

### 10.3. 12-14 Waters Road, Neutral Bay - Voluntary Planning Agreement - Post Exhibition Report

<b>AUTHOR</b>	Katerina Papas, Senior Strategic Planner
<b>ENDORSED BY</b>	Joseph Hill, Director City Strategy
<b>ATTACHMENTS</b>	<ol style="list-style-type: none"> <li>1. Draft VPA 12-14 Waters Rd Neutral Bay 27022023 [<b>10.3.1</b> - 34 pages]</li> <li>2. Public Submissions Summary Table - 12-14 Waters Rd Neutral Bay [<b>10.3.2</b> - 3 pages]</li> </ol>
<b>CSP LINK</b>	<ol style="list-style-type: none"> <li>2. Our Built Infrastructure               <ol style="list-style-type: none"> <li>2.1 Infrastructure and assets meet diverse community needs</li> <li>2.2 Vibrant public domains and villages</li> </ol> </li> <li>5. Our Civic Leadership               <ol style="list-style-type: none"> <li>5.1 Lead North Sydney’s strategic direction</li> <li>5.3 Community is engaged in what Council does</li> </ol> </li> </ol>

#### PURPOSE:

The purpose of this report is to outline the outcomes of the public exhibition process for a draft Voluntary Planning Agreement (VPA) related to the Planning Proposal at 12-14 Waters Road Neutral Bay, and to seek Council’s endorsement to enter into the VPA, which includes a contribution of \$1.9 million dollars towards public domain upgrades in the Neutral Bay Town Centre.

#### EXECUTIVE SUMMARY:

- At its meeting on 26 April 2022, Council resolved to refuse a Planning Proposal (PP2/22) at 12-14 Waters Road Neutral Bay. The Planning Proposal sought to increase the maximum building height from 16m to 26m.
- Following this decision, the applicant lodged a rezoning review with the Department of Planning and Environment. The rezoning review was considered by the Sydney North Planning Panel on 31 August 2022, with the Panel recommending that the Planning Proposal should proceed to Gateway Determination, subject to some modifications including a reduction in height to 22m.
- On 14 November 2022, Council resolved to accept, in-principle, an offer from the applicant (Central Element) to enter into a Voluntary Planning Agreement (VPA) related to the Planning Proposal, to provide Council a monetary contribution of \$1.9 million towards public domain improvements in the Neutral Bay Town Centre.
- On 23 December 2022, the Minister for Planning issued a Gateway Determination allowing the Planning Proposal to be placed on public exhibition. The Planning Proposal was exhibited by the Department of Planning from 22 February 2023 until 22 March 2023, and the related draft VPA was exhibited by Council from 6 March 2023 until 17 April 2023.

- Four submissions were received during the exhibition of the draft VPA. Three submissions were in support of the draft VPA, and one submission objected to Development Application (DA43/23) for the site.
- As the Planning Proposal was not supported by Council and has been the result of a successful rezoning review, the Department of Planning and Environment will proceed with the finalisation of the Planning Proposal.
- This report seeks Council's endorsement to enter into the VPA, which would result in the receipt of an additional \$1.9 million dollars to be utilised for the delivery of public domain improvements in the Neutral Bay Town Centre.
- It is preferable that the VPA be executed prior to the finalisation of the Planning Proposal for 12-14 Waters Road Neutral Bay. However, it should be noted that if the Planning Proposal and associated Development Application do not proceed, there is no obligation for the landowner/developer to deliver the public benefits subject to the VPA.

**RECOMMENDATION:**

- 1. THAT** Council notes the outcomes of the public exhibition process.
- 2. THAT** Council resolves to enter into a Voluntary Planning Agreement in relation to Planning Proposal (PP2/22) at 12-14 Waters Road, Neutral Bay at Attachment 1.
- 3. THAT** Council grant delegated authority to the General Manager to make minor alterations to the Voluntary Planning Agreement if required, which do not materially change the intent or outcomes of the Agreement as exhibited.

## **Background**

### **1. Strategic Planning Context**

#### Military Road Corridor Planning Study Stage 1 (MRCPS)

On 22 February 2021, Council resolved to adopt the *Neutral Bay Town Centre – Future Directions Report* also known as the *Military Road Corridor Planning Study Stage 1 (MRCPS)*. The aim of this work was to provide a framework to guide ongoing discussion with local landowners about the future development of the Centre. Its intent was to manage jobs and housing growth, and leverage public domain and facilities embellishments and improvements, whilst still maintaining the village atmosphere of the Neutral Bay Town Centre.

The most specific direction of the Study relating to the subject site was the identification of a height uplift of one storey and a corresponding increase in the non-residential floor space requirements. The rationale for this was to ensure commercial floor space was provided in the centre to arrest the decline of such floor space to the new, mainly residential development that has occurred under the current planning rules.

At its extraordinary meeting on 24 January 2022, Council resolved to rescind the MRCPS and prepare a revised study to better balance between height and provision of open space.

### **2. Development Applications at the Site**

#### Development Application No. 92/21

On 27 October 2021, the Sydney North Planning Panel granted a deferred commencement consent for a five-storey shop-top housing development with 36 apartments on the upper levels of the site. Consent was issued on 22 December 2021. The approval of this development included the provision of a 1.5m whole of building setback to Waters Lane to provide an improved pedestrian environment.

#### Development Application No. 42/23

On 20 February 2023, a Development Application was lodged to amend the approved mixed-use building (under DA92/21) to increase the total storeys from five to six, provide an additional five residential apartments, plus other internal and external modifications. The DA relies upon the changes to the planning (height) controls sought under Planning Proposal (PP2/22) for the site, despite the Planning Proposal not yet being finalised (i.e., the amendment to NSLEP 2013 not yet being made).

An appeal has been lodged with the Land and Environment Court as the application is deemed to have been refused by Council (i.e., the application has not been determined within the prescribed 40-day assessment timeframe). This remains ongoing.

### **3. Planning Proposal and draft VPA**

A detailed history to the background of the Planning Proposal is contained in Council's Assessment Report which was considered by the North Sydney Local Planning Panel (NSLPP)

on 13 April 2022, a copy of which can be viewed at:

<https://www.northsydney.nsw.gov.au/downloads/file/1659/lpp03-12-14-waters-road-neutral-bay-pp2-22-part-1>.

On 26 April 2022, Council resolved to refuse a Planning Proposal at 12-14 Waters Road Neutral Bay. The Planning Proposal sought to increase the maximum building height from 16m to 26m, and to increase the minimum non-residential floor space ratio (FSR) from 0.5:1 to 1.2:1. The reasons for refusal were the absence of an endorsed strategic study supporting the change, and the height being excessive (for the provision of an additional storey). An offer to enter into a Voluntary Planning Agreement (VPA) for the provision of public benefits was provided by the applicant, however, due to Council's non-support of the Planning Proposal, the VPA was not supported at that time.

Following Council's refusal of the Planning Proposal, the applicant lodged a rezoning review with the Department of Planning and Environment. This was considered by the Sydney North Planning Panel (SNPP) which, on 1 September 2022, issued a recommendation, subject to amendments, in support of the progression of the Planning Proposal. The panel recommended that the Planning Proposal be amended to provide a maximum building height of 22m with an additional 2m allowance for lift overrun and roof-top facilities. This represented a reduction from the 26m height limit initially sought by the applicant.

On 14 November 2022, Council considered a report on a standing offer from the applicant (Central Element) to provide a contribution towards additional public benefits in connection with the Planning Proposal. The letter of offer provided for a monetary contribution of \$1.9 million towards public domain improvements in the Neutral Bay Town Centre. Council resolved:

1. *THAT Council resolve to accept, in principle, the letter of offer provided at Attachment 2 to enter into a Voluntary Planning Agreement.*
2. *THAT Council grant delegated authority to the General Manager to negotiate the detailed terms of the draft Voluntary Planning Agreement.*
3. *THAT the draft Voluntary Planning Agreement be exhibited concurrently with the Planning Proposal.*
4. *THAT the outcomes of the public exhibition be further reported to Council.*

On 23 December 2022, the Minister for Planning issued a Gateway Determination allowing the Planning Proposal and draft VPA to be placed on public exhibition subject to meeting a number of conditions, which included the Planning Proposal being amended prior to exhibition to reflect a height of 22m (with an additional 2m height allowance for rooftop facilities).

The amended Planning Proposal was exhibited by the Department of Planning and Environment from 22 February 2023 until 22 March 2023, and the related draft VPA was exhibited by Council from 6 March 2023 until 17 April 2023.

In accordance with Council's resolution of 14 November 2022, the purpose of this report is to outline the submissions received during the public exhibition of the draft VPA.

## **Report**

### **4. Planning Proposal**

As outlined previously in this report, Council resolved on 26 April 2022 to refuse the Planning Proposal at 12-14 Waters Road Neutral Bay. The reasons for refusal were the absence of an endorsed strategic study supporting the change in height, and the requested height being excessive (for the provision of an additional storey).

The Sydney North Planning Panel, in its consideration of the applicant's rezoning review application, found that the proposal had demonstrated strategic merit and could, subject to amendment, satisfy the test of site-specific merit. The Panel, in its decision of 1 September 2022, recommended the Planning Proposal be amended to provide a maximum building height of 22m with an additional 2m allowance for lift overrun and rooftop facilities. In making this recommendation, the Panel was satisfied that the Planning Proposal as amended, would be consistent with Council's previously cited objective of finding an appropriate balance between additional height, employment generating opportunities, and additional open space.

