

Voluntary Planning Agreement

**731-769 Great Western Highway (French Street)
Werrington NSW 2747**

Penrith City Council
ABN 43 794 422 563

and

Settlers Estate Pty Ltd
ABN 84139894956

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Voluntary Planning Agreement

Date 29th April 2015/6

Parties

Penrith City Council ABN 43 794 422 563 of 601 High Street, Penrith NSW (Council)

and

Settlers Estate Pty Ltd of Level 2, 7 Charles Street, Parramatta NSW (Developer)

Background

- A The Developer is the registered proprietor of the Land.
- B On 26 April 2013, development consent DA11/0546 was granted by the Joint Regional Planning Panel in respect of the Land for the Torrens Title subdivision of 117 lots. That consent was then amended on 27 May 2015 and 17 February 2014 pursuant to s.96 of the Act.
- C On 27 June 2013, development consent DA12/1361 was granted in respect of the Land for the Residential Flat Building consisting of 250 apartments.
- D The Developer agrees to surrender development consent DA12/1361 within one month after execution of this Agreement.
- E Development consent DA11/0546.02 (being the modification to development consent 11/0546 approved on 17 February 2014) and development consent DA12/1361 contain a condition regarding an offer by the Developer dated 14 February 2013 to enter into this Agreement to make various Development Contributions.
- F On 4 June 2015 development consent DA14/0994 was granted in respect of the Land for the Torrens Title subdivision of 30 lots.
- G Both parties agree that it is possible that further development applications or modification applications may be made seeking to supplement or modify the Development and that this VPA subject to the schedules attached, is agreed by both parties to be offered by the Developer in respect of those further applications should they be made.
- H As contemplated by section 93F of the Act, the parties wish to enter into an Agreement in connection with Development Consent DA11/0546 and Development Consent DA14/0994 and any further development applications that seek consent for a residential use pertaining to Lots 50-58 of DP 1069025 consistent with and subject to Schedule 1 and on the terms and conditions in this agreement.

Operative Provisions

Definitions and Interpretation

1. Definitions

In this Agreement the following definitions apply:

Act means the *Environmental Planning and Assessment Act 1979* and includes any regulations or State Environmental Planning Policies made under that Act.

Agreement means this Planning Agreement including its Schedules.

Contribution Works means the works described in Schedule 1.

Commencement Date is the date of execution of this agreement.

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

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

Developed Lot means a lot created by the subdivision (including strata subdivision) forming part of the land which at the date of the request for transfer has been improved by completed built form in respect of which an occupation certificate is issued.

Development means the development of the Land in accordance with the Development Consents and Schedules. For the avoidance of doubt, the lands are lots 50, 51, 52, 53, 54, 55, 56, 57, and 58 of DP 1069025, and the subdivision to be registered consistent with the parameters of the map in schedule 4.

Development Consents means together Development Consent DA11/0546, Development Consent DA12/1361 and Development Consent DA14/0994 and any further development consents for a residential use pertaining to Lots 50-58 of DP 1069025, and any modifications to those consents.

Development Contributions means the Monetary Contributions, Dedicated Land, Contribution Works and the provision of material public benefits referred to in Schedule 1 and includes the contributions amounts attributed to the Dedicated Land and Contributions Works, including any adjustment to the contributions in accordance with Clause 6 of this Deed.

Development Contribution Procedures means the Development Contribution Procedures set out in Schedule 2 of this Agreement.

Development Contributions Schedule means Schedule 1 of this Agreement.

Explanatory Note means the Explanatory Note set out in Schedule 3 of this Agreement.

GST has the same meaning as in the GST Law.

GST Law has the same 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 or administration of the GST.

Land means Lots known as 50-58 in Deposited Plan 1069025, located at 731-769 Great Western Highway (French Street), Werrington.

Monetary Contribution means the total sum as calculated in Schedule 1.

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

Regulation means the *Environmental Planning and Assessment Regulation 2000*

RPPI means the Residential Property Price Indexes (6416.0) published by the Australian Bureau of Statistics

Section 96 Modification means any modification of the Development Consent pursuant to section 96 of the Act.

Subdivision Plan means the plan as described and annexed in any Schedule of this Agreement.

Sunset Date means the date on which the Development Consent lapses.

2. Interpretation

In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:

- (a) Headings are inserted for convenience only and do not affect the interpretation of this Agreement.
- (b) A reference in this Agreement to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
- (c) If the day on which any act, matter or thing is to be done under this Agreement is not a business day, the act, matter or thing must be done on the next business day.
- (d) A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- (e) A reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- (f) A reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- (g) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
- (h) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.

- (i) Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- (j) A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- (k) References to the word 'include' or 'including' are to be construed without limitation.
- (l) A reference to this Agreement includes the agreement recorded in this Agreement.
- (m) A reference to a party to this Agreement includes a reference to the staff, agents and contractors of the party, and the party's successors and assigns.
- (n) Any schedules and attachments form part of this Agreement.

