	ING Bank (Australia)	A	5,000,000.00	5,020,260.27
21-Jun-23	21-Jun-24	366	5,000,000.00	5.6100%	Bank of Queensland	BBB+	5,000,000.00	5,007,684.93
7-Apr-21	7-Apr-25	1461	3,000,000.00	1.0000%	National Australia Bank	AA-	3,000,000.00	3,006,657.53
6-Feb-23	7-Feb-28	1827	5,000,000.00	4.1200%	Westpac Group	AA-	5,000,000.00	5,081,835.62
6-Feb-23	7-Feb-28	1827	10,000,000.00	4.0900%	Westpac Group	AA-	10,000,000.00	10,162,479.45
6-Feb-23	7-Feb-28	1827	10,000,000.00	4.1300%	Westpac Group	AA-	10,000,000.00	10,164,068.49
			115,630,900.00	3.9471%			115,630,900.00	116,908,894.50

Floating Rate Term Deposits

Purchase Date	Maturity Date	Term Days	Face Value (\$)	Current Rate (%)	Institution	Credit Rating	Purchase Price (\$)	Current Value (\$)
3-Sep-18	3-Sep-23	1826	15,000,000.00	5.0526%	Westpac Group BBSW+0.98%	AA-	15,000,000.00	15,053,986.68
4-Sep-18	4-Sep-23	1826	15,000,000.00	5.0726%	ANZ Banking Group BBSW+1.00%	AA-	15,000,000.00	15,054,200.38
10-Sep-18	11-Sep-23	1827	15,000,000.00	5.1965%	Westpac Group BBSW+0.98%	AA-	15,000,000.00	15,038,439.86
12-Sep-18	12-Sep-23	1826	15,000,000.00	5.2165%	ANZ Banking Group BBSW+1.00%	AA-	15,000,000.00	15,038,587.81
			60,000,000.00	5.1345%			60,000,000.00	60,185,214.73

Floating Rate Notes

Purchase Date	Maturity Date	Term Days	Face Value (\$)	Current Rate (%)	Security Name	Credit Rating	Book Value (\$)	Current Value (\$)
26-Sep-18	26-Sep-23	1826	9,000,000.00	5.2472%	NAB Smr FRN (Sep23) BBSW+0.93%	AA-	9,034,920.00	9,018,012.46
16-Nov-18	16-Nov-23	1826	7,000,000.00	4.8622%	WBC Smr FRN (Nov23) BBSW+0.95%	AA-	7,024,640.00	7,055,423.93



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Hornsby Shire Council Investment Holdings Report - June 2023



Purchase Date	Maturity Date	Term Days	Face Value (\$)	Current Rate (%)	Security Name	Credit Rating	Book	Value (\$)	Current Value (\$)
24-Oct-19	24-Oct-24	1827	1,500,000.00	4.8032%	GSB Snr FRN (Oct24) BBSW+ 1.12%	BBB		1,502,910.00	1,514,562.64
4-Feb-20	4-Feb-25	1827	4,200,000.00	4.9920%	NPBS Snr FRN (Feb25) BBSW+ 1.12%	BBB		4,183,872.00	4,227,352.47
11-Mar-22	17-Mar-25	1096	4,000,000.00	5.2953%	BEN Snr FRN (Mar25) BBSW+ 0.98%	BBB+		3,997,640.00	4,008,963.68
16-Aug-22	22-Aug-25	1096	1,200,000.00	4.8467%	SUN Snr FRN (AUG25) BBSW+ 0.93%	A+		1,200,000.00	1,207,993.74
2-Dec-20	2-Dec-25	1826	3,400,000.00	4.5417%	BEN Snr FRN (Dec25) BBSW+ 0.52%	BBB+		3,320,984.00	3,370,108.81
9-Dec-20	9-Dec-25	1826	10,000,000.00	4.6867%	MAC Snr FRN (Dec25) BBSW+ 0.48%	A+		9,776,443.50	9,949,027.50
24-Feb-21	24-Feb-26	1826	2,100,000.00	4.3730%	SUN Snr FRN (Feb26) BBSW+ 0.45%	A+		2,047,584.00	2,085,263.70
18-Aug-21	24-Aug-26	1826	4,700,000.00	4.3330%	NAB Snr FRN (Aug26) BBSW+ 0.41%	AA-		4,592,840.00	4,671,523.02
9-Sep-21	15-Sep-26	1826	4,250,000.00	4.7160%	SUN Snr FRN (Sep26) BBSW+ 0.48%	A+		4,129,002.50	4,194,908.47
21-Sep-21	23-Dec-26	1917	6,000,000.00	4.7313%	CBA Green Snr FRN (Dec26) BBSW+ 0.41%	AA-		5,850,960.00	5,934,221.98
7-Feb-22	10-Feb-27	1826	1,500,000.00	4.8774%	NPBS Snr FRN (Feb27) BBSW+ 1.00%	BBB		1,460,115.00	1,479,747.94
9-Nov-22	11-Nov-27	1826	5,000,000.00	5.1043%	WBC Snr FRN (Nov27) BBSW+ 1.23%	AA-		5,000,000.00	5,073,075.18
			63,850,000.00	4.8481%				63,121,911.00	63,790,185.52
Total Investments									Current Value (\$)
			295,112,453.53						296,515,848.28

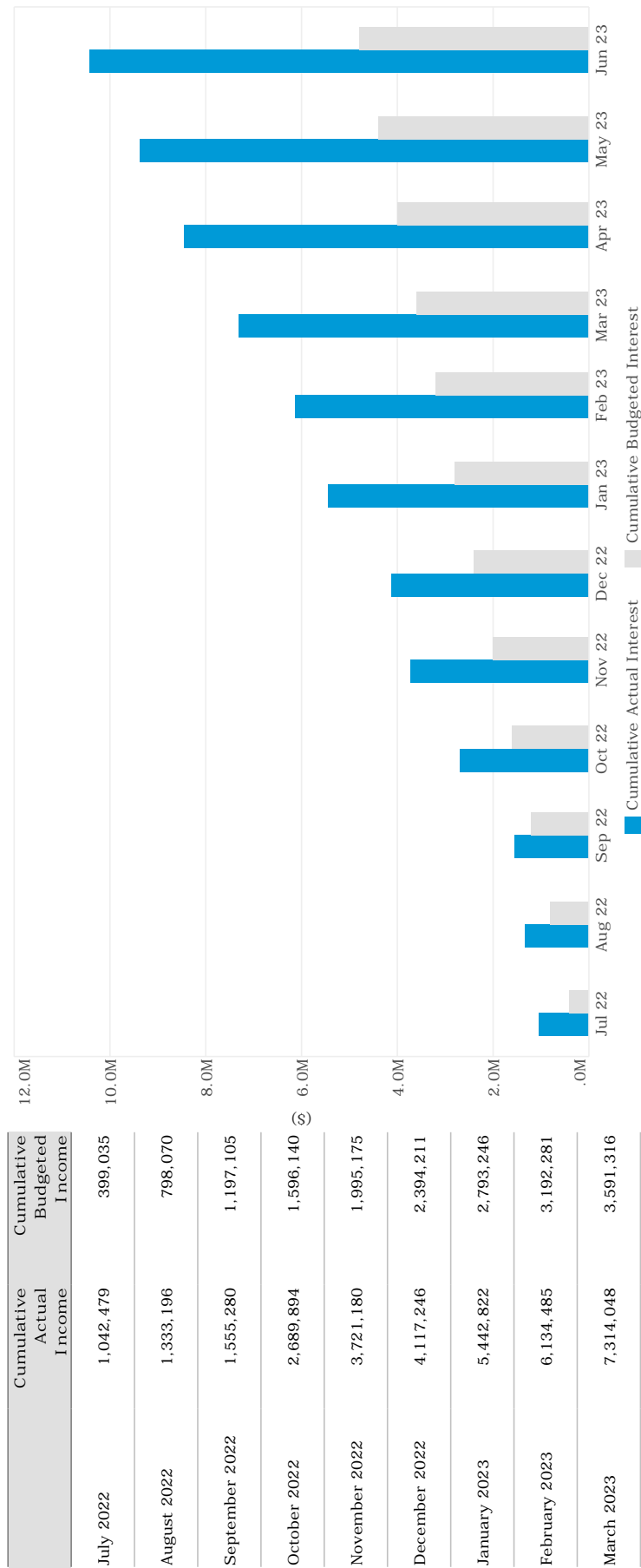


ATTACHMENT 1 - ITEM 3



Hornsby Shire Council Investment Budget Report - June 2023

Budgeted vs Actual Returns



ATTACHMENT 1 - ITEM 3

Hornsby Shire Council

Environmental Commitments Report - June 2023



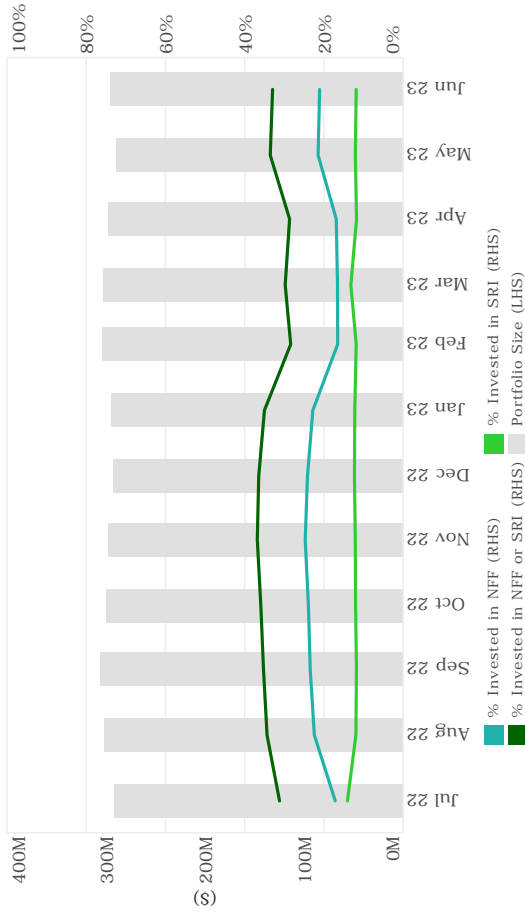
Current Breakdown

Historical Portfolio Exposure to NFF Lending ADIs and SRI's

ADI Lending Status *	Current Month (\$)	Previous Month (\$)
Fossil Fuel Lending ADIs		
AMP Bank	13,753,870	13,734,724
ANZ Group	30,000,000	30,000,000
Bank of Queensland	16,701,180	11,678,400
Commonwealth Bank of Australia	5,000,000	5,000,000
ING Bank Australia	10,000,000	5,000,000
Macquarie Bank	25,117,506	25,086,286
National Australia Bank	26,700,000	31,700,000
Westpac Group	48,276,955	48,173,992
	175,549,511	170,373,403
Non Fossil Fuel Lending ADIs		
Bendigo and Adelaide Bank	15,502,889	15,486,376
Great Southern Bank	1,500,000	1,500,000
Newcastle Greater Mutual Group	5,700,000	5,700,000
Rabobank Australia	19,000,000	19,000,000
Suncorp Bank	20,550,000	20,550,000
	62,252,889	62,236,376
Other		21%
NSW T-Corp (MT)	22,310,053	22,276,363
	22,310,053	22,276,363
Socially Responsible Investment		
CBA (Green)	6,000,000	6,000,000
Westpac Group (Green TD)	29,000,000	29,000,000
	35,000,000	35,000,000
	295,112,454	289,886,141

* source: Marketforces

Percentages may not add up to 100% due to rounding



Green Products Summary

	Current Month (\$)	Previous Month (\$)
Bendigo and Adelaide Bank	15,502,889	15,486,376
CBA (Green)	6,000,000	6,000,000
Great Southern Bank	1,500,000	1,500,000
Newcastle Greater Mutual Group	5,700,000	5,700,000
Rabobank Australia	19,000,000	19,000,000
Suncorp Bank	20,550,000	20,550,000
Westpac Group (Green TD)	29,000,000	29,000,000
	97,252,889	97,236,376
	295,112,454	289,886,141
		34%

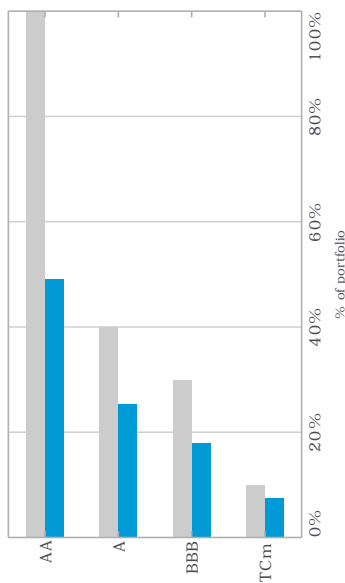


ATTACHMENT 1 - ITEM 3

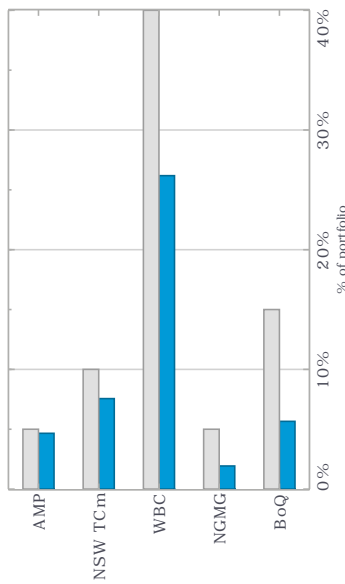


Hornsby Shire Council Investment Policy Compliance Report - June 2023

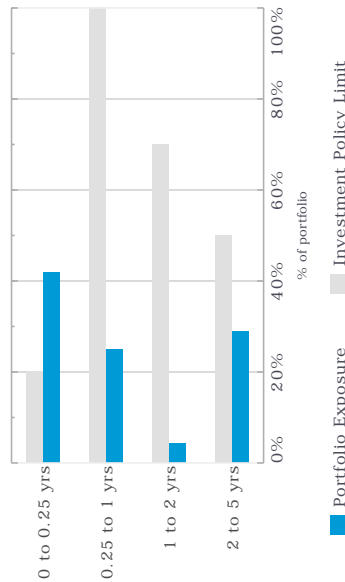
Total Credit Exposure



Individual Institutional Exposures



Term to Maturities



Credit Rating Group	Face Value (\$)	Policy Max
AA	144,976,955	49% 100% a
A	74,667,506	25% 40% a
BBB	53,157,940	18% 30% a
TCm	22,310,053	8% 10% a
	295,112,454	

Institution	% of portfolio	Investment portfolio Policy Limit
AMP Bank (BBB)	5%	5% a
NSW T-Corp (TCm)	8%	10% a
Westpac Group (AA-)	26%	40% a
Newcastle Greater Mutual Group (BBB)	2%	5% a
Bank of Queensland (BBB+)	6%	15% a
Bendigo and Adelaide Bank (BBB+)	5%	15% a
Macquarie Bank (A+)	9%	30% a
ANZ Group (AA-)	10%	40% a
Suncorp Bank (A+)	7%	30% a
National Australia Bank (AA-)	9%	40% a
Rabobank Australia (A+)	6%	30% a
ING Bank Australia (A)	3%	30% a
Great Southern Bank (BBB)	1%	5% a

	Face Value (\$)	Policy Max*
Between 0 and 0.25 years	123,371,501	42% 20%
Between 0.25 and 1 years	73,580,900	25% 100%
Between 1 and 2 years	12,700,000	4% 70%
Between 2 and 5 years	85,460,053	29% 50%
	295,112,454	

* Council always retains the flexibility to invest as short as required by internal requirements or the economic outlook

Specific Sub Limits	
BBB+	32,204,069 11% 30% a
BBB	20,953,870 7% 10% a

a = compliant
r = non-compliant



ATTACHMENT 1 - ITEM 3



HORNSBY SHIRE COUNCIL SCHEDULE OF BORROWINGS AS AT 30 JUNE 2023

1. LOANS	Lender	Date Drawn	Maturity Date	\$'000 Amount Borrowed	\$'000 01/07/2022 Opening Balance	\$'000 2022/23 YTD Repayments Principal	\$'000 Closing Balance	% Fixed Interest Rate
Westpac(SI)		26-Jun-13	25-Jun-23	2000	257	257	-	5.89

2. OPERATING LEASES	Lessor	Date Executed	Expiry date	\$'000 Total Lease Payments	\$'000 01/07/2022 Opening Balance	\$'000 New Leases	2022/2023 Repayments YTD	\$'000 Closing Balance
Vestone Capital Pty Ltd - previously known as Macquarie Equipment Finance (107)		22-Sep-17	15-Aug-22	56	3		3	0
Vestone Capital Pty Ltd - previously known as Macquarie Equipment Finance (108)		15-Aug-18	15-Aug-22	242	14		14	0
Vestone Capital Pty Ltd - previously known as Macquarie Equipment Finance (109)		15-Aug-18	15-May-23	85	17		17	0
Vestone Capital Pty Ltd - previously known as Macquarie Equipment Finance (110)		15-Nov-18	15-Aug-22	26	2		2	0
Vestone Capital Pty Ltd - previously known as Macquarie Equipment Finance (111)		15-Nov-18	15-Aug-23	632	158		126	32
Vestone Capital Pty Ltd - previously known as Macquarie Equipment Finance (113)		15-Feb-19	15-Aug-22	11	1		1	0
Vestone Capital Pty Ltd - previously known as Macquarie Equipment Finance (114)		15-May-19	15-Aug-23	15	4		3	1
Vestone Capital Pty Ltd - previously known as Macquarie Equipment Finance (115)		23-Aug-19	15-May-24	119	47		24	24
Vestone Capital Pty Ltd - previously known as Macquarie Equipment Finance (116)		15-Feb-20	15-May-26	14	5		4	1
Vestone Capital Pty Ltd - previously known as Macquarie Equipment Finance (118)		15-Aug-22	15-May-26	34	0	34	9	25
Vestone Capital Pty Ltd - previously known as Macquarie Equipment Finance (119)		15-Nov-22	15-Aug-27	64	0	64	10	54
Vestone Capital Pty Ltd - previously known as Macquarie Equipment Finance (101)ex		15-Feb-21	15-May-22	51	3	month to month lease extension	3	0
Vestone Capital Pty Ltd - previously known as Macquarie Equipment Finance (103)ex		15-Feb-21	15-May-22	19	2	month to month lease extension	2	0
Canon Finance Australia Pty Ltd		15-Nov-17	1-Nov-22	109	9		9	0
*McDonalds - Central Ave Lease		12-Apr-21	11-Apr-24	1538	400	530	516	414
TOTAL				3,014	665	629	743	550

*McDonalds lease has been extended to 11 April 24.
 - Rent for the period of 12 April 2022 to 11 April 2023 is \$42,693.75 including GST per month.
 - Rent increases to \$44,188.03 including GST per month from 12 April 2023 to 11 April 2024

3. DEBT SERVICE RATIO	Ratio %
Year ended Jun 22	0.16
Year ended Jun 21	0.31
Year ended Jun 20	0.61
Year ended Jun 19	0.78
Year ended Jun 18	1.08

Debt Service Ratio =	Debt Service Cost
	Revenue from Continuing Operations excluding Capital Items & Specific Purpose Grants/Contributions

ATTACHMENT 2 - ITEM 3

ATTACHMENT/S

REPORT NO. CE9/23

ITEM 6

**1. COMMUNITY EVENTS GRANTS PROGRAM -
APPLICATION SUMMARY**

Nominee & Event	Submission Summary	Community Benefit	Existing Event	Estimated attendance	Event Budget	Amount Requested from Council	Org. in LGA	Ward
Friends of Berowra Valley Inc. Berowra Fauna Fair	<ul style="list-style-type: none"> Held inaugural Berowra Fauna Fair event in February 2022, fun Funded by Friends of Berowra Valley Inc. supported by FATS (Frog and Tadpole Study Group), Birdlife Australia, Cattai Hills Environment Network Sydney Wildlife Rescue, Kids Connecting Nature, Hills-Hornsby Rural Koala Project, and Martyn Robinson (ex-Australia Museum) and Hornsby Shire Council. Seeking funding to assist with obtaining a greater variety of speakers/stall holders and children's activity. To be held at Berowra Community Centre. 	Promote the value of and connect people with the natural environment and groups associated with its care.	Events held in 2022, 2023.	200-400	\$4,162	Up to 7,000	Yes	A
Recommendation	<ul style="list-style-type: none"> Event is recommended for funding in 2024, however limiting at \$3,000 as per guidelines accompanying policy. Beyond 2024 event, this applicant should be encouraged to apply for multi-year funding rather than Place Activation Grant 							

ATTACHMENT 1 - ITEM 6

Nominee & Event	Submission Summary	Community Benefit	Existing Event	Estimated attendance	Event Budget	Amount Requested from Council	Org. in LGA	Ward
2077 After Dark Hornsby Chamber of Commerce	<ul style="list-style-type: none"> Launch of 'Vocal about local' program which promotes local night-time economy, with funding to be used for digital/print marketing to draw residents and visitors to town centre Applicant is recipient of Uptown Grants program - \$200k 	Event promotes and supports local town centre and businesses in Hornsby CBD	No	N/A	\$5,000	\$3,000	Yes	B
Recommendation	<ul style="list-style-type: none"> Program criteria is met and funding is recommended. It is noted that in addition to a \$200,000 NSW Government Grant the 2077 After Dark project is also the recipient of in-kind support from Council including staff time/assistance from our place making team and additional marketing/promotional support. 							
Multicultural Concert Cherrybrook Chinese Community Association	<ul style="list-style-type: none"> Festival and stage show featuring arts and cultural performances from various ethnic groups, diverse instruments and school band groups 	Supporting local community performance groups and vendors, celebrating diversity of LGA	No	150	\$3,000	\$3,000	Yes	C
Recommendation	<ul style="list-style-type: none"> Event is unable to be recommended for funding due to incomplete application Invite applicant to apply in future round 							

ATTACHMENT 1 - ITEM 6

Nominee & Event	Submission Summary	Community Benefit	Existing Event	Estimated attendance	Event Budget	Amount Requested from Council	Org. in LGA	Ward
Christmas Celebration for Russian-speaking community RCG Dance and Music group	<ul style="list-style-type: none"> Christmas celebration/puppet show for children and families in Russian-speaking community Event to be held at Beatrice Taylor Hall Funding request to cover costs so that attendees do not need to purchase tickets 	Supporting specific cultural group	No	100 - 300	\$3,000	\$3,000	Yes	A
Recommendation	<ul style="list-style-type: none"> Event does not appear to be accessible to the broader, non-Russian speaking community Event not recommended for funding due to restrictive nature of event Invite participant to re-apply in future round and open attendance capacity up to wider community 							
Fagan Park Carols by Candlelight The Social Factory	<ul style="list-style-type: none"> New event, community-inspired and open to all, focusing on utilising local resources, performers and charity organisations as well as local schools Event is a test run for proposed wider concert series 	Supporting local businesses and artists, large possibility for community participation	No	1,500	\$3,000	\$3,000	LGA	A
Recommendation	<ul style="list-style-type: none"> Event not recommended for funding as it is understood that the applicant is a commercial entity, Council's guidelines specify that applicants must be a not-for-profit organisation 							

ATTACHMENT 1 - ITEM 6

ATTACHMENT/S

REPORT NO. PC16/23

ITEM 7

- 1. EXPLANATORY NOTE**
- 2. PLANNING AGREEMENT**
- 3. VPA - LAND ACQUISITION PLAN**
- 4. VPA - PLAN OF ROAD WORKS**

Explanatory Note
Hornsby Shire Council and Goldmap Two Pty Ltd
Planning Agreement – 90-92 Franklin Road, Cherrybrook

Introduction

This Explanatory Note has been prepared jointly between the parties in accordance with clause 205 of the *Environmental Planning & Assessment Regulation 2021* (NSW).

The purpose of this explanatory note is to provide a plain English summary to support the notification of the draft voluntary planning agreement (the **Planning Agreement**) prepared under Subdivision 2 of Division 7.1 of Part 7 of the *Environmental Planning and Assessment Act 1979* (the **Act**).

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

Parties to the Planning Agreement

The parties to the Planning Agreement are Goldmap Two Pty Limited ABN 45 621 535 653 (the **Developer**) and Hornsby Shire Council ABN 20 706 996 972 (the **Council**).

Description of the Subject Land

The Planning Agreement applies to Lot 18 in Deposited Plan 16975 known as 90-92 Franklin Road, Cherrybrook NSW 2126 (**Land**).

Description of the Proposed Development

The Planning Agreement applies to the development (as generally described in DA/1146/2020) comprising of the subdivision of the Land into nine (9) residential lots, and one further lot (being Lot 1 in a plan of subdivision) currently zoned R2 Residential (Low Density) and identified as future road reserve under the *Hornsby Local Environmental Plan 2013* that has, or will, be acquired by Council under a separate contract of sale between Council and the Developer (**Proposed Development**).

Summary of Objectives, Nature and Effect of the Planning Agreement

The **objective** of the Planning Agreement is to provide community infrastructure by facilitating the construction and delivery of necessary road infrastructure so that the community does not need to bear that cost, and thereby provide a major benefit to road users and the community at large.

The **intent** and **effect** of the Planning Agreement is to facilitate the timely delivery of civil road and drainage works on the part of the Land reserved for Local Road at John Road and Franklin Road, Cherrybrook (at an estimated cost \$500,000) in lieu of paying Section 7.11 contributions applicable to the Proposed Development (**Works**).

The Works will be completed by professional contractors in accordance with Hornsby Shire Council's standards, policies, procedures and approvals and delivered either on the date which is twelve (12) months after the issue of a Subdivision Works Certificate for the Proposed Development or the issue of a subdivision certificate with respect to the Proposed Development (whichever occurs earlier).

The Developer will be required to:

- (1) provide financial security prior to completion of the Works (by way of bank guarantee) for an amount equivalent to ten percent (10%) of the indexed contribution value of the Works (the relevant contribution value being \$500,000 as at the date of the Planning Agreement) to secure the cost for the rectification of any defects in the Works up to a period of twelve (12) months after completion; and
- (2) register the Planning Agreement on the title to the Land in accordance with section 7.6 of the Act.

Council will be able to withhold Subdivision Certificates and Occupation Certificates in connection with the Proposed Development until such time as those Works are delivered.

Upon completion of the Works, the relevant road will be trafficable subject to acquisition by the Council and dedication as a public road.

The **nature** of the Planning Agreement is a contractual relationship between the Council and the Developer to facilitate the provision of the Works as development contributions in connection with the Proposed Development.

Assessment of Merits of Planning Agreement

The Public Purposes Served by the Planning Agreement

In accordance with section 7.4(2) of the Act, the Planning Agreement has the following public purpose:

- The provision of (or the recoupment of the cost of providing) transport or other infrastructure relating to land.

The Council and the Developer have assessed the Planning Agreement and both hold the view that the provisions of the Planning Agreement provide a reasonable means of achieving the public purpose set out above.

How the Planning Agreement Promotes the Public Interest

The Planning Agreement promotes the public interest by achieving the objectives of the Act by promoting:

- certainty for the Developer and Council as to the provision of development contributions directed towards community infrastructure within the Cherrybrook community;
- the social and economic welfare of the community by requiring construction of local infrastructure as determined by the General Manager of Council from time to time;
- delivery of infrastructure, facilities and services to satisfy needs of the community including those that arise from the Proposed Development; and
- the orderly and economic use and development of land and good design and amenity of the built environment by ensuring improved infrastructure.

How the Planning Agreement promotes Council's guiding principles

The Planning Agreement promotes a number of Council's guiding principles under section 8A of the *Local Government Act 1993* (NSW), as follows:

- The exhibition of the Planning Agreement facilitates the involvement of members of the public in the consultation process for the Planning Agreement.
- To plan strategically for the provision of effective and efficient services and regulation to meet the diverse needs of the local community.
- To act fairly, ethically and without bias to the interests of the local community.
- To have regard to the long term and cumulative effects of its decisions on future generations.
- To engage in long-term strategic planning on behalf of the local community.
- To bear in mind that it is the custodian and trustee of public assets and to effectively plan for, account for and manage the assets for which it is responsible.
- The Planning Agreement makes it clear that Council has a statutory role as consent authority in relation to the Proposed Development and that the Planning Agreement is not intended to unlawfully influence the exercise of Council's regulatory functions.

Whether the Agreement Conforms with Council's Capital Works Program

The Planning Agreement does not conform to Council's capital works program.

Requirements relating to Construction, Occupation and Subdivision Certificates

The Planning Agreement specifies standards as to construction of the roads infrastructure with which the Developer must comply prior to the issue of a subdivision works certificate or final subdivision certificate under the Act (as relevant) for the Proposed Development.

Planning Agreement
90-92 Franklin Road, Cherrybrook

Hornsby Shire Council (ABN 20 706 996 972) (**Council**)

Goldmap Two Pty Limited (ABN 45 621 535 653) (**Developer**)

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Planning Agreement

90-92 Franklin Road, Cherrybrook

Parties

Council	Name	Hornsby Shire Council
	Address	296 Peats Ferry Road Hornsby NSW 2077
	ABN	20 706 996 972
	Phone	(02) 9847 6666
	Email	hsc@hornsby.gov.au
Developer	Name	Goldmap Two Pty Limited
	Address	26 Brunette Drive Castle Hill NSW 2154
	ABN	45 621 535 653
	Phone	0431 992 258
	Email	mw.sydney.au@gmail.com

Background

- A** The Developer owns the Land.
- B** The Developer wishes to carry out the Development.
- C** The Developer has applied for the Development Consent.
- D** The Developer has agreed to make the Contributions in connection with the Development on and subject to the terms of this document.

Operative Provisions

1 Agreement

The agreement of the parties is set out in the Operative Provisions of this document, in consideration of, among other things, the mutual promises contained in this document.

2 Definitions

2.1 Defined Terms

In this document, words beginning with a capital letter that are defined in Part 1 of **Schedule 2** have the meaning ascribed to them in that schedule.

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2.2 Interpretation

The interpretational rules contained in Part 2 of **Schedule 2** apply in the interpretation of this document.

3 Application and operation of document

3.1 Planning Agreement

This document is a planning agreement:

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

3.2 Application

This document is made in respect of the Development and applies to both the Land and the Development.

3.3 Operation

This document operates:

- (1) as a deed from the date that it is executed by both parties; and
- (2) as a planning agreement for the purpose of the Act from the date that the Development Consent becomes operative.

4 Application of s7.11 & s7.12

4.1 Application

This document excludes the application of section 7.11 or section 7.12 of the Act to the Development.

4.2 Section 7.24

This document does not exclude the application of s7.24 to the Development.

5 Provision of Contributions

5.1 Indexation of Amounts payable by Developer

Each Contribution Works Value will be increased (with the calculation to be made as from the date the relevant Contribution is required to be provided to Council under this document) in accordance with the following formula:

$$A = B \times \frac{C}{D}$$

D

where:

A = the indexed amount;

B = the relevant amount as set out in this document;

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C = the Index most recently published before the date that the relevant payment or the calculation with respect to the relevant amount is to be made; and

D = the Index most recently published before the commencement date of this document.

If **A** is less than **B**, then the relevant Contribution Works Value will not change.

5.2 Conduct of Works

If a Development Consent is granted, the Developer, at its cost, must:

- (1) obtain development consent, and any other form of consent required by a relevant Authority, for the construction and use of the Works;
- (2) carry out and Complete the Works to the reasonable satisfaction of the Council in accordance with **Schedule 3**; and
- (3) carry out and Complete the Works:
 - (a) in accordance with the specifications (if any) referred to in **Schedule 3** for the relevant item of Work or the design and specifications agreed or determined to apply to an item of Work under clause 5.3;
 - (b) in accordance with any relevant Development Consent;
 - (c) in accordance with the requirements of, or consents issued by, any Authority;
 - (d) ensuring that (except to the extent permitted by any Development Consent):
 - (i) all necessary measures are taken to protect people, property, and the Environment;
 - (ii) unnecessary interference with the passage of people and vehicles is avoided;
 - (iii) nuisances and unreasonable noise and disturbances are prevented; and
 - (iv) all relevant laws and regulations with respect to water, air, noise and land pollution (including 'pollution incidents') as defined under the *Protection of the Environment Operations Act 1997* (NSW);
 - (e) in accordance with any Australian Standards applicable to works of the same nature as each aspect of the Works; and
 - (f) in a proper and workmanlike manner complying with current industry practice and standards relating to each aspect of the Works.