As the Planning Proposal was not supported by Council and has been the result of a successful rezoning review, the Planning Panel is the Principal Planning Authority (PPA) in accordance with the State Government's new (September 2022) LEP Making Guidelines. This means that the State Government is managing the Plan Making Process (including exhibition and finalisation of the Planning Proposal).

The Planning Proposal was exhibited by the Department of Planning and Environment from 22 February 2023 until 22 March 2023. The Department has indicated to Council staff its intention to proceed with the finalisation of the Planning Proposal.

### **5. Draft VPA**

The draft Voluntary Planning Proposal comprises a \$1.9 million monetary contribution towards public domain improvements in the Neutral Bay Town Centre. This contribution would be in addition to the site frontage upgrade works ordinarily associated with a Development Application of this nature. The offer is also in addition to the developer contributions applicable under the (section 7.11) North Sydney Local Infrastructure Contributions Plan 2020.

The detailed terms of the VPA (including timing of payment, registration of the agreement on title, security etc) have been reviewed by Council's appointed solicitor and agreed to by the applicant. To reduce the risk of non-fulfilment of obligations under the VPA, the terms require the landowner/developer to provide the monetary contribution prior to the issue of an

occupation certificate of the upper level of the development. It is preferable that the VPA be executed prior to the finalisation of any amendment to the LEP.

The additional height being sought under the Planning Proposal may facilitate the delivery of approximately five additional apartments on the site, when compared to the existing approved DA (DA92/21). As a proportion of the development uplift, the VPA offer of \$1.9 million is significant. It should be noted, however, that were the Planning Proposal and related Development Application not to proceed, there is no obligation for the landowner/developer to deliver the public benefits subject to the VPA.

## **6. Public Exhibition of draft VPA**

The draft VPA (Attachment 1) was placed on public exhibition for 42 days, from 6 March 2023 until 17 April 2023.

The following provides a summary of the engagement methods that were used to generate awareness of the draft VPA:

- Letter notifications to property owners and occupiers located in vicinity of the site (2,503 letters sent);
- Memo to Precinct Committees;
- Notification in Council's e-newsletters, including:
  - Council eNews (1,440 subscribers)
  - Precincts eNews (166 subscribers)
  - DA eNews (183 subscribers)
- A dedicated exhibition web page, including all documentation and contact information – 93 visits to the project page during the exhibition period, 30 downloads of the draft VPA document and 4 online submissions
- Physical copies of all supporting documentation and contact information on display at Council's Customer Service Centre and Stanton Library.

## **7. Submissions Overview**

Four submissions were received in response to the public exhibition of the draft VPA, of which three submissions supported the intent of the draft VPA; and one submission addressed matters relating to the current Development Application (DA42/23) for site, and not the draft VPA being exhibited.

Of those who supported the draft VPA, the following reasons were identified:

- the acute need for open space in and around the Neutral Bay Town Centre, in particular a plaza connected to its surrounding laneways, and moving the existing car park underground to create a pedestrian-friendly Centre is highly desirable;
- the proposed development is of high-quality and will contribute to improving the amenity, activation and streetscape of the Neutral Bay Town Centre;
- the appropriateness of the proposed height on the subject site considering its proximity to Military Road; and
- attention paid to the provision of additional greenery and street furniture.

One of the submissions, whilst supportive of the draft VPA, raised concerns with the removal of mature box trees along Waters Road and the associated loss of privacy for residents opposite the development. The draft VPA does not endorse or propose the removal of trees. This is a matter for consideration in the assessment of the Development Application.

A detailed summary and response to all submissions received is provided in Attachment 2.

## Options

Council has the following options in relation to this matter:

1. Do nothing/not enter into the agreement;
2. Enter into the agreement (preferred option);

These options are assessed in the table below.

Option	Finance/Resourcing	Risk/Opportunity	Consultation
1.	Taking no action/not entering into the VPA would have a significant financial impact and negligible resourcing impact.	Abandoning the VPA will represent a lost opportunity for Council to receive an additional \$1.9 million monetary contribution towards public domain improvements in the Neutral Bay Town Centre.	Beyond this report, no further consultation is required.
2.	Entering into the VPA would have a negligible financial impact, as the terms of the VPA require the landowner / developer to cover all legal costs associated with the administration of the agreement. From a resourcing perspective, whilst additional staff time will be required to implement the agreement, the impact would be negligible.	For the reasons outlined in this report, the recommended course of action would represent a significant financial benefit to Council and assist deliver public domain improvements strongly supported by the community. However, were the Planning Proposal and associated Development Application not to proceed, there is no obligation for the landowner/developer to deliver the public benefits subject to the VPA.	Beyond this report, no further consultation is required.

Option 2, is recommended for the following reasons:

- Community consultation has been conducted, and whilst one submission raised concerns with the Planning Proposal for 12-14 Waters Road, the majority of submissions were supportive of the VPA.
- The Department of Planning has indicated its intention to proceed with the finalisation of the Planning Proposal for 12-14 Waters Road Neutral Bay, and not entering into the VPA will represent a lost opportunity to receive a significant monetary contribution towards public domain improvements in the Neutral Bay Town Centre, which is strongly supported by the community.

### **Consultation requirements**

Community engagement has occurred in accordance with Council's *Community Engagement Protocol*. The detail of this report provides the outcomes from the engagement for Council to consider prior to adoption.

### **Financial/Resource Implications**

This report recommends Council enter into a VPA to receive a \$1.9 million monetary contribution towards public domain improvements in the Neutral Bay Town Centre. This contribution would be in addition to the developer contributions applicable under the (section 7.11) North Sydney Local Infrastructure Contributions Plan 2020 and will represent a significant financial benefit to Council. The detailed terms of the VPA require the landowner/developer to cover all legal costs associated with the administration of the agreement. Whilst additional staff time will be required to implement the agreement, the resourcing implications of entering into the agreement will be negligible.

### **Legislation**

If Council resolves to enter into the Voluntary Planning Agreement, the agreement will be executed in accordance with the agreed terms (as per Attachment 1) and any requirements of the Environmental Planning and Assessment Act and Regulation.

# Voluntary Planning Agreement

## Draft for Exhibition

North Sydney Council  
*ABN 32 353 260 317*

CE Waters Pty Limited  
*ACN 636 274 578*

<b>Contents</b>	
<b>Background</b>	<b>4</b>
<b>Operative part</b>	<b>4</b>
<b>1 Definitions</b>	<b>4</b>
<b>2 Interpretation</b>	<b>6</b>
<b>3 Planning Agreement under the Act</b>	<b>8</b>
<b>4 Application of this agreement</b>	<b>8</b>
<b>5 Operation of this agreement</b>	<b>8</b>
<b>6 Contributions to be made under this agreement</b>	<b>8</b>
6.1 <i>Monetary Contribution</i>	8
6.2 <i>Payment of the Monetary Contribution</i>	8
<b>7 Application of s 7.11, s 7.12 and s 7.24 of the Act</b>	<b>9</b>
<b>8 Registration of this agreement</b>	<b>9</b>
8.1 <i>Developer Interest</i>	9
8.2 <i>Registration of this agreement</i>	9
8.3 <i>Removal from Register</i>	10
8.4 <i>Caveat</i>	10
<b>9 Review of this agreement</b>	<b>10</b>
<b>10 Dispute Resolution</b>	<b>10</b>
10.1 <i>Reference to Dispute</i>	10
10.2 <i>Notice of Dispute</i>	11
10.3 <i>Representatives of Parties to Meet</i>	11
10.4 <i>Further Notice if Not Settled</i>	11
10.5 <i>Mediation</i>	11
10.6 <i>Expert determination</i>	12
10.7 <i>Litigation</i>	12
10.8 <i>No suspension of obligations</i>	13
<b>11 Enforcement</b>	<b>13</b>
11.1 <i>Default</i>	13
11.2 <i>Restriction on the issue of Certificates</i>	13
11.3 <i>General Enforcement</i>	13
<b>12 Assignment and Dealings</b>	<b>13</b>
12.1 <i>Assignment</i>	13

12.2	<i>Transfer of Land</i>	14
12.3	<i>Land may be used for finance, sales contracts may be exchanged and agreements for lease entered into</i>	14
<b>13</b>	<b>Approvals and consents</b>	<b>15</b>
<b>14</b>	<b>No fetter</b>	<b>15</b>
14.1	<i>Discretion</i>	15
14.2	<i>No fetter</i>	15
<b>15</b>	<b>Notices</b>	<b>15</b>
<b>16</b>	<b>General</b>	<b>16</b>
16.1	<i>Relationship between parties</i>	16
16.2	<i>Time for doing acts</i>	16
16.3	<i>Further assurances</i>	16
16.4	<i>Variation</i>	16
16.5	<i>Counterparts</i>	17
16.6	<i>Legal expenses, costs and stamp duty</i>	17
16.7	<i>Entire agreement</i>	17
16.8	<i>Representations and warranties</i>	17
16.9	<i>Severability</i>	17
16.10	<i>Invalidity</i>	17
16.11	<i>Waiver</i>	17
16.12	<i>GST</i>	18
16.13	<i>Governing law and jurisdiction</i>	18
16.14	<i>Section 10.7 Planning Certificate</i>	18
16.15	<i>Explanatory Note</i>	18
	<b>Schedule 1 Summary of requirements (section 7.4)</b>	<b>19</b>
	<b>Annexure A Draft Deed of Novation</b>	<b>22</b>

# Agreement

## Date

## Parties

### First party

<b>Name</b>	North Sydney Council ( <b>Council</b> )
<b>ABN</b>	32 353 260 317
<b>Contact</b>	General Manager
<b>Telephone</b>	(02) 9936 8100

### Second party

<b>Name</b>	CE Waters Pty Ltd ( <b>Developer</b> )
<b>ACN</b>	636 274 578
<b>Contact</b>	[INSERT]
<b>Telephone</b>	[INSERT]

## Background

- A. The Developer owns the Land at 12-14 Waters Road, Neutral Bay.
- B. The Developer proposes to carry out the Development which will include a mixed use residential and commercial development, with basement parking and public domain works.
- C. To facilitate the Development, the Developer has lodged the Planning Proposal seeking amendments to LEP 2013.
- D. The Developer has made an offer to enter into this agreement to provide public benefits in connection with the Instrument Change and proposed future Development of the Land.