3. Compliance with New Laws

If a Law is changed or a new Law comes into force (both referred to as “New Law”), and the Developer is obliged by the New Law to perform certain works or pay an amount which it is required to do in accordance with this Agreement or which was not contemplated at the time of entering into this Agreement, then, to the extent that the relevant obligation is required under the New Law and this Agreement, compliance with the New Law will constitute compliance with the relevant obligation under this Agreement, and the parties will do all reasonable things including adjusting all payments due under this Agreement with the intention that to the extent permitted by law this Agreement and particularly clause 6 will be given effect and the developer contributions for the development permitted by the Development Consents will be provided in accordance with Schedule 1.

4. Planning Agreement under the Act

- 4.1. The Parties agree that this Agreement is a planning agreement governed by Part 4 of the Act.
- 4.2. It is acknowledged and agreed that this Agreement is in the terms of the offer made by the Developer in connection with the Development as defined, and the Development Consents as defined.

5. Operation and Application of this Agreement

- (a) This Agreement applies to the Land and the Development and the Development Consents as defined.
- (b) This Agreement takes effect on the date of this Agreement after execution by both parties, subject to clause 5(c).

- (c) This Agreement will remain in force until:
 - (i) all obligations are performed or satisfied; or
 - (ii) the Sunset Date is reached; or
 - (iii) it is otherwise discharged or removed in accordance with the terms of this Agreement.
- (d) Each party must (at its own expense) do all things that any other party asks as may be reasonably required or necessary to give the other party the full benefit of any obligations owed to the other party and expressed in this document.

6. Development Contributions

6.1. The developer will provide, or procure the provision of, the Development Contributions in accordance with Schedule 1 to this Agreement at the times provided for in that Schedule.

6.2. If:

- (a) any further development consent is obtained for residential development, or
- (b) any of the Development Consents are modified, or
- (c) any of the Development Consents are surrendered with the consent of the Council, or
- (d) any of the Development Consents or any part thereof becomes inoperable or invalid, whether by effluxion of time, Court Order or otherwise,

so as to alter the number of persons who would be expected to occupy the Land (applying the relevant formulas under Council's adopted contributions plans and policies as at the date of this Deed), then the parties are to take all reasonable steps including making appropriate payments to adjust the amounts paid or payable under this Agreement in accordance with the "Rate" per person" stated in the table in Schedule 1.

6.3. All development contributions including dedication of land, works, provision of infrastructure, and monetary contributions, must be delivered prior to the release of the subdivision certificate for the part of the proposed development to which the contribution relates.

7. Application of the Development Contributions

The Development Contributions shall be applied in the manner in which and for the public purposes as described in Schedule 1 of this Agreement and Schedule 2 of this Agreement and subject to the conditions outlined therein.

8. Application of the Act to the Development

(a) This Agreement wholly excludes the application of:

- (i) sections 94 and 94A of the Act;
- (ii) any Affordable Housing Levy;
- (iii) any other monetary contributions

to any existing or future Development Consent or Approval that is granted in respect of the Land, including any Section 96 Modifications.

(b) The Council warrants that it will not make any further claim, make any demand, or impose any development consent condition, requiring payment of additional developer contributions whether financial or otherwise in connection with any approval or development consent other than those provided for in this Agreement for the subject Lots 50-58 of DP1069025 (being payments according to the rates provided for in Schedule 1 paid in accordance with Clause 6), unless the Applicant seeks consent for a non-residential purpose.

9. Registration of this Agreement

9.1. The Developer must, at its expense, procure the registration of the Agreement on the relevant folios of the register held by the LPI pertaining to the Land as soon as reasonably practical after the Commencement Date and, in any event, no later than 120 Business Days after that date, for the purposes of and consistent with Section 93H of the Act.

9.2. The Parties agree that in the event and only in the event, that the Developer fails to register this Agreement on the relevant folios of the register held by the LPI pertaining to the Land, then subject to Clause 9.4, the Developer agrees that the Council may lodge a caveat to prevent the transfer of the Land but no other Dealing.

9.3. If the Council lodges a Caveat in accordance with clause 9.2, the Council, as appropriate, will do all things reasonably necessary to remove the Caveat from the title to the Land promptly, immediately following registration of this Agreement in accordance with clause 9.1.

9.4. Despite clause 9.2, the Council, as caveator must do all things necessary to facilitate registration of a transfer of the Land or any part of the Land from the Developer to a third party if that third party has entered into a Deed of Novation in substantially the same terms as this Agreement.

9.5. If after 120 Business Days, the Developer has failed or has been unable to register this Agreement on any of the Land in accordance with clause 9.1, the Developer must pay Council's reasonable costs and expenses, including legal costs, of exercising its rights under clause 9.2 of this Agreement.

10. Dispute Resolution

10.1. Reference to Dispute

If a dispute arises between the Parties in relation to this Agreement, then either Party must resolve that dispute in accordance with this clause.

10.2. Notice of Dispute

The Party wishing to commence the dispute resolution processes must notify the other in writing of:

- (a) the intent to invoke this clause;
- (b) the nature or subject matter of the dispute, including a summary of any efforts made to resolve the dispute other than by way of this clause; and
- (c) the outcomes which the notifying Party wishes to achieve (if practicable).