5.3 Design and specification of Works

- (1) The Developer must:
 - (a) consult with Council with respect to the development of the detailed design and specification with respect to each item of Works; and
 - (b) ensure that the relevant design is consistent with, and has regard to, any relevant policies of Council as identified in the Development Consent.

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- (2) Before commencing construction of an item of Works, the Developer must submit to Council:
 - (a) for its approval, the detailed design and specification for that item of Works; and
 - (b) a report from a suitable qualified and experienced Quantity Surveyor which estimates the cost to complete the relevant item of Work in accordance with the detailed design.
- (3) The design and specification for the item of Works must be prepared by the Developer having specific regard to:
 - (a) the specification (if any) for that item of Works set out in **Schedule 3**; and
 - (b) the Contribution Works Value of the relevant item of Works.
- (4) Within thirty (30) days of the date of the first submission referred to in paragraph (2), Council must do either of the following:
 - (a) Notify the Developer in writing of its approval of the design and specification. The Developer is then to carry out and complete the item of Works in accordance with that design and specification.
 - (b) Notify the Developer in writing that it does not approve of the design and specification and provide the Developer with reasons for this.
- (5) If Council notifies the Developer in writing that it does not approve of the design and specification, the parties shall consult in good faith to finalise an approved design and specification for the Work and, if those consultations are unsuccessful, the Developer may:
 - (a) elect to amend the design and specification and submit to Council the amended design and specification in which case the approval process set out in this clause 5.3 applies to that amendment; or
 - (b) if the Developer does not agree with the modifications requested by Council, then, it may refer the relevant matter for dispute resolution in accordance with this document.

5.4 No credit or reimbursement

- (1) If the Developer's actual cost of carrying out the Works are greater than the Contribution Works Value for those Works, then the Developer is not entitled to claim credit or reimbursement, as the case may be, for the difference.
- (2) If the Developer's actual cost of carrying out the Works are less than the Contribution Works Value for those Works, then Council is not entitled to make any claim (including a claim for contributions under the Act) for the difference.

5.5 Access to Council Land

- (1) If the Developer or its authorised employees, agents, contractors, sub-contractors and consultants requires access to any land owned by Council for the purposes of constructing an item of Works, the Developer must make an application to Council for access within a reasonable period of time prior to the required access.
- (2) The Developer acknowledges and agrees that:
 - (a) any such application will be considered by Council at the relevant time; and

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- (b) Council must comply with any relevant law with respect to any such application and licence.
- (3) Council must respond to an application under paragraph (1) within five (5) Business Days of the making of the application.
- (4) Council may grant access to the Developer (and its authorised employees, agents, contractors, sub-contractors and consultants) to enter, occupy and use that land on conditions including, but not limited to, the following:
 - (a) That access be solely for the purposes of the Developer performing its obligations under this document.
 - (b) That the access be subject to, and in accordance with all relevant Laws, rules regulations and statutory approvals, including but not limited to work, health and safety Laws, rules and regulations.
 - (c) Any other reasonable directions and conditions imposed by Council in relation to that access.

5.6 Access to the Land and location of Works

- (1) The Developer must permit the Council, its officers, employees, agents and contractors to enter the Land at any time, upon giving reasonable prior notice, in order to inspect, examine or test any of the Works.
- (2) The Developer must enable Council, its officers, employees, agents and contractors access to the location of the Works where this is not the Land, Council land or a public road.

6 Completion of Works

6.1 Completion

For the purpose of this document an item of Works is Completed when:

- (1) the Works are:
 - (a) substantially completed in accordance with the conditions of the applicable Development Consent such that a Subdivision Certificate may be issued in respect of the Works; or
 - (b) deemed to have been Completed in accordance with this clause 6; and
- (2) any other obligation with respect to the relevant item of Works which must be discharged prior to the Completion of that item of Works in accordance with this document has been discharged.

6.2 Issue of Completion Notice

If the Developer considers that any particular item of the Works is complete it must serve a notice on Council which:

- (1) is in writing;
- (2) identifies the particular item of the Works to which it relates; and
- (3) specifies the date on which the Developer believes the relevant item of the Works was completed,

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(Completion Notice).

6.3 Inspection by Council

- (1) Council must inspect the Works set out in a Completion Notice within five (5) business days of the receipt of that notice.
- (2) If Council fails to carry out an inspection required under paragraph (1) the Works referred to in the relevant Completion Notice will be deemed to be Complete.

6.4 Rectification Notice

- (1) Within five (5) business days of inspecting the Works set out in a Completion Notice Council must provide notice in writing (**Rectification Notice**) to the Developer that the Works set out in the Completion Notice:
 - (a) have been Completed; or
 - (b) have not been Completed, in which case the notice must also detail:
 - (i) those aspects of the Works which have not been Completed; and
 - (ii) the work Council requires the Developer to carry out in order to rectify the deficiencies in those Works.
- (2) If Council does not provide the Developer with a Rectification Notice in accordance with paragraph (1), the Works set out in the Completion Notice will be deemed to have been Completed.
- (3) Where Council serves a Rectification Notice on the Developer, the Developer must:
 - (a) rectify the Works in accordance with that notice; or
 - (b) serve a notice on the Council that it disputes the matters set out in the notice.
- (4) Where the Developer:
 - (a) serves notice on Council in accordance with paragraph (3)(b), the dispute resolution provisions of this document apply; or
 - (b) rectifies the Works in accordance with paragraph (3)(a), it must serve upon the Council a new Completion Notice for the Works it has rectified.

6.5 Works-as-executed-plan

As soon as practicable, and by no later than sixty (60) days after an item of Work is Completed in accordance with this document, the Developer must submit to Council:

- (1) a full works-as-executed-plan for the relevant item of Work; and
- (2) the technical or operation manual, specifications and warranties (if any) for any product that forms part of the relevant item of Work.

7 Defects Liability

7.1 Defects Notice

- (1) Where any part of the Works has been Completed but those Works contain a Material Defect which:

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- (a) adversely affects the ordinary use and/or enjoyment of the relevant Works; or
- (b) will require maintenance or rectification works to be performed on them at some time in the future as a result of the existence of the defect;

(Defect) Council may issue a defects notice (**Defects Notice**) concerning those Works but only within the Defects Liability Period (time being of the essence).

- (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 (which must be a reasonable time and not less than fifteen (15) business days).

7.2 Developer to Rectify Defects

- (1) The Developer must rectify the Defects contained within a Defects Notice as soon as practicable after receipt of the Defects Notice.
- (2) The Developer must follow the procedure set out in clause 6 in respect of the satisfaction of the Defects Notice.

7.3 Right of Council to Step-In

Council, at its absolute discretion, may enter upon the Land for the purpose of satisfying the Defects Notice where the Developer has failed to comply with a Defects Notice within a reasonable time having regard to the nature of the Defects but only after giving the Developer five (5) business days written notice of its intention to do so.

7.4 Consequence of Step-In

If Council elects to exercise the step-in rights granted to it under clause 7.3 then:

- (1) Council may:
 - (a) enter upon any part of the Land that it requires access to in order to satisfy the obligations of the Developer in accordance with the Defects Notice; and
 - (b) rectify the relevant Defects in accordance with the Defects Notice; and
- (2) the Developer must not impede or interfere with Council in undertaking that work.

7.5 Costs of Council

Where Council exercises its step-in rights, it may call upon the Defects Security provided by the Developer and recover as a debt due in a court of competent jurisdiction any difference between the amount of the Defects Security and the costs incurred by the Council in rectifying the Defects.

7.6 Passing of risk

Subject to clause 7.2, and unless Council has already issued a Defects Notice in respect of the relevant Defect within the Defects Liability Period, the risk in relation to that Defect in respect of Works will pass to Council upon the expiry of the Defects Liability Period.

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8 Variation of scope or timing for provision of Works

8.1 Variation to the scope of an item of Work

- (1) The Developer may request that Council approve in writing a variation to the scope any item of Work.
- (2) The scope of an item of Work is not to be varied unless Council and the Developer agree in writing to the variation.
- (3) Council may withhold its consent to a variation of an item of Work at its absolute discretion.

8.2 Deferral of the timing of Completion of an item of the Works

- (1) Notwithstanding any other provision of this document, if the Developer forms the view at any time, that:
 - (a) it is unable to Complete any item of the Works by the time specified in **Schedule 3**; or
 - (b) it believes that there is a risk of damage to any item of the Works if they are delivered by the time required in **Schedule 3**,

(**Deferred Works**), then the Developer may seek Council's approval to defer the Completion of the relevant item of the Works by providing written notice to the Council:

 - (c) identifying the relevant item of Work that the Developer proposes to defer;
 - (d) specifying the reason for the request to defer the Completion of that item of the Works; and
 - (e) identifying the anticipated time for Completion of the relevant item of Work.
- (2) The Council, acting reasonably, must give the Developer a written notice within thirty (30) business days of the date upon which the Developer serves written notice upon Council in accordance with paragraph (1) stating:
 - (a) whether or not it consents to the deferral of the Deferred Works;
 - (b) the revised date for Completion required by Council; and
 - (c) any reasonable conditions Council requires with respect to the deferral (including any requirement for additional Security on account of that deferral, but only to the extent necessary to ensure that Council holds adequate security based on the then estimated cost to complete the relevant item of the Works).
- (3) If the Council consents to the deferral of the Deferred Works, then the following applies:
 - (a) The Developer must comply with any conditions required by Council under paragraph (2)(c) above.
 - (b) Provided the Developer satisfies those conditions, the Developer will not be considered to be in breach of this document as a result of a failure to achieve Completion of the relevant Deferred Works by the time for Completion specified in this document.
 - (c) The time for completion of the Deferred Works under this document is the revised date for Completion approved by Council.

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9 Developer Warranties and Indemnities

9.1 Warranties

The Developer warrants to Council that:

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

9.2 Indemnity by Developer

The Developer indemnifies Council in respect of any Claim that may arise as a result of the conduct of the Works up to Completion and any breach of the Developer's obligations under this agreement but only to the extent that any such Claim does not arise as a result of the negligent acts or omissions of Council.

10 Security

10.1 Provision of Security

- (1) Subject to paragraph (2), the Developer must deliver to Council one (1) or more Bank Guarantees to the satisfaction of Council:
 - (a) prior to the Completion of an item of Works, for an amount equivalent to ten (10%) of the Contribution Works Value of that item of Works (**Defects Security**),

(collectively referred to as the **Security**).
- (2) The Developer may satisfy its obligations under paragraph (1) (either in whole or in part), by directing Council to retain any Security held by Council which is required to be released by Council under this document.

10.2 Replacement of Security

- (1) The Developer may replace any Security provided by it at any time, provided that the amount of that replacement is not less than that which is required to be provided under this document.
- (2) On receipt of a replacement Security, Council must immediately release the Security being replaced and return it to the Developer.

10.3 Council may call on Security

- (1) If the Developer commits an Event of Default Council, without limiting any other remedies available to it, may call on any Security provided by the Developer.
- (2) If Council calls on any Security, it may use the amount so paid to it in satisfaction of any costs incurred by it in remedying the relevant Event of Default.

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10.4 Top up of Security

If Council calls on the Security, Council, by notice in writing to the Developer, may require the Developer to provide a further or replacement Security in an amount that, when added to any unused portion of any Security then held by Council, does not exceed the amount of the Security Council is entitled to hold at that time under this document.

10.5 [not used]**10.6 Release of Defects Security**

Unless:

- (1) there are unremedied Defects of which the Developer was notified by the Council during the Defects Liability Period and/or Council has made or intends to make a demand against the Defects Security in relation to unremedied Defects; or
- (2) the relevant Defects Liability Period has not expired;

Council, upon a written request being made by the Developer, must return the Defects Security within ten (10) business days of such a request being made.

10.7 Council may withhold Subdivision Certificate

- (1) The Developer may only make, or cause, suffer or permit the making of, an application for a Subdivision Certificate in respect of the Development if, at the date of the application, the Developer is not in breach of its obligation to make any Contribution under this document.
- (2) Council may withhold the issue of a Subdivision Certificate if, at the relevant time, the Developer is in breach of any obligation to make any Contribution under this document until such time as the breach is rectified.

10.8 Council may withhold Occupation Certificate

- (1) The Developer may only make, or cause, suffer or permit the making of, an application for an Occupation Certificate in respect of the Development if, at the date of the application, the Developer is not in breach of its obligation to make any Contribution under this document.
- (2) Council may withhold the issue of an Occupation Certificate if, at the relevant time, the Developer is in breach of any obligation to make any Contribution under this document until such time as the breach is rectified.

11 Registration of this document**11.1 Registration of this document**

The Developer acknowledges and agrees that:

- (1) this document must be registered on the title to the Land pursuant to section 7.6 of the Act; and
- (2) subject to clause 11.2:
 - (a) Council will undertake the registration in paragraph (1); and
 - (b) the Developer will pay or reimburse Council for all its reasonable legal and registration costs associated with that registration.

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11.2 Obligations of Developer

- (1) The Developer, at its own expense must, promptly after this document comes into operation, and before the issue of any Construction Certificate or Subdivision Certificate for the Development, take all necessary and practical steps, and otherwise do anything that the Council reasonably requires, to procure:
 - (a) the consent of each person who:
 - (i) has an estate or interest in the Land; or
 - (ii) is seized or possessed of an estate or interest in the Land;
 - (b) the execution of any documents; and
 - (c) the production of the relevant title documentation,
 to enable the registration of this document in accordance with clause 11.1.
- (2) The Developer, at its own expense, will take all necessary and practical steps, and otherwise do anything that the Council reasonably requires:
 - (a) to allow the lodgement of this document with the Registrar-General as soon as reasonably practicable after this document comes into operation but in any event, no later than thirty (30) business days after that date; and
 - (b) to allow the registration of this document by the Registrar-General in the relevant folios of the Register for the Land as soon as reasonably practicable after this document is lodged for registration.

11.3 Discharge from the Register

The Council will provide its consent to the release and discharge of this document so that it may be removed from the folios of the Register for the Land (or any part of it) within 14 days of either of the following events:

- (1) the Works have been Completed in accordance with this document; or
- (2) if this document is terminated or otherwise comes to an end for any other reason.

12 Assignment**12.1 Restriction on Assignment**

Other than in accordance with this clause 12.1 the Developer may not:

- (1) Assign any part of the Land; and/or
- (2) Assign their rights or obligations under this document.

12.2 Procedure for Assignment

- (1) If the Developer:
 - (a) wishes to Assign any part of the Land; and/or

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- (b) wishes to Assign its rights or obligations under this document,
- then the Developer must:
- (c) provide a written request to Council for the consent of Council to the relevant Assignment;
 - (d) provide Council with any evidence required by Council, acting reasonably, to satisfy Council that the third party in whose favour the Assignment is to be made (**Assignee**) is reasonably capable of performing the obligations under this document that are to be Assigned to it;
 - (e) obtain written consent of Council to the relevant Assignment (such consent which must not be unreasonably withheld subject to the Developer complying with this clause 12.2); and
 - (f) at no cost to Council, procure:
 - (i) the execution by the Assignee of an appropriate deed where the Assignee agrees to be bound by the terms of this document; and
 - (ii) the provision of all Securities to Council by the Assignee that the Developer is required to provide under this document (and any additional securities if required by Council acting reasonably) at the same time as, or prior to, entering into that deed.
 - (2) Council is under no obligation to consider granting its consent to any request made by the Developer under paragraph (1)(c) if, at the time the request is made, the Developer is in breach of this document.

13 Dispute Resolution

13.1 Notice of dispute

- (1) If a dispute or lack of certainty between the parties arises in connection with this document 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**) to negotiate the Dispute.
- (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 to negotiate the Dispute (the representatives designated by the parties being together, the **Representatives**).

13.2 Conduct pending resolution

The parties must continue to perform their respective obligations under this document 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

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in completing the disputed matter if the Dispute is not resolved in favour of the indemnifying party.

13.3 Further steps required before proceedings

Subject to clauses 13.14 and 13.15 and except as otherwise expressly provided in this document, any Dispute must, as a condition precedent to the commencement of litigation, mediation under clause 13.5 or determination by an expert under clause 13.6, 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 13.1(2) is served.

13.4 Disputes for mediation or expert determination

If the Representatives have not been able to resolve the Dispute, then the parties must agree within five (5) Business Days to either refer the matter to mediation under clause 13.5 or expert resolution under clause 13.6.

13.5 Disputes for mediation

- (1) If the parties agree in accordance with clause 13.4 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 for the time being.
- (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 13.6.

13.6 Choice of expert

- (1) If the Dispute is to be determined by expert determination, this clause 13.6 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 for the time being.
- (3) If the parties fail to agree as to the relevant field within five (5) Business Days after the date that the matter is required to be determined by expert determination, either party may refer the matter to the President of the Law Society of New South Wales for the time being whose decision as to the relevant field is final and binding on the parties.
- (4) The expert appointed to determine a Dispute:
 - (a) must have a technical understanding of the issues in dispute;
 - (b) must not have a significantly greater understanding of one party's business, functions or operations which might allow the other side to construe this greater understanding as a bias; and
 - (c) must inform the parties before being appointed of the extent of the expert's understanding of each party's business or operations and, if that information indicates a possible bias, then that expert must not be appointed except with the written approval of the parties.

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- (5) The parties must promptly enter into an agreement with the expert appointed under this clause 13.6 setting out the terms of the expert's determination and the fees payable to the expert.

13.7 Directions to expert

- (1) In reaching a determination in respect of a dispute under clause 13.6, the independent expert must give effect to the intent of the parties entering into this document and the purposes of this document.
- (2) The expert must:
- (a) act as an expert and not as an arbitrator;
 - (b) proceed in any manner as the expert thinks fit without being bound to observe the rules of natural justice or the rules of evidence;
 - (c) not accept verbal submissions unless both parties are present;
 - (d) on receipt of a written submission from one party, ensure that a copy of that submission is given promptly to the other party;
 - (e) take into consideration all documents, 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;
 - (f) not be expected or required to obtain or refer to any other documents, information or material (but may do so if the expert so wishes);
 - (g) 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;
 - (h) issue a final certificate stating the expert's determination (together with written reasons); and
 - (i) act with expedition with a view to issuing the final certificate as soon as practicable.
- (3) The parties must comply with all directions given by the expert in relation to the resolution of the Dispute and 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 documents, records or information which the expert requests.

13.8 Expert may commission reports

- (1) Subject to paragraph (2):
- (a) the expert may commission the expert's own advisers or consultants (including lawyers, accountants, bankers, engineers, surveyors or other technical consultants) to provide information to assist the expert in making a determination; and

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- (b) the parties must indemnify the expert for the cost of those advisers or consultants in accordance with clause 13.6(5) of this deed.

- (2) The parties must approve the costs of those advisers or consultants in writing prior to the expert engaging those advisers or consultants.

13.9 Expert may convene meetings

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

13.10 Other courses of action

If:

- (1) the parties cannot agree in accordance with clause 13.4 to refer the matter to mediation or determination by an expert; or
- (2) the mediation referred to in clause 13.5 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.

13.11 Confidentiality of information provided in dispute resolution process

- (1) The parties agree, and must procure that the mediator and the expert agree as a condition of his or her appointment:
 - (a) subject to paragraph (2), to keep confidential all documents, information and other material disclosed to them during or in relation to the mediation or expert determination;
 - (b) not to disclose any confidential documents, information and other material except:
 - (i) to a party or adviser or consultant who has signed a confidentiality undertaking; or
 - (ii) if required by Law or any Authority to do so; and
 - (c) not to use confidential documents, information or other material disclosed to them during or in relation to the mediation or expert determination for a purpose other than the mediation or expert determination.
- (2) The parties must keep confidential and must not disclose or rely upon or make the subject of a subpoena to give evidence or produce documents in any arbitral, judicial or other proceedings:
 - (a) views expressed or proposals or suggestions made by a party or the mediator or the expert during the expert determination or mediation relating to a possible settlement of the Dispute;

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- (b) admissions or concessions made by a party during the mediation or expert determination in relation to the Dispute; and
- (c) information, documents or other material concerning the dispute which are disclosed by a party during the mediation or expert determination unless such information, documents or facts would be discoverable in judicial or arbitral proceedings.

13.12 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.

13.13 Costs

If any independent expert does not award costs, each party must contribute equally to the expert's costs in making the determination.

13.14 Remedies available under the Act

This clause 13 does not operate to limit the availability of any remedies available to Council under the Act.

13.15 Urgent relief

This clause 13 does not prevent a party from seeking urgent injunctive or declaratory relief concerning any matter arising out of this document.

14 Breach of this document

14.1 Breach Notice

If the Developer breaches this document, Council may serve a notice on the Developer (**Breach Notice**) specifying:

- (1) the nature and extent of the alleged breach;
- (2) if:
 - (a) the breach is capable of being rectified other than by the payment of compensation, what Council requires the Developer to do in order to rectify the breach; or
 - (b) the breach is not capable of being rectified other than by payment of compensation, the amount of compensation Council requires the Developer to pay in order to rectify the breach, and
- (3) the time within which Council requires the breach to be rectified, which must be a reasonable time of not less than forty (40) business days.

14.2 Events of Default

The Developer commits an **Event of Default** if it:

- (1) Fails to comply with a Breach Notice; or
- (2) becomes subject to an Insolvency Event.

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14.3 Consequences of Events of default

Where the Developer commits an Event of Default, Council may, in addition to any rights it has at Law:

- (1) exercise the Step in Rights so as to carry out any work specified in the relevant Breach Notice; or
- (2) call on the Security to the extent of any compensation claimed in a Breach Notice and not paid by the Developer.

15 Termination, Rescission or Determination**15.1 Termination**

This document terminates in the following events:

- (1) The parties agree in writing to terminate the operation of this document at any time.
- (2) Council serves notice on the Developer terminating this Planning Agreement where the Developer has failed to comply with a notice issued in accordance with clause 14.1.
- (3) The Development Consent lapses.

15.2 Consequence of termination

Upon termination of this Planning Agreement:

- (1) all future rights and obligations of the parties are discharged; and
- (2) all pre-existing rights and obligations of the parties continue to subsist.

15.3 Determination

This document will determine upon the Developer satisfying all of the obligations imposed on it in full.

16 Position of Council**16.1 Consent authority**

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

16.2 Document does not fetter discretion

This document is not intended to operate to fetter, in any unlawful manner:

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

16.3 Severance of provisions

- (1) No provision of this document is intended to, or does, constitute any unlawful fetter on any Discretion. If, contrary to the operation of this clause, any provision of this document

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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 documents, to ensure the objective of this clause 16 is substantially satisfied; and
 - (b) in the event that paragraph (1)(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 document has full force and effect; and
 - (c) to endeavour to satisfy the common objectives of the parties on relation to the provision of this document 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 document contracted out of a provision or exercised a Discretion under this document, then to the extent of this document is not to be taken to be inconsistent with the Law.

16.4 No Obligations

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

17 Confidentiality

17.1 Document not Confidential

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

17.2 Other Confidential Information

- (1) The parties acknowledge that:
- (a) Confidential Information may have been supplied to some or all of the parties in the negotiations leading up to the making of this document; and
 - (b) The parties may disclose to each other further Confidential Information in connection with the subject matter of this document.
 - (c) Subject to paragraphs (2) and (3), each party agrees:
 - (i) not to disclose any Confidential document received before or after the making of this document to any person without the prior written consent of the party who supplied the Confidential Information; or
 - (ii) to take all reasonable steps to ensure all Confidential Information received before or after the making of this document is kept confidential and protected against unauthorised use and access.
- (2) A party may disclose Confidential Information in the following circumstances:
- (a) in order to comply with the Law, or the requirements of any Authority; or
 - (b) to any of their employees, consultants, advisers, financiers or contractors to whom it is considered necessary to disclose the information, if the employees,

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consultants, advisers, financiers or contractors undertake to keep the information confidential.

- (3) The obligations of confidentiality under this clause do not extend to information which is public knowledge other than as a result of a breach of this clause.

18 GST

18.1 Defined GST Terms

Defined terms used in this clause 18 have the meaning ascribed to them in the GST Law.

18.2 GST to be Added to Amounts Payable

- (1) If GST is payable on a Taxable Supply made under, by reference to or in connection with this document, the party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- (2) This clause does not apply to the extent that the Consideration for the Taxable Supply is expressly agreed to be GST inclusive.
- (3) Unless otherwise expressly stated, prices or other sums payable or Consideration to be provided under or in accordance with this document are exclusive of GST.

18.3 GST Obligations to Survive Termination

This clause 18 will continue to apply after expiration of termination of this document.

19 Miscellaneous

19.1 Obligation to act in good faith

The parties must at all times:

- (1) cooperate and use their best endeavours to profitably and professionally give effect to their rights and obligations set out in this document;
- (2) not unreasonably delay any action, approval, direction, determination or decision which is required of them;
- (3) make approvals or decisions that are required of them in good faith and in a manner consistent with the completion of the transactions set out in this document; and
- (4) be just and faithful in their activities and dealings with the other parties.

19.2 Legal costs

The Developer agrees to:

- (1) pay or reimburse the reasonable legal costs and disbursements of Council of the negotiation, preparation, execution, and stamping of this document;
- (2) pay or reimburse the reasonable legal costs and disbursements of Council in relation to:
 - (a) the registration or removal of this document on the title to the Land in accordance with clause 11; and
 - (b) any breach or default by the Developer of its obligations under this document,

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within ten (10) business days of receipt of a tax invoice from Council.

20 Administrative Provisions

20.1 Notices

- (1) Any notice, consent or other communication under this document 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's address;
 - (b) sent by pre-paid mail to that person's address; or
 - (c) transmitted by facsimile or email to that person's 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 third business day after posting;
 - (c) if transmitted by facsimile to a person's address and a correct and complete transmission report is received, on the day of transmission if a business day, otherwise on the next business day; and
 - (d) if sent by email and the sender does not receive a delivery failure message from the sender, within a period of twenty four (24) hours of the email being sent.
- (3) For the purpose of this clause the address of a person is the address set out in this document or another address of which that person may from time to time give notice to each other person.

20.2 Entire Document

This document is the entire agreement of the parties on the subject matter. All representations, communications and prior agreements in relation to the subject matter are merged in and superseded by this document.

20.3 Waiver

The non-exercise of or delay in exercising any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the parties to be bound by the waiver.

20.4 Cooperation

Each party must sign, execute and deliver all agreements, documents, instruments and act reasonably and effectively to carry out and give full effect to this document and the rights and obligations of the parties under it.

20.5 Counterparts

This document may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same instrument. A party who has executed a counterpart of this document may exchange it with another party by emailing a pdf (portable document

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format) copy of, the executed counterpart to that other party, and if requested by that other party, will promptly deliver the original by hand or post. Failure to make that delivery will not affect the validity and enforceability of this document.

20.6 Amendment

This document may only be amended or supplemented in writing signed by the parties.

20.7 Unenforceability

Any provision of this document 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 document or affecting the validity or enforceability of that provision in any other jurisdiction.

20.8 Power of Attorney

Each attorney who executes this document 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.

20.9 Governing law

The law in force in the State of New South Wales governs this document. 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 document; and
 - (2) may not seek to have any proceedings removed from the jurisdiction of New South Wales on the grounds of *forum non conveniens*.
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Schedule 1– Requirements under s7.4

REQUIREMENT UNDER THE ACT	THIS PLANNING AGREEMENT
Planning instrument and/or development application – (Section 7.4(1)) The Developer has: <ul style="list-style-type: none"> (c) sought a change to an environmental planning instrument. (d) made, or proposes to make, a Development Application. (e) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies. 	<ul style="list-style-type: none"> (a) No (b) Yes (c) Not applicable
Description of land to which this agreement applies – (Section 7.4(3)(a))	Lot 18 in Deposited Plan 16975 known as 90-92 Franklin Road, Cherrybrook NSW 2126.
Description of change to the environmental planning instrument to which this agreement applies – (Section 7.4(3)(b))	Not applicable
Application of section 7.11 of the Act – (Section 7.4(3)(d))	Excluded
Applicability of section 7.12 of the Act – (Section 7.4(3)(d))	Excluded
Consideration of benefits under this agreement if section 7.11 applies – (Section 7.4(3)(e))	Not applicable
Mechanism for Dispute resolution – (Section 7.4(3)(f))	See clause 13.
Enforcement of this agreement (Section 7.4(3)(g))	See clause 10.
No obligation to grant consent or exercise functions – (Section 7.4(3)(9))	See clause 15.

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Schedule 2 – Defined Terms and Interpretation

Part 1 – Definitions

Act	means the <i>Environmental Planning and Assessment Act 1979</i> (NSW).
Assign	as the context requires refers to any assignment, sale, transfer, disposition, declaration of trust over or other assignment of a legal and/or beneficial interest.
Authority	means (as appropriate) any: <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 an irrevocable and unconditional undertaking without any expiry or end date by one of the following trading banks: <ol style="list-style-type: none"> (1) Australia and New Zealand Banking Group Limited. (2) Commonwealth Bank of Australia. (3) Macquarie Bank. (4) National Australia Bank Limited. (5) St George Bank Limited. (6) Westpac Banking Corporation. (7) Any other financial institution approved by the Council, in its absolute discretion, in response to a request from the Developer.
Claim	means 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.
Completed	means completed in accordance with the requirements of this document.
Completion Notice	has the meaning ascribed in clause 6.1.
Confidential Information	means any information and all other knowledge at any time disclosed (whether in writing and orally) by the parties to each other, or acquired by the parties in relation to the other's activities or services which is not already in the public domain and which: <ol style="list-style-type: none"> (1) is by its nature confidential; (2) is designated, or marked, or stipulated by either party as confidential (whether in writing or otherwise);

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	(3) any party knows or ought to know is confidential;
	(4) is information which may be reasonably considered to be of a confidential nature.
Contributions	means the Works.
Contribution Works Value	means the amount specified in Schedules 3 in the column headed "contribution works value" for each item of the Contributions.
Material Defect	means a defect in the Works arising from faulty materials or workmanship which adversely affects the ordinary use and/or enjoyment of the relevant Works or will require maintenance or rectification works to be performed on them at some time in the future as a result of the existence of the defect but excluding any defects or faults relating to normal use, maintenance or fair wear and tear.
Defects Notice	has the meaning ascribed to it in clause 7.1.
Defects Liability Period	means with respect to an item of Work, a period of twelve (12) months commencing on the date of Completion of the relevant item of Work.
Development	means the demolition of structures and subdivision of the Land into nine (9) residential lots and Lot 1.
Development Application	means DA/1146/2020 in connection with the Development.
Development Consent	means development consent issued under the Act in respect of the Development Application.
Dispute	has the meaning ascribed to it in clause 13.1.
Event of Default	has the meaning ascribed to it in clause 14.2.
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 GST.
Index	means the Consumer Price Index (All Groups - Sydney) as provided by the Australian Bureau of Statistics.
Insolvency Event	means the happening of any of the following events: <ol style="list-style-type: none"> (1) Application which is not withdrawn or dismissed within fourteen (14) days is made to a court for an order or an order is made that a body corporate be wound up. (2) An application which is not withdrawn or dismissed within fourteen (14) days is made to a court for an order appointing a liquidator or provisional liquidator in respect of a body corporate or one of them is appointed, whether or not under an order. (3) Except to reconstruct or amalgamate while solvent, a body corporate enters into, or resolves to enter into, a scheme of arrangement, agreement of company arrangement or composition with, or assignment for the benefit of, all or any

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class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them.