## Operative part

### 1 Definitions

In this agreement, unless the context indicates a contrary intention:

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

**Address** means a party's address set out in the Notices clause of this agreement;

**Approval** means any certificate, licence, consent, permit, approval or other requirement of any Authority having jurisdiction in connection with the activities contemplated by this agreement;

**Authority** means any government, semi-governmental, statutory, administrative, fiscal or judicial body, department, commission, authority, tribunal, public or other person; agency or entity and includes a registered certifier under the Building and Development Certifiers Act 2018 (NSW).

**Business Day** means a day on which banks are open for general banking business in Sydney, excluding Saturdays and Sundays;

**Claim** means any claim, loss, liability, damage, proceeding, order, judgment or expense arising out of the operation of this agreement;

**Construction Certificate** means a construction certificate as defined under section 6.4 of the Act;

**CPI** means the All Groups Consumer Price Index applicable to Sydney published by the Australian Bureau of Statistics;

**Damages** means all liabilities, losses, damages, costs and expenses, including legal fees and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties;

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

**Development** means a mixed use residential and commercial development, with basement parking and public domain works, on the Land as modified from time to time, including development facilitated by the Instrument Change as generally anticipated in the Planning Proposal;

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

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

**Final Lot** means a lot created in the Development for separate residential, retail or commercial occupation and disposition and which is not:

- (a) intended to be further subdivided (including to create a strata or community lot);
- (b) a Service Lot; or
- (c) a lot of a kind or created for a purpose that is otherwise agreed by the parties;

**Floor Space Ratio Map** means the Floor Space Ratio Map in the LEP 2013;

**GST** has the same meaning as in the GST Law;

**GST Law** has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition of or administration of the GST;

**Gross Floor Area** has the same meaning as in the LEP 2013;

**Height of Buildings Map** means the Height of Buildings Map in the LEP 2013;

**Instrument Change** means an amendment to LEP 2013 generally in accordance with the Planning Proposal;

**Land** means:

- (a) Lots 1 to 33 in SP 68360, known as 12 Waters Road, Neutral Bay; and
- (b) Lot 18 in DP 537700, known as 14 Waters Road, Neutral Bay;

**Law** means:

- (a) any law applicable including legislation, ordinances, regulations, by-laws and other subordinate legislation;
- (b) any Approval, including any condition or requirement under it; and

- (c) any fees and charges payable in connection with the things referred to in paragraphs (a) and (b);

**LEP 2013** means the North Sydney Local Environmental Plan 2013;

**Monetary Contribution** means a monetary contribution payable by the Developer in accordance with clause 6.1;

**Non-Residential Floor Space Ratio Map** means the Non-Residential Floor Space Ratio Map in the LEP 2013;

**Novation Deed** means the draft deed in Annexure A;

**Occupation Certificate** means an occupation certificate as defined under section 6.4 of the Act, and includes an Occupation Certificate for part of a building;

**Planning Proposal** means PP2/22 (Council's reference) or PP-2021-7492 (Planning Portal's reference) lodged with the Council on 29 December 2021, amended on 22 March 2022, and further amended on 17 June 2022 as part of a request for rezoning review, seeking the following amendments to LEP 2013:

- (a) an amendment to the Height of Buildings Map to allow a maximum building height of 22m on the Land;
- (b) inclusion of a site specific provision to enable rooftop structures, plant and equipment to a maximum building height of 24m; and
- (c) an amendment to the Non-Residential Floor Space Ratio Map to provide a minimum non-residential floor space ratio for the Land of 1.2:1.

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

**Regulation** means the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*;

**Related Body Corporate** has the meaning given to that term in s 9 of the *Corporations Act 2001* (Cth);

**Service Lot** means a lot that is created for one or more of the following purposes:

- (a) to be dedicated or otherwise transferred to an Authority;
- (b) for any public utility undertaking (within the meaning of the *Standard Instrument (Local Environmental Plans) Order 2006* as at the date of this Agreement);
- (c) for roads, open space, recreation, environmental conservation, water cycle management or riparian land management;
- (d) for avoidance of doubt — association property within the meaning of the *Community Land Development Act 1989* that is to be used for any one or more of the purposes set out in (c) above.

## 2 Interpretation

In this agreement, unless the context indicates a contrary intention:

- (a) **(documents)** a reference to this agreement or another document includes any document which varies, supplements, replaces, assigns or novates this agreement or that other document;

- (b) **(references)** a reference to a party, clause, paragraph, schedule or annexure is a reference to a party, clause, paragraph, schedule or annexure to or of this agreement;
- (c) **(headings)** clause headings and the table of contents are inserted for convenience only and do not affect interpretation of this agreement;
- (d) **(person)** a reference to a person includes a natural person, corporation, statutory corporation, partnership, the Crown and any other organisation or legal entity and their personal representatives, successors, substitutes (including persons taking by novation) and permitted assigns;
- (e) **(party)** a reference to a party to a document includes that party's personal representatives, executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns;
- (f) **(president, CEO or managing director)** the president, CEO or managing director of a body or Authority means any person acting in that capacity;
- (g) **(requirements)** a requirement to do any thing includes a requirement to cause that thing to be done, and a requirement not to do any thing includes a requirement to prevent that thing being done;
- (h) **(including)** including and includes are not words of limitation, and a list of examples is not limited to those items or to items of a similar kind;
- (i) **(corresponding meanings)** a word that is derived from a defined word has a corresponding meaning;
- (j) **(singular)** the singular includes the plural and vice-versa;
- (k) **(gender)** words importing one gender include all other genders;
- (l) **(parts)** a reference to one or more things includes each part and all parts of that thing or group of things but nothing in this clause implies that part performance of an obligation constitutes performance of that obligation;
- (m) **(rules of construction)** neither this agreement nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting;
- (n) **(legislation)** a reference to any legislation or provision of legislation includes all amendments, consolidations or replacements and all regulations or instruments issued under it;
- (o) **(time and date)** a reference to a time or date in connection with the performance of an obligation by a party is a reference to the time and date in Sydney, Australia, even if the obligation is to be performed elsewhere;
- (p) **(joint and several)** an agreement, representation, covenant, right or obligation:
  - (q) in favour of two or more persons is for the benefit of them jointly and severally; and
  - (r) on the part of two or more persons binds them jointly and severally;
- (s) **(writing)** a reference to a notice, consent, request, approval or other communication under this agreement or an agreement between the parties means a written notice, request, consent, approval or agreement;
- (t) **(replacement bodies)** a reference to a body (including an institute, association or Authority) which ceases to exist or whose powers or functions are transferred to another

body is a reference to the body which replaces it or which substantially succeeds to its power or functions;

- (u) **(Australian currency)** a reference to dollars or \$ is to Australian currency;
- (v) **(month)** a reference to a month is a reference to a calendar month; and
- (w) **(year)** a reference to a year is a reference to twelve consecutive calendar months.

### 3 Planning Agreement under the Act

- (a) The parties agree that this agreement is a planning agreement within the meaning of section 7.4 of the Act.
- (b) **Schedule 1** of this agreement summarises the requirements for planning agreements under s 7.4 of the Act and the way this agreement addresses those requirements.

### 4 Application of this agreement

This agreement applies to:

- (a) the Land;
- (b) the Development; and
- (c) the Instrument Change.

### 5 Operation of this agreement

- (a) This agreement commences on and from the date it is executed by all parties.
- (b) For the avoidance of doubt, the obligation to pay monetary contributions under **clause 6.1** does not arise unless and until the Instrument Change is made.

### 6 Contributions to be made under this agreement

#### 6.1 Monetary Contribution

The Monetary Contribution is \$1,900,000.00, indexed in accordance with increases in the CPI from the date of commencement of this agreement to the date of payment.

#### 6.2 Payment of the Monetary Contribution

- (a) The Developer must pay to Council the Monetary Contribution in accordance with this **clause 6**.
- (b) The Monetary Contribution must be paid to Council prior to the issue of an Occupation Certificate for any part of the Development.
- (c) The Monetary Contribution must be paid by way of bank cheque in favour of Council or by deposit by means of electronic funds transfer into an account specified by Council.
- (d) The Monetary Contribution will be taken to have been made when:
  - (i) the bank cheque has been received; or
  - (ii) cleared funds or electronic funds have been deposited in the Council's bank account.
- (e) The Council must notify the Developer forthwith upon the Council receiving the bank cheque, cleared funds or electronic funds under **clause 6.2(d)**.
- (f) The parties agree and acknowledge that the Monetary Contribution will be used by the Council for the delivery of public domain improvements in the Neutral Bay Town Centre.

- (g) For the avoidance of doubt, nothing in this agreement requires the Council to:
  - (i) spend the Monetary Contribution made under this agreement by a particular date; or
  - (ii) refund to the Developer any contribution made under this agreement.