10.3. Representatives of Parties to Meet

- (a) The representatives of the Parties must promptly (and in any event within 14 Business Days of the written notice provided in accordance with clause 10.2) 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, expert opinion or consideration is needed to effectively resolve the dispute (in which event the Parties will, in good faith, agree to a timetable for resolution);
 - (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) which is appropriate for the resolution of the relevant dispute.

10.4. Neither party may constrain

If:

- (a) at least one meeting has been held in accordance with clause 10.3; and
- (b) the Parties have been unable to reach an outcome identified in clause 10.3(b)(i) to (iii); and
- (b) either of the Parties, acting in good faith, forms the view that the dispute is reasonably unlikely to be resolved in accordance with a process agreed under clause 10.3,

then, that Party may, by 14 Business Days written notice to the other Party, terminate the dispute resolution process in respect of that dispute. The termination of the process set out in this clause does not of itself amount to a breach of this Agreement

and either Party may proceed to enforce this Agreement in a Court of competent jurisdiction.

11. Works in the Riparian Corridor

The Developer must carry out landscape works in the riparian corridor in accordance with the landscape plan at Schedule 5, which must be completed and addressed during the subdivision certificate process for Stage 3 of the development of the site.

12. Default

12.1. Notice

In the event that a Party considers another party has failed to perform and/or fulfil an obligation under this Agreement, it may give notice in writing to that 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 be remedied within a reasonable time not being less than 21 days.

12.2. Reasonable Time

In determining 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 or causes a public nuisance or raises other circumstances of urgency or emergency.

12.3. Suspension of time Dispute

If a Party disputes the Default Notice it may refer that dispute to dispute resolution under Clause 10 of this Agreement.

13. Notices

13.1. Any notice, consent, information, application or request that must or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:

- (a) Delivered or posted to that party at its address set out below.
- (b) Faxed to that party at its fax number set out below.
- (c) Emailed to that party at its email address set out below.

Council

Attention: Development Services Manager

Address: 601 High Street, Penrith NSW 2750

Email: penrith@penrithcity.nsw.gov.au

Developer

Attention: Matt Daniel

Address: Level 2, 7 Charles Street, Parramatta NSW 2150

Email: m.daniel@statewideplanning.com.au

- 13.2. If a party gives the other party 3 business days' notice of a change of its address or fax number, any notice, consent, information, application or request is only given or made by that other party if it is delivered, posted or faxed to the latest address or fax number.
- 13.3. Any notice, consent, application or request is to be treated as given or made at the following time:
- (a) If it is delivered, when it is left at the relevant address.
 - (b) If it is sent by post, 2 business days after it is posted.
 - (c) If it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.

14. Entire Agreement

This Agreement contains everything to which the parties have agreed in relation to the matters it deals with. No party can rely on an earlier document, or anything said or done by the other party, agent or employee of the party, before the Agreement was executed, except as permitted by law.

15. Assignment and Novation

- 15.1. This Agreement may be assigned or novated by the Developer in accordance with any dealings the Developer may have with respect to its interests in the Land.
- 15.2. Council agrees to execute any deeds of assignment or novation or other documents necessary to assign, novate or otherwise transfer all of the Developer's rights and obligations under the Agreement to a successor as contemplated by the Agreement.

16. Costs

Both parties shall pay their own legal costs and disbursements arising out of the negotiation, preparation and execution of this Agreement.

17. Further Acts

Each party must promptly execute all documents and do all things that another Party from time to time reasonably requests to affect, perfect or complete this Agreement and all transactions incidental to it including giving an approval or consent.

18. Governing Law and Jurisdiction

This Agreement is governed by the law of New South Wales. The Parties submit to the non-exclusive jurisdiction of the Courts and Courts of Appeal of New South Wales. The Parties will not object to the exercise of jurisdiction by those Courts on any basis.

19. Joint and Individual Liability and Benefits

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

20. No fetter

Nothing in this Agreement shall be construed as requiring the Council to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

21. Representations and Warranties

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

22. 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.

23. Release and Discharge

23.1 To the extent the Developer has:

- a. satisfied its obligations under this Agreement; or

- b. the Agreement no longer applies as a consequence of any event referred to in Clause 5(c) of this Agreement;

the Council will provide a release and discharge of this Agreement with respect to any part of, or the whole of, the Land.

23.2 To the extent the Developer:

- a) requests a partial release and discharge of this Agreement for the purpose of selling part of the Land as a Developed Lot; or
- b) requests a partial release and discharge of this Agreement in connection with the completion of a sale contract for a Developed Lot; or
- c) requests a partial release and discharge of this Agreement to effect the transfer of part of Land to Council or any other authority pursuant to this Agreement, then

the Council will execute any form, and supply such other information, as is reasonably required to enable the removal of reference to the Agreement from the title to the Developed Lot upon registration of a plan of subdivision which creates a separate title for the Developed Lot.