- (4) A body corporate resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so, except to reconstruct or amalgamate while solvent or is otherwise wound up or dissolved.
- (5) A body corporate is or states that it is insolvent.
- (6) As a result of the operation of section 459F(1) of the *Corporations Act 2001* (Cth) (**Corporations Act**), a body corporate is taken to have failed to comply with a statutory demand;
- (7) A body corporate is or makes a statement from which it may be reasonably deduced that the body corporate is, the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act.
- (8) A body corporate takes any step to obtain protection or is granted protection from its creditors, under any applicable legislation or an administrator is appointed to a body corporate.
- (9) A person becomes an insolvent under administration as defined in section 9 of the Corporations Act or action is taken which could result in that event.
- (10) A receiver, manager or receiver and manager is appointed to the Company.
- (11) A claim is filed in a court against a person that is not defended, released or otherwise settled within twenty eight (28) days of the date of its filing at the court.
- (12) Anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

Land

means the "Land" set out in **Schedule 1**.

Law

means all legislation, regulations, by-laws, common law and other binding order made by any Authority.

Lot 1

means that part of the Land currently zoned R2 Residential (Low Density) identified as future road reserve under the *Hornsby Local Environmental Plan 2013*, comprising of Lot 1 in a plan of subdivision that has, or will, be acquired by Council under a separate contract of sale between Council and the Developer.

Occupation Certificate

has the same meaning as in section 6.4(c) of the Act.

Planning Legislation

means the Act, the *Local Government Act 1993* (NSW) and the *Roads Act 1993* (NSW).

Quantity Surveyor

means a person who:

- (1) is a member of their respective professional organisation and has been for at least five (5) years;
- (2) practises as a quantity surveyor for works of the same nature as the relevant Works;

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	(3)	is active as a quantity surveyor at the time of his appointment;
	(4)	has at least three (3) years experience in valuing works of the same nature as the relevant Works; and
	(5)	undertakes to act fairly and promptly in accordance with the requirements of this document.
Rectification Notice		has the meaning ascribed to it in clause 6.4.
Security		has the meaning ascribed to it in clause 10.
Subdivision Certificate		has the same meaning as in section 6.4(d) of the Act.
Subdivision Certificate	Works	has the same meaning as in section 6.4(b) of the Act.
Works		means the works specified or described in Schedule 3 .

Part 2 - Interpretational Rules

clauses, annexures and schedules	a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this document.
reference to statutes	a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them.
singular includes plural	the singular includes the plural and vice versa.
person	the word "person" includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association or any government agency.
executors, administrators, successors	a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns.
dollars	Australian dollars, dollars, \$ or A\$ is a reference to the lawful currency of Australia.
calculation of time	if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day.
reference to a day	a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later.
accounting terms	an accounting term is a reference to that term as it is used in accounting standards under the Corporations Act or, if not inconsistent with those standards, in accounting principles and practices generally accepted in Australia.
reference to a group of persons	a group of persons or things is a reference to any two or more of them jointly and to each of them individually.
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

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	to which the example relates to that example or examples of a similar kind.
next day	if an act under this document 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 document.
agreement	a reference to any agreement, document or instrument includes the same as varied, supplemented, novated or replaced from time to time.
Gender	a reference to one gender extends and applies to the other and neuter gender.

ATTACHMENT 2 - ITEM 7

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Schedule 3 - Works

Item of Works	Time for Completion	Contribution Works Value
Construction of civil road and drainage works on the part of the Land reserved for road widening at John Road and Franklin Road, Cherrybrook	Prior to the first to occur of the following: (1) that date that is twelve (12) months after the date of the grant of a Subdivision Works Certificate in respect of the Works. (2) the issue of a Subdivision Certificate with respect to the Development.	\$500,000

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ATTACHMENT 2 - ITEM 7

Execution page

Executed as a deed.

Dated:

Signed, sealed and delivered by **Hornsby Shire Council** by its General Manager pursuant to delegation from Council:

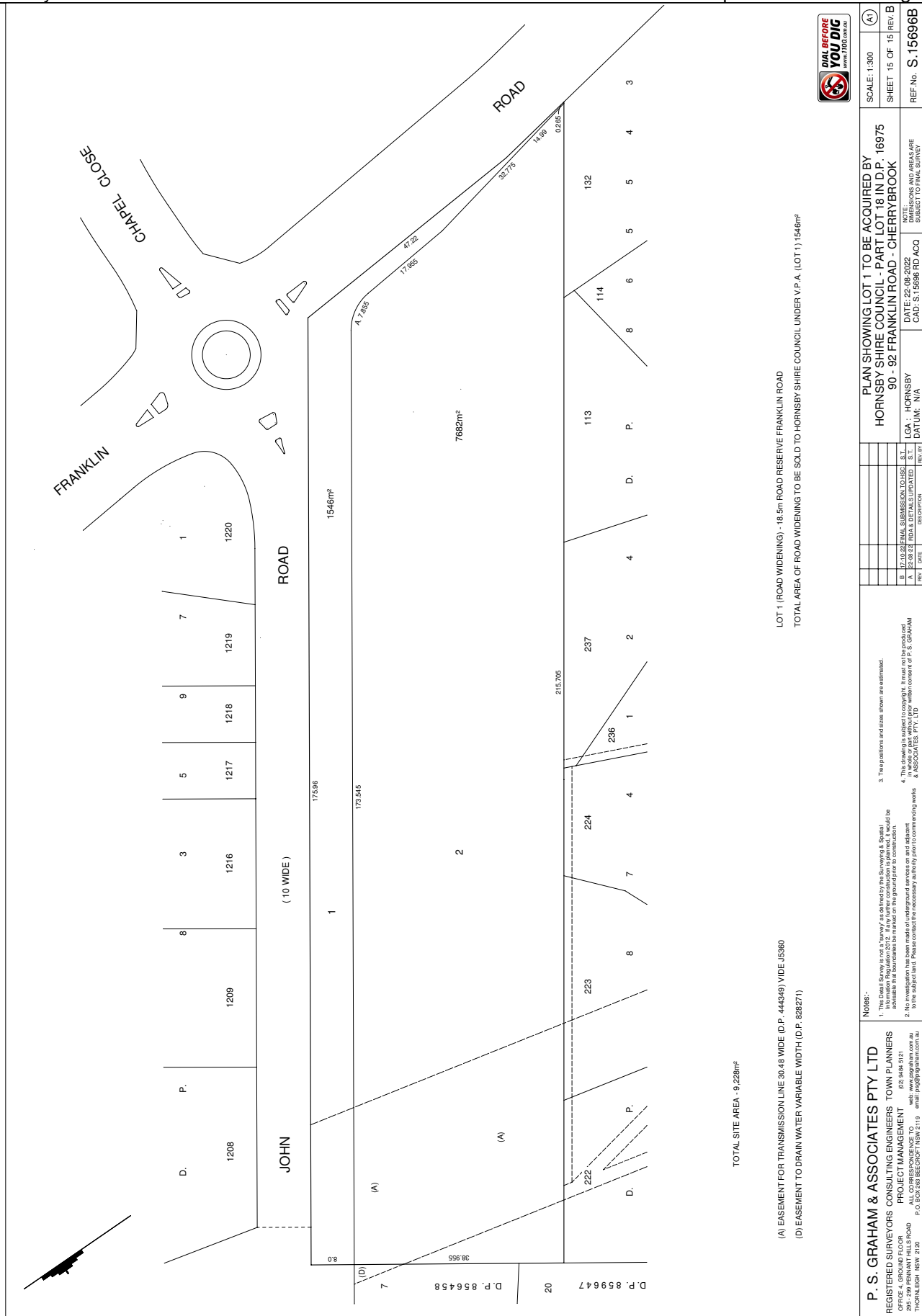
General Manager (Signature)

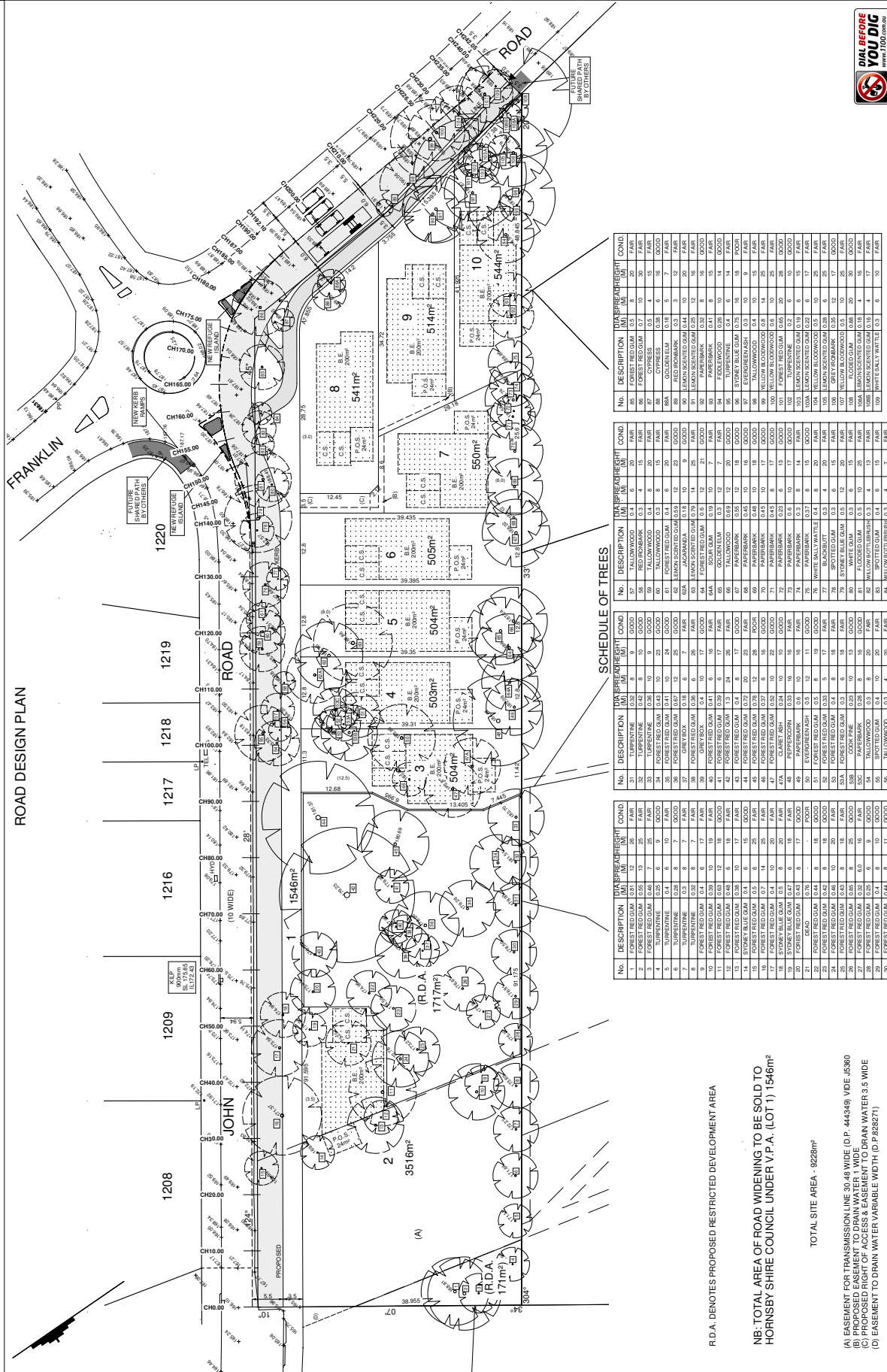
Name of General Manager (Print Name)**Signed, sealed and delivered** by **Goldmap Two Pty Limited** in accordance with section 127(1) of the Corporations Act by authority of its sole director and secretary.

Xinyong Wang (Signature)

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17508551_1





P. S. GRAHAM & ASSOCIATES PTY LTD

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REVISED PLAN OF PROPOSED SUBDIVISION (DA 1146/2020)

FOR LOT 18 IND.P. 16975

90-92 FRANKLIN ROAD - CHERRYBROOK

DATE: 22-08-2022
CAD: S156968A

SCALE: 1:300

SHEET 3 OF 15

REV B

REF No. **S.156968**

Notes:-

- The Design Survey and Survey of a Subdivision in Surveying & Spatial Information, 1996 (2012), 11.4.1, and 11.4.2, would be available that boundaries are marked on the ground prior to construction.
- The investigation has been made of underground services on and adjacent to the subject land. Please contact the necessary authority prior to commencing works

NO.	DESCRIPTION	DATE	BY	CHKD	DATE	BY	CHKD
1	FINAL SUBMISSION	17-12-22	S.T				
2	RE-VALUED	12-08-22	REV				
3	DATE		REV				
4	DESCRIPTION		REV				

ATTACHMENT 4 - ITEM 7

ATTACHMENT/S

REPORT NO. PC18/23

ITEM 8

1. CLAUSE 4.6 - 1 APRIL TO 30 JUNE 2023

Clause 4.6 Returns Quarter 2 - 1 April to 30 June 2023

Council DA reference number	DA/166/2023	DA/1236/2022
Lot number	2	101
DP number	SP58785	1037591
Apartment/Unit number	2	
Street number	17	21
Street name	Casuarina Drive	Fraser Road
Suburb/Town	Cherrybrook	Normanhurst
Postcode	2126	2076
Category of development	1: Residential - Alterations & additions	1: Residential - Alterations & additions
Environmental planning instrument	HLEP	HLEP
Zoning of land	R2	R2
Development standard to be varied	4.3	4.3
Justification of variation	That the written request adequately demonstrates compliance with the clause and is acceptable in this regard. Notwithstanding the non-compliance with numerical standards, the proposal does not give rise to any adverse amenity impacts to any adjoining property. Previous excavation works to facilitate the ground floor garage has restricted future development compliant with Clause 4.3 of the HLEP. The height contravention would not adversely affect the streetscape.	That the written request adequately demonstrates compliance with the clause and is acceptable in this regard. Notwithstanding the non-compliance with numerical standards, the proposal does not give rise to any adverse amenity impacts to any adjoining property.
Extent of variation	9.4%	1.3%
Concurring authority	Council	Council
Date DA determined	11/04/2023	26/04/2023

ATTACHMENT 1 - ITEM 8

Clause 4.6 Returns Quarter 2 - 1 April to 30 June 2023

Council DA reference number	DA/1313/2022	DA/1244/2021
Lot number	1	146, 148 and 149 51 1 and 2
DP number	25196	1212965, 1212724, 1261337
Apartment/Unit number		30
Street number	62	15B, 17, 19, 19A and 21 579
Street name	Dartford Road	Penrhyn Ave and Pennant Hills Road
Suburb/Town	Thornleigh	West Pennant Hills and Beecroft
Postcode	2120	2119 and 2125
Category of development	13: Subdivision only	5: Residential - Seniors Living
Environmental planning instrument	HLEP	SEPP HSPD 2004
Zoning of land	R2	R2
Development standard to be varied	4.1	Clause 40(4)(b)
Justification of variation	That the written request adequately demonstrates compliance with the clause and is acceptable in this regard. Strict compliance with the development standard is considered unreasonable and unnecessary in the circumstances of the case and sufficient environmental planning grounds have been submitted to justify the contravention to the development standard.	That the written request adequately demonstrates compliance with the clause and is acceptable in this regard. The proposal would be of a bulk and scale consistent with the Penrhyn Avenue streetscape, the proposed townhouse building would appear as a 2 storey building from the street and the proposed variation is appropriate considering the constraints of the site and would not create any adverse amenity impacts in terms of privacy, overshadowing, view loss or visual impact.
Extent of variation	0.9%	50%
Concurring authority	Council	LPP
Date DA determined	27/04/2023	26/04/2023

ATTACHMENT 1 - ITEM 8

Clause 4.6 Returns Quarter 2 - 1 April to 30 June 2023

Council DA reference number	DA/1221/2022	DA/135/2023
Lot number	15	10
DP number	219738	219143
Apartment/Unit number		
Street number	24	20
Street name	Berkeley Close	Bungowen Avenue
Suburb/Town	Berowra Heights	Thornleigh
Postcode	2082	
Category of development	1: Residential - Alterations & additions	1: Residential - Alterations & additions
Environmental planning instrument	HLEP	HLEP
Zoning of land	R2	R2
Development standard to be varied	4.3	4.3
Justification of variation	That the written request adequately demonstrates compliance with the clause and is acceptable in this regard. Notwithstanding the non-compliance with numerical standards, the proposal does not give rise to any adverse amenity impacts to any adjoining property. Previous excavation works to facilitate the lower ground level has restricted future development compliant with Clause 4.3 of the HLEP. The height contravention would not adversely affect the streetscape.	That the written request adequately demonstrates compliance with the clause and is acceptable in this regard. Notwithstanding the non-compliance with numerical standards, the proposal does not give rise to any adverse amenity impacts to any adjoining property. Previous development works to facilitate the lower ground level has restricted future development compliant with Clause 4.3 of the HLEP. The height contravention would not adversely affect the streetscape.
Extent of variation	14.82%	5.8%
Concurring authority	Council	Council
Date DA determined	3/05/2023	19/06/2023

ATTACHMENT 1 - ITEM 8

Clause 4.6 Returns Quarter 2 - 1 April to 30 June 2023

Council DA reference number	DA/245/2023	DA/1170/2022
Lot number	2	42
DP number	1275032	236494
Apartment/Unit number		
Street number	45A	33
Street name	Orana Avenue	Evans Road
Suburb/Town	Hornsby	Hornsby Heights
Postcode	2077	2077
Category of development	2: Residential - Single new dwelling	2: Residential - Single new dwelling
Environmental planning instrument	HLEP	HLEP
Zoning of land	R2	R2
Development standard to be varied	4.3	4.3
Justification of variation	That the written request adequately demonstrates compliance with the clause and is acceptable in this regard. Notwithstanding the non-compliance with numerical standards, the proposal does not give rise to any adverse amenity impacts to any adjoining property. The dwelling would not be feasible if strict compliance with clause 4.3 was enforced due to the steep slope of the land. The height contravention would not adversely affect the streetscape.	That the written request adequately demonstrates compliance with the clause and is acceptable in this regard. Notwithstanding the non-compliance with numerical standards, the proposal does not give rise to any adverse amenity impacts to any adjoining property. The dwelling would not be feasible if strict compliance with clause 4.3 was enforced due to the steep slope of the land. The height contravention would not adversely affect the streetscape.
Extent of variation	27%	63.5%
Concurring authority	LPP	LPP
Date DA determined	28/06/2023	28/06/2023

ATTACHMENT 1 - ITEM 8

ATTACHMENT/S

REPORT NO. PC19/23

ITEM 9

- 1. 7 CITY VIEW ROAD UPDATED PLANNING PROPOSAL**
- 2. 7 CITY VIEW ROAD PLANNING PROPOSAL - DPE
ALTERATION OF GATEWAY DETERMINATION**
- 3. COUNCIL RESPONSE TO 7 CITY VIEW LETTER OF
OFFER**
- 4. VPA EXPLANATORY NOTE**
- 5. VOLUNTARY PLANNING AGREEMENT**

GYDE

ATTACHMENT 1 - ITEM 9

Planning Proposal

7 City View Road, Pennant Hills

submitted to Hornsby Council
on behalf of EG



Planning Proposal

This report was prepared by:

Executive Director: David Ryan
Senior Associate: Anthony Kazacos
Project Planner: Chloe Boyd
Project: 21071
Report Version: Final

Disclaimer

This report has been prepared by Gyde Consulting with input from a number of other expert consultants (if relevant). To the best of our knowledge, the information contained herein is neither false nor misleading and the contents are based on information and facts that were correct at the time of writing. Gyde Consulting accepts no responsibility or liability for any errors, omissions or resultant consequences including any loss or damage arising from reliance in information in this publication.

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APPENDICES

APPENDIX	DOCUMENT	PREPARED BY
A	Architectural Statement and Plans	Fender Katsilidis
B	Arboricultural Impact Assessment	Travers Bushfire and Ecology
C	Biodiversity Assessment Report	Travers Bushfire and Ecology
D	Economic Assessment	HillPDA Consulting
E	Pre-DA Report for ESD Services	EMF Griffiths
F	Heritage Impact Statement	City Plan Heritage
G	Services Infrastructure Report	Northrop
H	Landscape Concept	Arcadia
I	Traffic and Transport Impact Assessment	Stantec
J	Urban Design Report	Hatch Roberts Day
K	Draft Site Specific DCP	GYDE Consulting
L	Voluntary Planning Agreement Offer	EG / Mills Oakley
M	Social Infrastructure Report	Elton Consulting / WSP
N	Community Engagement Report	Elton Consulting / WSP
O	Proposed LEP Maps	Hatch Roberts Day



Planning Proposal

1. EXECUTIVE SUMMARY

This Planning Proposal (PP) is being submitted to Hornsby Shire Council on behalf of the proponent, EG Funds Management Pty Limited (EG).

This PP explains the intended effect of, and justification for, the proposed amendment to the Hornsby Local Environmental Plan 2013 (HLEP). The amendment is a site specific LEP for 7 City View Road, Pennant Hills (the site). The PP has been prepared in accordance with Section 3.33 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) and the relevant Department of Planning Guideline 'Local Environmental Plan Making Guideline (Dec 2021)'.

Proposed Site Renewal

The intended renewal of the site involves a mixed-use commercial and residential re-development that retains significant stands of existing vegetation, whilst incorporating a publicly accessible 'pocket park' and communal facilities. The proposal capitalises on the slope of the site to provide a 7 storey, stepped building, which effortlessly blends in with its surroundings (refer to Figure 1). The building is proposed to include a mix of uses including residential, commercial, seniors living and community uses.

Figure 1: Indicative Concept (Source: Fender Katsalidis)



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Planning Proposal



Figure 2: Indicative concept (Source: Fender Katsalidis).

LEP Amendments

To enable the redevelopment and associated public benefits to be delivered, the following amendments to the HLEP are required:

Table 1: Summary of LEP Amendments

Control	Existing	Proposed
Floor Space Ratio	1.5:1	Introduce a new Local Provision that would permit residential flat buildings, seniors housing and an increased FSR for the site, if the development would result in the delivery of a minimum 0.5:1 floor space ratio for commercial uses.
Zone	B5 Business Development	
Building Height	23.5 metres	No change proposed

It is proposed to include residential flat buildings as part of the new local provision for the site but only as part of a mixed-use re-development containing non-residential uses including office premises, to overcome definitional limitations associated with the current definition of 'shop top housing' (a permitted use in the B5



Planning Proposal

Business Development zone) on a sloping site such as this. 'Shop top housing' is currently defined as *"one or more dwellings located above the ground floor of a building, where at least the ground floor is used for commercial premises or health services facilities"*. The slope of the site has informed the proposed renewal concept and resulted in the provision of dwellings, commercial premises and community facilities over multiple levels. Introducing residential flat buildings as a permissible use (as part of a mixed-use development) will ensure the site can be renewed regardless of the impact of the slope of the site on the location of commercial premises in relation to dwellings.

Seniors housing is also proposed as part of the local provision in order to avoid any doubt about the application of Part 5 of the Housing SEPP, as a consequence of the biodiversity mapping that applies to a small area of the site.

The proposed LEP amendments could facilitate a redevelopment with the following:

Table 2: Key Concept Statistics

Key Concept Statistics (indicative only)	
Residential	77 apartments
Seniors Housing	28 Independent Living Units
Commercial / Retail	3,448 sqm
Community Uses	571 sqm
Open Space	700 sqm (pocket park) 635sqm (communal level 3 terrace) 380sqm (level 6 occupants)

Public Benefits

- Employment - the development has the potential to generate up to 280 jobs upon completion, which is an increase of 31 jobs when compared to the site's existing building (noting that the building has been vacant since 2018).
- Pocket Park – a new publicly accessible pocket park with a total area of 700sqm for the enjoyment of local residents and community (refer to Figure 3). The pocket park will also formalise an existing pedestrian 'desire line' through the site.
- Community Space – a new communal space is proposed to be located within the development, for the benefit of on-site residents in addition to use by local community groups for functions and gatherings.
- Green Star Building – the new development has the potential to be a Green Star building, demonstrating and including the latest environmentally sustainable design and construction techniques.



Planning Proposal

- Streetscape Improvements - including the potential construction of acoustic treatment to rail and Pennant Hills Road for improved amenity, pedestrian amenity improvements at the nearby City View Road and Pennant Hills Road intersection, and other civic improvements.
- Affordable Housing - approximately 5% of the future residential accommodation is proposed as affordable housing, with a focus on key workers such as emergency service personnel and teachers, nurses and senior residents.
- Diversity – the proposal will increase the diversity of dwelling stock in the LGA, which is currently dominated by detached dwellings.

The PP is accompanied by a Letter of Offer to enter into a Voluntary Planning Agreement (VPA) which includes the public benefits being offered to Council. The tenure of the publicly accessible spaces such as the pocket park will be the subject of future VPA related discussions with Council, including their possible dedication.



Figure 3: Indicative Pocket Park (Source: Fender Katsalidis)

Strategic Merit

The PP demonstrates strategic merit by aligning with several key strategies applicable to the site and surrounding local area. The proposal enables greater contribution to the housing supply of Hornsby LGA, retention of employment land and delivery of community spaces and publicly accessible open space. In relation to direct consistency with strategic documents:

- **Greater Sydney Region Plan (GSRP)** – the proposed concept is consistent with the applicable elements of the GSRP. This includes through the site's proximity to 'city-shaping infrastructure' such as Northconnex and the North-West Rail Link, the vicinity of the site to employment hubs and Pennant Hills train station and the proposed public domain works which will improve walking and cycling



Planning Proposal

accessibility and provide improved streetscapes.

- **North District Plan (District Plan)** – the proposed concept is consistent with the planning priorities outlined in the District Plan. Pennant Hills is identified as a local centre in the District Plan, which act as the focal point of neighbourhoods. The proposed concept will reinforce the role of Pennant Hills as a local centre through the renewal of the site. Further, the District Plan identifies potential renewal opportunities along the Pennant Hills Road corridor, leveraging the investment made in NorthConnex. The Planning Proposal is entirely consistent in this regard.
- **Local Strategic Planning Statement (LSPS)** – the LSPS identifies that Pennant Hills town centre is in need of revitalisation and renewal. The proposal directly responds to this statement, as it seeks to renew a key site in the local area, potentially acting as a catalyst for the broader revitalisation within the Pennant Hills area, particularly around the town centre. The proposal is also consistent with numerous other priorities within the LSPS, including in relation to environmental, local character, high-quality design and promoting the '30-minute city'.
- **Local Housing Strategy (LHS)** – the proposed concept incorporates opportunities for diverse housing as well as increased housing supply and delivery. The introduction of residential flat buildings and seniors housing as uses to be provided alongside commercial, retail and publicly accessible open space will enable provision of housing to assist Hornsby LGA in meeting its housing targets to 2036. The site aligns with the typology of ideal housing locations identified in Objective 5 of the LHS, particularly given its proximity to Pennant Hills train station and the Pennant Hills town centre.
- **Employment Lands Study (ELS)** - the intent of the PP aligns with the recently adopted ELS, which states that B5 zoned land should be retained. The proposed concept seeks to maintain the current zoning, with the introduction of new land uses to allow for a mixed-use development that renews and enhances the site. The development provides a net increase in employment opportunities when compared to the site's existing buildings.

Site Specific Merit

The PP demonstrates site-specific merit, with the unique elements and location of the site informing the development of the proposed concept. In relation to the suitability of the site for the proposed concept:

- The site is not subject to significant environmental constraints or hazards, such as bushfire or flooding. This means the location of the proposed concept is not placing new homes or workplaces in high-risk, hazard-affected areas.
- The presence of Blue Gum High Forest is a valued part of the site and it has been carefully considered throughout the development of the proposed concept. A Biodiversity Assessment Report confirms the proposed development will not have a significant impact on any threatened species, populations or TECs.
- The proposed concept has also carefully considered neighbouring land uses, including the surrounding low-density residential, commercial and hotel uses. The proposed concept will not detrimentally impact the local area, given the proposed uses already largely occur in the local area. No adverse shadowing impacts to the surrounding low-density locality to the south of the site will occur and privacy impacts have been managed through the proposed built form.



Planning Proposal

- The site is well-serviced and there is sufficient infrastructure available to accommodate the proposed concept. Any augmentation required has been identified in the Services Infrastructure Report provided as part of this PP.

This PP demonstrates strategic and site-specific merit and addresses all relevant considerations under the *Local Environmental Plan Making Guidelines (Dec 2021)*. The proposed concept is consistent with State, Regional and Local planning policies and the relevant Section 9.1 Ministerial Directions.



Planning Proposal

2. SITE AND LOCALITY DETAILS

2.1. Local and District Context

The site is located at 7 City View Road, within the suburb of Pennant Hills, approximately 25km north-west from the Sydney Central Business District (CBD). The site is located within the Local Government Area (LGA) of Hornsby and within the jurisdiction of Hornsby Shire Council. A location plan of the site is shown in Figure 4.

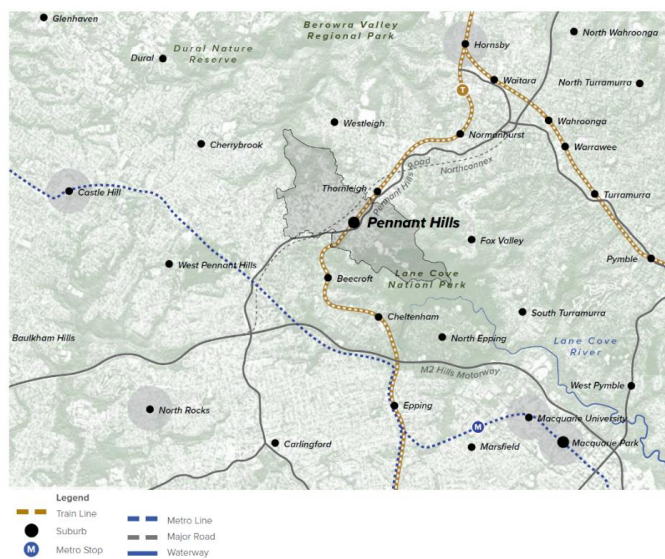


Figure 4: Regional context map (Source: Hatch Roberts Day).



Planning Proposal

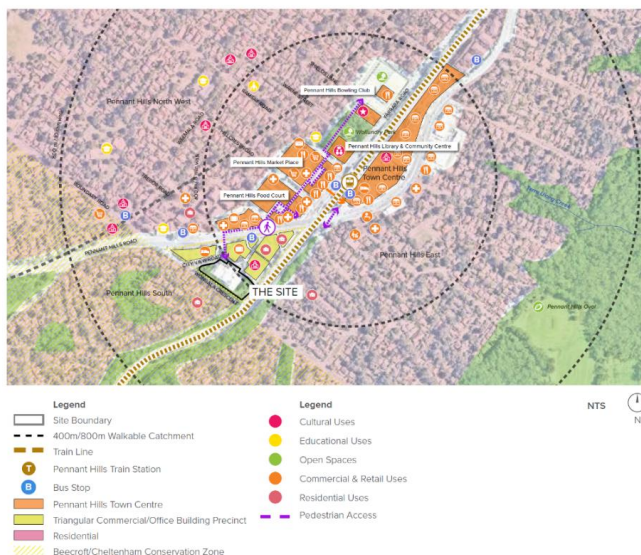


Figure 5: Local context map (Source: Hatch Roberts Day).

2.2. Site Features and Existing Development

The site is legally described as Lot 3 in Deposited Plan 732565 and has an area of approximately 6,476sqm. A detailed site plan is shown in Figure 6.

The site is currently occupied by a 3-5 storey commercial office building including above ground car parking (refer to Figure 7). The building is currently vacant and is surrounded by mature trees and vegetation (refer to Figure 8-Figure 12). The lot has frontages to City View Road to the north-west and Wongala Crescent to the south-west. It also adjoins the T1 North Shore, Northern & Western train line to the south-east. Building heights are perceived differently due to the sloping topography of the site, which falls substantially from north-west to south-east away from Pennant Hills Road (refer to Figure 8).