## 7 Application of s 7.11, s 7.12 and s 7.24 of the Act

- (a) This agreement does not exclude the application of section 7.11 of the Act to the Development.
- (b) This agreement does not exclude the application of section 7.12 of the Act to the Development.
- (c) This agreement does not exclude the application of section 7.24 of the Act to the Development.
- (d) The benefits under this agreement are not to be taken into consideration in determining a development contribution under section 7.11 of the Act.

## 8 Registration of this agreement

### 8.1 Developer Interest

The Developer represents and warrants to the Council that on the date of this agreement it is the registered proprietor of the Land.

### 8.2 Registration of this agreement

- (a) The Developer agrees to procure the registration of this agreement under the *Real Property Act 1900* (NSW) in the relevant folios of the Register of the Land in accordance with section 7.6 of the Act.
- (b) The Developer must, at its own expense, promptly after the execution of this agreement, take all practical steps, and otherwise do anything that the Council reasonably requires to procure:
  - (i) the consent of each person who:
    - (A) has an estate or interest in the Land registered under the *Real Property Act 1900* (NSW); or
    - (B) is seized or possessed of an estate or interest in the Land;
  - (ii) the execution of any documents; and
  - (iii) the production of the relevant duplicate certificates of title or electronic equivalents to enable the registration of this agreement in accordance with this clause 8.2.
- (c) The Developer must, at its own expense, take all practical steps, and otherwise do anything that the Council reasonably requires:
  - (i) to procure the lodgement of this agreement with the Registrar-General as soon as reasonably practicable after this agreement comes into operation, but in any event, no later than ten (10) Business Days after that date; and
  - (ii) to procure the registration of this agreement by the Registrar-General in the relevant folios of the Register for the Land as soon as reasonably practicable after this agreement is lodged for registration.

### 8.3 *Removal from Register*

The Council must provide a release and discharge of this agreement so that it may be removed from the folios of the Register for the Land (and any part of it) if either:

- (a) the Council agrees, acting reasonably (and such agreement is not to be unreasonably withheld):
  - (i) that the Developer has provided the Monetary Contribution in accordance with this agreement; and
  - (ii) that the Developer is not otherwise in a material unremedied default of any of the obligations under this agreement; or
- (b) the Instrument Change does not occur within 2 years after this agreement comes into operation, and Council considers the Instrument Change will not occur.

### 8.4 *Caveat*

- (a) The Developer acknowledges and agrees that:
  - (i) when this agreement is executed, the Council will have acquired and the Developer will have granted, an equitable estate and interest in the Land for the purposes of section 74F(1) of the *Real Property Act 1900* (NSW) and consequently the Council will have a sufficient interest in the Land in respect of which to lodge a caveat over the Land notifying that interest;
  - (ii) it will not object to the Council lodging a caveat in the relevant folios of the Register for the Land nor will it seek to remove any caveat lodged by the Council provided the caveat does not prevent registration of any dealing or plan other than a transfer.
- (b) The Council must, at the Developer's cost, register a withdrawal of any caveat in respect of the Land within five (5) Business Days after the Developer complies with **clause 8.2** and must not lodge any other caveats on the titles to any of the Land.

## 9 *Review of this agreement*

- (a) This agreement may be reviewed or modified by agreement between the parties using their best endeavours and acting in good faith.
- (b) 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.
- (c) 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.

## 10 *Dispute Resolution*

### 10.1 *Reference to Dispute*

- (a) If a dispute arises between the parties in relation to this agreement, the parties must not commence any court proceedings relating to the dispute unless the parties have complied with this clause, except where a party seeks urgent interlocutory relief.
- (b) **Clause 10.1(a)** (and the balance of this **clause 10**) does not affect the Developer's ability to commence and/or conduct any class 1 proceedings (as set out in section 17 of the *Land and Environment Court Act 1979*) and, in doing so, rely on this agreement as a matter for consideration under section 4.15(1)(a)(iii) of the Act, provided that the validity or reasonableness of, or the need for this agreement is not questioned by the Developer in those proceedings.

10.2 *Notice of Dispute*

The party wishing to commence the dispute resolution process must give written notice (**Notice of Dispute**) to the other parties of:

- (a) The nature of the dispute,
- (b) The alleged basis of the dispute, and
- (c) The position which the party issuing the Notice of Dispute believes is correct.

10.3 *Representatives of Parties to Meet*

- (a) The representatives of the parties must promptly (and in any event within fifteen (15) business days of the Notice of Dispute) meet in good faith to attempt to resolve the notified dispute.
- (b) The parties may, without limitation:
  - (i) resolve the dispute during the course of that meeting,
  - (ii) agree that further material or expert determination in accordance with **clause 10.6** about a particular issue or consideration is needed to effectively resolve the dispute (in which event the parties will, in good faith, agree to a timetable for resolution); or
  - (iii) agree that the parties are unlikely to resolve the dispute and, in good faith, agree to a form of alternative dispute resolution (including expert determination, arbitration or mediation) which is appropriate for the resolution of the relevant dispute.

10.4 *Further Notice if Not Settled*

If the dispute is not resolved **within fifteen (15) Business Days** after the nominated representatives have met, either party may give to the other a written notice calling for determination of the dispute (**Determination Notice**) by mediation under **clause 10.5** or by expert determination under **clause 10.6**.

10.5 *Mediation*

If a party gives a Determination Notice calling for the dispute to be mediated:

- (a) The parties must agree to the terms of reference of the mediation within fifteen (15) Business Days of the receipt of the Determination Notice (the terms shall include a requirement that the mediation rules of the Institute of Arbitrators and Mediators Australia (NSW Chapter) apply;
- (b) The mediator will be agreed between the parties, or failing agreement within fifteen (15) Business Days of receipt of the Determination Notice, either Party may request the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter) to appoint a mediator;
- (c) The mediator appointed pursuant to this **clause 10.5** must:
  - (i) have reasonable qualifications and practical experience in the area of the dispute; and
  - (ii) have no interest or duty which conflicts or may conflict with his or her function as a mediator he or she being required to fully disclose any such interest or duty before his or her appointment;
- (d) The mediator shall be required to undertake to keep confidential all matters coming to his or her knowledge by reason of his or her appointment and performance of his or her duties;

- (e) The parties must within fifteen (15) Business Days of receipt of the Determination Notice notify each other of their representatives who will be involved in the mediation (except if a resolution of the Council is required to appoint a representative, the Council must advise of the representative within five (5) Business Days of the resolution);
- (f) The parties agree to be bound by any mediation settlement and may only initiate judicial proceedings in respect of a dispute — which is the subject of a mediation settlement — for the purpose of enforcing that mediation settlement; and
- (g) In relation to costs and expenses:
  - (i) Each party must bear its own professional and expert costs incurred in connection with the mediation; and
  - (ii) The costs of the mediator must be shared equally by the parties unless the mediator determines that a party has engaged in vexatious or unconscionable behaviour in which case the mediator may require the full costs of the mediation to be borne by that party.

#### 10.6 *Expert determination*

If the dispute is not resolved under **clause 10.3** or **clause 10.5**, or the parties otherwise agree that the dispute may be resolved by expert determination, the parties may refer the dispute to an expert, in which event:

- (a) The dispute must be determined by an independent expert in the relevant field:
  - (i) agreed upon and appointed jointly by the parties; and
  - (ii) in the event that no agreement is reached or no appointment is made within fifteen (15) Business Days of the agreement to refer the dispute to an expert, appointed on application of a party by the then President of the Law Society of New South Wales;
- (b) The expert must be appointed in writing and the terms of the appointment must not be inconsistent with this clause;
- (c) The determination of the dispute by such an expert will be made as an expert and not as an arbitrator and will be in writing and contain the reasons for the determination;
- (d) The expert will determine the rules for the conduct of the process but must conduct the process in accordance with the rules of natural justice;
- (e) Each party must bear its own costs in connection with the process and the determination by the expert and must share equally the expert's fees and costs; and
- (f) Any determination made by an expert pursuant to this clause is final and binding upon the parties except unless:
  - (i) Within 20 Business Days of receiving the determination, a party gives written notice to the other party that it does not agree with the determination and commences litigation; or
  - (ii) The determination is in respect of, or relates to, termination or purported termination of this agreement by any party, in which event the expert will be giving a non-binding appraisal.

#### 10.7 *Litigation*

If the dispute is not finally resolved in accordance with this **clause 10**, then either party is at liberty to litigate the dispute.

10.8 *No suspension of obligations*

Subject to any interlocutory order obtained under **clause 10.1**, the referral to or undertaking of a dispute resolution process under this **clause 10** does not suspend the parties' obligations under this agreement.

11 **Enforcement**

11.1 *Default*

- (a) In the event a party considers another party has failed to perform and fulfil an obligation under this agreement, it may give notice in writing to the other party (**Default Notice**) giving all particulars of the matters in respect of which it considers default has occurred and by such notice require the default to be remedied within a reasonable time not being less than **twenty (20) Business Days**.
- (b) In determining a reasonable time, regard must be had to both the nature of the default and the work or other action required to remedy it and whether or not the continuation of the default constitutes a public nuisance or raises other circumstances of urgency or emergency.
- (c) If a party disputes the Default Notice it may refer the dispute to dispute resolution under **clause 10** of this agreement.

11.2 *Restriction on the issue of Certificates*

- (a) In accordance with section 6.8 of the Act and clause 21 of the Regulation, a Construction Certificate for any part of the Development that is above 5-storeys and includes residential floorspace must not be issued unless Council has confirmed in writing that this Agreement has been registered in accordance with **clause 8.2**.
- (b) In accordance with section 6.10 of the Act and clause 48 of the Regulation, and subject to **clause** Error! Reference source not found., an Occupation Certificate for any part of the Development must not be issued unless the Council has confirmed in writing that the Monetary Contribution required under **clause 6.1** has been paid in full.