24. Review and Modification

- (a) The parties agree that both will review this Agreement at the request of the other party. The Agreement may be modified with the Agreement of both parties who agree to the use of their respective best endeavours and to act in good faith in any such review and/or dialogue concerning proposed modification.
- (b) No modification of this Agreement will be of any force or effect unless it is in writing and signed by the Parties to this Agreement.

25. Force Majeure

- (a) If a party is unable by reason of force majeure to carry out wholly or in part its obligations under the Agreement, it must give to the other party prompt notice of the force majeure with reasonably full particulars.
- (b) The obligations of the parties so far as they are affected by the force majeure are then suspended during continuance of the force majeure and any further period as may be reasonable in the circumstances.
- (c) The party giving such notice under this clause must use all reasonable effort and diligence to remove the force majeure or ameliorate its effects as quickly as practicable.
- (d) If the parties are unable to agree on the existence of an event of force majeure or the period during which the obligations of the parties are suspended during the continuance of the force majeure, that dispute must be referred for determination under the Agreement.

26. Dealing with the Land

The parties acknowledge and agree that nothing in the Agreement abrogates, fetters or in any way prevents the Developer from selling, transferring, assigning, subdividing, mortgaging, charging, encumbering or otherwise dealing with the Land (excluding, after dedication, the Dedicated Land), subject to the Council's rights under this Agreement.

27. Waiver

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

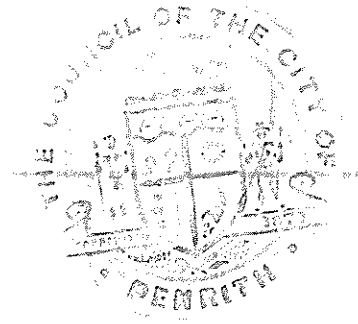
28. GST

If any Party reasonably decides that it is liable to pay GST on a supply made to the other Party under this Agreement and the supply was not priced to include GST, then the recipient of the supply must pay an additional amount equal to the GST on that supply.

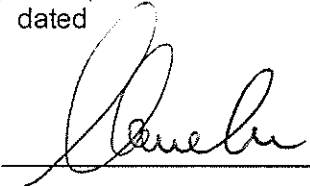
29. Counterparts

This Agreement may be executed in counterparts. All counterparts when taken together are to be taken to constitute one instrument.

Executed as an Agreement:



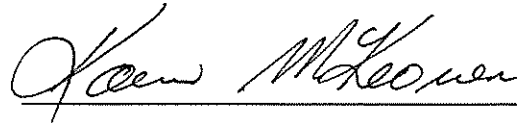
The common seal of the Council of the City of Penrith was hereunto affixed this day of *April* ~~2015~~ ²⁰¹⁶ pursuant to a resolution of Council dated _____ :



Signature of General Manager

ALAN STONKETT

Name



Signature of the Mayor

KAREN MCKEDOWN

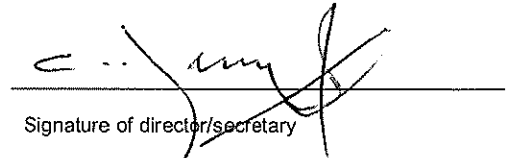
Name

Dated

Executed by Settlers Estate Pty Limited in accordance with section 127 of the Corporations Act by its authorised officers:

Signature of director

Name



CHARBEL DEMIAN

Name

Dated 29.4.2016

Schedule 1 Development Contributions Schedule

1. Development Contributions - Monetary

The Developer undertakes to provide the following Monetary Contributions as set out and provided for in the Table below.

New Population Expected		1097.4				
Works Contribution Per Person		\$1,507.78				
Land Contribution Per Person		\$1,770.01				
Contribution Per Person (Unindexed)		\$3,277.79				
New Population Expected						
	Lots	Person	Rate / PP	Stage Contribution Amount	Works Component Amount	Land Component Amount
Stage 1	114	353.4	\$3,277.79	\$1,158,371	\$532,849	\$625,522
Stage 2	30	93.00	\$3,277.79	\$304,834	\$140,224	\$164,611
Stage 3	85	263.50	\$3,277.79	\$863,698	\$397,300	\$466,398
Stage 4	125	387.50	\$3,277.79	\$1,270,144	\$584,265	\$685,879
Total	354	1097.4		\$3,597,047	\$1,654,638	\$1,942,410

1.1 The monetary contributions that are payable in relation to any part/stage of the development are to be the amounts attributable to that part/stage of the development applying the rates set out in the above table, but indexed:

a) for Stages 1 and 2:

- i. from the date of the most recent Development Consent (excluding any modification) for the relevant part/stage of the development;
- ii. to the date of payment for each part/stage of the development; and

b) for Stages 3 and 4:

- i. from the date of signing this Agreement;
- ii. to the date of payment for each part/stage of the development,

in accordance with the following formulas:

Works

$$A = B \times C/D$$

where:

- A** is the indexed amount of the Monetary Contribution payable;
- B** is the unindexed amount of the contribution listed in the Monetary Contributions Table;
- C** is the Consumer Price Index (CPI) published for the quarter immediately before the date that the Monetary Contribution is due to be paid; and
- D** is the CPI (Sydney) published for the quarter immediately before:
- a) for Stages 1 and 2, the date of the most recent Development Consent (excluding any modification) for the relevant part/stage of the development; and
 - b) for Stages 3 and 4, the date of signing this Agreement.