Planning Proposal

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Figure 6: Site Analysis of the subject property (Source: Fender Katsalidis).



Planning Proposal



Figure 7: Commercial office building on the site, viewed from City View Road (Source: Google).



Figure 8: View of the site from the top of Boundary Road/Wongala Crescent (Source: Google).

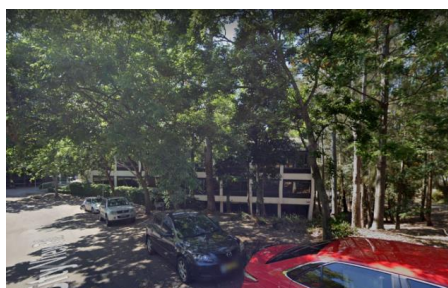


Figure 9: View of the site from City View Rd, near the intersection with Boundary Road (Source: Google).



Figure 10: Wongala Crescent, looking north (Source: Google)



Figure 11: Vegetation along Wongala Crescent (Source: Google)

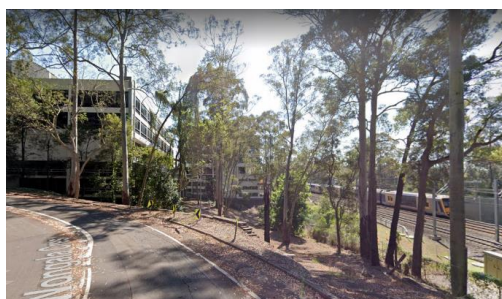


Figure 12: View of the rear of the site and adjacent rail corridor (Source: Google).



Planning Proposal

2.3. Surrounding Land Use Context

The site is situated within, and forms an integral part of, the Pennant Hills Local Centre. A range of uses and densities of development are located in the vicinity of the site. The site is within close proximity to Pennant Hills Road, which comprises a variety of different building forms. The site is located within the City View Road Precinct, being a triangular shaped area, which is part of the Pennants Hills Centre, bounded by the Main Northern Railway corridor, Pennant Hills Road and Boundary Road, and has a distinctive physical and land use character. It is intensely developed with several larger scale buildings, including a seven-storey commercial office building occupied by Catholic Care - Diocese of Broken Bay, an eight-storey residential flat building, a five-storey hotel, a 7-9-storey (approx.) commercial building occupied by various commercial tenancies, and a Telstra substation (see Figure 13). To the north-east of the site (within a 5-10 minute walk) is located the Pennant Hills Rail Station, the adjacent bus interchange and a diverse range of retail and medical services, in addition to a community centre and library adjacent the station (refer to Figure 5).

Opposite the site, on the opposite side of the train line and to the south and west of the site are single detached residential dwellings, also within the suburb of Pennant Hills.



Figure 13: Surrounding context of the site. Source: Fender Katsalidis.



Planning Proposal



Figure 14: View of Pennant Hills Road, to the north of the site (Source: Google).



Figure 15: Pennant Hills train station (Source: Google).



Figure 16: Single detached dwellings opposite the site (at left), with the bushland at the site's western boundary evident at right (Source: Google).

Existing Planning Provisions

The Hornsby Local Environmental Plan 2013 is the relevant Environmental Planning Instrument (EPI) applicable to the site. The following controls are relevant to the subject site.

Land use zoning: B5 Business Development (refer to Figure 17). An extract of the land use table for the B5 zone is provided in Table 3 below. The land uses identified in the development concept are permissible with consent under the B5 Business Development zone, including shop-top housing, commercial and office premises (as innominate uses) and food and drink premises. The introduction of residential flat buildings and seniors housing as part of the new local provision will overcome any definitional limitations associated with the definition of 'shop top housing' (as discussed in Section 1).



Planning Proposal

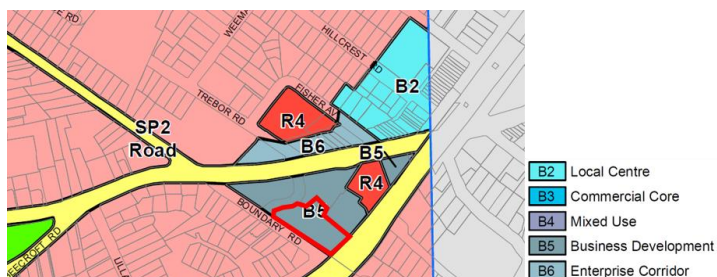


Figure 17: Land use zoning, site highlighted in red (Source: NSW Legislation).

Table 3: Permissible uses in B5 zone.

Permissible with consent (emphasis added)	Centre-based child care facilities; Food and drink premises ; Garden centres; Group homes; Hardware and building supplies; Hotel or motel accommodation; Kiosks; Landscaping material supplies; Light industries; Neighbourhood shops; Oyster aquaculture; Passenger transport facilities; Plant nurseries; Respite day care centres; Roads; Shop top housing ; Specialised retail premises; Tank-based aquaculture; Timber yards; Vehicle sales or hire premises; Warehouse or distribution centres; Water reticulation systems; Any other development not specified in item 2 or 4
---	---

Floor Space Ratio: 1.5:1 (refer to Figure 18).

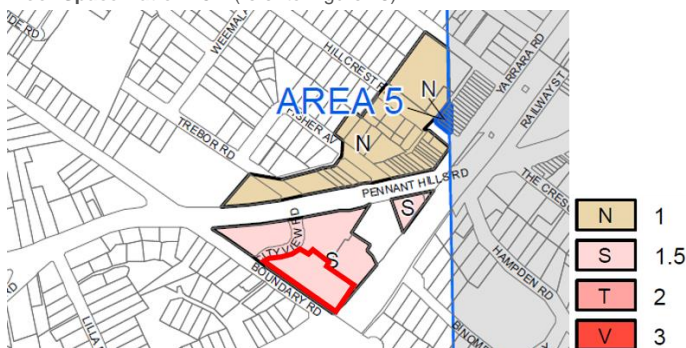


Figure 18: Floor Space Ratio, site highlighted in red (Source: NSW Legislation).



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Height of Building: 23.5 metres (refer to Figure 19).

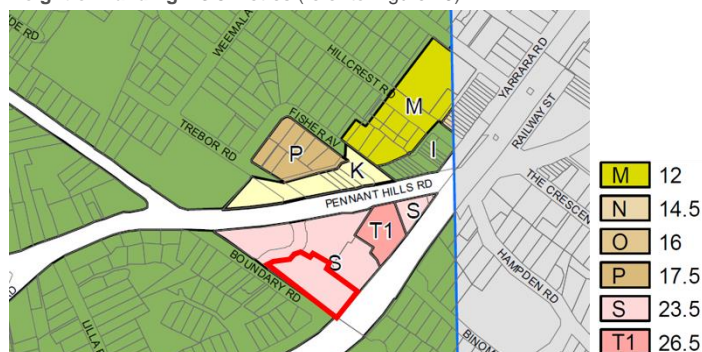


Figure 19: Height of building, site highlighted in red (Source: NSW Legislation)

Terrestrial Biodiversity: part of the site is zoned "biodiversity" (refer to Figure 20).

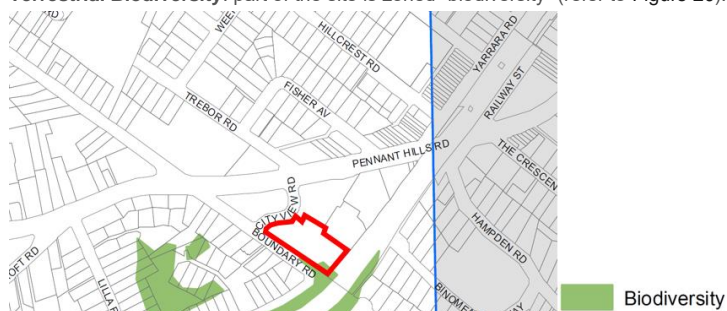


Figure 20: Terrestrial biodiversity, site highlighted in red (Source: NSW Legislation).

Heritage: the site is not a heritage item nor within a heritage conservation area (refer to Figure 21). However, the site is directly opposite the "Beecroft-Cheltenham Heritage Conservation Area" to the west. The HCA extends from the adjacent suburb Beecroft and terminates at Boundary Road. Part of this area comprises a historic subdivision which was used to fund the development of the railway line. It also contains a number of Victorian, Federation, Arts and Crafts, Inter-War and Post-War era buildings throughout the conservation area. The site is also adjacent to "bushland" to the south, which is a landscape heritage item that encompasses the rail corridor and certain vegetation within it.

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Figure 21: Heritage, site highlighted in black (Source: NSW Legislation)



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3. INDICATIVE RENEWAL CONCEPT

3.1. Urban Design Analysis

The Urban Design report at Appendix J provides an urban design analysis of the proposed concept. It identifies the vision for City View Place as being the creation of a context-responsive, green, mixed-use development, that will deliver a place for people that evolves the best attributes of Pennant Hills into the 21st century. Ultimately, the proposed concept seeks to revive an underutilised site, lacking activation and usable elements of public domain into a precinct delivering a range of community benefits, including new open space, seniors living, business space and a communal centre.

The Urban Design report undertook a detailed Place Assessment, which found that the proposal for City View Road delivers on the key urban design performance metrics identified within policy relevant to the site. Through measures such as providing new dwellings within walking distance of the nearby train station, including for seniors, delivering a new community facility and park, and retaining a large proportion of the trees on-site, the proposal demonstrates strong alignment with local and regional-level policies.

3.2. Key Design Moves

Six key 'design moves' have informed the proposal for the site, as outlined in the Urban Design Report at Appendix J. These are described below:

- a. *Retain significant vegetation and promote green spaces*
This includes retaining the majority of existing trees, introducing new tree plantings and increased landscaping and communal gardens.
- b. *Enhance pedestrian permeability and activation*
The incorporation of two, new through-site links and the continuation of the pedestrian footpath around the site boundary will deliver this design move.
- c. *Respond sympathetically with the topography of the site*
The stepped design of the built form reflects the topography of the site; the overall design promotes access to views and the creation of communal open spaces.
- d. *Layering of uses in a vertical form to promote a truly integrated mixed-use development*
The proposal provides a genuine mixed-use development concept by integrating uses such as seniors living, a multi-purpose community space, living and working spaces, a 'business incubator' space and a café.
- e. *Provide a sensitive transition in scale, form and land use to both the commercial and residential precinct.*
The scale of the proposal provides a sense of the missing middle typology, by providing an alternative situated between taller residential and commercial buildings and the low-rise residential dwellings in the surrounding area.



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- f. *Minimise overshadowing to nearby residential properties.*

The sympathetic development concept facilitates access to natural light for neighbouring properties.

A Place Assessment of the development concept using the Seven Essential Elements of Great Places was undertaken. This outlined that the proposal delivers on the key performance metrics within policy relevant to the site.

3.3. Building Envelope

The extensive tree canopy within part of the site and adjacent road reserves and rail corridor vegetation in the local area forms a key part of its character and identity. The proposed concept has recognised this through a sympathetic design that is set back from the valuable Blue Gum High Forest to the north-west of the site. Strong setbacks from City View Road and Boundary Road/Wongala Crescent have also informed the design and generally reflect the existing building setbacks.

Importantly, the proposal utilises the existing vegetation to maintain the leafy ambience of the locality.

3.4. Indicative Concept Plan

An indicative concept plan, prepared by Fender Katsalidis, is provided at Appendix A, which demonstrates the intended outcome of the proposed LEP amendments.

The indicative design of the proposal will provide a mixed-use development situated amongst the existing vegetation of the site, incorporating a pocket park and opportunities for work, play and living. The proposal capitalises on the slope of the site to provide a 7 storey, stepped building, which effortlessly blends in with its surroundings. The proposed building has been set back from City View Road to provide an enhanced pocket park for the community. Most levels combine two uses and include residential units across nine levels, commercial floor space across two floors, community space across one floor and seniors living across three floors (refer to Figure 22).

Based on the indicative section below, the re-development concept is generally consistent with the existing 23.5 metre building height control. However, it is noted that given the relatively steep topography, parts of the stepped building form occur slightly above, but also some distance below, the 23.5m height plane. Accordingly, this is considered a very minor departure to the height standard, causing no undue environmental impact and could ordinarily be addressed via a Clause 4.6 variation requests at the Development Application stage.

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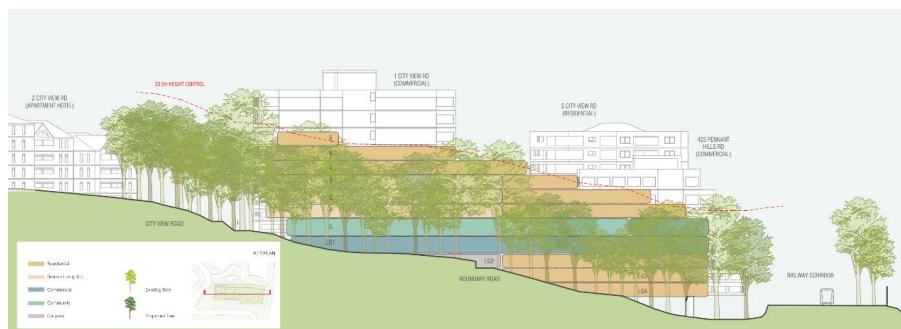
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Figure 22: Indicative section (Source: Fender Katsalidis)



Figure 23: Renders of the proposed renewal concept, demonstrating the intended outcomes of the site (Source: Fender Katsalidis).

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Figure 24: Aerial site render (Source: Fender Katsalidis).

3.4.1. Landscape and Open Space Outcomes

The landscape concept for the site has been driven by the question 'what makes a great outdoor space'? Seven elements of a great outdoor space are identified, these being:

- Atmosphere
- People
- Access
- Equality
- Environment
- Wildlife
- Comfort

These elements have informed a landscape concept that incorporates publicly accessible open space, through the provision of a 'pocket park' at the north-western end, bounded by the City View Road and Boundary Road frontages. This park integrates with the Blue Gum High Forest located in the western part of the site, which



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will be regenerated and protected as part of the proposed concept. The various uses of the site encourage people to linger and spend time at the site at different times of the day, enhancing the safety and useability of the park by the public, as well as workers and residents of the building.

The proposal will also include substantial new plantings around the site including within the proposed pocket park, as part of the surrounding streetscape and integrated with the built form. The proposed built form will include a combination of natural materials (such as timber) and plantings on the terraces of the building (Figure 23) to further complement the woodland character of the site.

3.4.2. Access and Parking

The proposed concept has considered both pedestrian and vehicular access to the site and incorporated both in a way that encourages pedestrian usage of the site and enhances pedestrian/cyclist access to areas beyond the site (such as Pennant Hills Station). This includes a through-site link from Boundary Road/Wongala Crescent to City View Road, providing a quicker, safer route to footpaths connected to Pennant Hills Station.

Vehicular access will be provided from the existing spur road from City View Road, retaining the existing access. Car parking will be provided across a three-level basement car park from this access point. Access for services is proposed to be located on Boundary Road/Wongala Crescent, with a new service access proposed that will enable servicing of the site by 12.5m Heavy Rigid Vehicles, as noted in the Hornsby DCP. It is noted this access point is restricted to larger service vehicles only and, therefore, its use will be infrequent.

Table 4 provides a summary of the indicative development statistics which could be associated with the proposed concept plan (subject to variation with further detailed design development at DA stage).

Table 4: Summary of Development Statistics

Key Concept Statistics (indicative)	
Residential	77 apartments
Seniors Housing	28 Independent Living Units
Commercial / Retail	3,448sqm
Community Uses	571sqm
Pocket Park	700sqm

To ensure the key design principles (that have informed the re-development concept) are realised at the Development Application (DA) stage, a site-specific Development Control Plan (DCP) has been prepared and accompanies this PP at Appendix K. The draft document has established several key design principles to be adhered to at the DA stage. Further, more detailed revision of the DCP can occur in conjunction with Council post-lodgement, with the intention to finalise the document during assessment of the PP.



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4. PART 1 - OBJECTIVES AND INTENDED OUTCOMES

Objective

This Planning Proposal seeks to facilitate the renewal of the site for a genuine mixed-use outcome including residential as well as commercial (office) and community uses. It also proposes a number of public benefits including open space in the form of a 'pocket park', a pedestrian thoroughfare, publicly available communal space, affordable housing and other civic amenity improvements.

It also seeks to implement a site-specific development control framework ensuring renewal of an exemplary standard and achievement of design excellence particularly with regards to architectural and landscape design in addition to environmental sustainability.

Intended Outcomes

- To provide housing choice which responds to the needs of the local community, potentially including compact dwellings and seniors housing in close proximity to services and infrastructure, and affordable housing to accommodate key workers.
- To maintain sustainable employment in the Pennant Hills Local Centre, by revitalising an existing, vacant commercial premises and retaining office premises in any site re-development.
- To provide significant public benefits, including a new publicly accessible pocket park and communal space for the benefit of the local community.
- To retain existing mature and significant vegetation where possible; and
- To facilitate a high-quality architectural design outcome, incorporating the principles of ecological sustainable development.



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5. PART 2 - EXPLANATION OF PROVISIONS

The Planning Proposal proposes the following modifications to the Hornsby Local Environmental Plan 2013 (HLEP):

Table 5: Summary of LEP Amendments

Control	Existing	Proposed
Floor Space Ratio	1.5:1	Introduce a new Local Provision that would permit residential flat buildings, seniors housing and an increased FSR for the site if the development would result in the delivery of a minimum 0.5:1 floor space ratio for commercial uses.
Building Height	23.5 metres	Nil change proposed

*Note: It is proposed to include RFBs as part of the new local provision, to overcome definitional limitations associated with the current definition of "shop top housing" (a permitted use in the zone) on a sloping site such as this. This approach will manage issues around the provision of housing above the ground floor; the indicative design demonstrates the complexity of this in relation to the topography of the site. The proposed re-development concept (as facilitated by this PP) will deliver a similar typology to shop-top housing, however commercial office uses and communal spaces will be delivered on the lower-mid levels as opposed to confined to the ground floor. Seniors housing is proposed as part of the new local provision, in order to avoid any doubt about the application of Part 5 of the Housing SEPP, as consequence of the biodiversity mapping that applies to a small area of the site.

It is proposed to introduce a new local provision to the HLEP. Example wording of the amendment has been provided below.

Table 6: Proposed Local Provision

Example Provision
<p><i>Use of certain land at Pennant Hills</i></p> <p><i>(1) This clause applies to Lot 3 DP732565, 7 City View Road, Pennant Hills.</i></p> <p><i>(2) The consent authority may grant development consent to development on land to which this clause applies for the purposes of senior housing or a residential flat building (including a mixed use development).</i></p> <p><i>(3) Despite clause 4.4, the maximum floor space ratio may exceed the floor space ratio shown in the map for the land if the floor space ratio for non-residential purposes is not less than 0.5:1.</i></p>



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6. PART 3 – JUSTIFICATION OF STRATEGIC AND SITE-SPECIFIC MERIT

6.1. Section A - Need for a Planning Proposal

6.1.1. Q1 - Is the planning proposal a result of an endorsed LSPS, strategic study or report?

The PP is considered to be consistent with and/or will enact specific recommendations from the following strategic documents (each of which is explored in further detail below):

- Hornsby Employment Land Study
- Hornsby Local Strategic Planning Statement
- Hornsby Local Housing Strategy

6.1.2. Q2 - Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

Option 1 – No action

The first option is to undertake no action in relation to the site. This would not achieve the objectives and intended outcomes, given the site has been vacant for a number of years and requires renewal to provide value to the local area and the broader Pennant Hills town centre. The building is also significantly outdated and requires substantial upgrade works, which are unfeasible with current market conditions. As such, this option was discounted.

Option 2 – Renew the site under current controls

The second option is to renew the site under the current development controls. However, there is a misalignment between the permissible height of buildings and permissible floor space ratio (FSR) controls applying to the site, meaning that a poor development outcome would result. This would be compounded by the reliance on the existing definition of shop-top housing, which could produce poor mixed use design outcomes on the site, whereby commercial or health services facilities occupy the ground floor(s). The existing site slope and established residential amenity particularly along the Boundary Road frontage does not lend itself to activated ground plane commercial (retail & business) frontages in these locations. As such, this option was discounted. The current range of permissible uses on the site has been demonstrated by market conditions over an extended period to be no longer conducive to promoting viable redevelopment.

Option 3 – Lodge DA with Clause 4.6 variation request

The third option is to lodge a Development Application (DA) with Council to renew the site, with an accompanying Clause 4.6 Variation Request to vary the applicable FSR control. This would attempt to balance the misalignment between the height of buildings and FSR controls. However, this would represent an extent of variation to a standard that would be better determined through a Part 3 process than a Part 4 process under the Act. Also, the DA would remain subject to the complications arising from the definition of shop top housing on the sloping site, potentially produce subpar outcomes for the renewal of the site.



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Option 4 – Site Specific Planning Proposal

The fourth option is to lodge a site-specific Planning Proposal (PP) to enable the renewal of the site. The PP is the most transparent means of achieving the desired outcomes to facilitate the economic redevelopment of the land and provide public benefit. The PP enables the discrepancy between the height of buildings and FSR controls to be amended in a more strategic way through Part 3 rather than Part 4 of the Act; it also enables the introduction of other specific land uses that would permit the development of a well-designed mixed-use building that responds to its immediate and surrounding context. With shop top housing already permissible, the proposed introduction of residential flat buildings and seniors housing does not introduce residential development to the area – it simply refines the options available to renew the site given the limitations of the shop top housing definition. Therefore, Option 4 is considered to be the preferred option and a PP is required to facilitate the permissibility of the proposed development.

6.2. Section B - Relationship to Strategic Planning Framework

- 6.2.1. Q3 - Will the planning proposal give effect to the objectives and actions of the applicable regional, or district plan or strategy (including any exhibited draft plans or strategies)?

The Greater Sydney Region Plan 2036

The Greater Sydney Commission released the Greater Sydney Region Plan in March 2018, which outlines a series of actions to coordinate the growth of Sydney. Of particular note, the Region Plan identifies the following locational criteria for urban renewal investigation opportunities:

Table 7: Consistency with the Greater Sydney Region Plan

Location Criteria	Comment
Alignment with investment in regional and district infrastructure which acknowledges the catalytic impacts of infrastructure such as Sydney Metro Northwest and Sydney Metro City & Southwest, NorthConnex, WestConnex, CBD and South East Light Rail, Parramatta Light Rail, Northern Beaches Hospital. Other possible future investments such as Western Harbour Tunnel and Beaches Link and Sydney Metro West and opportunities created by enhancements to existing infrastructure such as upgrades to schools, open space including sporting facilities and transport.	There is significant “city shaping” infrastructure within a short walking distance of the site, being the Pennant Hills Rail Station and bus interchange. Further, recently constructed infrastructure close to the site is expected to improve the site’s accessibility and connectivity with the Greater Sydney Metropolitan Area. This includes the opening of Northconnex, with the tunnel’s alignment located directly to the north of the site. Also, the North-West Rail Link is located several kilometres from the site, with the nearest metro stations being Cherrybrook, which will offer direct and frequent metro services to Chatswood, Macquarie Park and Norwest.
Accessibility to jobs, noting close to half of Greater Sydney’s jobs are generated in strategic centres.	The site is in the vicinity of several Strategic Centres and major employment hubs, including Hornsby,



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	Epping and Macquarie Park, which can be accessed from the site within under 30 minutes.
Accessibility to regional transport, noting that high frequency transport services can create efficient connections to local transport services and expand the catchment area of people who can access regional transport.	The site is within a short walkable distance (under 10 minutes) to the Pennant Hills rail station and bus interchange. The rail station provides frequent train services to major centres within the Sydney metropolitan area offering direct and frequent services to the Chatswood CBD.
Catchment areas within walking distance (up to 10 minutes) of centres with rail, light rail or regional bus transport.	The site is 500 metres (or 7 minutes) from the Pennant Hills train station, which is situated on the main northern line, providing direct heavy rail access to key centres including Hornsby, Epping, Macquarie Park in addition to the Sydney CBD.
Efficient interchanges with a comprehensive walking and cycling network.	The proposal includes improved streetscapes and public domain areas which will provide opportunities for improved walking and through-site pedestrian access. In addition, cycle access would be accommodated in any detailed design, along with end of trip facilities.
Areas of high social housing concentration where there is good access to services, transport and jobs.	Not applicable. The Pennant Hills Centre does not comprise high levels of social housing.
Distance from special land uses such as ports and airports.	Not applicable. The site is not near any ports or airports.

The table below outlines consistency with the objectives of the Greater Sydney Region Plan.

Regional Plan Objectives	Consistency
Infrastructure Objective 1 Infrastructure supports the three cities:	The site is located 500 metres from the Pennant Hills train station which is serviced by both train and bus services. Other infrastructure services that improve the sites accessibility include the Northconnex (10min drive from the site) and Cherrybrook Metro station (10min drive from the site). All these infrastructure services provide access to centres across Sydney, such as Chatswood, Sydney and Parramatta CBDs, which help promote the "30-minute city" objectives of the plan.
Liveability Objective 10 Greater housing supply	The PP seeks to facilitate the redevelopment of the site to provide for 77 residential apartments and 28 independent living units for seniors. These dwellings will be located in close proximity to existing services and infrastructure.
Liveability	The proposal notes that detached dwellings are the dominate dwelling topology within the LGA. The concept plan provided with the PP seeks



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Objective 11 Housing is more diverse and affordable	to facilitate the development of the site for a mixed-use development, which includes residential apartment units and seniors living units.
Productivity Objective 14: A Metropolis of Three Cities – integrated land use and transport creates walkable and 30-minute cities	The proposal seeks to facilitate the development of a site for residential purposes in close proximity to existing services and infrastructure.
Productivity Objective 22: Investment and business activity in centre	The proposal is seeking to redevelop the site for a mixed-use development. The site is located in close proximity to the Pennant Hills town centre precinct.

The North District Plan 2036

The North District Plan has been prepared to give effect to the Greater Sydney Region Plan. The plan has identified Pennant Hills as a local centre (refer to Figure 25). Local centres are the focal point of neighbourhoods and where they are a focus for public transport, they are an important part of a 30-minute city.

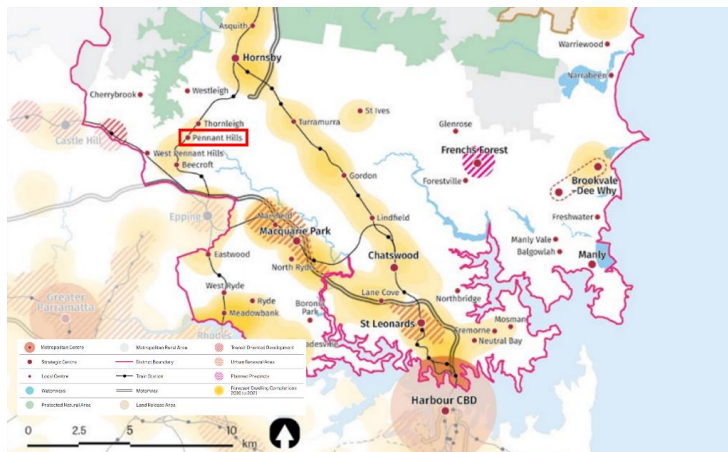


Figure 25: North District Plan, Pennant Hills outlined in red (Source: North District Plan).

Consistency with the plan's planning priorities, objectives and actions is demonstrated in Table 8 below.



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Table 8: Consistency with North District Plan

Planning Priorities	Greater Sydney Region Plan objectives	Actions	Comments	Consistent
Planning Priority N1. Planning for a city supported by infrastructure	Infrastructure aligns with forecast growth-growth by infrastructure compact. Infrastructure adapts to meet future needs. Objective 4 Infrastructure use is optimised.	Align forecast growth with infrastructure. Maximise the utility of existing infrastructure assets and consider strategies to influence behaviour changes, to reduce the demand for new infrastructure, including supporting the development of adaptive and flexible regulations to allow decentralised utilities.	The envisaged site renewal or re-development incorporates the principles of a Transit Oriented Development. It proposes a high-density mixed-use development, close to the Pennant Hills train station, providing direct services to the major centres and employment hubs.	Yes
Planning Priority N3. Providing services and social infrastructure to meet people's changing needs.	Services and infrastructure meet changing communities' needs.	Deliver social infrastructure that reflects the needs of the community now and in the future. Optimise the use of available public land for social infrastructure.	The indicative concept provides new social infrastructure such as new public domain areas and improved streetscapes. The PP also proposes a mixed-use development, incorporating non-residential floorspace. This will provide employment in the Pennant Hills centre.	Yes
Planning Priority N4. Fostering healthy, creative, culturally rich and socially connected communities	Communities are healthy, resilient and socially connected. Greater Sydney's communities are culturally rich with diverse neighbourhoods	Deliver healthy, safe, and inclusive places for people of all ages and abilities that support active, resilient and socially connected communities. Facilitate opportunities for creative and artistic expression and participation, wherever feasible, with a minimum regulatory burden. Strengthen social connections within and	The subject site is within walking distance of train and bus services. The proposed development will also provide additional community infrastructure such as a pocket park and community space, for the utilisation of both Council and the local community. This will improve the overall amenity of the area and will	Yes

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			between communities through better understanding of the nature of social networks and supporting infrastructure in local places.	provide opportunities for people to walk and cycle, which promotes social cohesion and community connectivity. Overall, the proposal supports strong, healthy and well-connected communities.	
Planning Priority N5. Providing housing supply, choice and affordability, with access to jobs, services and public transport	Greater housing supply. Housing is more diverse and affordable.	Prepare local or district housing strategies. Prepare Affordable Rental Housing Target Schemes following development of implementation arrangements. Further potential urban renewal opportunities to align growth with infrastructure investment include: • leveraging the investment in NorthConnex on Pennant Hills Road		The site is located in a unique position, in close proximity to existing infrastructure, including the Pennant Hills train station and the NorthConnex motorway. The PP is directly consistent with this action and priority, given it will leverage on the increased transport capacity around the site, facilitated by the opening of the NorthConnex tunnel, which significantly improves the site's accessibility and connectivity with the greater area. The PP facilitates an appropriate mix and number of dwellings which will contribute to increasing the supply of housing in the locality.	Yes
Planning Priority N6. Creating and renewing great places and local centres, and respecting the District's heritage	Great places that bring people together.	Use place-based planning to support the role of centres as a focus for connected neighbourhoods. Use flexible and innovative approaches to revitalise high streets in decline.		The PP encourages urban renewal of a key strategic site within the Pennant Hills local centre, which creates an opportunity for place-based planning.	Yes



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				<p>The site is located directly opposite the "Beecroft-Cheltenham Heritage Conservation Area" and adjacent to "bushland" which is a landscape heritage item. The proposed concept plan includes an appropriate transition in height, away from the heritage items and suitable setbacks, to ensure there is no adverse impacts to site's heritage context and surrounding heritage items.</p>	
Planning Priority N12. Delivering integrated land use and transport planning and a 30-minute city	A Metropolis of Three Cities – integrated land use and transport creates walkable and 30-minute cities.	Integrate land use and transport plans to deliver the 30-minute city.	<p>The site is located within 30-minutes of existing and future employment opportunities, within the Pennant Hills centre, and other major centres in the vicinity including Hornsby, Macquarie Park and Ryde.</p>	Yes	
Planning Priority N10. Growing investment, business opportunities and jobs in strategic centres	Investment and business activity in centres.	Provide access to jobs, goods and services in centres. Prioritise strategic land use and infrastructure plans for growing centres, particularly those with capacity for additional retail floor space.	<p>The provision of non-residential floorspace will provide an opportunity to incorporate retail/commercial space within the proposed development, providing both business and job opportunities within the Pennant Hills centre.</p>	Yes	
Priority N21: Reducing carbon emissions and managing energy, water and waste efficiently	A low-carbon city contributes to net-zero emissions by 2050 and mitigates climate change.	Support initiatives that contribute to the aspirational objective of achieving net-zero emissions by 2050, especially through the establishment of low-carbon precincts; and	<p>As outlined in the ESD report prepared by EMF Griffiths (Appendix E), the proposed development will include the latest ESD principles. These principles</p>	Yes	

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		Support precinct-based initiatives to increase renewable energy, and energy and water efficiency.	have also been included in the proposed site-specific DCP (Appendix K), to ensure these principles are implemented at the Development Application stage.	
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Strategic Merit Considerations

DPE has released assessment criteria for assessing PPs, to justify and determine if a PP has strategic and site-specific merit. Table 9 below demonstrates the site has clear strategic and site-specific merit.