11.3 *General Enforcement*

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

12 **Assignment and Dealings**

12.1 *Assignment*

- (a) The Developer is not to settle on the sale or assignment or novation of its interest under this agreement to another party (**Incoming Party**) unless before settlement the Developer:
  - (i) procures the execution by the Incoming Party of an agreement in favour of the Council on the same terms as this agreement;

- (ii) delivers any replacement Securities provided by the Incoming Party as required under this agreement; and
  - (iii) satisfies the Council that the Developer is not in breach of this agreement at the time of settlement of the sale, assignment or novation.
- (b) Any purported dealing in breach of this clause is of no effect.
- (c) This **clause 12.1** does not apply:
- (i) when this agreement is registered under **clause 8.2**; or
  - (ii) after this agreement has been removed from the register under **clause 8.3**.

#### 12.2 *Transfer of Land*

- (a) The Developer (**Transferor**) may not transfer, assign or dispose of the whole or any part of its right, title or interest in the Land (present or future) or in the Development to another person (**Transferee**) unless it obtains the consent of Council before it sells, transfers or disposes of that right, title or interest .
- (b) The Council must give its consent under **clause 12.2(a)** if:
- (i) the Developer has, at no cost to the Council, first procured the execution by the Transferee a deed of novation on reasonable terms (being a deed generally in terms of the Deed of Novation at Annexure A);
  - (ii) the Developer is not in an unremedied material breach of this Agreement; and
  - (iii) the Transferor agrees to pay the Council's reasonable legal costs in relation to the transfer, assignment or disposition, including any costs in connection with the execution of the Deed of Novation.
- (c) The Council, on giving consent under **clause 12.2(a)**, must enter into the Deed of Novation referred to in **clause 12.2(b)(i)**.
- (d) **Clause 12.2(a)** does not apply to a transfer, assignment or disposition of the Developer's interest in the Land:
- (i) if the Developer has satisfied Council that all obligations of the Developer under this agreement have been met; or
  - (ii) if the Council has released or discharged the Developer from any obligations under this agreement in connection with the part of the Land to be transferred.
- (e) This **clause 12.2** does not apply:
- (i) when this agreement is registered under clause 8.2; or
  - (ii) after this agreement has been removed from the register under **clause 8.3**.

#### 12.3 *Land may be used for finance, sales contracts may be exchanged and agreements for lease entered into*

- (a) This **clause 12.3** takes precedence over the other provisions in this **clause 12**.
- (b) For the avoidance of doubt, once this agreement is registered under **clause 8.2**:
- (i) the Developer may mortgage, charge, encumber and/or grant a security interest (however defined or described) over or in respect of all or any of the Developer's right, powers, title, benefit and/or interest in, to, under or derived from the Land, this agreement and/or any other asset or property of the Developer to or in favour of any

financier or creditor of the Developer (or to or in favour of any agent or trustee of or for any such financier or creditor); and

- (ii) the Developer may enter into any agreement to sell, transfer, option or lease which, if exercised, may result in the formation of an agreement to sell, transfer or lease any Final Lot comprised in or forming part of the Development, provided that the sale, transfer, option or lease cannot be exercised under the agreement until the Final Lot is the subject of an Occupation Certificate.

## 13 Approvals and consents

Except as otherwise set out in this agreement, and subject to any statutory obligations, a party may give or withhold an approval or consent to be given under this agreement in that party's discretion, acting reasonably, and subject to any conditions determined by the party.

## 14 No fetter

### 14.1 Discretion

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

### 14.2 No fetter

No provision of this agreement is intended to constitute any fetter on the exercise of any Discretion. If, contrary to the operation of this **clause 14.2**, any provision of this agreement is held by a court of competent jurisdiction to constitute a 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 is substantially satisfied;
- (b) in the event that (a) cannot be achieved without giving rise to a fetter on the exercise of a Discretion, the relevant provision is to be severed and the remainder of this agreement has full force and effect; and
- (c) to endeavour to satisfy the common objectives of the parties in relation to the provision of this agreement which is to be held to be a fetter on the extent that is possible having regard to the relevant court judgment.

## 15 Notices

Any notice given under or in connection with this agreement (**Notice**):

- (a) must be in writing and signed by a person duly authorised by the sender;
- (b) must be addressed as follows and delivered to the intended recipient by hand, by prepaid post or by email at the address below, or at the address last notified by the intended recipient to the sender after the date of this agreement:
  - (i) to North Sydney Council: 200 Miller Street, North Sydney 2060  
Email: council@northsydney.nsw.gov.au  
Attention: General Manager
  - (ii) to CE Waters Pty Ltd: **[INSERT ADDRESS]**

Email: [INSERT EMAIL]

Attention: [INSERT NAME]

- (c) is taken to be given or made:
  - (i) in the case of hand delivery, when delivered;
  - (ii) in the case of delivery by post, three Business Days after the date of posting (if posted to an address in the same country) or seven Business Days after the date of posting (if posted to an address in another country); and
  - (iii) in the case of delivery by email, when the sender receives an email acknowledgement from the recipient's information system showing the Notice has been delivered to the email address stated above or when the Notice is first opened or read by the recipient, whichever occurs first; and
- (d) if under **clause 15.1(c)** a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent, or later than 4.00 pm (local time), it is taken to have been given or made at the start of business on the next Business Day.

## 16 General

### 16.1 Relationship between parties

- (a) Nothing in this agreement:
  - (i) constitutes a partnership between the parties; or
  - (ii) except as expressly provided, makes a party an agent of another party for any purpose.
- (b) A party cannot in any way or for any purpose:
  - (i) bind another party; or
  - (ii) contract in the name of another party.
- (c) If a party must fulfil an obligation and that party is dependent on another party, then that other party must do each thing reasonably within its power to assist the other in the performance of that obligation.

### 16.2 Time for doing acts

- (a) If the time for doing any act or thing required to be done or a notice period specified in this agreement expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.
- (b) If any act or thing required to be done is done after 5.00 pm on the specified day, it is taken to have been done on the following Business Day.

### 16.3 Further assurances

Each party must promptly execute all documents and do all other things reasonably necessary or desirable to give effect to the arrangements recorded in this agreement.

### 16.4 Variation

A provision of this agreement can only be varied by a later written document executed by or on behalf of all parties and in accordance with the provisions of the Act.

**16.5 Counterparts**

This agreement may be executed in any number of counterparts. All counterparts taken together constitute one instrument.

**16.6 Legal expenses, costs and stamp duty**

- (a) The Developer must pay Council's reasonable legal costs incurred with the negotiation, preparation, execution, stamping, registering, release and discharge of this agreement, including the costs of obtaining any legal advice in connection with this agreement.
- (b) The costs referred to in **clause 16.6(a)** must be paid no later than ten (10) Business Days after receiving a demand from Council to pay such costs.
- (c) The Developer agrees to pay Council any administrative fees as required by Council, acting reasonably, in connection with the administration of this agreement.

**16.7 Entire agreement**

The contents of this agreement constitute the entire agreement between the parties and supersede any prior negotiations, representations, understandings or arrangements made between the parties regarding the subject matter of this agreement, whether orally or in writing.

**16.8 Representations and warranties**

The parties represent and warrant that they have the power and authority 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.

**16.9 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.

**16.10 Invalidity**

- (a) A word or provision must be read down if:
  - (i) this agreement is void, voidable, or unenforceable if it is not read down;
  - (ii) this agreement will not be void, voidable or unenforceable if it is read down; and
  - (iii) the provision is capable of being read down.
- (b) A word or provision must be severed if:
  - (i) despite the operation of **clause 16.10(a)**, the provision is void, voidable or unenforceable if it is not severed; and
  - (ii) this agreement will be void, voidable or unenforceable if it is not severed.
- (c) The remainder of this agreement has full effect even if **clause 16.10(b)** applies.

**16.11 Waiver**

- (a) A right or remedy created by this agreement cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right or remedy does not constitute a waiver of that right or remedy, nor does a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.

- (b) 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.

**16.12 GST**

- (a) Words and expressions which are not defined in this agreement but which have a defined meaning in GST Law have the same meaning as in the GST Law.
- (b) Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this agreement are exclusive of GST.
- (c) If GST is imposed on any supply made under or in accordance with this agreement, the Developer must pay the GST or pay to the Council an amount equal to the GST payable on or for the taxable supply, whichever is appropriate in the circumstances.

**16.13 Governing law and jurisdiction**

- (a) The laws applicable in New South Wales govern this agreement.
- (b) The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.

**16.14 Section 10.7 Planning Certificate**

- (a) The Developer acknowledges and agrees that the Council will include a notation that this agreement has been entered into on any Planning Certificate issued under section 10.7 of the Act relating to the Land.
- (b) Council will remove the notation as required under **clause 16.14(a)** in relation to the Land:
  - (i) upon the satisfactory delivery of all aspects of the contribution under this agreement; or
  - (ii) if the Instrument Change does not occur within 2 years after this agreement comes into operation, and Council considers the Instrument Change will not occur.

**16.15 Explanatory Note**

- (a) Annexure B contains the Explanatory Note relating to this agreement required by clause 205 of the Environmental Planning and Assessment Regulation 2021.
- (b) Pursuant to clause 205(5) of the Environmental Planning and Assessment Regulation 2021, the parties agree that the Explanatory Note is not to be used to assist in construing this agreement.