Land

$$A = B \times C/D$$

where:

- A** is the indexed amount of the Monetary Contribution payable;
- B** is the unindexed amount of the contribution listed in the Monetary Contributions Table;
- C** is the Residential Property Price Index (RPPI) published for the quarter immediately before the date that the Monetary Contribution is due to be paid; and

D is the RPPI published for the quarter immediately before:

- a) for Stages 1 and 2, the date of the most recent Development Consent (excluding any modification) for the relevant part/stage of the development; and
- b) for Stages 3 and 4, the date of signing this Agreement.

- 1.2 The monetary contributions will be made subject to any rises or falls to the New Population Expected per Stage at the specified contribution rate per person as outlined in the table above.
- 1.3 Monetary contributions are to be paid prior to the release of relevant subdivision certificates for stages 1-3. Where a subdivision certificate issues for any part of a stage of development, then the contribution proportionate to that part of the development is to be paid at that time calculated applying the rates in this Schedule.
- 1.4 The monetary contributions for stage 4 will be paid within 18 months of the stage 3 subdivision certificate releases or prior to the release of the subdivision certificate for stage 4 whichever occurs first.
- 1.5 The dwelling types and the occupancy rate for that dwelling form, which are to be applied when calculating the contribution rates, are as follows:

Dwelling occupancy rate by dwelling type

Dwelling or lot type	Occupancy rate (i.e. number of persons per dwelling)
<ul style="list-style-type: none">• Subdivided lot• dwelling house• dual occupancy	3.1
<ul style="list-style-type: none">• multi unit housing dwelling• shop top housing dwelling	2
<ul style="list-style-type: none">• Seniors living dwelling• Secondary dwelling• Student bedroom/unit	1.5

Note: Variations to the dwelling types described in the Table above will be assessed by Council on the basis of the dwelling form which most closely approximates the variation proposed. Council retains sole discretion in determining the occupancy rate applicable to the variation.

2. Development Contributions - Works

The Developer undertakes to provide the following Works set out and provided for in the Table below.

<u>Works</u>	<u>Description</u>	<u>Timing</u>
1. Road Works	Roads to be constructed in accordance with the requirements of the Development Consent DA11/0546.02 whether the consent is declared invalid or not.	In accordance with the requirements of the Development Consent DA11/0546.02
2. Stormwater works relating to the stormwater system and riparian corridor, to satisfy the entire development of the Land, being Stages 1-4	Development to be constructed in accordance with the requirements of the Development Consent DA11/0546.02 whether the consent is declared invalid or not.	In accordance with the requirements of the Development Consent DA11/0546.02
3. Bicycle paths and bus facilities to service the entire Land	Development to be constructed in accordance with the requirements of the Development Consent DA11/0546.02 whether the consent is declared invalid or not.	In accordance with the requirements of the Development Consent DA11/0546.02

Schedule 2 Development Contribution Procedures

1. Developer's Undertakings

The Developer undertakes to carry out or procure the carrying out of, the construction of the Contribution Works set out in Schedule 1 as required by any relevant development consent and as contemplated by, and in accordance with this Schedule 2 and also so as to ensure that completion of each Contribution Works Portion is achieved prior to release of the subdivision certificate for the relevant part of the development.

2. Contribution Works Procedures

(i) Approvals

The Developer must:

- (a) prepare and obtain all Approvals necessary to carry out the Contributions Works; and
- (b) comply with all conditions of such Approvals.

(ii) Quality of Material and Work

The Developer must procure the Contribution Works to be carried out:

- (a) using good quality materials, which must be suitable for the purposes for which they are required under this Agreement;
- (b) in compliance with relevant standards determined by Australian Standards Limited, the Building Code of Australia and any relevant manufacturers' standards; and
- (c) so that the Contribution Works, when completed, are suitable for the purpose for which they are required as contemplated by the relevant Approvals.

(iii) Standards

The Parties agree that the design and specifications of the Contribution Works shall take into consideration Council's relevant development control plans, design codes and technical manuals.

(iv) Standards as Conditions of Approval

The Parties agree that to the extent the Contribution Works are to be undertaken in accordance with Clause (iii) of this Schedule, where any inconsistency with the requirements of any Approvals exists, the requirements of that Approval shall prevail.

(v) Reinstatement on Damage or Destruction

The Developer may but is not obliged to reinstate any Contribution Works where the damage or destruction is the result of:

- (a) any negligent act or omission of the Council or its employees, consultants or agents relating to any part of the Contribution Works under this Agreement; or

(b) the use or occupation by the Council or its employees, consultants or agents, Council's representatives or other contractor of Council of any part of the Contribution Works.

(vi) Implementation

(a) During the period commencing on the date of issue of the final occupation certificate and ending 12 months later, the Developer is required to complete or rectify such works relating to the Contribution Works after receiving notice from the Council detailing any alleged defect and the works required to rectify the defect.