Table 9: DPE's Assessment Criteria

Does the proposal have strategic merit? Does it:	
give effect to the relevant regional plan outside of the Greater Sydney Region, the relevant district plan within the Greater Sydney Region, and/or corridor/precinct plans applying to the site. This includes any draft regional, district or corridor/precinct plans released for public comment or a place strategy for a strategic precinct including any draft place strategy; or	As demonstrated in Table 8, the proposed concept is entirely consistent with the relevant priorities in the North District Plan. There are no other corridor/precinct strategies applicable to the site.
demonstrates consistency with the relevant LSPS or strategy that has been endorsed by the Department or required as part of a regional or district plan; or	Section 6.1.1 outlines consistency with both Council's LSPS and LHS. There are no local council strategies, that we are aware of, that have been endorsed by DPE, relevant to the PP.
respond to a change in circumstances that has not been recognised by the existing planning framework	<p>Infrastructure</p> <p>There is significant infrastructure investment occurring within the vicinity of the subject site, including the recently constructed Northconnex and the North-West Rail Link, which are significant city-shaping infrastructure referenced in the North District Plan.</p> <p>This PP has the potential to maximise the usage of this new infrastructure, in addition to existing infrastructure such as the Pennant Hills train station, which is within walking distance of the site.</p> <p>Local Environmental Plans</p> <p>The Hornsby Local Environmental Plan 2013 was prepared in order to cater for the growth as outlined in a previous Metropolitan Strategy, 'A Plan for Growing Sydney'. The LEP (which was gazetted in 2013) is therefore approximately 8 years old.</p> <p>Demographics</p> <p>The Hornsby Local Housing Strategy (LHS) was prepared circa 2020, providing a series of updated demographic analysis and projections specific to the LGA.</p>



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	<p>The LHS indicates that the population of Hornsby is anticipated to grow by approximately 32,000 people from 2016-2036, with an implied dwelling requirement of 14,879 dwellings (approx. 743 dwellings per year)¹.</p> <p>The 2019 DPE Population Projections indicate that, in the short-term (from 2021-2026), the population of Hornsby will increase by 5,800 people. An implied dwelling projection for this period is not provided². From Q1 2016 to Q4 2020, Hornsby averaged 200 dwelling completions per year³. This is not sufficient to accommodate the expected increase in population, with an additional 540 dwellings per year (approx.) required to meet the 743 dwellings needed to provide sufficient dwellings for the anticipated population.</p> <p>Council's LHS also identifies an ageing population in the LGA, with an expected increase of 9,000 additional persons aged 70+ from 2016-2036⁴. It notes the issues arising with the location of seniors housing in rural areas, particularly through SCCs. The proposal is located in an established urban area and will provide housing opportunities for seniors in a highly accessible location.</p> <p>As the planning controls applicable are more than 5 years old, a review of planning controls is therefore required in order to ensure the LGA can accommodate the forecast growth.</p> <p>This PP is capable of assisting the LGA in accommodating this growth by providing in the order of approximately 77 apartments, 28 independent living units for seniors and approximately 280 jobs. The proposal is located in an established urban area and provides space for various demographics to gather and interact. There is also a significant amount of investment in "city shaping" infrastructure in the vicinity of the site. As previously discussed, the site is in proximity to Northconnex and the North-West Rail Link, which significantly improve the site's accessibility and connectivity with the greater Sydney Metropolitan Area.</p>
Does the proposal have site-specific merit, having regard to the following:	
the natural environment on the site to which the proposal relates and other affected land (including known significant environmental values,	<p>The PP is located within an existing urban environment and is not subject to significant environmental constraints or hazards. The site is not bushfire prone land, nor is it flood-affected.</p> <p>A Biodiversity Assessment Report has been prepared by Travers</p>

¹ Page 8, Hornsby LHS

² <https://www.planning.nsw.gov.au/-/media/Files/DPE/Factsheets-and-fags/Research-and-demography/Population-projections/2019-Hornsby.pdf>

³ <https://www.planning.nsw.gov.au/Research-and-Demography/Metropolitan-Housing-Monitors/Metropolitan-Housing-Monitor>

⁴ Page 45, Hornsby LHS



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resources or hazards)	Bushfire and Ecology (Appendix C), which confirms that the proposed development will not have a significant impact on any threatened species or populations or TECs.
existing uses, approved uses, and likely future uses of land in the vicinity of the land to which the proposal relates	The envisaged use of the site, being a mix of residential and commercial (office) uses is considered highly compatible with the surrounding land-use context. It will not unreasonably impact any surrounding development (existing or proposed). The Heritage Impact Statement identifies that the proposal would not generate any adverse impacts on nearby heritage items or the adjoining Beecroft-Cheltenham Heritage Conservation Area. The Urban Design Report also states that overshadowing of nearby residential properties is minimised and the built form facilitates access to natural light.
services and infrastructure that are or will be available to meet the demands arising from the proposal and any proposed financial arrangements for infrastructure provision.	There is sufficient infrastructure available to accommodate the proposed development. The proposal will have minimal impacts on the surrounding road networks, will utilise existing public transport infrastructure and enhance the local walking and cycling infrastructure by providing a connection between the site and surrounding streets. Refer to Section 6.3.2.

- 6.2.2. Q4 - Is the planning proposal consistent with a council LSPS that has been endorsed by the Planning Secretary or GSC, or another endorsed local strategy or strategic plan?

As discussed in detail below, the proposed concept is consistent with the:

- Hornsby Local Strategic Planning Statement (LSPS)
- Hornsby Local Housing Strategy (LHS)
- Hornsby Employment Land Study (ELS).

Local Strategic Planning Statement

The Hornsby Local Strategic Planning Statement (LSPS) sets out a 20-year land-use vision; the special character and values that are to be preserved; shared community values; and how Hornsby Shire Council will manage growth and change.

Of particular relevance to Pennant Hills Town Centre, the LSPS states the following:

Pennant Hills Town Centre is in need of revitalisation and renewal. A review of the Pennant Hills Road Corridor between Pennant Hills and Thornleigh will be undertaken with a strong place-based approach aimed at improving the amenity and user experience for local residents within the corridor.



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The proposal directly responds to this statement, as it encourages the renewal of a key site within an established multi-storey office and residential precinct, close to rail and bus transport along the nearby Pennant Hills Road corridor. The proposed concept may act as a catalyst for the revitalisation of the Pennant Hills town centre. The proposed concept also improves the quality and amenity of the public domain, by providing a new 700sqm publicly accessible pocket park, a new communal space, substantial landscaping and the retention and embellishment of existing mature vegetation.

Table 10 below outlines consistency with key priorities of Council's LSPS.

Table 10: Consistency with LSPS

Key Priorities	
Expanding our tree canopy cover and protecting mature trees to enhance the environmental qualities and character of the bushland shire	Consistent. The Landscape Plan (Appendix H) outlines the retention of the existing Blue Gum High Forest, regeneration of the Forest and supplementing this area with additional plantings. Significant landscaping is also proposed along the terraces of the proposed development.
Protecting the character of our low density neighbourhoods	Consistent. The concept plan has included several design techniques to ensure the amenity of the adjacent low-density residential area to the south and west is protected. This includes providing a transition in height, suitable setbacks from all boundaries and the retention of mature vegetation within the setback areas.
Responding to climate change with an active strategy to reduce carbon emissions and manage energy, waste and water efficiently	Consistent. The proposed concept plan has been designed in accordance with the latest Ecological Sustainable Design principles. An ESD report has been prepared by EMF Griffiths (Appendix E), which outlines the key principles which will be implemented at the Development Application stage to minimise the development's carbon footprint. These principles, which adopted a Green Star design for the development, have been incorporated into the proposed site-specific Development Control Plan at Appendix K.
Improving the quality of architectural design of new development	Consistent. The proposed concept plan has been informed by both the Architectural Package prepared by Fender Katsalidis (Appendix A) and the Urban Design Report prepared by Hatch Roberts Day (Appendix J). The design of the redevelopment will include a combination of neutral/natural materials, sensitive massing and the retention of mature vegetation which will ensure the development exhibits a high degree of architectural quality and design excellence. Further, the site specific DCP will ensure these high-quality design principles will be adhered to in any site re-development.
Enhancing, protecting, and conserving	Consistent. The Heritage Impact Statement (Appendix F) states that no adverse impacts would occur to any nearby heritage items or the adjacent Beecroft-



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promoting our natural, built and cultural heritage	Cheltenham Heritage Conservation Area.
Revitalising the Hornsby Town Centre	Not applicable.
Protecting and enhancing the environmental value and economic productivity of the Metropolitan Rural Lands in the Shire	Not applicable – the site is not within the Metropolitan Rural Lands.
Supporting sustainable economic growth based on the Shire's built and natural assets, infrastructure and locational advantages	Consistent. The proposed concept takes advantage of the site's locational attributes of being within the Pennant Hills town centre and in close proximity to transport infrastructure such as the Pennant Hills train station and its adjacent bus interchange and the recently constructed Northconnex.
Building our resilience to natural hazards, including bushfire risk, flooding and storms	Not applicable – the site is not within a known bushfire or flood prone location and increases the resilience of the community by avoiding locating housing and workplaces in areas of known hazard risk.
Promoting the '30-minute City' by improving the walkability, connectivity and accessibility of our centres and neighbourhoods	Consistent. The proposed concept promotes the '30-minute city' by encouraging a mixed-use development (incorporating both residential and non-residential land uses) in close proximity to the Pennant Hills train station. This will encourage future residents to access jobs and services within the Pennant Hills Centre and/or via the suburban heavy rail network. The inclusion of non-residential uses will also provide job opportunities to local residents. Hornsby centre will be accessible by public transport within 30-minutes, while other strategic and employment centres, such as Macquarie Park, Norwest and Parramatta, will also be within 30-minutes' drive of the site, offering further opportunities to residents.

Priority LP3 "supporting the development of community and cultural facilities that will adequately service our current and future community" is addressed by the proposal, as it incorporates community space within the development.

In line with SP10 "ensuring inclusive play experiences are available across the Shire providing playgrounds that are diverse in their design, exciting, challenging and safe for all", the proposed "pocket park" may present the opportunity to create an inclusive and engaging play space for children.



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The proposal also focuses economic and residential development in the existing Pennant Hills centre, aligning with PP4.

The LSPS identifies that Council will undertake the Pennant Hills Centre/Road Corridor Review and the Pennant Hills Place Plan as part of its ongoing strategic work. This PP is localised to the site and does not pre-empt any outcomes from those future reviews/plans.

Hornsby Employment Land Study

Hornsby Council has released its Employment Land Study (ELS), which outlines the key economic and employment issues and trends affecting the LGA in the context of the North District Plan. It also provides directions to support sustainable growth. The ELS was endorsed by Council on 12 May 2021.

In the ELS, Pennant Hills is identified as a “Local centre” (refer to Figure 26). The subject site occurs within, and forms an integral part of, the Local centre of Pennant Hills. The centre is primarily zoned either B5 Business Development, B6 Enterprise Corridor, B2 Local Centre or R4 High Density Residential.

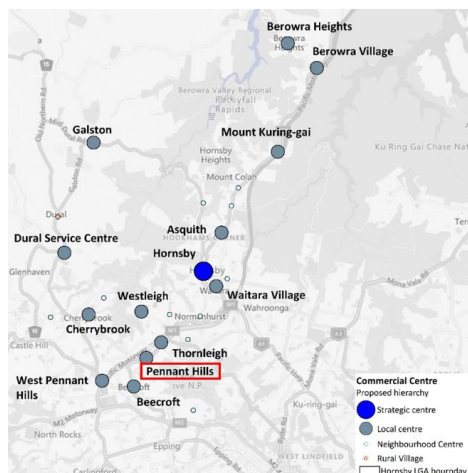


Figure 26: Centres Map, Pennant Hills highlighted in red (Source: Hornsby Employment Land Study)

During the consultation of the ELS, the community noted that “Pennant Hills needs revitalising – currently looks tired and has low space utilisation. Needs increase[d] amenity and a community focal point (p.94).” It was also noted that NorthConnex (which is now complete and open to traffic) may unlock opportunities for Pennant Hills to become a higher order centre.

As a result, the ELS recommends the revitalisation of the Pennant Hills to Thornleigh Corridor, as outlined below:

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**Strategy 1.2: Revitalise Pennant Hills to Thornleigh Corridor**

The Pennant Hills and Thornleigh centres are in relatively close proximity, however both centres lack a clear identity and contain a mismatch of uses and zoning. Pennant Hills generally services properties to the north of Pennant Hills Road / Cumberland Highway and the rail line and Thornleigh services the catchment to the south. The centres do however have competing trade catchments. The current provision of supermarket space at Thornleigh is stronger, with those at Pennant Hills having a smaller catchment.

The capacity assessment indicates that the existing planning controls are not sufficient to accommodate future demand. There is also a disparity in the planning controls (building height and FSR) that may be preventing viable development outcomes.

- **Action 1.2.1:** Prepare a Pennant Hills to Thornleigh Corridor combined masterplan to establish a clear identity for the centres and revisit the planning controls and zoning to incentivise a higher density of commercial and residential development.
- **Action 1.2.2:** Consider enabling a full line supermarket to establish in Pennant Hills, which would support the revitalisation of the centre. This should be located in the B2 zone, over B5 or B6 zones. It should reinforce the centre hierarchy (see Action 6.2.1).
- **Action 1.2.3:** Encourage Pennant Hills to transition into a higher order centre to complement Hornsby Town Centre with a greater provision of business and office space.
- **Action 1.2.4:** Encourage an increased diversity of retail uses at Thornleigh by establishing a specific brand (i.e. boutique retail) and encouraging the delivery of more non-food retail floorspace.

The ELS notes that the existing B5 zone should be retained given it provides an essential urban support zone that facilitates employment uses. The PP maintains the current B5 zoning. The proposed reduction in commercial floorspace should be considered in the context of the current commercial building's ongoing underutilisation evident in it remaining vacant for an extended period of time. Additionally, the proposed concept is estimated to generate an additional 31 jobs when compared to the site's existing building (if this were to be fully occupied).

The PP seeks to address the disparity in building height and FSR controls that are currently preventing viable development on the site and revisit the Floor Space Ratio control to incentivise a higher density of commercial and residential development (Action 1.2.1), whilst remaining largely consistent with the established LEP height standard (23.5 metres) and maintaining generous building setbacks along key frontages.

The ELS also notes that a masterplan for the Pennant Hills to Thornleigh Corridor should be prepared to revisit planning controls and incentivise higher order development. It is acknowledged that the PP is proposed prior to the preparation of a wider masterplan; however, the PP is still considered consistent with this action, given no change to the underlying zoning or building height is proposed. Therefore, it does not pre-empt or influence any outcomes that might arise from the masterplan.

Whilst the PP is not a direct result of the ELS, it is nonetheless generally consistent with it and a number of



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specific recommended actions for the Pennant Hills Local centre, and supports their implementation in relation to this site.

Local Housing Strategy

The Local Housing Strategy (LHS) outlines Council's 20-year vision and priorities for housing in response to the Greater Sydney Region Plan and the North District Plan.

The LHS states that Hornsby LGA's population is predicted to reach 179,582 people by 2036. This represents an increase of nearly 32,000 people between 2016-36. To house this population there will be a corresponding need for an additional 14,879 new homes by 2036, representing a required annual increase of 744 dwellings over the period.

The LHS confirms that, due to the development activity which has occurred since the 2011 Housing Strategy, Council can meet its housing targets set by the State Government to 2026 under its current planning scheme (2016-26). However, beyond this point additional supply may be required for the LGA to continue to reach its housing target.

Objective 5 of the LHS seeks to "*Promote sustainable locations for housing growth close to transport, which support the role of centres, have adequate infrastructure and maximise opportunities through collaboration*" (p.86). Parts of Pennant Hills are identified in the LHS as one of Council's planned precincts, which are focused near train stations and commercial centres. The LHS also indicates that new and future road and rail infrastructure will unlock further placemaking opportunities at Pennant Hills. The LHS outlines that, given the construction of Northconnex is expected to reduce traffic along Pennant Hills Road, there may be opportunities to revitalise Pennant Hills for urban renewal opportunities.

The proposed PP is consistent with the LHS, as the proposed controls will allow the site to be renewed for mixed use purposes, including approximately 77 residential apartments and 28 independent living units. It is well-located in relation to Pennant Hills train station and also includes substantial public benefits, including a new pocket park and a community space, which will improve the amenity for the surrounding existing residential community.

Employment Zone Reforms

The Department of Planning and Environment (DPE) is currently undertaking a suite of reforms which includes the delivery of a simplified employment zones framework. DPE exhibited a proposal to replace the existing Business and Industrial zones with five new employment zones and three supporting zones under the Standard Instrument - Principal Local Environmental Plan (2006). The reforms have now been gazetted and partially commenced in December 2021.

The purpose of the reforms is to:

- Maximise productivity while minimising land use conflicts and ensuring they are fit for purpose;
- Address current barriers within the planning system that limit the ability of businesses to establish, expand or adapt; and,



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- Better support councils in the delivery of the strategic vision contained in their Local Strategic Planning Statements and background studies.

The reform documentation outlines that both the B5 and B6 zones (the currently predominant zones in the Pennant Hills centre) are largely applied uniformly. The documentation states that “the purpose of B6 is unclear, lacking in strategic clarity. Land use activities commonly found in areas zoned B6 are generally classified as urban support or mixed use.”

The following new zones will be implemented from 2021-22:

- E1 Local Centre
- E2 Commercial Centre
- E3 Productivity Support
- E4 General Industrial
- E5 Heavy Industrial
- MU1 Mixed Use
- W4 Working Foreshore
- SP4 Local Enterprise

It is not yet known what the site will be rezoned under these reforms. The site is within the Pennant Hills Local centre and is currently zoned B5 Business Development. Therefore, the centre (including the site) could be rezoned to E3 Productivity Support. The E3 zone allows for a mix of services, low impact industry, creative industry, manufacturing, warehousing, office and limited supporting retail. Residential uses are not proposed to be permitted in this zone; however, Council may be able to include this use as part of the new local provision as the reforms progress (as is proposed by this PP). Council could seek to apply the MU1 zoning to the subject site and its broader ‘triangle’ of neighbouring sites, reflecting the existing mix of uses including commercial, residential and hotel accommodation. The conversion of zone cannot be known until Council determines its preference.

Regardless of the future conversion zone, this PP does not seek to change the intent of these reforms. It will not alter the existing B5 zone, but rather introduce site-specific provisions that provide employment opportunities in the form of commercial and retail uses alongside residential dwelling supply, in a high-quality design outcome. The concept plan also indicates a net increase of 31 jobs when compared to the existing building on-site (were it to be fully occupied), ensuring the employment-based zoning of the site is not diminished.

- 6.2.3. Q5 - Is the planning proposal consistent with any other applicable State and regional studies or strategies?

Not applicable, there are no other State or regional studies/strategies applicable to the subject site.

- 6.2.4. Q6 – Is the planning proposal consistent with applicable SEPPs?

Table 11 outlines consistency with the relevant State Environmental Planning Policies.



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Table 11: Consistency with State Environmental Planning Policies (SEPPs)

SEPP/SREP Title	Consistency	Comment
State Environmental Planning Policy (Biodiversity and Conservation) 2021	N/A	The Biodiversity Assessment Report prepared by Travers Bushfire and Ecology (Appendix C), outlines that given the sporadic nature of recent Koala records, the study area does not comprise Core Koala Habitat. In addition, the presence of major roads, a railway and moderately dense development in the surrounding area, with no direct connectivity to conserved bushland would significantly reduce the site's capacity to be a host for this species.
State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004	Yes	The PP will not contain provisions that will contradict or would hinder application of this SEPP.
State Environmental Planning Policy (Exempt and Complying Development Codes) 2008	N/A	Not applicable.
State Environmental Planning Policy (Housing) 2021	Yes	<p>The proposal incorporates one type of housing (for seniors) which may rely on the SEPP for development. However, the site is identified on the Biodiversity Values Map and Threshold Tool, meaning that at least a small part of the site may be excluded from the application of the SEPP. To avoid any doubt, seniors housing is proposed to be identified as part of a new local provision for the site, negating any reliance on the Housing SEPP for permissibility.</p> <p>The proposal is consistent with this SEPP, as approximately 5% of the future residential accommodation will be dedicated as affordable housing, with a focus on key workers such as emergency service personnel and teachers, nurses and senior residents.</p>



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SEPP/SREP Title	Consistency	Comment
State Environmental Planning Policy (Industry and Employment) 2021	N/A	Not applicable.
State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development	Yes	The Indicative Architectural Package (Appendix A) has taken into consideration the principles of the SEPP. The indicative concept is also consistent with the requirements of the Apartment Design Guide (ADG). Specifically, the concept scheme apartments are capable of achieving 70% solar access and 60% natural ventilation. Any future Development Application to be submitted to Council for this site will demonstrate detailed compliance with the requirements of the SEPP.
State Environmental Planning Policy (Planning Systems) 2021	N/A	Not applicable.
State Environmental Planning Policy (Precincts—Central River City) 2021	N/A	Not applicable.
State Environmental Planning Policy (Precincts—Eastern Harbour City) 2021	N/A	Not applicable.
State Environmental Planning Policy (Precincts—Regional) 2021	N/A	Not applicable.
State Environmental Planning Policy (Precincts—Western Parkland City) 2021	N/A	Not applicable.
State Environmental Planning Policy	N/A	Not applicable.



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SEPP/SREP Title	Consistency	Comment
(Primary Production) 2021		
State Environmental Planning Policy (Resilience and Hazards) 2021	Yes	The site's existing zone permits shop top housing. The site is therefore suitable for mixed use and residential development. Based on the historical and current use of the site as a commercial office building, it is unlikely that it is subject to contamination. More detailed analysis, if required, will be provided at Development Application stage.
State Environmental Planning Policy (Resources and Energy) 2021	N/A	Not applicable.
State Environmental Planning Policy (Transport and Infrastructure) 2021	Yes	Division 15, Subdivision 2 of the SEPP provides controls for "development immediately adjacent to rail corridors", "excavation in, above or adjacent to rail corridors", "impact of rail noise or vibration on non-rail development", "development within or adjacent to interim rail corridor" and "development near proposed metro stations". Consideration will need to be given to these matters as part of any future Development Application.

There are no deemed State Environmental Planning Policies (former Regional Environmental Plans (REPs)) applicable to the PP.

Draft State Environmental Planning Policies

Draft State Environmental Planning Policy (Design and Place)

The objective of this draft SEPP is to establish a framework which encourages innovative design that maximises public benefit. It is envisioned to be an integrated instrument that will influence the application of other SEPPs.

The draft SEPP is currently under consideration following public exhibition; however, it is not a mandatory matter for consideration pursuant to the Act. The draft SEPP is not imminent nor certain; however, as it has been placed on exhibition, it has been considered in, and has informed, this PP. This development's consistency with the intent of the draft SEPP is established by consideration of the proposed Guiding Principles.



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Table 12: SEPP Design and Place - Design Principles (draft clause 12(2)).

PRINCIPLE	COMMENT
Deliver beauty and amenity to create a sense of belonging for people.	The proposed development has been informed by a series of architectural and urban design studies, which have assisted in developing a high-quality scheme, integrated with the surrounding community and environment. The development, in addition to the proposed public domain improvements, will provide an overall improvement to the presentation of the site and streetscape.
Deliver inviting public spaces and enhanced public life to create engaged communities	The proposed development includes a new 700sqm pocket park, which will be activated with non-residential uses. This will enhance the public domain and provide a new outdoor recreation space for new and existing residents.
Promote productive and connected places to enable communities to thrive	The proposed renewal concept will facilitate productivity via the inclusion of a commercial (office) space set within an established treed environment, which will be enhanced with additional landscaping and a publicly accessible pocket park for the enjoyment of on-site and surrounding residents and workers. Improved connections between the site and surrounding pathway network also form part of the proposal.
Deliver sustainable and greener places to ensure the wellbeing of people and the environment	Supplementary tree plantings are proposed in addition to extensive landscaping of all open space, external common and setback areas. These requirements are to be incorporated into the site-specific DCP. The proposed development includes a number of ESD principles to ensure the development has a reduced carbon footprint. These principles have been incorporated into the accompanying site-specific DCP.
Deliver resilient, diverse places for enduring communities	

Draft State Environmental Planning Policy (Environment SEPP)

The Explanation of Intended Effect for the draft Environment SEPP was released in October 2017. It aims to promote the protection and improvement of key environmental assets for their intrinsic value and the social and economic benefits they provide.

The draft SEPP is not imminent nor certain, however, given the EIE has been placed on exhibition it is considered in this PP. It proposes to set out provisions under four parts being: Catchments, Waterways, Bushland, and Protected areas. The parts relevant to this application are discussed below.

The draft SEPP proposes to create a consolidated set of principles and controls to guide development in catchments, and general heads of consideration for consideration by the consent authority. The heads of



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consideration will seek to protect and maintain:

- Water quality and flows within watercourses;
- Native plants, animals, habitats and ecosystems; and
- Recreational, scenic and environmental amenity.

A Biodiversity Assessment Report has been prepared and accompanies this application. The report outlines that the proposed development will have no impact to the natural environment. The subject site occurs in a highly urbanised part of Pennant Hills, within the town centre and an established dense office and residential precinct. It is not near nor adjacent any bushland areas. A more detailed assessment of this SEPP will be undertaken at Development Application stage, when more information is publicly available

6.2.5. Q7 – Is the planning proposal consistent with the applicable Ministerial Directions (section 9.1 Directions)?

It is considered that the PP is consistent with the relevant Directions issued under Section 9.1 of the Act by the Minister to councils, as demonstrated in Table 13:

Table 13: Consistency with S9.1 Ministerial Directions

Direction Title	Consistency	Comment
Focus area 1: Planning Systems		
1.1 Implementation of Regional Plans	Yes	Refer to Table 7 which demonstrates consistency with the Greater Sydney Regional Plan.
1.2 Development of Aboriginal Land Council land	N/A	Not applicable.
1.3 Approval and Referral Requirements	N/A	Not applicable.
1.4 Site Specific Provisions	Yes	The PP will be consistent with this Ministerial Direction. A site-specific provision is proposed to ensure a specific mix of uses is provided on the site and to respond to the site topography. It does not seek to strictly preclude other uses from the site through the use of a site-specific provision.
Focus area 1: Planning Systems – Place-based		
1.5 Parramatta Road Corridor Urban Transformation Strategy	N/A	Not applicable.
1.6 Implementation of North West Priority Growth Area	N/A	Not applicable.



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Land Use and Infrastructure Implementation Plan		
1.7 Implementation of Greater Parramatta Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	N/A	Not applicable.
1.8 Implementation of Wilton Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	N/A	Not applicable.
1.9 Implementation of Glenfield to Macarthur Urban Renewal Corridor	N/A	Not applicable.
1.10 Implementation of the Western Sydney Aerotropolis Plan	N/A	Not applicable.
1.11 Implementation of Bayside West Precincts 2036 Plan	N/A	Not applicable.
1.12 Implementation of Planning Principles for the Cooks Cove Precinct	N/A	Not applicable.
1.13 Implementation of St Leonards and Crows Nest 2036 Plan	N/A	Not applicable.
1.14 Implementation of Greater Macarthur 2040	N/A	Not applicable.
1.15 Implementation of the Pyrmont Peninsula Place Strategy	N/A	Not applicable.
1.16 North West Rail Link Corridor Strategy	N/A	Not applicable.
1.17 Implementation of the Bays West Place Strategy	N/A	Not applicable.
Focus area 2: Design and Place		
-	-	-



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Focus area 3: Biodiversity and Conservation		
3.1 Conservation Zones	N/A	Not applicable.
3.2 Heritage Conservation	Yes	The site is not a heritage item nor is it within a heritage conservation area. Nonetheless, the site is adjacent to the Beecroft-Cheltenham Heritage Conservation Area, which is of local significance. As outlined in the Urban Design Report (Appendix J), an appropriate built form could be accommodated on site, incorporating appropriate setbacks and transition in height, to ensure there is no impact to the heritage significance of the surrounding area. The architectural concept adopts the principles of the urban design report; therefore, it provides an appropriate response and transition to the Heritage Conservation Area. The Heritage Impact Statement (Appendix F) notes the proposal would not adversely impact the nearby Heritage Conservation Area or any heritage items.
3.3 Sydney Drinking Water Catchments	N/A	Not applicable.
3.4 Application of C2 and C3 Zones and Environmental Overlays in Far North Coast LEPs	N/A	Not applicable.
3.5 Recreation Vehicle Areas	N/A	Not applicable.
Focus area 4: Resilience and Hazards		
4.1 Flooding	N/A	The site is not located within a known flood prone area. Accordingly, Direction 4.3 is not applicable.
4.2 Coastal Management	N/A	Not applicable.
4.3 Planning for Bushfire Protection	Yes	The site is not identified as Bushfire Prone Land.
4.4 Remediation of Contaminated Land	Yes	The site's existing zone permits shop top housing and it has been used most recently for commercial office purposes. The site is therefore suitable for mixed use and residential development. Further



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		detail, such as a contamination report, will be provided at the Development Application stage.
4.5 Acid Sulfate Soils	N/A	The site is not located on any known acid sulfate soils. Accordingly, Direction 4.1 is not applicable.
4.6 Mine Subsidence and Unstable Land	N/A	Not applicable.
Focus area 5: Transport and Infrastructure		
5.1 Integrating Land Use and Transport	Yes	The PP will enable retail / commercial and residential development close to (within 10 minutes' walk of) existing rail and bus infrastructure, jobs and services, encouraging walking, cycling and use of public transport.
5.2 Reserving Land for Public Purposes	N/A	Not applicable.
5.3 Development Near Regulated Airports and Defence Airfields	N/A	Not applicable.
5.4 Shooting Ranges	N/A	Not applicable.
Focus area 6: Housing		
6.1 Residential Zones	Yes	The PP encourages a variety and choice of housing types to provide for existing and future housing needs, whilst making efficient use of existing infrastructure and services. The PP demonstrates appropriate built form whilst minimising the impact of residential development on the environment.
6.2 Caravan Parks and Manufactured Home Estates	N/A	Not applicable.
Focus area 7: Industry and Employment		
7.1 Business and Industrial Zones	Yes	The PP does not propose to amend the zoning of the site. The zone already permits shop-top housing and the APU seeks only to enable a type of housing in a similar form but that would not otherwise be permitted because of the sloping nature of the site



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		<p>and its implications in relation to the shop-top housing definition.</p> <p>The PP promotes employment growth and supports the viability of the local centre, by providing a mixed-use development in a highly accessible location.</p> <p>The proposal (including the APU) seeks to facilitate a genuine mixed-use outcome, whereby almost two-levels of non-residential floorspace are intended to be used primarily for commercial (office) premises. Refer to the Economic Assessment (Appendix D) for a detailed assessment against this direction.</p>
7.2 Reduction in non-hosted short-term rental accommodation period	N/A	Not applicable.
7.3 Commercial and Retail Development along the Pacific Highway, North Coast	N/A	Not applicable.
Focus area 8: Resources and Energy		
8.1 Mining, Petroleum Production and Extractive Industries	N/A	Not applicable.
Focus area 9: Primary Production		
9.1 Rural Zones	N/A	Not applicable.
9.2 Rural Lands	N/A	Not applicable.
9.3 Oyster Aquaculture	N/A	Not applicable.
9.4 Farmland of State and Regional Significance on the NSW Far North Coast	N/A	Not applicable.