## Schedule 1 Summary of requirements (section 7.4)

Subject and subsection of the Act	Planning Agreement
<p><b>Planning instrument and/or Development Application – Section 7.4(1)</b></p> <p>The Developer has:</p> <p>Sought a change to an environmental planning instrument</p> <p>Made, or propose to make a Development Application</p> <p>Entered into an agreement with, or are otherwise associated with, a person to whom paragraph (a) or (b) applies</p>	<p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p>
<p><b>Description of the land to which the planning Agreement applies – Section 7.4(3)(a)</b></p>	<p>See the definition of “Land” in clause 1.</p>
<p><b>Description of proposed change to environmental planning instrument or development – Section 7.4(3)(b)</b></p>	<p>See the definitions of “Development”, “Instrument Change” and “Planning Proposal” in clause 1.</p>
<p><b>The scope, timing and manner of delivery of contribution required by the Planning Agreement – Section 7.4(3)(c)</b></p>	<p>See clause 6</p>
<p><b>Applicability of section 7.11 of the Act – Section 7.4(3)(d)</b></p>	<p>The application of section 7.11 of the Act is not excluded in respect of the Development.</p>
<p><b>Applicability of section 7.12 of the Act – Section 7.4(3)(d)</b></p>	<p>The application of section 7.12 of the Act is not excluded in respect of the Development.</p>
<p><b>Applicability of section 7.24 of the Act – Section 7.4(3)(d)</b></p>	<p>The application of section 7.24 of the Act is not excluded in respect of the Development.</p>
<p><b>Mechanism for dispute resolution – Section 7.4(3)(f)</b></p>	<p>See clause 10.</p>
<p><b>Enforcement of the Planning Agreement – Section 7.4(3)(g)</b></p>	<p>See clause 8 and clause 11.</p>

<b>Subject and subsection of the Act</b>	<b>Planning Agreement</b>
<b>Registration of the Planning Agreement</b> – Section 7.4(3)(g) and section 7.6	See clause 8.2
<b>No obligation to grant consent or exercise functions</b> – Section 7.4(9)	See clause 14.

Executed as an agreement

Executed for and on behalf of North Sydney Council by its authorised delegate in accordance with a resolution of the Council dated 27 September 2021:

Witness

Authorised Delegate

Name of Witness

Name of Authorised Delegate

Executed by CE Waters Pty Ltd ACN 636 274 578 in accordance with section 127 of the Corporations Act 2001 (Cth) by:

Company Secretary/ Director

Director

Name of Company Secretary/ Director (print)

Name of Director (print)

Annexure A      Draft Deed of Novation

## **Deed of Novation**

North Sydney Council  
*ABN 32 353 260 317*

CE Waters Pty Limited  
*ACN 636 274 578*

[Insert name of new developer]

# Deed of Novation

Dated

Parties

North Sydney Council of 200 Miller Street North Sydney NSW 2060 (Council)

CE Waters Pty Ltd of [insert address] (Existing Developer)

[Drafting Note: insert details of Transferee] (New Developer)

## Background

- A. The Council and the Existing Developer are parties to the Agreement.
- B. The Agreement relates to the whole of the Land.
- C. The Existing Developer intends to transfer [insert title reference(s)] to the New Developer.

***[If, as a result of the transfer, the Existing Developer will no longer own any of the Land:]***

- D. The Existing Developer has agreed to transfer the Rights and Obligations to the New Developer, and the New Developer has agreed to accept the Rights and Obligations.
- E. The Council has consented to the transfer of the Existing Developer's Rights and Obligations to the New Developer and those parties have agreed to enter into this Deed to give effect to their common intentions.

***[If, as a result of the transfer, the Existing Developer will still own part of the Land:]***

- F. The New Developer has agreed to accept the Rights and Obligations as a Developer under the Agreement.
- G. The Council has consented to the transfer of the Relevant Land to the New Developer and the inclusion of the New Developer as a Developer party to the Agreement and those parties have agreed to enter into this Deed to give effect to their common intentions.

## Operative provisions

### 1 Defined meanings

Words used in this Deed and the rules of interpretation that apply are set out and explained in the definitions and interpretation clause at the back of this Deed.

### 2 Novation

***[If, as a result of the transfer, the Existing Developer will no longer own any of the Land:]***

2.1 With effect on and from the Effective Date:

- (a) The New Developer is substituted for the Existing Developer under the Agreement as if the New Developer had originally been a party to the Agreement instead of the Existing

Developer and all references in the Agreement to the Existing Developer in any capacity must be read and construed as if they were references to the New Developer;

- (b) The New Developer is bound by, and must comply with, the provisions of the Agreement and the Liabilities, Rights and Obligations imposed on the Existing Developer by the Agreement and the New Developer enjoys all the rights and benefits of the Existing Developer under the Agreement (even if an obligation, right or benefit, arose or accrued before the Effective Date); and
- (c) If, as a consequence of clauses 2.1(a) and (b), the Developer under the Agreement comprises more than one entity, any agreement, representation, covenant, or obligation under the Agreement on the part of the Developer binds those entities jointly and severally.

***[If, as a result of the transfer, the Existing Developer will still own part of the Land:]***

2.2 With effect on and from the Effective Date:

- (a) The New Developer is taken to be a party to the Agreement and references to the Developer in the Agreement are taken to include the New Developer; and
- (b) The New Developer is bound by, and must comply with, the provisions of the Agreement and the Liabilities, Rights and Obligations imposed on the Developer by the Agreement and the New Developer enjoys all the rights and benefits of the Developer under the Agreement (even if an obligation, right or benefit, arose or accrued before the Effective Date); and
- (c) If, as a consequence of clauses 2.2(a) and (b), the Developer under the Agreement comprises more than one entity, any agreement, representation, covenant, or obligation under the Agreement on the part of the Developer binds those entities jointly and severally.

**3 Consent**

***[If, as a result of the transfer, the Existing Developer will no longer own any of the Land:]***

3.1 With effect on and from the Effective Date, the Council:

- (a) consents to the New Developer being substituted for Existing Developer on the terms outlined at clause 2 of this Deed;
- (b) accepts the assumptions by the New Developer of all the Liabilities, Rights and Obligations of the Existing Developer under the Agreement;
- (c) subject to clause 4.4, releases the Existing Developer from all Liabilities, Rights and Obligations under the Agreement; and
- (d) agrees to be bound by the terms of the Agreement in every way as if the New Developer were a party to the Agreement instead of the Existing Developer.

***[If, as a result of the transfer, the Existing Developer will still own part of the Land:]***

3.2 With effect on and from the Effective Date, the Council:

- (a) consents to the New Developer becoming a Developer under the terms of the Agreement as outlined at clause 2 of this Deed;
- (b) agrees to be bound by the terms of the Agreement in every way as if the New Developer were a party to the Agreement.

**4 Release and Indemnity**

**[If, as a result of the transfer, the Existing Developer will no longer own any of the Land:]**

4.1 *Release and Discharge (the Council)*

On and from the Effective Date, the Council releases the Existing Developer from all Rights and Obligations and from all Claims that they may have against the Existing Developer under or in respect of the Agreement.

4.2 *Release and Discharge (the Existing Developer)*

On and from the Effective Date, the Existing Developer releases the Council from all their obligations under the Agreement and from all Claims that it may have against the Council under or in respect of the Agreement.

4.3 *Indemnity*

On and from the Effective Date, the New Developer indemnifies the Council from and against all Liabilities and Claims that they may have against the Existing Developer in respect of the Agreement.

4.4 *Liability before Effective Date*

Notwithstanding clauses 4.1 to 4.3, the Existing Developer is not released, relieved or discharged from liability under the Agreement before the Effective Date, or any breach of any provision of the Agreement by the Existing Developer before the Effective Date (to the extent that it is not remedied by the Effective Date) insofar as the Agreement relates to the Liabilities, Rights and Obligations.

**[Omit clause 4 if, as a result of the transfer, the Existing Developer will still own part of the Land]**

**5 Representations and Warranties**

5.1 Each party represents and warrants that:

- (a) **(power)** it has power to enter into this Deed and comply with its obligations;
- (b) **(no contravention or exceeding power)** this Deed does not contravene its constituent documents (if any) or any law or obligation by which it is bound or to which any of its assets are subject, or cause a limitation on its powers or the powers of its officers to be exceeded;
- (c) **(authorisations)** it has in full force and effect the authorisations necessary for it to enter into this Deed, to comply with its obligations and exercise its rights under this Deed and to allow this Deed to be enforced;
- (d) **(validity of obligations)** its obligations under this Deed are valid and binding and are enforceable against it in accordance with the terms of the Deed;
- (e) **(no immunity)** it does not have immunity from the jurisdiction of a court or from legal process;
- (f) **(benefit)** it benefits by entering into this Deed to which it is a party.

5.2 *Reliance by the Council*

The Existing Developer and the New Developer each acknowledge that the Council has entered into this Deed in reliance on the representations and warranties detailed in clause 5.1.

**6 General provisions**

6.1 *Affirmation of the Agreement*

The Agreement will be read and construed subject to this Deed, and in all other respects of the provisions of the Agreement are ratified and confirmed and, subject to the variation and novation contained in this Deed, the Agreement will continue in full force and effect.

6.2 *Developer Costs*

The Existing Developer and the New Developer must pay their own costs in relation to:

- (a) the negotiation, preparation, execution, performance, amendment or registration of, or any consent given or made; and
- (b) the performance of any action by that party in compliance with any liability arising, under this Deed, or any agreement or document executed or effected under this Deed, unless this Deed provides otherwise.