(b) Whenever reasonable requested in writing by Council, the Developer must provide evidence of insurance prior to commencement of Contribution Works.

(vii) Works Completion

When, in the opinion of the Developer, the Contribution Works have reached completion, the Developer must notify Council in writing.

(viii) Final Inspection by Council

Following the notification by the Developer pursuant to Clause (vii) of this Schedule, the Council's representative must inspect the Contribution Works within 28 days and must by written notice to the Developer concur that completion of the Contribution Works has been achieved, or identify with reasonable particularity what is required to occur to enable completion of the Contribution Works.

Schedule 3 Explanatory Note

Explanatory Note

Environmental Planning and Assessment Regulation 2000 (NSW)

(Clause 25E)

Planning Agreement

Under section 93F of the *Environmental Planning and Assessment Act 1979 (NSW)*

(a) **Parties**

Settlers Estate Pty Limited (ABN 84 139 894 956) – Level 2, 7 Charles Street, Parramatta NSW (**Developer**)

Penrith City Council (ABN 43 794 422 563) – 601 High Street, Penrith NSW (**Council**)

(b) **Description of Subject Land**

- (i) The subject land is 731-769 Great Western Highway (French Street), Werrington NSW, being Lots 50-58 in DP 1069025.
- (ii) The Developer is the owner of the subject land.

(c) **Description of Proposed Development Application**

- (a) The proposed development is documented in development consents DA 11/0546 (as modified by DA 11/0546.01 and DA 11/0546.02), Development Consent DA12/1361, and Development Consent DA14/0994.
- (b) A new development application to be lodged with Council for the purpose of creating in Stage 1 on Lots 56-58, small lot housing, a riparian corridor and B7 employment land Superlot (Draft DA No. 1).
- (c) A new development application to be lodged with Council for the purpose of creating in Stage 5, Lot 55, small lot housing (Draft DA No. 2).
- (d) A new application to Council pursuant to section 96 of the *Environmental Planning and Assessment Act 1979* for Stage 2 on Lot 50 for the purpose of replacing the approval under DA 12/1361 for 250 apartments in four Residential Flat Buildings with small housing lots for detached housing and to amend the side corner housing lots to smaller lot configurations in Stage 3 and Stage 4 on Lot 50 (Draft Section 96 Application). These proposed amendments to the Development are mapped in Schedule 4.

(d) **Summary of Objectives**

The objectives of the draft Planning Agreement are to:

- (a) dedicate land to Council for the purposes of providing a stormwater system and riparian corridor;
- (b) provide a range of road works, infrastructure works and facility services; and

- (c) provide monetary contributions to Council,

in order to provide a benefit for the public and to address the impacts of the proposed development on the locality and the need for additional infrastructure works and facilities to address these impacts.

(e) Nature and Effect of the Draft Planning Agreement

The draft Planning Agreement requires the Developer to provide the following dedicated land, works and monetary contributions:

- (a) dedication to Council of land for the purposes of a new open space corridor, new roads inclusive of a vehicle crossing, pedestrian footpath, shared bicycle/pedestrian path and a pedestrian and bicycle link.
- (b) contribution works, including:
- construction of roads in accordance with the current Development Consents;
 - construction and development of stormwater system, to satisfy the entire development of the Land;
 - construction and development of stormwater management and riparian corridor pursuant to the conditions of the Development Consent; and
 - construction and development of bicycle paths and bus facilities to service the entire Land.

The obligations of the Developer are in place of those contributions imposed under section 94, section 94A and section 94EF of the *Environmental Planning and Assessment Act 1979* (NSW) in connection with the proposed development.

All relevant monetary and non-monetary contributions under this deed are to be paid or provided prior to or at the time of release of the subdivision certificate. Prior to the issuing of a subdivision certificate for any part of the Development, the Developer is to pay or deliver that part of the total agreed monetary and non-monetary contributions required by this Agreement as is proportionate to the part of the Development concerned, applying the monetary rates and timing nominated in Schedule 1.

(f) Assessment of the Merits of the Draft Planning Agreement

The Draft Planning Agreement has merit as a negotiated agreement which will achieve its planning purposes.

(g) The Planning Purposes Served by the Draft Planning Agreement

In accordance with section 93F(2) of the *Environmental Planning and Assessment Act 1979* (NSW), the Planning Agreement promotes the following public purposes:

- (a) the provision of (or the recoupment of the cost of providing) public amenities or public services;
- (b) the provision of (or the recoupment of the cost of providing) transport or other infrastructure relating to land;

- (c) the funding of recurrent expenditure relating to the provision of public amenities or public services, affordable housing or transport or other infrastructure;
- (d) the monitoring of the planning impacts of development; and
- (e) the conservation or enhancement of the natural environment.

(h) How the Draft Planning Agreement Promotes the Objects of the Environmental Planning and Assessment Act 1979 (NSW)

The draft Planning Agreement promotes the following objects of the *Environmental Planning and Assessment Act 1979* (NSW):

- (a) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment;
- (b) the promotion and coordination of the orderly and economic use and development of land;
- (c) the protection of land for public purposes; and
- (d) the provision and coordination of community services and facilities.