6.3. Section C - Environmental, Social and Economic Impact

- 6.3.1. Q8 - Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

Arboricultural Assessment



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A Preliminary Arboricultural Impact Assessment has been prepared by Travers Bushfire and Ecology and provided at Appendix B.

The report was prepared to assess the condition and significance of a number of trees on the property and the potential impact of any future renewal (as proposed) on the identified trees. The assessments carried out in the report were based on the Australian Standard AS4970-200 - *Protection of Trees on Development Sites*.

The assessment and its findings can be summarised as follows:

- The development concept has sought to retain the vast majority of existing trees, particularly within the southern and western building setback areas. Whilst a number of these trees are located within the 3m development impact footprint, the proponent seeks to retain these trees wherever possible, and a specific provision will be included in the site-specific Development Control Plan to achieve tree retention and protection in these areas.
- The report recommends removal of 17 of approximately 110 trees across the site (~15%) that occur within the development footprint or 3m thereof, whose SULE rating was a 4 (dead, dying, dangerous, etc).
- The landscaping plan prepared by Arcadia shows a number of tree plantings proposed around the perimeter of the site to compensate any losses within the development footprint and to improve site amenity.

Table 14: Trees to be retained (Source: Travers Ecology)

Table 2 - Summary of the 24 trees for retention (# of trees)						
		Listed in Biodiversity Cons. Act	Env Pest (Exempt from TPO)	Low Landscape Signif.	Medium Landscape Signif.	High Landscape Signif.
Condition	SULE 1					
	SULE 2			1	21	
	SULE 3			1		
	SULE 4					

Table 15: Trees to be removed (Source: Travers Ecology)

Table 3 - Summary of the 17 trees for removal (# of trees)						
		Listed in Biodiversity Cons. Act	Env Pest (Exempt from TPO)	Low Landscape Signif.	Medium Landscape Signif.	High Landscape Signif.
Condition	SULE 1					
	SULE 2				10	
	SULE 3					
	SULE 4			4	3	

- A further 30 trees close to the building footprint may be retained subject to further investigation at the DA stage. These trees are typically located in close proximity to the proposed development footprint that may



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have an SRZ or TPZ partially compromised. In addition, exotic species are included that may not necessarily require removal if in moderate-good condition. Further investigations would occur at Development Application stage. As noted previously, the retention of the majority of these trees would be sought.

Of the 71 trees assessed on-site and based upon the proposed development this report has determined the following:

- Twenty-four (24) trees are able to be retained
- Thirty (30) are recommended for further investigation as noted above.
- Seventeen (17) are recommended for removal

There are approximately 30-40 trees further on site that have not been assessed given their distance from the existing/re-development footprint. They largely occur near the corner of Boundary Rd and City View Rd, as well as a few individuals along the railway corridor boundary, bringing the total number of trees estimated on site to 110.

The report concludes that, subject to the specific tree protection measure being implemented, the proposed development will not have a significant impact on long-term health of the retained trees.

Ecology

A Biodiversity Assessment Report was also prepared by Travers Bushfire and Ecology and provided at Appendix C.

Ecological surveys have been undertaken in accordance with relevant legislation including the *Environmental Planning and Assessment Act 1979*, the *Biodiversity Conservation Act 2016*, the *Commonwealth Environment Protection and Biodiversity Conservation Act 1999* and the *Fisheries Management Act 1994*. Figure 27 provides a summary of the surveys undertaken.



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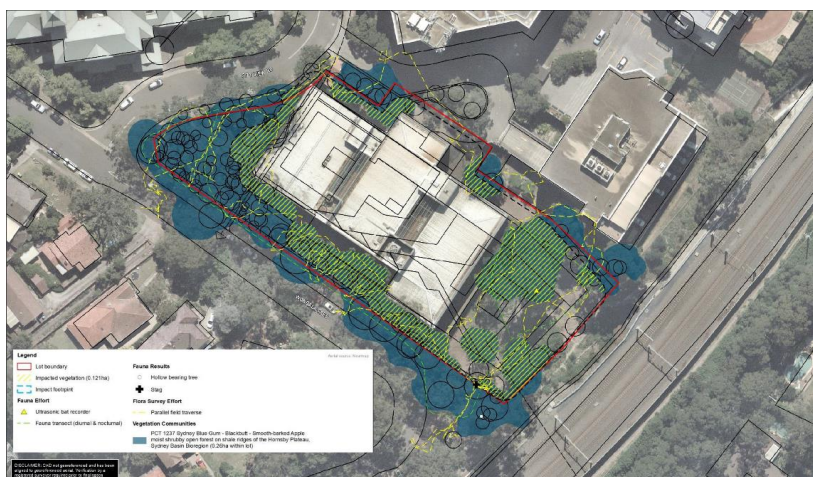


Figure 27: Flora and Fauna Survey (Source: Travers Ecology)

Of the flora and fauna surveyed, no threatened fauna species, no threatened flora species, no endangered populations and one (1) TEC, Blue Gum High Forest, were recorded within the study area.

Whilst offsetting under the Biodiversity Offsets Scheme (BOS) is required for the proposal as the study area is located on lands mapped as Biodiversity Values Land, the assessment of significance has concluded that the proposed development will not have a significant impact on any threatened species, populations or TECs. Therefore, a Species Impact Statement is not required for the proposal.

In respect of matters required to be considered under the *Environment Protection and Biodiversity Conservation Act 1999*, no threatened fauna species, no protected migratory bird species, no threatened flora species, and one (1) TEC, Blue Gum High Forest, were recorded within the study area.

The proposal was not considered to have a significant impact on matters of national environmental significance. As such, a referral to Department of Agriculture, Water and the Environment should not be required.

The report includes a series of mitigation measures to ensure the development does not have any long-term implications on the surrounding environment. These measures have been incorporated into the site-specific DCP.

- 6.3.2. Q9 - Are there any other likely environmental effects of the planning proposal and how are they proposed to be managed?

Heritage



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A Heritage Impact Statement (HIS) (Appendix F) was prepared to consider any potential impacts on local heritage that may arise as a result of the development. The site is not listed as a heritage item, nor is it located within a Heritage Conservation Area (HCA). However, the site is adjacent to the Beecroft-Cheltenham HCA. As such, the provisions of Clause 5.10 of the Hornsby Local Environmental Plan 2013 (HLEP 2013) apply to the site.

The HIS concludes that the amendments proposed by this PP to the HLEP 2013 will be acceptable from a heritage perspective. The proposal would not result in any adverse heritage impacts and would utilise design elements, such as generous building setbacks, a 'stepped' building form, site landscaping, and existing mature tree retention to mitigate the visual impact upon the immediate setting. The indicative natural and neutral colours and material palette also assists in managing the relationship between the proposal and its surroundings.

The HIS notes that the proposed amendments to the HLEP 2013 and the proposed works will have no direct impact on the heritage significance of the neighbouring HCA. Similarly, the identified values of the nearby heritage items will not be affected by the proposal.

Therefore, the proposal is considered to be an appropriate built form and design from a heritage perspective and will not generate any adverse impacts on the neighbouring heritage items or HCA.

Traffic

A Transport Impact Assessment (TIA) (Appendix I) was prepared to assess the anticipated transport implications arising from the proposal. The site has frontage to two roads (City View Road and Wongala Crescent), with City View Road providing access to the State-managed Pennant Hills Road to the north of the site. Pennant Hills Road has an indicative traffic volume of 2,300 vehicles per hour, per direction, in March 2017. The recent opening of NorthConnex is anticipated to remove a significant proportion of traffic from Pennant Hills, particularly heavy vehicles, with an estimated 5,000 heavy vehicles per day expected to be removed. The typical six-month adjustment period following the opening of a new toll road was immediately followed by the COVID-19 pandemic and, as such, reliable data on road traffic patterns following the opening of NorthConnex is not available. More detailed traffic modelling and information will be provided at the Development Application stage.

The surrounding public transport network includes train services at Pennant Hills railway station and six bus routes near the site. Pennant Hills station provides access to major stations including Castle Hill (where the Sydney Metro North West can be accessed), Parramatta station and Hornsby station. In addition, walking infrastructure is well-established on the surrounding roads and includes a pedestrian bridge over Pennant Hills Road, accessed via Hampden Road. However, there is limited cycling infrastructure near the site. The TIA notes the proposal will provide internal footpaths and bicycle routes to connect with the adjacent street network.

Parking requirements for the proposal generate a nominal requirement for 206 parking spaces. Two parking supply reductions were considered appropriate, these being:

- No dedicated residential visitor parking, with visitors to make use of the parking supply for the



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- community space.
- 15% reduction in the DCP requirement for the community component to reflect ancillary use and local walk-up catchment.
- Based on this, it is anticipated that a total parking supply of 187 parking spaces would be sufficient for the proposal, where a reduced provision of 16 community use parking spaces would also satisfy residential visitor demand.

It is estimated that the proposed three-level basement car park would accommodate approximately 187 parking spaces. While the exact parking provision would be established during any subsequent development application, the TIA notes the plans demonstrate sufficient space allocation to accommodate parking demands. A minimum of 5 motorcycle parking spaces will be required as per the DCP and the proposed site layout is capable of accommodating this parking requirement within the basement levels. The proposed development is required to provide 31 bicycle parking spaces; the proposed site layout is capable of accommodating this, through a combination of at-grade and basement facilities, as well as end-of-trip facilities including showers and lockers. The site is also capable of accommodating service vehicles to ensure appropriate waste management, with a hardstand area provisioned in the masterplan. This area could be designed appropriately to accommodate service vehicles during any subsequent development application.

The proposal is expected to generate up to 102 and 88 vehicle movements in the AM and PM peak hours, respectively. This represents a decrease in traffic when compared to the existing traffic generation of 116 and 88 vehicles movements in the AM and PM peak hours, respectively, which could be expected if the site was currently occupied. Further, the proposal could result in a minor reduction of around 14 and 8 trips in the AM and PM peak hours, respectively, compared to the occupation of the existing building.

There is sufficient capacity within the immediate road network and intersection (Pennant Hills and City View) to accommodate the traffic generated by any future re-development on the site.

Therefore, the proposal will have minimal impacts on the surrounding road network, will utilise existing public transport infrastructure and enhance the local walking and cycling infrastructure by providing a connection between the site and surrounding streets.

Solar Access

The building volume of the indicative concept scheme has been designed to avoid any adverse overshadowing of rooftops and primary living areas of dwellings to the south. The Architectural Plans (Appendix A) demonstrate the extent to which additional overshadowing would occur. While some additional overshadowing of properties to the south-west occurs at 9am, this has largely receded by 10am, with no impacts from 11am onwards. There is also no overshadowing of principal private open space nor rooftops or windows along their northern elevation. Properties to the south-east of the site experience additional overshadowing at 3pm. The overshadowing is relatively rapid-moving and is minimised for residences neighbouring the site (see Figure 28 and Figure 29).

The Apartment Design Guide design criteria is for 70% of apartments to receive 2 hours' solar access between 9am and 3pm on the winter solstice. Preliminary analysis of the concept building design indicates this



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requirement can be achieved. This can be achieved in upper level, south-facing apartments through the integration of skylights.

Section 4 of the Hornsby DCP includes additional sunlight and ventilation controls, including:

- On 22 June, public open space areas, plaza areas and footpaths should receive 2 hours of sunlight between 9am and 3pm to at least 50% of the area

The proposed pocket park and the north/north-east facing community terrace will likely receive adequate daylight access through most of the year.

- Principal communal open space should receive a minimum 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9am and 3pm on 21 June (mid-winter).

The communal terrace for residents, located on Level 3, is likely to exceed the minimum requirements noted above.

- At least 60 percent of dwellings should have dual aspect and natural cross ventilation.

The indicative design includes 39 apartments with dual aspect (approximately 36%). Preliminary analysis of the indicative building design shows the building can achieve the required 60% of apartments with cross-ventilation, through a mixture of natural cross-ventilation through typical levels and stack effect ventilation through upper levels.

Therefore, the proposal has adequately considered and mitigated any overshadowing impacts on neighbouring dwellings and is capable of achieving the ADG solar access requirement.

This indicates the concept is capable of complying with the above controls, in relation to both the ADG and Hornsby DCP.

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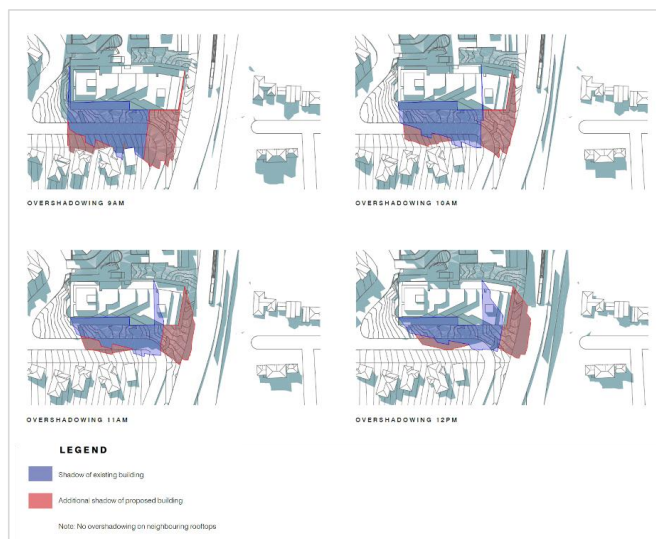
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Figure 28: Excerpt of shadow diagrams.



Figure 29: Excerpt of shadow diagrams



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Privacy

The Architectural Plans (Appendix A) note the alignment of the built form directs views to the east and, with the use of privacy screens, prevents overlooking to those dwellings opposite the site on Wongala Crescent. Key design principles that inform the proposal included a focus on orientating views away from neighbouring dwellings and towards the Sydney CBD. The slope of the site and the proposed landscaping will also assist in ensuring adequate privacy for residents and workers within the building, as well as nearby dwellings.

The SEPP65 Apartment Design Guide provides guidelines in relation to managing visual privacy, including adequate separation between buildings. The existing road separation, bushland and vegetation, the sloping topography and future landscaping of the site will provide adequate privacy screening to neighbouring residential and commercial land uses, including the low-density residential uses to the south-west of the site, as required by the Apartment Design Guide and Council's DCP. Detailed setbacks, apartment orientation and privacy design features will be provided at the Development Application stage.

The SEPP65 Apartment Design Guide also provides guidelines in relation to acoustic privacy for residential flat buildings. Suggested approaches for managing acoustic privacy include adequate building separation, orienting windows and doors away from noise sources, the co-location of noisy areas in buildings adjacent to each other, the use of non-habitable rooms to buffer noise from external sources, limiting the number of party walls and locating noise sources (such as garage doors, plants rooms etc.) at least 3m away from bedrooms. The proposal will address these key criteria during the Development Application stage, when more detailed design information will be available. It is not anticipated that the proposal will give rise to any substantial noise impacts and is expected to demonstrate compliance with these guidelines at the Development Application stage.

View Impact

The proposal is aligned to take advantage of views to the south-east of the site and orientates views away from neighbouring dwellings to the south, directing them instead towards views of the CBD and district views to the west. The proposal may impact on existing views enjoyed by the neighbouring commercial and residential properties. The existing building prevents any significant views being obtained by the low-density residential dwellings to the south-west, with the existing views of bushland and trees to be retained as part of the proposal.

Views from the existing commercial buildings and serviced apartments may also be affected by the increased scale of the proposal; however, this is typically considered lower-impact due to the use of the buildings (i.e. not residential). The predominant views of the site from these buildings, which appears as a mix of built form and natural vegetation, will be maintained by the proposal. Additionally, there is no change proposed to the existing height of buildings control. Further analysis of any potential impacts on views can be undertaken at the Development Application stage.

Environment

Part of the site comprises Blue Gum High Forest. This vegetation community is classified as Critically



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Endangered under both State and Commonwealth legislation and is distinctive of the Sydney region, not being found anywhere else in Australia. The Biodiversity Assessment Report notes that state assessment of significance undertaken concludes that the proposed development will not have a significant impact on any threatened species, populations or TECs.

The Landscape Plan (Appendix H) demonstrates the careful consideration that has been made of the existing ecological and environmental context of the site and will seek to enhance this, particularly through the regeneration of the existing Blue Gum High Forest at the north-west of the site. This area will be complemented by a timber play area and an extension to the existing footpath to the proposed pedestrian crossing at Wongala Crescent. A swale to manage overland flow and a 'Discovery Trail' incorporating Aboriginal Bush Tucker planting and signage extend around the periphery of the site, providing ongoing engagement and management of the site environs. The proposed landscaping identifies, protects and regenerates the Blue Gum High Forest on-site and provides engaging play and learning features for site users and visitors. These principles are incorporated into the proposed DCP for the site.

An ESD report has been prepared for the proposal which identifies the ESD principles, goals and strategies for the site. This demonstrates how the proposal will create a sustainable and ecologically sensitive development. Each of these principles and its associated goal are identified below:

- **Providing community benefits** – a community that is diverse, safe and healthy, has access to services, jobs and learning, that fosters active local participation and is a pleasant place to live, work and visit while integrating with and enhancing the value of existing neighbourhoods.
- **Providing economic benefit** – economic benefit is maximised by facilitating the release of urban land, incorporating lifecycle costs including operational savings, long term employment opportunities, and creating partnering opportunities and long-term value.
- **Protecting ecological values and incorporating sustainability initiatives** – protect, manage, and enhance natural systems, habitats and biodiversity, and promote the innovative and efficient use and management of materials, water and energy to minimise impacts on the climate.
- **Promoting planning and design excellence** – develop a modern, resilient and adaptable urban form that promotes connectivity, safety and accessibility whilst recognising existing local values and aspirations.

Incorporating these principles and goals and enacting them through the identified strategies ensures the development responsibly responds to the local environment, and gives consideration to environmental, social and economic sustainability aspects for the building's occupants, users and the wider community. For the specific design methods to be employed to achieve these principles, refer to the ESD report at Appendix E.

Overall, the proposed environmental management approach provides broad social benefits, including an efficient, modern building that revitalises the local area, provides employment opportunities and respects and enhances the valuable local biodiversity.

6.3.3. Q10 - Has the planning proposal adequately addressed any social and economic effects?



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Impact on Employment Land

An Economic Assessment has been prepared by Hill PDA and is provided at Appendix D.

It is considered that the PP would have no adverse impact on Hornsby's employment land stocks for the following reasons:

1. The PP would maintain the current B5 zoning. Hence, the PP would not directly reduce the amount of employment land stocks in the LGA.
2. The type of land uses proposed (retail, commercial and residential) are currently permissible and present in or adjoining the B5 sub-precinct. This implies that the PP would not impact the functionality of the current or future functionality of the employment precinct.
3. The PP would increase employment densities on the site. This would contribute to the wider employment precinct reaching its employment targets while also reducing the deficit in capacity identified in the ELS.
4. There is currently more than 10,000sqm of vacant office space in Pennant Hills. Given that the subject site is an inferior location to the other comparable areas analysed, there is considerable risk and probability of long-term vacancies for any office space on the subject site. Additionally, with uncertainty around the ongoing COVID-19 pandemic and emerging trends like work from home practices, there is additional risk of long-term vacancies.

Economic Benefits

In Hill PDA's Economic Assessment at Appendix D, the following economic benefits are identified as being associated with the proposal:

Increased Residential Provision

The Hornsby Housing Strategy 2020 notes that Hornsby is on track to reach its 2016-2021 dwelling targets (+4,350 dwellings). However, as noted in the LSPS, Hornsby experienced relatively slow growth in additional dwelling stock between 2011 and 2016. This slow growth may have created a historic undersupply in the LGA.

Our high-level analysis indicates an undersupply in the LGA of around 782 dwellings. An undersupply undermines housing affordability and diversity in the locality. Increasing supply would contribute to the LGA addressing this historic undersupply which, in turn, could help place downward pressure on housing prices.

The Housing Strategy also acknowledges that additional supply is required for Hornsby to reach its dwelling targets between 2021-36 (+10,530 dwellings). We estimated that without a further increase in supply, Hornsby LGA will fall short of its housing targets over the period to 2025 (6,696 dwellings), by around 1,323 dwellings.

An undersupply in residential dwellings can place upward pressure on dwelling prices and subsequently affordability. Analysis of recent residential sale values in Hornsby shows that as of March 2021, the median sale price for non-strata dwellings was around \$1.67 million in Hornsby. This was \$236,000 or 16% higher than Greater Sydney (\$1.44 million). While the median sale price for strata dwellings in Hornsby reached



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around \$774,000. This was \$158,000 or 20% lower than the median strata dwelling recorded in Greater Sydney (\$932,000).

If left unabated the housing affordability gap will continue to widen. Increased residential supply can place downward pressure on housing prices and rents as acknowledged in the former A Plan for Growing Sydney. Advancement of the Planning Proposal would increase dwelling supply and capacity within the LGA, helping to alleviate the housing affordability gap and rental stress.

The Planning Proposal would have the following beneficial outcomes for the LGA:

- Provide a more affordable dwelling option for residents and key workers within the LGA. This is evident in strata dwellings having a median value \$898,000 or 116% lower than the median price of non-strata dwellings.
- Increase diversity of dwelling stock within the LGA which is currently dominated by detached dwellings.
- The Planning Proposal would be providing a dwelling type and mix that would cater to the changing characteristics of the local community.
- Provide dwellings near public transport nodes and existing services. This would contribute to Hornsby attaining the 30-minute concept and transport sustainability, allow older residents to age in place and contribute to the urban renewal/revitalisation of Pennant Hills corridor.

Impacts on Hornsby's employment land stocks

It is considered that the Planning Proposal would have no adverse impact on Hornsby's employment land stocks for the following reasons:

1. The Planning Proposal would maintain the current B5 zoning. Hence, the Planning Proposal would not directly reduce the amount of employment land stocks in the LGA.
2. The type of land uses proposed (retail, commercial and residential) are currently permissible and present in or adjoining the B5 sub-precinct. This implies that the Planning Proposal would not impact the functionality of the current or future functionality of the employment precinct.

The Planning Proposal would increase employment densities on the site. This would contribute to the wider employment precinct reaching its employment targets while also reducing the deficit in capacity identified in the ELS.

Impact on commercial office space

- During the construction phase, the economic benefits are estimated to be:
 - 303 direct and indirect jobs years created.
 - \$134 million in total economic output directly and indirectly created.
 - \$26 million directly contributed to the Hornsby economy (gross value added or GVA) and a total of \$48 million directly and indirectly contributed.
- On completion, the economic benefits resulting from development under the PP are estimated to be:



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- A total of 280 jobs, 31 more jobs than that estimated which could be currently generated onsite (assuming the current vacant space was occupied).
- \$21 million in wage generation per annum.
- \$29 million in GVA per annum to the local economy.
- \$14.9 million in financial revenue for whole of government in the form of GST payments from residential sales, stamp duty revenue, developer contributions (Section 7.11) and payroll tax on construction workers.
- Local retailers would directly capture approximately \$1.7 million per annum from residents on-site. This would directly support the viability and vibrancy of the nearby Pennant Hills Village.
- The PP would increase employment density on the land, supporting strong forecast growth in health sector jobs, and enhancing employment retention in the LGA.
- Constituting a more orderly and efficient use of the land which is more aligned with State planning objectives in a location which would benefit from the revitalisation of Pennant Hills Village.

Public Benefits

A Letter of Offer to enter into a Voluntary Planning Agreement (VPA) has been prepared and accompanies this PP (Appendix L).

The public benefits have been valued at approximately \$10.5m, which includes the 700sqm pocket park, community space and potential noise attenuation measures and pedestrian amenity improvements at nearby intersections. Total value also includes subsidised rental space for start-up businesses and an assumption that three apartments would be provided for affordable housing.

6.4. Section D – Infrastructure (Local, State and Commonwealth)

6.4.1. Q11 - Is there adequate public infrastructure for the planning proposal?

Yes, existing public infrastructure is capable of accommodating the demand generated by this PP.

The site is near the intersection of Pennant Hills Road and City View Road and is within a short (5-10 minute walk) of the Pennant Hills heavy rail station and bus interchange. The site also benefits from good accessibility directly from Pennant Hills Road (being a major arterial road corridor between Parramatta and Hornsby districts). It is also a short distance from other major road corridors, such as the M2 Motorway which links the Sydney Orbital Network through Beecroft Road, as seen in Figure 30. The site is also in close proximity to the recently constructed Northconnex motorway.

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Figure 30: Road Network (Source: Transport for NSW)

The site is located approximately 500m from the Pennant Hills Railway Station. The site is also well serviced by bus routes providing connectivity to Greater Sydney, which includes routes 625, 626, 631, 632 and 633 along Pennant Hills Road, with a major bus stop provided at Pennant Hills Railway Station ('Hillsbus'). In addition, routes 637, 638, 639 and the M60 offer northern connectivity to Cherrybrook. The train and bus networks are shown in Figure 31 and Figure 32.

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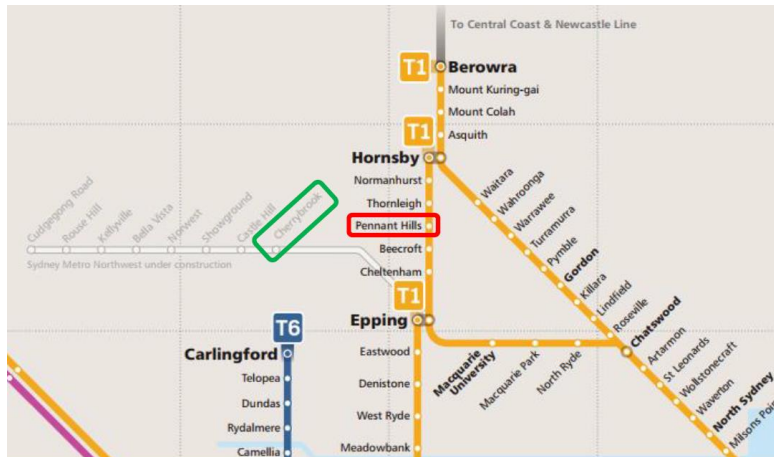


Figure 31: Sydney Train Network (Source: Sydney Trains)

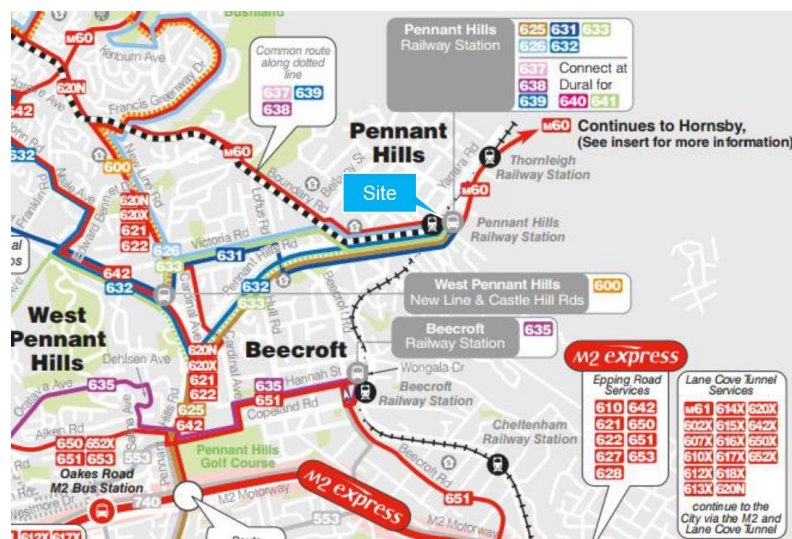


Figure 32: Hillbus Network Map (Source: Transport for NSW)

ATTACHMENT 1 - ITEM 9



Planning Proposal

Key local infrastructure includes:

- Several parks are located in the vicinity, including Wollundry Park (located opposite the rail station some 600m from the site) and Pennant Hills Park, which is an expansive multi-hectare passive and active recreation reserve approximately 1.5km to the east of the site. It contains numerous sports fields and courts.
- Pennant Hills Public School is located approximately 10minutes' walk from the site, whilst Pennant Hills High School is located approximately 1.5km from the site. There are also a number of non-Government schools nearby including St Agatha's Catholic Primary School (300m away) and Mount St Benedict College (1.2km away).
- Existing utility services will adequately service any future development proposal as a result of this PP and will be upgraded or augmented where required.
- Waste management and recycling services are available through Hornsby Shire Council.
- The area is generally well-serviced with Police, Ambulance, Fire and other emergency services, including several medical centres and a day surgery facility nearby. The nearest public hospital is Hornsby Ku-ring-gai Hospital, located approximately 8km away.

Infrastructure Servicing

The Infrastructure Servicing report prepared by Northrop and provided at Appendix G indicates there are adequate services proximal to the site. These should be able to service the proposed development. The Report indicates that all or most of the site's stormwater drainage can be directed to the existing drainage easement, with several connection points available as pits along the length of the easement. The Report provides the following considerations should the proposed development proceed:

- The building footprint needs to be kept clear of the **drainage easement**. If it is proposed to encroach into the easement, the affected stormwater pipes would need to be relocated, with Council's consent.
- **Enquiries to Authorities** to confirm the availability of services.
- **Water supply** may need to be supplemented by on-site tanks and pumps.
- The development needs to remain clear of the **sewer zone of influence** on the eastern side of the development. Accurate survey of sewer assets is required to inform design.
- A **chamber substation** upgrade may be required to support the proposed development in full as a result of the demolition works. Provision of such a substation requires further investigation of the current capacity of the local HV network to support the proposed utility works. Further investigation of possible options for resupplying other customers currently served by substation S.6251 will also be required.
- The existing facility may not have the required number of **telecommunication** connections. Telecommunications augmentation may be required consisting of optical fibre cabling from the preferred telecommunications carrier.



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Social Infrastructure

Elton Consulting/WSP undertook an assessment of the proposed concept and its alignment with strategic directions for social infrastructure in the local area. It found that the social infrastructure delivered through the PP supports strategic directions for housing and social infrastructure in the area. The concept envisages well-located diverse and affordable housing, including through the provision of a range of apartment sizes, seniors housing and affordable and key worker housing. It provides communal and open space that is accessible and adaptable to meet changing needs, as well as an incubator 'start-up' space for local businesses that is close to public transport.

The PP has capacity to provide significant benefit to the broader community, through:

- The large communal space that has the potential to provide for the occasional needs of surrounding community users (i.e. as a cultural and art space), thereby assisting to satisfy LGA demand and to reinforce Pennant Hills as a multipurpose district hub.
- The provision of affordable rental housing and/or key worker housing to help meet needs of low- to moderate-income households or essential workers in the area (i.e. emergency service personnel, nurses and teachers).
- The provision of a publicly accessible 'pocket park' will assist in meeting demand for localised recreation for both on-site and surrounding residents.

In addition to the benefit provided to the broader community, the small increase in population generated by the proposal is unlikely to have a major impact on infrastructure items such as aged and child care, education, health and emergency services.

As such, there is adequate infrastructure available to accommodate the proposal.

6.5. Section E – State and Commonwealth Interests

- 6.5.1. Q12 - What are the views of state and federal public authorities and government agencies consulted in order to inform the Gateway determination?

State and Commonwealth public authorities have not yet been contacted at this early stage in the PP process. We anticipate that this will be undertaken post-Gateway.



Planning Proposal

7. PART 4 - MAPS

No mapping amendments are considered necessary as part of this PP. Instead the proposed amendments will be undertaken via a new Local Provision.

8. PART 5 –CONSULTATION

Preliminary Community Consultation

Elton Consulting was engaged to assist EG with community engagement in order to:

- Assist in facilitating the planning approval process and comply with regulatory requirements
- Gather feedback from stakeholders to inform the concept design
- Reduce the risk of misinformation and demonstrate that potential impacts have been considered in planning and design
- Communicate EG's commitment to transparency in the engagement, planning and development processes
- Inform stakeholders about what to expect during future planning approvals phases
- Provide ongoing stakeholder consultation during the planning process

Engagement focused on the site's immediate neighbours and a local community organisation:

- Residents of Wongala Crescent / Boundary Road
- Pennant Hills District Civic Trust
- Commercial and residential buildings adjacent to the site

A variety of engagement activities were undertaken to determine sentiment and receive feedback from the community. All collateral used in the engagements carried contact information (phone numbers and email addresses) for engagement team members, to allow stakeholders to ask queries or lodge feedback at a later date. A contact log was kept for engagement activities undertaken, including feedback received and more detail is available if required.