6.3 *The Council's Costs*

The Existing Developer and the New Developer are jointly and severally responsible for Council's reasonable costs in relation to this Deed.

6.4 GST

If any payment made by one party to any other party under or relating to this Deed constitutes consideration for a taxable supply for the purposes of GST or any similar tax, the amount to be paid for the supply will be increased so that the net amount retained by the supplier after payment of that GST is the same as if the supplier was not liable to pay GST in respect of that supply. This provision is subject to any other agreement regarding the payment of GST on specific supplies, and includes payments for supplies relating to the breach or termination of, and indemnities arising from, this Deed.

6.5 Duties

- (a) The New Developer must promptly, within the initial applicable period prescribed by law, pay any duty payable in relation to the execution, performance and registration of this Deed, or any agreement or document executed or effected under this Deed.
- (b) The New Developer indemnifies Council and the Existing Developer against any loss incurred by any other party in relation to any duty specified in this provision, whether through default by the New Developer under this provision or otherwise.

6.6 Assignment

A party must not transfer any right or liability under this Deed without the prior consent of each other party, except where this Deed provides otherwise.

6.7 Notices

- (a) Any notice may be served by delivery in person or by post or transmission by facsimile or email to the address or number of the recipient specified in this provision or most recently notified by the recipient to the sender
  - (i) to North Sydney Council: 200 Miller Street, North Sydney 2060  
Email: [council@northsydney.nsw.gov.au](mailto:council@northsydney.nsw.gov.au)  
Attention: General Manager
  - (ii) to CE Waters Pty Ltd: [INSERT ADDRESS]  
Email: [INSERT EMAIL]  
Attention: [INSERT NAME]

(iii) [INSERT PARTY]: [INSERT ADDRESS]  
Email: [INSERT EMAIL]  
Attention: [INSERT NAME]

- (b) Any notice to or by a party under this Deed must be in writing and signed by either:
- (i) the sender or, if a corporate party, an authorised officer of the sender; or
  - (ii) the party's solicitor.
- (c) Any notice is effective for the purposes of this Deed:
- (i) upon delivery to the recipient; or
  - (ii) production to the sender of a facsimile transmittal confirmation report; or
  - (iii) when the sender receives an email acknowledgement from the recipient's information system showing the Notice has been delivered to the email address stated above, or when the Notice is first opened or read by the recipient, whichever occurs first.
- (d) If a Notice under clause 6.7(c) would be taken to be given or made on a day that is not a Business Day in the place to which the Notice was sent, or later than 4:00 pm (local time), it is taken to have been given or made at the start of business on the next Business Day.

6.8 *Governing law and jurisdiction*

- (a) This Deed is governed by and construed under the law in the State of New South Wales.
- (b) Any legal action in relation to this Deed against any party or its property may be brought in any court of competent jurisdiction in the State of New South Wales.
- (c) Each party by execution of this Deed irrevocably, generally and unconditionally submits to the non-exclusive jurisdiction of any court specified in this provision in relation to both itself and its property.

6.9 *Amendments*

Any amendment to this Deed has no force or effect, unless effected by a document executed by the parties.

6.10 *Relationship between the parties*

- (a) Nothing in this Deed:
  - (i) constitutes a partnership between the parties; or
  - (ii) except as expressly provided, makes a party an agent of another party for any purpose.
- (b) This Deed confers rights only upon a person expressed to be a party, and not upon any other person.

6.11 *Pre-contractual negotiation*

This Deed:

- (a) expresses and incorporates the entire agreement between the parties in relation to its subject matter, and all the terms of that agreement; and
- (b) supersedes and excludes any prior or collateral negotiation, understanding, communication or agreement by or between the parties in relation to that subject matter or any term of that agreement.

6.12 *Further assurance*

- (a) Each party must execute any document and perform any action necessary to give full effect to this Deed, whether before or after performance of this Deed.
- (b) This Deed binds each party that signs it even if other parties do not, or is the execution by other parties is defective, void or voidable.

6.13 *Continuing performance*

- (a) The provisions of this Deed do not merge with any action performed or document executed by any party for the purposes of performance of this Deed.
- (b) Any representation in this Deed survives the execution of any document for the purposes of, and continues after, performance of this Deed.
- (c) Any indemnity agreed by any party under this Deed:
  - (i) constitutes a liability of that party separate and independent from any other liability of that party under this Deed or any other agreement; and
  - (ii) survives and continues after performance of this Deed.

6.14 *Waivers*

Any failure by any party to exercise any right under this Deed does not operate as a waiver and the single or partial exercise of any right by that party does not preclude any other or further exercise of that or any other right by that party.

6.15 *Remedies*

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

6.16 *Severability*

If a clause or part of a clause of this Deed 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.

6.17 *Invalidity*

- (a) A word or provision must be read down if:
  - (i) the Deed is void, voidable or unenforceable if it is not read down;
  - (ii) this Deed will not be void, voidable or unenforceable if it is read down; and
  - (iii) the provision is capable of being read down.
- (b) A word or provision must be severed if:
  - (i) despite the operation of clause 6.16(a), the provision is void, voidable or unenforceable if it is not severed; and
  - (ii) this Deed will be void, voidable or unenforceable if it is not severed.
- (c) The remainder of this Deed has full effect, even if clause 6.16(b) applies.

6.18 *Counterparts*

This Deed may consist of a number of counterparts and the counterparts taken together constitute one and the same instrument.

6.19 *Party acting as trustee*

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

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

**7 Definitions and interpretation**

7.1 *Definitions*

In this Deed, unless the context otherwise requires:

**Claims** includes actions, proceedings, suits, causes of action, arbitration, verdicts and judgments either at law or in equity or arising under a statute, debts, dues, demands, claims of any nature, costs and expenses.

**Agreement** means the voluntary planning agreement between the Council and the Existing Developer dated [insert date], a copy of which is annexed to this Deed as Annexure A.

**Deed** means this Deed and includes any Annexures to this Deed.

**Effective Date** means the date upon which the Existing Developer provides the New Developer with an instrument, in registrable form, that (when registered) will effect the transfer of the title to the land from the Existing Developer to the New Developer.

**GST** means any tax, levy, charge or impost implemented under the *A New Tax System (Goods and Services Tax) Act (GST Act)* or an Act of the Parliament of the Commonwealth of Australia substantially in the form of, or which has a similar effect to, the GST Act.

**Land** has the meaning given to that term in the Agreement.

**Liabilities** include all liabilities (whether actual, contingent or prospective), losses, damages, costs and expenses of whatever description.

**[insert definition of Relevant Land if Existing Developer will still own part of the Land]**

**Relevant Land** means that part of [title reference to the Land of which part is being transferred] to be transferred from the Existing Developer to the New Developer, as shown on the plan at Annexure B.

**Rights and Obligations** means all of the rights, benefits and obligations imposed or conferred on the Existing Developer by the Agreement.

7.2 *Interpretation*

In this Deed unless the context otherwise requires:

- (a) clause and subclause headings are for reference purposes only;
- (b) the singular includes the plural and vice versa;
- (c) words denoting any gender include all genders;
- (d) reference to a person includes any other entity recognised by law and vice versa;
- (e) where a word or phrase is defined its other grammatical forms have a corresponding meaning;
- (f) any reference to a party to this Deed includes its successors and permitted assigns;
- (g) any reference to any agreement or document includes that agreement or document as amended at any time;
- (h) the use of the word includes or including is not to be taken as limiting the meaning of the words preceding it;
- (i) the expression at any time includes reference to past, present and future time and the performance of any action from time to time;
- (j) an agreement, representation or warranty on the part of two or more persons binds them jointly and several;
- (k) an agreement, representation or warranty on the part of two or more persons is for the benefit of them jointly and severally;
- (l) any ambiguities in the interpretation of this Deed shall not be construed against the drafting party; and
- (m) reference to an exhibit, annexure, attachment or schedule is a reference to the corresponding exhibit, annexure, attachment or schedule in this Deed.

**Executed** as a deed.

***[Insert relevant attestation clauses]***

**[Insert the executed planning agreement that is the subject of the novation as Annexure A to this Deed]**

**[If the Existing Developer will still own part of the Land, insert a plan indicating the Relevant Land being transferred to the New Developer as Annexure B to this Deed]**

Annexure B Explanatory Note

## Explanatory Note

### Exhibition of draft Voluntary Planning Agreement

#### PP2/22: 12-14 Waters Road, Neutral Bay

*Environmental Planning & Assessment Regulation 2021 (section 205)*

#### Planning Agreement

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

Section 205(1) of the *Environmental Planning and Assessment Regulation 2021* (“**the EPA Regulation**”) requires that an Explanatory Note must be prepared to accompany a planning agreement.

The Explanatory Note must address the requirements of section 205(1)(a)-(b) of the EPA Regulation. This Explanatory Note has been prepared to address these requirements.

Additionally, in preparing the Explanatory Note, the planning authority must consider any relevant practice note prepared by the Planning Secretary under clause 203(6). The relevant practice note is *Planning agreements: Practice note – February 2021* published by the former NSW Department of Planning, Industry and Environment (now the Department of Planning and Environment).

This practice note has been considered by the parties in the course of preparing this Explanatory Note.

#### Parties

CE Waters Pty Limited (“**Developer**”) made an offer to North Sydney Council (“**Council**”) to enter into a Planning Agreement, in connection with a Planning Proposal for land at 12-14 Waters Road, Neutral Bay.