The draft Planning Agreement provides for a reasonable means of achieving those purposes.

(i) How the Draft Planning Agreement Promotes the Public Interest

The Planning Agreement will promote the public interest by achieving its planning purposes to the benefit of the public in a manner acceptable to the parties.

(j) How the Draft Planning Agreement Promotes the Elements of the Council's Charter

The draft Planning Agreement promotes Council's Charter under section 8 of the *Local Government Act 1993* (NSW) by:

- (a) the provision of adequate, equitable and appropriate services and facilities for the community in the form of providing land, road works, infrastructure works, corner park embellishment works and monetary contributions;
- (b) ensuring that the services and facilities are managed efficiently and effectively; and
- (c) properly managing, developing, protecting, restoring, enhancing and conserving the environment of the area for which it is responsible, in a manner that is consistent with and promotes the principles of ecologically sustainable development.

(k) Whether the Draft Planning Agreement conforms with the Council's Capital Works Program

The draft Planning Agreement conforms with Council's Capital Works Program to the extent that it will supplement the Program by providing works and infrastructure and

additional public facilities that will provide a public benefit. Also, it will provide contributions that Council would not normally be able to provide.

(l) Whether the Draft Planning Agreement specifies that certain requirements must be complied with before an occupation certificate is issued

The draft Planning Agreement provides that all development contributions including dedication of land, works, provision of infrastructure, and monetary contributions, must be delivered prior to release of the subdivision certificate (rather than the issue of any occupation certificate) for the part of the proposed development to which the contribution relates in accordance with the *Environmental Planning and Assessment Act 1979* (NSW).

(m) The Impact of the Draft Planning Agreement on the Public or Any Section of the Public

The draft Planning Agreement impacts on the Public by promoting the Public's interest as outlined above.