Whilst the preliminary engagement outcomes were reasonably supportive, EG has committed to ongoing community and stakeholder engagement through the planning process for 7 City View Rd, and proposes to:

- Offer quarterly meetings with the Pennant Hills District Civic Trust to keep it informed of progress and answer queries about progress for planning and development
- Distribute a twice-yearly newsletter to update stakeholders about the progress of the project. Recipients would include:
 - Residents, businesses and commercial property occupiers surrounding the site
 - Users of local community spaces
 - Regularly upload updated content to the EG website

All communications would contain contact details to allow stakeholders to pose questions and send feedback, with EG responding in timely fashion (where appropriate).



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It is anticipated that the PP will be placed on exhibition for a minimum of 28 days. The community will be notified of the commencement of the exhibition period via a notice in a local newspaper and via a notice on Hornsby Shire Council's website. The written notice will:

- Give a brief description of the objectives or intended outcomes of the PP;
- Indicate the land affected by the PP;
- State where and when the PP can be inspected;
- Give the name and address of the RPA for the receipt of any submissions; and
- Indicate the last date for submissions.

During the exhibition period, the following material will be made available for inspection:

- The PP, in the form approved for community consultation by the Director General of Planning and Environment;
- The Gateway determination; and
- Any studies relied upon by the PP.



Planning Proposal

9. PART 6 - PROJECT TIMELINE

The timeframe for the completion of the PP will depend on the complexity of the matters, the nature of any additional information that may be required and the need for agency and community consultation. The following details are indicative only and may be amended at Gateway to provide the necessary level of confidence that the PP will be finalised within a reasonable time.

Table 16: Project Timeline

Step	Indicative Timeframe
Lodgement of Planning Proposal	March 2022
Anticipated commencement date	July 2022
Anticipated timeframe to finalise the infrastructure studies/plan	Not applicable. Technical analysis has already been commissioned to support the PP.
Anticipated timeframe for completion of any additional technical studies, not completed prior to Gateway	February 2023
Post Gateway - Review gateway, action conditions, prepare relevant studies and consult with government agencies prior to exhibition	March 2023
Public exhibition and assessment - Undertake public exhibition and consultation with authorities, review of submissions and endorsement of proposal by the PPA	April 2023
Finalisation - Finalisation of the LEP, including legal drafting and gazettal	26 June 2023



Planning Proposal

10. CONCLUSION

This Planning Proposal has been prepared in accordance with Section 3.33 of the *Environmental Planning and Assessment Act 1979* (the EP&A Act) and the relevant guideline prepared by the NSW Department of Planning and Environment '*Local Environmental Plan Making Guideline (Dec 2021)*'.

It sets out the justification for the proposed amendments to the HELP in relation to the subject site at 7 City View Road, Pennant Hills. To ensure the renewal of the site for mixed-use purposes and the associated public benefits are delivered, the following amendments to the HLEP are required:

Table 17: Summary of LEP Amendments

Control	Existing	Proposed
Floor Space Ratio	1.5:1	Introduce a new Local Provision that would permit residential flat buildings, seniors housing and an increased FSR for the site, if the development would result in the delivery of a minimum 0.5:1 floor space ratio for commercial uses.
Zone	B5 Business Development	
Building Height	23.5 metres	Nil proposed

It is proposed to include RFBs as a part of the new local provision for the site, to overcome definitional limitations associated with the current definition of "shop top housing" (a permitted use in the zone) on a sloping site such as this. This approach will manage issues around the provision of housing above the ground floor; the indicative design demonstrates the complexity of this in relation to the topography of the site. The proposed re-development concept (as facilitated by this PP) will deliver a similar typology to shop-top housing, however commercial office uses and communal spaces will be delivered on the lower-mid levels as opposed to being confined to the ground floor. Seniors housing is proposed as part of the new local provision in order to avoid any doubt about the application of Part 5 of the Housing SEPP, as consequence of the biodiversity mapping that applies to a small area of the site.

It is proposed to introduce a new local provision in the HLEP. The proposal has been demonstrated as being the best means of achieving the objectives and intended outcomes. The PP is considered suitable and appropriate as it:

- Is consistent with key strategic planning documents;
- Is consistent with the relevant Ministerial Directions under Section 9.1 of the Act; and
- Does not pose any adverse environmental or social impacts to the surrounding community.



Planning Proposal

Public Benefits

The proposal will result in numerous public benefits being delivered to the local area, including in relation to:

- **Employment** - the development has the potential to generate up to 280 jobs upon completion, which is an increase of 31 jobs when compared to the site's existing building (noting that the building has been vacant since 2018).
- **Pocket Park** – a new publicly accessible pocket park with a total area of 700sqm for the enjoyment of local residents and community. The pocket park will also formalise an existing pedestrian 'desire line' through the site.
- **Community Space** – a new communal space is proposed to be located within the development, for the benefit of on-site residents in addition to use by local community groups for functions and gatherings.
- **Green Star Building** – the new development has the potential to be a Green Star building, demonstrating and including the latest environmentally sustainable design and construction techniques.
- **Streetscape Improvements** - including the potential construction of acoustic treatment to rail and Pennant Hills Road for improved amenity, pedestrian amenity improvements at the nearby City View Road and Pennant Hills Road intersection, and other civic improvements.
- **Affordable Housing** - approximately 5% of the future residential accommodation is proposed as affordable housing, with a focus on key workers such as emergency service personnel and teachers, nurses and senior residents.
- **Diversity** – the proposal will increase the diversity of dwelling stock in the LGA, which is currently dominated by detached dwellings.

The PP is accompanied by a Letter of Offer to enter into a Voluntary Planning Agreement (VPA) which includes the public benefits being offered to Council. The tenure of the publicly accessible spaces such as the pocket park will be the subject of future VPA-related discussions with Council, including their possible dedication.

The Planning Proposal would also have the following beneficial economic outcomes for the LGA:

- Provide a more affordable dwelling option for residents and key workers within the LGA. This is evident in strata dwellings having a median value \$898,000 or 116% lower than the median price of non-strata dwellings.
- Provide a dwelling type and mix that would cater to the changing characteristics of the local community.
- Provide dwellings near public transport nodes and existing services. This would contribute to Hornsby attaining the 30-minute concept and transport sustainability, allow older residents to age in place and contribute to the urban renewal/revitalisation of Pennant Hills corridor.

It is considered that the Planning Proposal would have no adverse impact on Hornsby's employment land stocks for the following reasons:

- The Planning Proposal would maintain the current B5 zoning. Hence, the Planning Proposal would not directly reduce the amount of employment land stocks in the LGA.



Planning Proposal

- The type of land uses proposed (retail, commercial and residential) are currently permissible and present in or adjoining the B5 sub-precinct. This implies that the Planning Proposal would not impact the functionality of the current or future functionality of the employment precinct.

The Planning Proposal would increase employment densities on the site. This would contribute to the wider employment precinct reaching its employment targets while also reducing the deficit in capacity identified in the ELS.

Strategic Merit

The PP demonstrates strategic merit by aligning with several key strategies applicable to the site and surrounding local area. The proposal enables greater contribution to the housing supply of Hornsby LGA, retention of employment land and delivery of community spaces and publicly accessible open space. As demonstrated in Section 6 above, the PP is consistent with the following strategies:

- Greater Sydney Region Plan
- North District Plan
- Local Strategic Planning Statement
- Local Housing Strategy
- Employment Lands Study

Site Specific Merit

The PP demonstrates site-specific merit, with the unique elements and location of the site informing the development of the proposed concept. In relation to the suitability of the site for the proposed concept:

- The site is not subject to significant environmental constraints or hazards, such as bushfire or flooding. This means the location of the proposed concept is not placing new homes or workplaces in high-risk, hazard-affected areas.
- The presence of Blue Gum High Forest is a valued part of the site and it has been carefully considered throughout the development of the proposed concept. A Biodiversity Assessment Report confirms the proposed development will not have a significant impact on any threatened species, populations or TECs.
- The proposed concept has also carefully considered neighbouring land uses, including the surrounding low-density residential, commercial and hotel uses. The proposed concept will not detrimentally impact the local area, given the proposed uses already largely occur in the local area. No adverse shadowing impacts to the surrounding low-density locality to the south of the site will occur and privacy impacts have been managed through the proposed built form.
- The site is well-serviced and there is sufficient infrastructure available to accommodate the proposed concept. Any augmentation required has been identified in the Services Infrastructure Report provided as part of this PP.

Planning Proposal



This PP demonstrates strategic and site-specific merit and addresses all relevant considerations under the *Local Environmental Plan Making Guidelines (Dec 2021)*. The proposed concept is consistent with State, Regional and Local planning policies and the relevant Section 9.1 Ministerial Directions. In summary, there is a sound planning basis, strategic planning merit and site-specific merit to support the amendments to the HELP in relation to this site, as promoted by this Planning Proposal.



March 2022

GYDE.COM.AU



Department of Planning and Environment

Mr Stephen Head
General Manager
Hornsby Shire Council
hsc@hornsby.nsw.gov.au

Our ref: PP-2022-908 (IRF23/821)

Attention: Katherine Vickery

Dear Mr Head

Planning proposal PP-2022-908 for Hornsby Local Environmental Plan 2013 – Alteration of Gateway Determination

I refer to the email from Ms Katherine Vickery, dated 5 April 2023, seeking an extension of time to complete planning proposal PP-2022-908 to allow the residential flat building, seniors housing and an increased floor space ratio which includes a minimum 0.5:1 FSR for commercial uses, at 7 City View Road, Pennant Hills.

I would like to thank Council for its effort in preparing this proposal and working with the proponent to answer the conditions of the Gateway determination issued on 26 August 2022. As was discussed during a meeting with the Department on 24 March 2023, it is appreciated that meeting the conditions of the 7 City View Road Gateway has taken time, as has the preparation of the VPA supporting this proposal. I recognise that Council has been working hard to progress this matter.

Since July 2020, the Government has been reforming the planning system to streamline and simplify processes. An important part of the reforms seeks to reduce planning proposal timeframes. I note that the above planning proposal has not yet been placed on public exhibition and the Gateway milestone for finalisation will not be met. As the Department has made a commitment to reduce assessment times, we are not able to approve Council's request to extend the Gateway timeframe.

For this reason, I have determined as the delegate of the Minister, in accordance with section 3.34(7) of the Environmental Planning and Assessment Act 1979, to alter the Gateway determination dated 26th day of August 2022 for PP-2022-908 to 'should not proceed'. The Alteration of Gateway determination is enclosed.

I request Council to submit the planning proposal for a new Gateway determination now that it has completed supporting technical studies. This will allow Council time to exhibit, report back on and finalise the VPA and planning proposal within a new Gateway timeframe. As the Department has completed a previous assessment and no new conditions are required, we will be able to provide a Gateway Determination within two weeks of Council lodging a new application.

If you have any questions in relation to this matter, I have arranged for Ms Ashley Richards to assist you. Ms Richards can be contacted on 02 8289 6776.

Yours sincerely



Monica Gibson
Deputy Secretary
Planning and Land Use Strategy

16 May 2023

Encl: Alteration of Gateway Determination



Department of Planning and Environment

Alteration of Gateway Determination

Planning proposal (Department Ref: PP-2022-908)

I, Deputy Secretary, Planning Land Use and Strategy, at the Department of Planning and Environment, as delegate of the Minister for Planning and Public Spaces, have determined under section 3.34(7) of the *Environmental Planning and Assessment Act 1979* to alter the Gateway determination dated 26 August 2022 for the proposed amendment to the Hornsby Local Environmental Plan 2013 as follows:

1. Change the description of the planning proposal from:

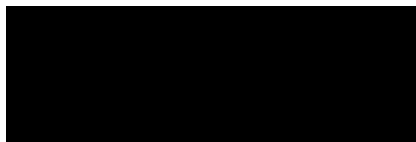
‘I, the Director at the Department of Planning and Environment, as delegate of the Minister for Planning and Homes, have determined under section 3.34(2) of the Environmental Planning and Assessment Act 1979 (the Act) that an amendment to the Hornsby Local Environmental Plan 2013 to introduce a new site-specific clause in Part 6 for 7 City View Road, Pennant Hills should proceed subject to the following conditions:’

and replace with:

‘I, the Deputy Secretary at the Department of Planning and Environment, as delegate of the Minister for Planning and Public Spaces, have determined under section 3.34(2) of the Environmental Planning and Assessment Act 1979 (the Act) that an amendment to the Hornsby Local Environmental Plan 2013 to introduce a new site-specific clause in Part 6 for 7 City View Road, Pennant Hills should not proceed.’

2. Delete conditions 1 to 7.

Dated 16 day of May 2023.



Monica Gibson
Deputy Secretary
Planning and Land Use Strategy
Department of Planning and Environment

Delegate of the Minister for Planning and
Public Space

PP-2022-908 (IRF23/821)

ATTACHMENT 2 - ITEM 9



31 October 2022

David Workman
Divisional Director – Urban and Community Planning
EG

Via Email: dworkman@eg.com.au

Dear Mr Workman,

7 City View Road Planning Proposal – Response to draft development control plan and voluntary planning agreement letter of offer

The purpose of this letter is to respond to elements of the 7 City View Road Planning Proposal (planning proposal), specifically the following supporting materials:

- *Draft Site Specific Development Control Plan (work-in-progress)* (GYDE Consulting, dated 17 December 2021);
- *Future Voluntary Planning Agreement, Planning Proposal for No. 7 City View Road Pennant Hills* (EG, dated 30 November 2021); and
- *Additional Information Letter – Affordable Housing* (GYDE Consulting, dated 9 May 2022).

As you would be aware, Council considered the planning proposal and its supporting materials at its 13 July 2022 meeting. At that meeting, Council resolved to make a technical amendment to the planning proposal (introduction of an Additional local provision, rather than an Additional permitted use and Floor space ratio map amendment) and send the planning proposal to the Department of Planning and Environment for Gateway Determination. The resulting Gateway Determination considered that the planning proposal was suitable for progression, with conditions seeking additional information regarding design and traffic concerns. Council understands that EG is progressing a response to those Gateway conditions.

Council's 13 July 2022 report also identified two subjects to be considered further, being the draft development control plan (DCP) referenced above and the voluntary planning agreement (VPA) letter of offer. The report deferred a full assessment of the draft DCP, given the potential changes associated with a post-Gateway design change. It also identified several key issues associated with the VPA letter of offer. As the Gateway Determination process has progressed, Council staff have considered the issues more fully, with this letter forming a response to the above supporting materials.

Draft Site Specific Development Control Plan

Council staff have reviewed the draft DCP provided with the planning proposal. For reference, the draft DCP has not been assessed in detail, as that would require formal submission of the draft DCP for assessment and potential adoption. That service is separate to the planning proposal process and subject to its own fees and charges that reflect assessment of the merit and impacts of an amendment to the current Hornsby Development Control Plan.

The draft DCP seeks to implement site-specific development controls for 7 City View Road across the following subjects, including objectives and provisions:

- Design objectives
- Site planning

- Land uses
- Setbacks
- Landscaping and public domain
- Vehicle access and parking
- Sustainability
- Building materials and finishes.

The practical effect of the draft DCP is to encourage the delivery of the concept plan delivered with the planning proposal. Council staff have undertaken a high level review of the objectives and provisions of the draft DCP and have not found substantial differences from Council's existing DCP or benefits associated with adoption of a site specific DCP for the site. Unless EG is able to provide a strong argument for the draft DCP to progress, it does not appear that such an amendment is necessary and this time. Should Council determine that DCP amendments are required in the future, those may be progressed separately by Council.

If EG agrees, acknowledgement of withdrawal of the draft DCP would be helpful.

Voluntary Planning Agreement Letter of Offer

The planning proposal was accompanied by a letter of offer to enter into a VPA (dated 30 November 2021). Upon review of the VPA letter of offer, Council staff requested clarification on 22 April 2022 regarding the affordable housing component discussed in the letter of offer. GYDE Consulting provided a response to that request in a separate letter dated 9 May 2022. This discussion considers those documents as a single amended offer.

The VPA letter of offer includes the following elements:

- Pocket Park
 - Up to 700 sqm of open space and recreation facilities;
 - Subject to easement or similar to allow for public use;
 - Facilitate Pedestrian access from City View Road to Boundary Road.
- Community space
 - Up to 500 sqm of community space and potentially 200sqm of discounted rental space for commercial purposes (unclear if this is cumulative or inclusive);
 - Community space would function as communal space for on-site residents/workers and also be made available for surrounding residents and groups.
- Civic amenity improvements surrounding the site
 - Potential improvements such as acoustic walls, pedestrian amenity/safety at City View Road and Pennant Hills Road intersection;
 - Improvements would likely require the concurrence of road/train authorities.
- Affordable housing
 - Between 5 and 7 per cent of housing as affordable housing (between 5 and 7 of the 105 proposed dwellings);
 - Housing may be an apartment or independent living unit (seniors housing);
 - A proportion of the units can be dedicated to a Community Housing Provider. Dwellings could also be maintained by EG and rented at discounted rates;
 - The dedication period is anticipated to be 15 years.

Council's initial position on these elements were discussed in Directors Report PC14/22 dated 13 July 2022, summarised below:

- Pocket park
 - Likely to benefit the site, but unlikely to represent a park that Council would accept as an owner or caretaker;
 - Investment to assist delivery of Council's strategic social infrastructure objectives would improve community benefit outcomes.

- Community space
 - Council's strategic position is to improve the quality of facilities in centralised locations, not isolated facilities;
 - Council's *Community and Cultural Facilities Strategic Plan* recommends expansion of the Pennant Hills Community Centre and Library.
- Civic amenity
 - Comment is not provided due to the undefined nature of the offer and likely consultation required with TfNSW regarding their nearby assets.
- Affordable housing
 - Council's LHS identifies the need for more affordable housing.

Council's position on the pocket park and community space have not changed. It is requested that EG reconsiders these elements of its VPA letter of offer and how they could be adjusted to meet Council's adopted strategic priorities, namely the delivery of high quality community and open space at the neighbouring Pennant Hills local centre. Given the scale of the additional demand for services associated with the planning proposal, provisions would be in addition to, not instead of, development contributions required by Council's development contribution plans.

Council has not received additional details regarding the proposed civic amenity improvements. Given that these are likely to involve modifications to TfNSW infrastructure, the delivery pathway could be complex. Further, EG would be required to demonstrate the improvements to be of a broader community benefit, rather than site specific (eg easing acoustic issues for future apartments). Additional information is required to provide feedback on this matter, should EG continue to pursue it.

As outlined above, Council's Local Housing Strategy identifies the need for more genuine affordable housing. This principle should be reflected in a future VPA letter of offer, with any affordable housing dedicated in perpetuity to a community housing provider. Dwellings are to be designed and constructed to a standard that is generally consistent with other dwellings, with relevant ADG and DCP provisions within the subset of dwellings (eg 70 per cent of affordable housing dwelling should achieve adequate solar access, with a mix of dwelling sizes). Notwithstanding that plans may change through the design and development application process, it would be useful to identify potential dwellings on concept plans, as well as demonstrate consultation with a community housing provider.

Next steps

As discussed previously, a draft voluntary planning agreement will be required to be reported to Council in order to be exhibited alongside an updated planning proposal. To progress this in a timely manner, it is recommended that EG amend its VPA letter of offer to respond to the matters discussed above, including specific quantifiable outcomes. EG may also find it useful to provide documentation to support the feasibility of delivering the offer, considering the uplift associated with the planning proposal.

We would be open to a meeting to discuss this letter and a potential revised offer.

Should you require any clarification on the feedback provided, please contact me directly on 9847 6780 or Katherine Vickery, Manager Strategic Land Use Planning on 9847 6744.

Yours faithfully



Taylor Richardson
Team Leader Strategic Land Use Planning
TRIM Reference: PP/1/2022

Explanatory Note

Hornsby Shire Council and EG Funds Management

Planning Agreement – 7 City View Road, Pennant Hills

Introduction

The purpose of this Explanatory Note is to provide a plain English summary to support the notification of a draft Voluntary Planning Agreement (**Planning Agreement**) under s7.4 of the *Environmental Planning and Assessment Act 1979* (NSW) (**Act**).

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

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

1 Parties

Hornsby Shire Council

EG Funds Management Pty Ltd ACN 108 198 492 ATF EG Unit Trust in its capacity as Investment Manager for the Yield Plus Infrastructure Property Fund No.2

2 Description of Subject Land

Lot 3 DP 732565, otherwise known as 7 City View Rd Pennant Hills.

3 Description of Proposed Change to Environmental Planning Instrument/Development Application

A change to *Hornsby Local Environmental Plan 2013* to include a local provision which would:

- permit residential flat buildings and seniors housing on the Land; and
- allow for an increased FSR on the Land consistent with the renewal concept submitted with the Planning Proposal,

provided that the Development would result in the provision of a minimum of 0.5:1 floor space for commercial use.

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

The **objective** of the Planning Agreement is to provide public benefit from an Instrument Change.

The nature of the public benefits are:

- Monetary Contribution – the payment of up to \$450,000 to be used by Council for the provision of public domain works in the Pennant Hills town centre;
- The dedication of four Affordable Housing units to Council in perpetuity, providing Council-owned affordable housing;
- The grant of an easement for public access to a pedestrian walkway which will provide access through the Development from City View Rd to Boundary Rd.

5 Assessment of the Merits of the Draft Planning Agreement

The Public Purposes Served by the Planning Agreement

The Planning Agreement will provide a material public benefit to be applied towards community infrastructure and also provides a benefit by way of monetary contributions, including towards affordable housing.

The provisions of the Planning Agreement provide a reasonable means of achieving the public purpose set out above.

How the Planning Agreement Promotes the Public Interest

The Planning Agreement promotes the public interest by achieving the objectives of the Act by promoting:

- certainty for the Developer and Council as to the provision of public benefit within the Pennant Hills Town Centre;
- the provision of affordable housing;
- the social and economic welfare of the community by requiring construction of local infrastructure as determined by the General Manager of Council from time to time;
- delivery of infrastructure, facilities and services to benefit and satisfy needs of the community; and
- the orderly and economic use and development of land and good design and amenity of the built environment by ensuring improved walkability and town centre infrastructure.

How the Planning Agreement promotes Council's guiding principles

The Planning Agreement promotes a number of Council's guiding principles under section 8A of the *Local Government Act 1993* (NSW), as follows:

- The exhibition of the Planning Agreement facilitates the involvement of members of the public in the consultation process for the Planning Agreement.
- To plan strategically for the provision of effective and efficient services and regulation to meet the diverse needs of the local community.
- To act fairly, ethically and without bias to the interests of the local community.
- To have regard to the long term and cumulative effects of its decisions on future generations.
- To engage in long-term strategic planning on behalf of the local community.
- To bear in mind that it is the custodian and trustee of public assets and to effectively plan for, account for and manage the assets for which it is responsible.
- The Planning Agreement makes it clear that Council has a statutory role as consent authority in relation to the Planning Proposal and that the Planning Agreement is not intended to unlawfully influence the exercise of Council's regulatory functions.

Whether the Agreement Conforms with Council's Capital Works Program

The monetary contribution proposed under the Planning Agreement is for the provision of open space, community facilities and civic improvements within the Pennant Hills Town Centre.

Multiple strategies adopted by Council have identified opportunities for improvements to community infrastructure within the Pennant Hills Town Centre, including Play Plan and Community and Cultural Facilities Strategic Plan.

If the VPA is entered into, options for improvements would be investigated further, costed and incorporated into a future delivery plan for Council review and adoption.

The Planning Agreement does not exclude the application of Section 7.11 or 7.12 fees for future development, therefore does not affect the infrastructure works program under these Plans.

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ATTACHMENT 5 - ITEM 9

Voluntary Planning Agreement

Section 7.4 of the *Environmental Planning and Assessment Act 1979*

[Date]

Hornsby Shire Council (**ABN 20 706 996 972**) of 296
Pacific Highway, Hornsby NSW (**Council**)

and

EG Funds Management Pty Ltd **ACN 108 198 492** ATF EG
Unit Trust in its capacity as Investment Manager of the
Yield Plus Infrastructure Property Fund No.2, Level 21,
Governor Phillip Tower, 1 Farrer Place Sydney , NSW
(**Developer**)

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Schedule 3 – Requirements under s7.4

18

Execution of Planning Agreement No. XXXX of 200X

19

ATTACHMENT 5 - ITEM 9

Agreement

Date

Parties

First party

Name Hornsby Shire Council (**Council**)
ABN 20 706 996 972
Contact xxx
Telephone (02) 9847 6666

Second party

Name EG Funds Management Pty Ltd ACN 108 198 492
ATF EG Unit Trust in its capacity as Investment
Manager of the Yield Plus Infrastructure Property
Fund No.2 (**Developer**)
Contact David Workman
Telephone (02) 9220 7045

Background

- A. On 4th April 2022, the Developer made an application to the Council for the Instrument Change for the purpose of making a planning proposal to facilitate the Development of the Land .
- B. The Developer has agreed to make Development Contributions in connection with the carrying out of the Development enabled by the Instrument Change, in accordance with the terms of this Agreement.

Operative provisions

1. Planning agreement under the Act

The Parties agree that this Agreement is a planning agreement within the meaning set out in s7.4 of the Act and governed by Subdivision 2 of Division 7.1 of Part 7 of the Act

2. Application of this Agreement

This Agreement is made in respect of the Development and applies to the Land, the Instrument Change and the Development.

3. Operation of this Agreement

This Agreement operates as a planning agreement for the purpose of the Act from the last to occur of the following:

- (1) the Instrument Change being published in the NSW Government Gazette; and
- (2) the date that this Agreement is executed by both parties.

4. Definitions and interpretation

4.1 In this Agreement the following definitions apply:

Acquisition Act means the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW).

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

Affordable Housing has the same meaning as in the Act.

Affordable Housing Units means the units described in Schedules 1 and Schedule 2 of this Agreement.

Affordable Housing Units Works means all works in connection with the construction of the Affordable Housing Units as specified or described in **Schedule 2** of this Agreement.

Assign means, as the context requires, any assignment, sale, transfer, disposition, declaration of trust over or other assignment of a legal and/or beneficial interest.

Authority means (as appropriate) any:

- (1) federal, state or local government;
- (2) department of any federal, state or local government;
- (3) any court or administrative tribunal; or
- (4) statutory corporation or regulatory body.

Bank Guarantee means an irrevocable and unconditional undertaking without any expiry or end date by one of the following trading banks:

- (1) Australia and New Zealand Banking Group Limited.
- (2) Commonwealth Bank of Australia.
- (3) Macquarie Bank.
- (4) National Australia Bank Limited.
- (5) St George Bank Limited.
- (6) Westpac Banking Corporation.
- (7) Any other financial institution approved by the Council, in its absolute discretion, in response to a request from the Developer.

Claim means, 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.

Completed means completed in accordance with the requirements of this Agreement.

Completion Notice has the meaning ascribed in clause 7.2.

Construction Certificate has the same meaning as in section 6.4(a) of the Act.

Contribution Value means the amount specified in **Schedule 1** in the column headed "contribution value" for each item of the Development Contributions.

Defect has the meaning ascribed to it in clause 10.1.

Defect Notice has the meaning ascribed to it in clause 10.1.

Defects Liability Period means a period of 9 or 12 (to be confirmed) months commencing from Completion of the relevant Affordable Housing Units Works.

Defects Security has the meaning ascribed to it in clause 15.5.

Development means the proposed future development of the Land for a mixed-use development comprising residential, commercial and community facilities.

Development Application has the same meaning as in the Act.

Development Consent means the consent issued under the Act for the Development.

Development Contribution means the contributions being provided by the Developer pursuant to **Schedule 1**, **Schedule 2** and **Schedule 3** of this Agreement, consisting of the Monetary Contribution, grant of the Easement, the Affordable Housing Units Works and the transfer of the Affordable Housing Units to Council free of cost.

Dispute has the meaning ascribed to it in clause 13.

Easement means the easement for public access as described:

- (1) in **Schedule 1**; and
- (2) on the terms outlined in **Schedule 3**.

Encumbrance means an interest or power:

- (1) reserved in or over an interest in any asset;
- (2) arising under, or with respect to, a Bio-Banking Agreement;
- (3) 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, covenant, lease, subordination to any right of any other person and any other encumbrance or security interest, trust or bill of sale; or
- (4) by way of security for the payment of a debt or other monetary obligation or the performance of any obligation.

Encumber means to grant an Encumbrance.

GST has the same meaning as in the GST Law.

GST Law means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition or administration of the GST.

Index means the Consumer Price Index (All Groups - Sydney) as provided by the Australian Bureau of Statistics.

Insolvency Event means the happening of any of the following events:

- (1) An application which is not withdrawn or dismissed within fourteen (14) days is made to a court for an order or an order is made that a body corporate be wound up.
- (2) An application which is not withdrawn or dismissed within fourteen (14) days is made to a court for an order appointing a liquidator or provisional liquidator in respect of a body corporate or one of them is appointed, whether or not under an order.
- (3) Except to reconstruct or amalgamate while solvent, a body corporate enters into, or resolves to enter into, a scheme of arrangement, agreement of company arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them.
- (4) A body corporate resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so, except to reconstruct or amalgamate while solvent or is otherwise wound up or dissolved.
- (5) A body corporate is or states that it is insolvent.
- (6) As a result of the operation of section 459F(1) of the *Corporations Act 2001* (Cth) (**Corporations Act**), a body corporate is taken to have failed to comply with a statutory demand;
- (7) A body corporate is or makes a statement from which it may be reasonably deduced that the body corporate is, the subject of an event described in section 459C(2)(b) or section 585 of the *Corporations Act*.
- (8) A body corporate takes any step to obtain protection or is granted protection from its creditors, under any applicable legislation or an administrator is appointed to a body corporate.
- (9) A person becomes an insolvent under administration as defined in section 9 of the *Corporations Act* or action is taken which could result in that event.
- (10) A receiver, manager or receiver and manager is appointed to the Company.
- (11) A claim is filed in a court against a person that is not defended, released or otherwise settled within twenty eight (28) days of the date of its filing at the court.
- (12) Anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

Instrument Change means a change to *Hornsby Local Environmental Plan 2013* to include a local provision which would:

- (1) permit residential flat buildings and seniors housing on the Land;
- (2) allow for an increased FSR on the Land consistent with the renewal concept submitted with the Planning Proposal; and
- (3) subject to development consent, allow development on the land which would achieve floor space of at least 0.5:1 for commercial use.

Land means Lot 3 DP 732565, known as 7 City View Rd, Pennant Hills.

Law means all legislation, regulations, by-laws, common law and other binding order made by any Authority.

Monetary Contribution means the monetary contributions specified or described in Schedule 1 (as indexed in accordance with this Agreement).

Occupation Certificate means an occupation certificate as defined under section 6.4(c) of the Act.

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

Planning Legislation means the Act, the *Local Government Act 1993* (NSW) and the *Roads Act 1993* (NSW).

Primary Security has the meaning ascribed to it in clause 15.5.

Rectification Notice has the meaning ascribed to it in clause 7.2.

Register means the Torrens title register maintained under the *Real Property Act 1900* (NSW).

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

Security means collectively the Primary Security and the Defects Security.

Subdivision Certificate has the same meaning as in section 6.4(d) of the Act.

- 4.2** In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:
- (a) Headings are inserted for convenience only and do not affect the interpretation of this Agreement.
 - (b) A reference in this Agreement to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
 - (c) If the day on which any act, matter or thing is to be done under this Agreement is not a business day, the act, matter or thing must be done on the next business day.
 - (d) A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
 - (e) A reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
 - (f) A reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
 - (g) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
 - (h) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
 - (i) Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
 - (j) A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
 - (k) References to the word 'include' or 'including' are to be construed without limitation.