#### Description of subject land

The land to which the Planning Agreement applies is:

- (a) Lots 1 to 33 in SP 68360; and
- (b) Lot 18 in DP 537700,

known as 12-14 Waters Road, Neutral Bay (“**the Land**”).

#### The Development

The Planning Agreement relates to proposed development of the Land to which the Planning Agreement applies for redevelopment of the Land for the purpose of a mixed use residential and commercial

development with basement parking and public domain works, including development generally anticipated in the Planning Proposal.

### **Description of the Planning Proposal to which the Planning Agreement applies**

To facilitate the Development, the Developer has lodged a Planning Proposal. The Planning Proposal (PP2/22 -Council's reference and PP-2021-7492 Department of Planning and Environment's reference) which was issued a Gateway Determination) by the Department of Planning and Environment on 23 December 2022 seeks to amend the *North Sydney Local Environmental Plan 2013 ("NSLEP 2013")* to:

- (a) increase the maximum building height for the Land on the Height of Buildings Map to 22m;
- (b) include a site specific provision to enable rooftop structures, plant and equipment to a maximum building height of 24m; and
- (c) provide a minimum non-residential floor space ratio for the Land on the Non-Residential Floor Space Ratio Map of 1.2:1.

### **Summary of Objectives, Nature and Effect of the Planning Agreement**

#### **Objectives**

The objective of the Planning Agreement is to provide a mechanism by which contributions towards public purposes can be made in connection with the future development of the Land to benefit the community.

The public benefits include the provision of monetary contributions to be used towards the improvement of the public domain within the Neutral Bay Town Centre.

#### **Nature**

A Planning Agreement of this kind may require a developer to dedicate land free of costs, pay a monetary contribution, or provide any other material public benefit to be used for or applied towards a public purpose.

In this case, the Planning Agreement will require payment of \$1,900,000.

The monetary contribution will be used towards the delivery of community infrastructure and public domain upgrades within the Neutral Bay Town Centre.

The monetary contribution will be payable prior to the issue of an Occupation Certificate for any part of the Development. The monetary contribution amount will be indexed in accordance with increases in the consumer price index from the date of agreement to the date of payment.

#### **Effect**

In general terms, delivery of the contributions is timed in a way that is practicable for the Developer and still provides for the enhancement of public domain and open space and improvement of to meet the needs of the new residents and the community.

The Planning Agreement provides for the enforcement of the Planning Agreement by a suitable means if there is a breach by the Developer. The contributions are to be delivered prior to the issue of an

occupation certificate for the Development or any part of the Development. An occupation certificate cannot be lawfully issued if the required contributions have not been made.

The Planning Agreement is to be registered on the title to the Land.

Where it is relevant to a development application, a consent authority must take into consideration a planning agreement — or any draft planning agreement — that a developer has entered into or offered to enter into (respectively).

A planning agreement cannot impose an obligation on a planning authority to actually grant a development consent. A merit assessment of the proposed development must still be carried out.

## **Assessment of the Merits of the Planning Agreement**

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

The draft Planning Agreement promotes the following objectives of the Act:

- a. Promotes the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources (section 1.3(a)).*
- b. Promotes the orderly and economic use and development of land (section 1.3 (c)).*
- c. Promotes good design and amenity of the built environment (section 1.3(g)).*

The Planning Agreement will enable the utilisation of the development potential of the Land, while requiring the Developer to make provision for public purposes. The Planning Agreement promotes the public interest because it will require the provision of public domain improvements that will benefit existing and future residents and workers in the area. These contributions will have a positive impact on the public and will provide for the social and economic welfare of the community.

The contribution required under the Planning Agreement is additional to any normal contribution that will ordinarily need to be made in relation to the development.

The proposed contribution under the Planning Agreement is consistent with the Council's strategic plans and policy documents.

### **The Planning Purposes served by the Planning Agreement**

The Planning Agreement facilitates the implementation of Council's strategic plans and will enable the Council to provide improved public amenities and facilities for new development in the locality of the Development.

The Planning Agreement will require development contributions that will improve public amenity.

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

The Planning Agreement offers a monetary contribution that will enable the Council to embellish and maintain public domain in the vicinity of the Development. The Planning Agreement will enable the Council to provide public domain and community facilities to meet the current and future needs of the local community.

The contribution proposed under the Planning Agreement does not conform with the Council's capital works program. This is because the opportunity to obtain the contributions has arisen outside of the Council's capital works program.

The Planning Agreement will not have an adverse effect on this capital works program. Overall, the Planning Agreement is likely to result in more capital works (to the benefit of the community) than would be the case without the Planning Agreement.

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

The Planning Agreement requires the monetary contribution to be paid before the issue of an **occupation certificate** for the Development. The registration of the Planning Agreement must be completed prior to the issue of a **construction certificate** for the Development.

**Status of the Explanatory Note**

This Explanatory Note has been prepared jointly between the parties.

The parties have agreed that this Explanatory Note is not to be used to assist in construing the Planning Agreement.

## ATTACHMENT 2

### Draft Voluntary Planning Agreement – 12-14 Waters Road, Neutral Bay Summary of submissions received during public exhibition period (6 March 2023 to 17 April 2023)

The following criteria are used to analyse all submissions received, and to determine whether or not the plan would be amended:

1. The draft VPA for 12-14 Waters Road, Neutral Bay **would be** amended if issues raised in the submission:
  - a provided additional information of relevance.
  - b indicated or clarified a change in government legislation, Council's commitment or management policy.
  - c proposed strategies that would better achieve or assist with Council's objectives.
  - d was an alternate viewpoint received on the topic and is considered a better option than that proposed or;
  - e indicated omissions, inaccuracies or a lack of clarity.
  
2. The draft VPA for 12-14 Waters Road, Neutral Bay **would not be** amended if the issues raised in the submission:
  - a addressed issues beyond the scope of the draft VPA.
  - b was already in the draft VPA or will be considered during the development of a subordinate plan (prepared by Council).
  - c offered an open statement, or no change was sought.
  - d clearly supported the proposal.
  - e was an alternate viewpoint received on the topic but the recommendation was still considered the best option.
  - f was based on incorrect information.
  - g contributed options that are not possible (generally due to some aspect of existing legislation or government policy) or; involved details that are not appropriate or necessary for inclusion in a document aimed at providing a strategic community direction over the long term.

Draft Voluntary Planning Agreement – 12-14 Waters Road, Neutral Bay SUBMISSIONS SUMMARY (Exhibition Period – 6 March 2023 to 17 April 2023)						
No.	Name and Address	Issue/Theme	Key Points Raised	Council Response	Recommended Action	Criteria
1.	E Santone 134 Military Road Neutral Bay NSW 2089	<ul style="list-style-type: none"> <li>Public Benefits (Open Space)</li> </ul>	<p>Supports the project at 12-14 Waters Road. There is an acute need for open space in and around the Neutral Bay Town Centre.</p> <p>The Neutral Bay Town Centre, in its current state, does not encourage pedestrian activity. The existing car park is outdated, Young Street plaza has remained in temporary form and is to be re-opened to vehicular access and Grosvenor Lane is unsafe for pedestrians. Opening and connecting the town plaza to all its laneways is highly desirable for residents, with the existing car park moved underground.</p>	Submission noted. Council's renewed Study for the Neutral Bay Town Centre will seek to leverage the delivery of new open space and community facilities through targeted and modest increases in height that reinforces the existing and future desired village character of Neutral Bay. It is anticipated that the revised Study will be reported to Council in September 2023 and subsequently placed on exhibition for public comment.	N/A	2d
2.	Anonymous	<ul style="list-style-type: none"> <li>Height</li> <li>Overshadowing</li> <li>Privacy</li> <li>Quantum of commercial floorspace</li> <li>Traffic Generation</li> </ul>	Concerned about the height of the amended Development Application (DA42/23) for 12-14 Waters Rd, which will set a precedent that is not in keeping with the village atmosphere of the area and will result in overshadowing and loss of privacy. Also concerned with the quantum of underground floorspace and associated traffic generation.	The issues raised are beyond the scope of the draft VPA and will be determined in the assessment of DA42/23.	N/A	2a
3.	Paul Levrier 2 Ryries Parade Cremorne NSW 2090	<ul style="list-style-type: none"> <li>Public Benefits (Open Space)</li> <li>Height</li> </ul>	<p>Supports the site's contribution to the upgrade of Neutral Bay and Grosvenor Street. The proposed development will improve the amenity and activation of Neutral Bay and improve the streetscape.</p> <p>Supportive of high-quality mixed-use development. Considers the height to be justified due to the site's proximity to Military Road, but not considered appropriate on the opposite side of the street.</p>	Submission noted. Refer to submission 1 response.	N/A	2d

Draft Voluntary Planning Agreement – 12-14 Waters Road, Neutral Bay SUBMISSIONS SUMMARY (Exhibition Period – 6 March 2023 to 17 April 2023)						
No.	Name and Address	Issue/Theme	Key Points Raised	Council Response	Recommended Action	Criteria
4.	Prof Roslyn Pesman 3-5 Waters Road Neutral Bay NSW 2089	<ul style="list-style-type: none"> <li>Public Benefits</li> </ul>	<p>Supportive of the draft VPA and the attention paid to the provision of additional greenery and street furniture.</p> <p>Concerned about the removal of mature box trees along Waters Road and associated loss of privacy for residents opposite the development. The developer should be required to replant mature box trees or alternatively the funds allocated to Council could be used for this purpose.</p>	Submission noted. The draft VPA does not endorse or support the removal of trees. This is a matter for consideration in the assessment of the Development Application.	N/A	2d