- (l) A reference to this Agreement includes the agreement recorded in this Agreement.
- (m) A reference to a party to this Agreement includes a reference to the servants, agents and contractors of the party, and the party's successors and assigns.
- (n) Any schedules and attachments form part of this Agreement.

5. Development Contributions to be made under this Agreement

The Developer must make the Development Contributions in the manner and at the times as set out in Schedule 1 of this Agreement.

6. Monetary Contribution

- (1) The Developer must pay the Monetary Contribution in accordance with **Schedule 1**.
- (2) The Monetary Contribution is made for the purpose of this Agreement when Council receives the full amount of the Monetary Contribution payable under this Agreement:
 - (a) in cash; or
 - (b) by unendorsed bank cheque; or
 - (c) by the deposit by means of electronic funds transfer of cleared funds into a bank account nominated by Council.

7. Affordable Housing Units

7.1 Design of Affordable Housing Units

- (3) The Developer must consult with Council with respect to the development of the detailed design and specification with respect to each of the Affordable Housing Units.
 - (1) Before commencing construction of any of the Affordable Housing Units, the Developer will provide council with details of the design and specification for each Affordable Housing Unit.

7.2 Completion of Affordable Housing Units Works

- (1) If the Developer considers that any particular item of the Affordable Housing Units Works is complete it must serve a notice on Council which:
 - (a) is in writing;
 - (b) identifies the particular Affordable Housing Units Works to which it relates; and
 - (c) specifies the date on which the Developer believes the relevant Affordable Housing Units Works was completed,

(Completion Notice).
- (2) Council must inspect the Affordable Housing Units Works set out in a Completion Notice within ten (10) business days of the receipt of that notice. If Council fails to carry out this inspection, the Affordable Housing Units Works referred to in the relevant Completion Notice will be deemed to be Complete.
- (3) Within twenty (20) or fifteen (15) (to be confirmed) business days of inspecting the Affordable Housing Units Works set out in a Completion Notice Council must provide notice in writing (**Rectification Notice**) to the Developer that the Affordable Housing Units Works set out in the Completion Notice:
 - (a) have been Completed; or

- (b) have not been Completed, in which case the notice must also detail:
 - (i) those aspects of the Affordable Housing Units Works which have not been Completed; and
 - (ii) the work Council requires the Developer to carry out in order to rectify the deficiencies in those Affordable Housing Units Works.
- (4) If Council does not provide the Developer with a Rectification Notice in accordance with paragraph (3), the Works set out in the Completion Notice will be deemed to have been Completed.
- (5) Where Council serves a Rectification Notice on the Developer, the Developer must:
 - (a) rectify the Works in accordance with that notice; or
 - (b) serve a notice on the Council that it disputes the matters set out in the notice.
- (6) Where the Developer:
 - (a) serves notice on Council in accordance with paragraph (5)(b), the dispute resolution provisions of this Agreement apply; or
 - (b) rectifies the Works in accordance with paragraph (5)(a), it must serve upon the Council a new Completion Notice for the Affordable Housing Units Works it has rectified.

7.3 Developer Access to Affordable Housing Units

If the Developer is required to Complete, maintain or rectify any Defects in the Affordable Housing Units Works after the Affordable Housing Units have been transferred or dedicated to the Council pursuant to clause 7.4, Council will take all necessary steps to provide the Developer with reasonable access to the Affordable Housing Units in order to enable the Developer to satisfy its obligations under this Agreement, provided that, at all times, the Developer complies with:

- (1) Council's reasonable written directions; and
 - (2) Council's policies and procedures from time to time,
- as they relate to this right of access,

7.4 Dedication free of Encumbrances

The Developer must dedicate or transfer the Affordable Housing Units to Council free of any trusts, estates, interests, covenants and Encumbrances in accordance with **Schedule 2**.

7.5 Costs

The Developer must meet all costs (including legal and registration costs) associated with the dedication or transfer of the Affordable Housing Units in accordance with clause 7.4 including any costs incurred by Council in relation to that dedication or transfer.

7.6 Process for dedication

For the purpose of this Agreement, the Affordable Housing Units are dedicated to Council:

- (1) **(Deposited Plan)** if the relevant allotments in respect of the Affordable Housing Units are dedicated in a deposited plan registered at NSW Land Registry Services, when that plan is so registered; or
- (2) **(Instrument of Transfer)** otherwise when the Developer delivers to Council:
 - (a) a transfer of the relevant allotments in respect of the Affordable Housing Units in registrable form;

- (b) any consent required by an interested party in the relevant allotments in respect of the Affordable Housing Units; and
- (c) any document in registrable form which, when registered, will remove any Encumbrances registered on the title of those allotments in respect of the Affordable Housing Units, excluding encumbrances that would not in the Council's opinion, acting reasonably, impede the intended use of all or any part of the Affordable Housing Units to be dedicated to the Council including but not limited to easements and covenants for services and drainage and encumbrances with respect to the common property of the Development.

8. Easement

8.1 Dedication of Easement

The Developer must register the Easement on the title to the Land.

8.2 Costs for grant of Easement

The Developer must meet all costs (including legal and registration costs) associated with the grant of the Easement in accordance with paragraph 8.1.

8.3 Process for grant of Easement

For the purpose of this Agreement, the Easement is granted to Council:

- (1) **(Deposited Plan)** if the relevant Easement is granted to Council in a deposited plan of easement (incorporating the easement terms set out in **Schedule 3** in an accompanying section 88B instrument) registered at NSW Land Registry Services, when that plan is so registered; or
- (2) **(Instrument of Transfer)** otherwise when the Developer delivers to Council:
 - (a) a transfer granting Easement in registrable form, which incorporates the easement terms in Schedule 3; and
 - (b) any consent required by an interested party to the grant of Easement.

9. Indexation of Contribution Values

The Contribution Values for the Monetary Contribution and Affordable Housing Units will increase (with the calculation to be made as from the date the relevant Development Contribution is required to be provided to Council under this Agreement) in accordance with the following formula.

$$A = B \times \frac{C}{D}$$

where:

A = the indexed amount;

B = the relevant amount as set out in this Agreement;

C = the Index most recently published before the date that the relevant payment or the calculation with respect to the relevant amount is to be made; and

D = the Index most recently published before the commencement date of this Agreement.

If **A** is less than **B**, then the amount of the relevant Contribution Value will not change.

10. Defects

10.1 Defects Notice

- (1) Where any part of the Affordable Housing Units Works has been Completed but those Affordable Housing Units Works contain a material defect which:
 - (a) adversely affects the ordinary use and/or enjoyment of the relevant Affordable Housing Units Works; and/or
 - (b) will require rectification works to be performed on them as a result of the existence of the defect;

(**Defect**) Council may issue a defects notice (**Defects Notice**) concerning those Affordable Housing Units Works but only within 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 (which must be a reasonable time and not less than ten (10) business days).

10.2 Developer to Rectify Defects

- (1) The Developer must rectify the Defects contained within a Defects Notice as soon as practicable after receipt of the Defects Notice.
- (2) The Developer must follow the procedure set out in clause 7.2 in respect of the satisfaction of the Defects Notice.

10.3 Right of Council to Step-In

Council, at its absolute discretion, may enter the Affordable Housing Units (and the Land upon which the Affordable Housing Units are situated) for the purpose of satisfying the Defects Notice where the Developer has failed to comply with a Defects Notice but only after giving the Developer five (5) business days written notice of its intention to do so.

10.4 Consequence of Step-In

If Council elects to exercise the step-in rights granted to it under clause 10.3 then:

- (1) Council may:
 - (a) enter upon any part of the Affordable Housing Units (and the Land upon which the Affordable Housing Units are situated) that it requires access to in order to satisfy the obligations of the Developer in accordance with the Defects Notice; and
 - (b) rectify the relevant Defects in accordance with the Defects Notice; and
- (2) the Developer must not impede or interfere with Council in undertaking that work.

10.5 Costs of Council

Where Council exercises its step-in rights and incurs costs in rectifying the relevant Defects, it may call upon the Defects Security provided by the Developer pursuant to clause 15.5 and recover as a debt due in a court of competent jurisdiction any difference between the amount of the Defects Security and the costs incurred by the Council in rectifying the Defects.

11. Application of s7.11, s7.12 or s7.24 of the Act to the Development

This Agreement does not exclude the application of section 7.11, section 7.12 or section 7.24 of the Act to the Development.

12. Registration of Agreement

12.1 Registration

The Developer acknowledges and agrees that:

- (1) this Agreement must be registered on the title to the Land pursuant to section 7.6 of the Act; and
- (2) the Developer will pay or reimburse Council for all its legal and registration costs associated with registration in accordance with paragraph (1)

12.2 Obligations on Developer

- (1) The Developer, at its own expense, will promptly after this Agreement comes into operation, and before the issue of any Construction Certificate or Subdivision Certificate for the Development, take all necessary and practical steps, and otherwise do anything that Council reasonably requires, to procure:
 - (a) the consent of each person who:
 - (i) has an estate or interest in the Land; or
 - (ii) is seized or possessed of an estate or interest in the Land;
 - (b) the execution of any Agreements; and
 - (c) the production of the relevant title documentation,

to enable the registration of this Agreement in accordance with clause 12.1.
- (2) The Developer, at its own expense, will take all necessary and practical steps, and otherwise do anything that the Council reasonably requires:
 - (a) to allow 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 thirty (30) business days after that date; and
 - (b) to allow 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

12.3 Discharge from the Register

The Council will provide its consent to the 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) when:

- (1) the Developer's obligations under this Agreement have been satisfied; or
- (2) if this Agreement is terminated or rescinded.

13. Dispute Resolution

13.1 Notice of Dispute

- (1) If a dispute or lack of certainty 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**) to negotiate the Dispute.
- (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 to negotiate the Dispute (the representatives designated by the parties being together, the Representatives).

13.2 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.

13.3 Further steps required before proceedings

Subject to 13.14 and 13.15 and except as otherwise expressly provided in this Agreement, any Dispute must, as a condition precedent to the commencement of litigation, mediation under clause 13.5 or determination by an expert under clause 13.6, 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 13.1 is served.

13.4 Disputes for mediation or expert determination

If the Representatives have not been able to resolve the Dispute, then the parties must agree within five (5) Business Days to either refer the matter to mediation under clause 13.5 **Error! Reference source not found.** or expert resolution under clause 13.6. **Error! Reference source not found.**

13.5 Disputes for mediation

- (1) If the parties agree in accordance with clause 13.4 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 for the time being.
- (2) If the mediation 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 13.6.

13.6 Choice of expert

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

13.7 Directions to expert

- (1) In reaching a determination in respect of a dispute under clause (2) 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) proceed in any manner as the expert thinks fit without being bound to observe the rules of natural justice or the rules of evidence;
 - (c) not accept verbal submissions unless both parties are present;
 - (d) on receipt of a written submission from one party, ensure that a copy of that submission is given promptly to the other party;
 - (e) take into consideration all documents, 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;
 - (f) not be expected or required to obtain or refer to any other documents, information or material (but may do so if the expert so wishes);
 - (g) 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;
 - (h) issue a final certificate stating the expert's determination (together with written reasons); and
 - (i) act with expedition with a view to issuing the final certificate as soon as practicable.
- (3) The parties must comply with all directions given by the expert in relation to the resolution of the Dispute and 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 documents, records or information which the expert requests.

13.8 Expert may commission reports

- (1) Subject to paragraph(2):
 - (a) the expert may commission the expert's own advisers or consultants (including lawyers, accountants, bankers, engineers, surveyors or other technical consultants) to provide information to assist the expert in making a determination; and
- (2) The parties must approve the costs of those advisers or consultants in writing prior to the expert engaging those advisers or consultants.

13.9 Expert may convene meetings

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

13.10 Other courses of action

If:

- (1) the parties cannot agree in accordance with clause 13.4 to refer the matter to mediation or determination by an expert; or
- (2) the mediation referred to in clause 13.5 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,
- (3) then either party may take whatever course of action it deems appropriate for the purpose of resolving the Dispute.

13.11 Confidentiality of information provided in dispute resolution process

- (1) The parties agree, and must procure that the mediator and the expert agree as a condition of his or her appointment:
 - (a) subject to paragraph(2), to keep confidential all documents, information and other material disclosed to them during or in relation to the mediation or expert determination;
 - (b) not to disclose any confidential Agreements, information and other material except:
 - (i) to a party or adviser or consultant who has signed a confidentiality undertaking; or
 - (ii) if required by Law or any Authority to do so; and
 - (c) not to use confidential Agreements, information or other material disclosed to them during or in relation to the mediation or expert determination for a purpose other than the mediation or expert determination.
- (2) The parties must keep confidential and must not disclose or rely upon or make the subject of a subpoena to give evidence or produce Agreements in any arbitral, judicial or other proceedings:
 - (a) views expressed or proposals or suggestions made by a party or the mediator or the expert during the expert determination or mediation relating to a possible settlement of the Dispute;
 - (b) admissions or concessions made by a party during the mediation or expert determination in relation to the Dispute; and

- (c) information, Agreements or other material concerning the dispute which are disclosed by a party during the mediation or expert determination unless such information, Agreements or facts would be discoverable in judicial or arbitral proceedings.

13.12 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.

13.13 Costs

If any independent expert does not award costs, each party must contribute equally to the expert's costs in making the determination.

13.14 Remedies available under the Act

This clause 13 does not operate to limit the availability of any remedies available to Council under the Act.

13.15 Urgent relief

This clause 13 does not prevent a party from seeking urgent injunctive or declaratory relief concerning any matter arising out of this Agreement.

14. Review of Agreement

- i. This agreement may be reviewed or modified as agreed by the parties. Any review or modification of this Agreement will be conducted in the circumstances and in the manner determined by the parties.
- ii. No modification or review of this Agreement will be of any force or effect unless it is in writing and signed by the parties to this Agreement.
- iii. A party is not in breach of this Agreement if it does not agree to an amendment to this Agreement requested by a party in, or as a consequence of, a review.

15. Breach and Enforcement

15.1 Default

The Developer commits a default under this Agreement if it:

- (1) fails to comply with a Default Notice under clause 15.2; or
- (2) becomes subject to an Insolvency Event,
(Default).

15.2 Default Notice

If the Developer breaches this Agreement, Council may serve a notice on the Developer (**Default Notice**) specifying:

- (1) the nature and extent of the alleged breach;
- (2) if:

- (a) the breach is capable of being rectified other than by the payment of compensation, what Council requires the Developer to do in order to rectify the breach; or
- (b) the breach is not capable of being rectified other than by payment of compensation, the amount of compensation Council requires the Developer to pay in order to rectify the breach, and
- (3) the time within which Council requires the breach to be rectified, which must be a reasonable time of not less than twenty-one (21) days.

15.3 Consequences of Default

Where the Developer commits a Default, Council may, in addition to any rights it has at Law call on the Security to the extent of any compensation claimed in a Default Notice and not paid by the Developer.

15.4 General Enforcement

Without limiting any other remedies available to the parties, this Agreement may be enforced by any party in any Court of competent jurisdiction.

Nothing in this Agreement prevents:

- a) 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
- b) 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

15.5 Provision of Securities

- (1) Subject to paragraph (2), prior to the issue of a Construction Certificate in respect of the Development, the Developer must deliver to Council separate Bank Guarantees, bonds or other forms of security to the satisfaction of the Council:
 - (a) for the amount equivalent to the sum of the Monetary Contribution (**Primary Security**).
- (2) The Developer may satisfy its obligations under paragraph (1) (either in whole or in part), by directing Council to retain any Security held by Council which is required to be released by Council under this Agreement.
- (3) Prior to the issue of an Occupation Certificate in respect of the Development, the Developer must deliver to Council a Bank Guarantee, bond or other form of security to the satisfaction of Council for an amount equivalent to 10% of the Contribution Value of the Affordable Housing Units (**Defects Security**).

15.6 Replacement of Security

- (1) The Developer may replace any Security provided by it at any time, provided that the amount of that replacement is not less than that which is required to be provided under this Agreement.
- (2) On receipt of a replacement Security, Council must immediately release the Security being replaced and return it to the Developer.

15.7 Council may call on Security

- (1) If the Developer commits a Default under this Agreement, Council, without limiting any other remedies available to it, may call on any Security provided by the Developer.

- (2) If Council calls on any Security, it may use the amount so paid to it in satisfaction of any costs incurred by it in remedying the relevant Default.

15.8 Top up of Security

If Council calls on the Security, Council, by notice in writing to the Developer, may require the Developer to provide a further or replacement Security in an amount that, when added to any unused portion of any Security then held by Council, does not exceed the amount of the Security Council is entitled to hold at that time under this Agreement.

15.9 Release of Primary Security

Unless:

- (1) Council has made a demand against any Security provided by the Developer;
 - (2) the Development Contributions on account of which that Security was provided have not been made; or
 - (3) the Developer is in breach of this Agreement at the relevant time,
- Council, upon a written request being made by the Developer, must return the Primary Security within ten (10) business days of such a request being made.

15.10 Release of Defects Security

Unless:

- (1) Council has made a demand against any Security provided by the Developer for that Stage;
 - (2) the relevant Defects Liability Period has not expired; or
 - (3) the Developer is in breach of this Agreement at the relevant time,
- Council, upon a written request being made by the Developer, must return the Defects Security within ten (10) business days of such a request being made.

15.11 Indexation of value of Contribution Value

The Developer must ensure that the Security held by Council at all times equals the indexed amount notified to the Developer by Council and calculated in accordance with clause 9.

15.12 Compulsory acquisition

- (1) The Developer consents to the compulsory acquisition of the Affordable Housing Units
 - (a) in accordance with the Acquisition Act; and
 - (b) on the terms set out in this clause 15.12.
- (2) Council may only acquire the Affordable Housing Units in accordance with the Acquisition Act if the Developer has committed a default under this Agreement under this Agreement in respect of the dedication of the Affordable Housing Units.
- (3) If Council acquires the Affordable Housing Units compulsorily in accordance with the Acquisition Act:
 - (a) the Developer agrees that the compensation payable to it on account of an acquisition of the Affordable Housing Units under the Acquisition Act is \$1.00; and
 - (b) Council must complete that acquisition within twelve (12) months of the relevant Default.

- (4) The parties agree that the provisions of this clause 15.1215.12 are an agreement with respect to the compulsory acquisition of the Affordable Housing Units for the purpose of s30 of the Acquisition Act.
- (5) If Council:
- (a) acquires the Affordable Housing Units under paragraph (3); and
 - (b) is required to pay any compensation to a third party as a result of that acquisition,
- then the Developer must pay Council the amount of that compensation as a Monetary Contribution:
- (c) within ten (10) business days of demand for payment being made by Council; and
 - (d) prior to the issue of the then next Occupation Certificate or Subdivision Certificate with respect to the Development.

15.13 Council may withhold Subdivision Certificate

- (1) The Developer may only make, or cause, suffer or permit the making of, an application for a Subdivision Certificate in respect of the Development if, at the date of the application, the Developer is not in breach of its obligation to make any Development Contributions under this Agreement.
- (2) Council may withhold the issue of a Subdivision Certificate if, at the relevant time, the Developer is in breach of any obligation to make any Development Contributions under this Agreement until such time as:
 - (a) the breach is rectified; or
 - (b) Council calls upon the Security provided by the Developer in respect of the Contribution to which the breach relates.

15.14 Council may withhold Occupation Certificate

- (1) The Developer may only make, or cause, suffer or permit the making of, an application for an Occupation Certificate in respect of the Development if, at the date of the application, the Developer is not in breach of its obligation to make any Development Contributions under this Agreement.
- (2) Council may withhold the issue of an Occupation Certificate if, at the relevant time, the Developer is in breach of any obligation to make any Development Contributions under this Agreement until such time as:
 - (a) the breach is rectified; or
 - (b) Council calls upon the Security provided by the Developer in respect of the Development Contributions to which the breach relates.

16. Termination, Rescission or Determination

- (1) This Agreement terminates in the following events:
 - (a) if the parties agree in writing to terminate the operation of the Agreement at any time.
 - (b) Council serves notice on the Developer terminating this Agreement where the Developer has failed to comply with a Default Notice issued in accordance with clause 15.2.
 - (c) Any Development Consent in respect of the Development lapses.

- (d) The Instrument Change is not implemented.
- (2) Upon termination of this Agreement:
 - (a) all future rights and obligations of the parties are discharged; and
 - (b) all pre-existing rights and obligations of the parties continue to subsist.

17. Developer Warranties and Indemnities

17.1 Warranties

The Developer warrants to Council that it is:

- (a) legally and beneficially entitled to the Land;
- (b) able to fully comply with its obligations under this Agreement;
- (c) it has full capacity to enter into this Agreement; and
- (d) there is no legal impediment to it entering into this Agreement, or performing the obligations imposed under it.

17.2 Indemnity

The Developer indemnifies Council in respect of any Claim that may arise as a result of the Developer's obligations under this Agreement but only to the extent that any such Claim does not arise as a result of the negligent acts or omissions of Council.

18. Notices

- (1) Any notice consent, information, application or request that must or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:
 - (a) Delivered or posted to that Party at its address set out below.
 - (b) Faxed to that Party at its fax number set out below.
 - (c) Emailed to that Party at its email address set out below.

Council

Attention ##

Address ##

Fax Number ##

Email ##

Developer

Attention David Workman

Address Level 21, Governor Phillip Tower, 1 Farrer Place, Sydney
NSW 2000

Fax Number N/A

Email dworkman@eg.com.au

- (2) If a Party gives the other Party 3 business days notice of a change of its address, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, or posted to the latest address.
- (3) Any notice, consent, information, application or request is to be treated as given or made at the following time:
 - (a) If it is delivered, when it is left at the relevant address.
 - (b) If it is sent by post, 2 business days after it is posted
- (4) If any notice, consent, information, application or request is delivered, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day

19. Assignment and Dealings

19.1 Restriction on Assignment

Other than in accordance with this clause 19.1 the Developer may not:

- (1) Assign any part of the Land; and/or
- (2) Assign their rights or obligations under this Agreement.

19.2 Procedure for Assignment

- (1) If the Developer:
 - (a) wishes to Assign any part of the Land; and/or
 - (b) wishes to Assign its rights or obligations under this Agreement,
 then the Developer must:
 - (c) at no cost to Council, and only with the written consent of Council, procure:
 - (i) the execution by the Assignee of an appropriate deed where the Assignee agrees to be bound by the terms of this Agreement; and
 - (ii) the provision of all Securities to Council by the Assignee that the Developer is required to provide under this Agreement (and any additional securities if required by Council acting reasonably) at the same time as, or prior to, entering into that deed.
- (2) Council is under no obligation to grant its consent to the Developer under clause (1) if the Developer is in breach of this Agreement and/or does not provide Council with any evidence requested by Council, acting reasonably, required for Council to grant that consent.

20. Costs

The Developer agrees to pay or reimburse the reasonable legal costs and disbursements of Council for:

- (1) the negotiation, preparation, execution, stamping, administration and enforcement of this Agreement;

- (2) the registration or removal of this Agreement on the title to the Land in accordance with clause 12; and
- (3) any breach or default by the Developer of its obligations under this Agreement, within ten (10) business days of receipt of a tax invoice from Council.

21. Entire agreement

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

22. Further acts

Each Party must promptly execute all Agreements and do all things that another Party from time to time reasonably requests to affect, perfect or complete this Agreement and all transactions incidental to it.

23. Governing law and jurisdiction

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

24. Joint and individual liability and benefits

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

25. No fetter

25.1 Consent authority

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

25.2 Agreement does not fetter discretion

This Agreement is not intended to operate to fetter, in any unlawful manner:

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

(Discretion).

25.3 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 documents, to ensure the objective of this clause 25.3 is substantially satisfied; and
 - (b) in the event that paragraph (1)(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.
- (a) 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.

25.4 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 Instrument Change, the Land or the Development in a certain manner..

26. Representations and warranties

The Parties represent and warrant that they have power to enter into this Agreement and comply with their obligations under the Agreement and that entry into this Agreement will not result in the breach of any law.

27. Severability

If a clause or part of a clause of this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement, but the rest of this Agreement is not affected.

28. Modification

No modification or variation of this Agreement will be of any force or effect unless it is in writing and signed by the Parties to this Agreement.

29. Waiver

The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another Party. A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

30. GST

- (1) If GST is payable on a taxable supply (as that term is defined under the GST Law) made under, by reference to or in connection with this Agreement, the party providing the consideration for that taxable supply must also pay the GST Amount as additional consideration.
- (2) This clause does not apply to the extent that the consideration for the taxable supply is expressly agreed to be GST inclusive.
- (3) Unless otherwise expressly stated, prices or other sums payable or consideration to be provided under or in accordance with this Agreement are exclusive of GST.
 - (a) This clause will continue to apply after expiration of termination of this Agreement.

Schedule 1 - Development Contributions

Contribution	Public Purpose	Timing	Contribution Value
Monetary contribution of \$450,000 in total (excluding GST)	Contribution to the provision of open space, community facilities and civic improvements within the Pennant Hills Town Centre	Prior to the issue of an Occupation Certificate for the Development	\$450,000, subject to indexation.
Construction and Transfer to Council of four Affordable Housing units, in accordance with Schedule 2	Provision of affordable housing	Within 15 business days of the issue of an Occupation Certificate for the Development	Estimated Value: \$3,700,000. This is based on an estimated market value for the studio, 1 and 2 bedroom units.
Grant of an Easement to provide public access to a walkway through the pocket park on the Land, in accordance with Schedule 3	To facilitate access between City View Rd and Boundary Rd	Within 15 business days of the issue of an Occupation Certificate for the Development	\$837,700 This is based on an estimated land value of \$2,393/m2.

Schedule 2 to Planning Agreement No ##### - Works

Item of Works	Specification
Construction and Transfer of Affordable Housing Units	<ul style="list-style-type: none"> The Developer will design, construct and complete the Affordable Housing units. The Developer will dedicate to Council in perpetuity by way of transfer, free of cost, a total of 4 Affordable Housing Units consisting of either studio or 1 bedroom units in addition to a 2 bedroom unit. with the specific units to be dedicated to be determined by the Developer at the DA stage and agreed with Council. The minimum internal apartment and balcony areas should be consistent with or exceed that of the 'Apartment Design Guide' (NSW Department of Planning & Environment, 2015, as amended). The Affordable Housing Units will be fit out with the standard inclusions provided for in other similar studio, 1 bedroom or 2 bedroom units within the development but will not include any furniture. The units would be provided with at least 1 parking space unless there was no demonstrated need. The units to be transferred to Council as affordable housing will be of the same standard as other units in the Development in terms of solar access.

Schedule 3 – Terms of Grant of Easement

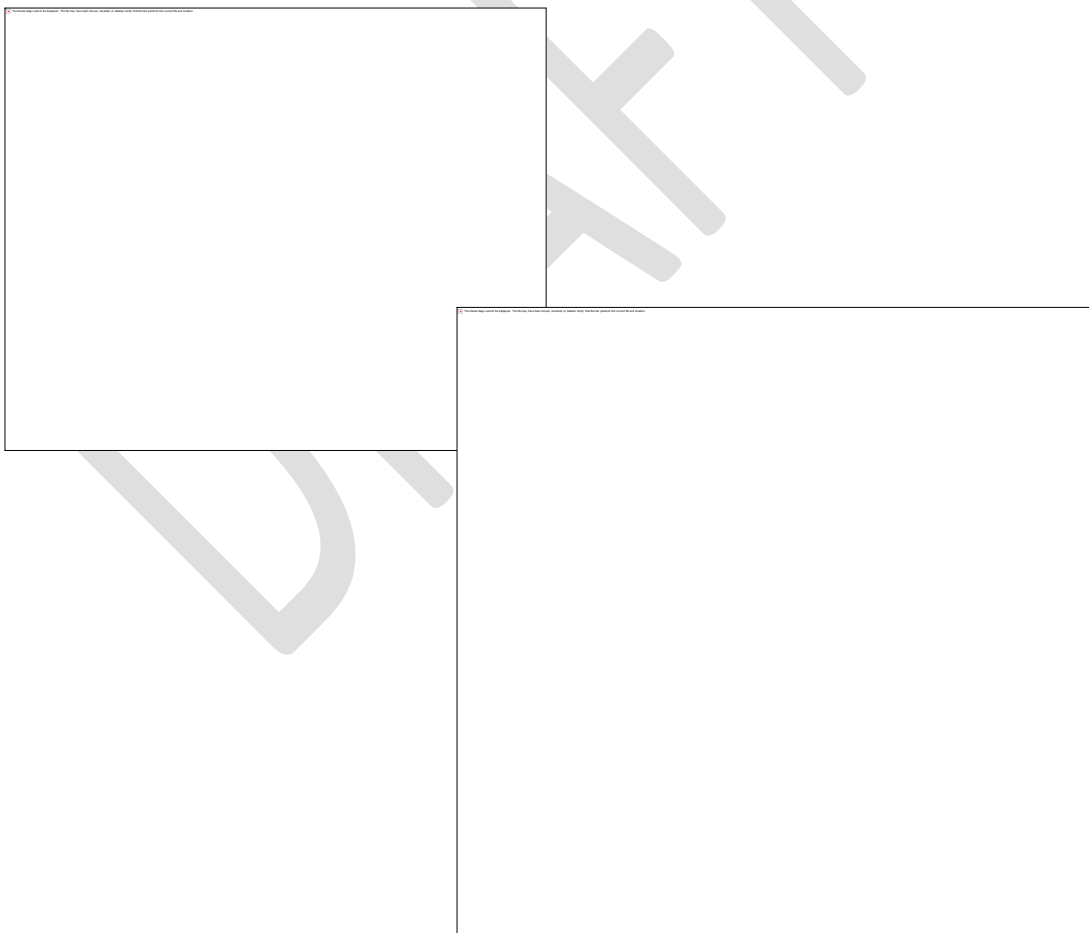
The Developer, at its own expense, must register the Easement on the title to the Land.

The Easement will:

- a) Be a public access Easement;
- b) Provide pedestrian access from City View Rd to Boundary Rd
- c) Be over a land area of approximately maximum of 350m².

The exact location, design and area of the Easement will be determined at the time that a development application is submitted for the Development and will form part of the conditions of development consent.

Indicative maps below - (Easement Terms/mapping to be confirmed)



Schedule 4 – Requirements under s7.4

REQUIREMENT UNDER THE ACT	THIS PLANNING AGREEMENT
Planning instrument and/or development application – (Section 7.4(1)) The Developer has: (a) sought a change to an environmental planning instrument. (a) (b) made, or proposes to make, a Development Application. (b) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.	(a) Yes (b) Yes (c) Not applicable
Description of land to which this agreement applies – (Section 7.4(3)(a))	Lot 3 DP732565
Description of change to the environmental planning instrument to which this agreement applies – (Section 7.4(3)(b))	Yes. See definition of “Instrument Change at clause 4.1.
Application of section 7.11 of the Act – (Section 7.4(3)(d))	Does apply
Applicability of section 7.12 of the Act – (Section 7.4(3)(d))	Does apply
Consideration of benefits under this agreement if section 7.11 applies – (Section 7.4(3)(e))	See clause 11.
Mechanism for Dispute resolution – (Section 7.4(3)(f))	See clause 13.
Enforcement of this agreement (Section 7.4(3)(g))	See clause 15.
No obligation to grant consent or exercise functions – (Section 7.4(3)(9))	See clause 25

Execution of Planning Agreement No. XXXX of 200X**Dated:** xxx

Signed, sealed and delivered by **Hornsby Shire Council** by its General Manager and Mayor by the affixing of the Common Seal of Council in accordance with resolution dated

General Manager (Signature)

Mayor (Signature)

Name of General Manager (Print Name)

Name of Mayor (Print Name)

Signed, sealed and delivered by EG Funds Pty Ltd ACN 108 198 492 ATF EG Unit Trust in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by authority of its directors.

Director/Secretary (Signature)

Director (Signature)

Name of Director/Secretary (Print Name)

Name of Director (Print Name)