(n) Other Matters

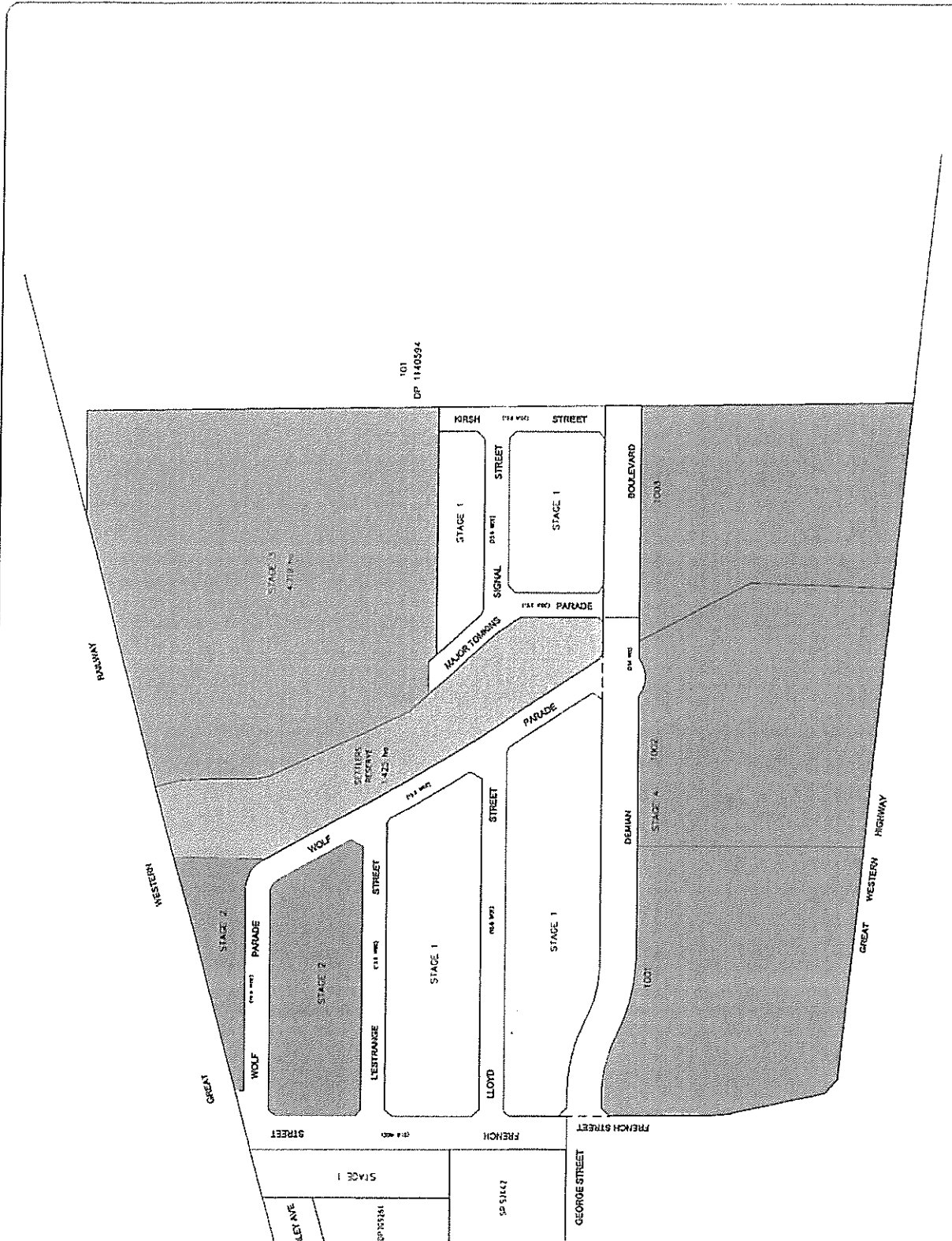
None

NOTES

- 1. THE PROPERTY HAS BEEN SURVEYED AND FOUND TO BE FREE FROM ANY ENCUMBRANCES, EASEMENTS, RIGHTS OF WAY, OR OTHER INTERESTS THAT MAY AFFECT THE DEVELOPMENT.
- 2. THE PROPERTY IS ZONED R1 AND IS SUBJECT TO THE R1 ZONING BY-LAW.
- 3. THE PROPOSED DEVELOPMENT IS CONSISTENT WITH THE R1 ZONING BY-LAW.
- 4. THE PROPOSED DEVELOPMENT IS CONSISTENT WITH THE LOCAL GOVERNMENT'S STRATEGIC DEVELOPMENT FRAMEWORK.
- 5. THE PROPOSED DEVELOPMENT IS CONSISTENT WITH THE LOCAL GOVERNMENT'S ENVIRONMENTAL STRATEGIC FRAMEWORK.
- 6. THE PROPOSED DEVELOPMENT IS CONSISTENT WITH THE LOCAL GOVERNMENT'S INFRASTRUCTURE STRATEGIC FRAMEWORK.
- 7. THE PROPOSED DEVELOPMENT IS CONSISTENT WITH THE LOCAL GOVERNMENT'S SOCIAL AND ECONOMIC DEVELOPMENT STRATEGIC FRAMEWORK.
- 8. THE PROPOSED DEVELOPMENT IS CONSISTENT WITH THE LOCAL GOVERNMENT'S CULTURAL HERITAGE STRATEGIC FRAMEWORK.
- 9. THE PROPOSED DEVELOPMENT IS CONSISTENT WITH THE LOCAL GOVERNMENT'S RECREATION AND OPEN SPACE STRATEGIC FRAMEWORK.
- 10. THE PROPOSED DEVELOPMENT IS CONSISTENT WITH THE LOCAL GOVERNMENT'S WATER AND WASTE MANAGEMENT STRATEGIC FRAMEWORK.
- 11. THE PROPOSED DEVELOPMENT IS CONSISTENT WITH THE LOCAL GOVERNMENT'S CLIMATE CHANGE STRATEGIC FRAMEWORK.
- 12. THE PROPOSED DEVELOPMENT IS CONSISTENT WITH THE LOCAL GOVERNMENT'S BIODIVERSITY STRATEGIC FRAMEWORK.
- 13. THE PROPOSED DEVELOPMENT IS CONSISTENT WITH THE LOCAL GOVERNMENT'S LANDSCAPE ARCHITECTURE STRATEGIC FRAMEWORK.
- 14. THE PROPOSED DEVELOPMENT IS CONSISTENT WITH THE LOCAL GOVERNMENT'S PUBLIC ART STRATEGIC FRAMEWORK.
- 15. THE PROPOSED DEVELOPMENT IS CONSISTENT WITH THE LOCAL GOVERNMENT'S COMMUNITY DEVELOPMENT STRATEGIC FRAMEWORK.
- 16. THE PROPOSED DEVELOPMENT IS CONSISTENT WITH THE LOCAL GOVERNMENT'S COMMUNITY PARTICIPATION STRATEGIC FRAMEWORK.
- 17. THE PROPOSED DEVELOPMENT IS CONSISTENT WITH THE LOCAL GOVERNMENT'S COMMUNITY WELLBEING STRATEGIC FRAMEWORK.
- 18. THE PROPOSED DEVELOPMENT IS CONSISTENT WITH THE LOCAL GOVERNMENT'S COMMUNITY RESILIENCE STRATEGIC FRAMEWORK.
- 19. THE PROPOSED DEVELOPMENT IS CONSISTENT WITH THE LOCAL GOVERNMENT'S COMMUNITY ENGAGEMENT STRATEGIC FRAMEWORK.
- 20. THE PROPOSED DEVELOPMENT IS CONSISTENT WITH THE LOCAL GOVERNMENT'S COMMUNITY LEADERSHIP STRATEGIC FRAMEWORK.
- 21. THE PROPOSED DEVELOPMENT IS CONSISTENT WITH THE LOCAL GOVERNMENT'S COMMUNITY PARTNERSHIP STRATEGIC FRAMEWORK.
- 22. THE PROPOSED DEVELOPMENT IS CONSISTENT WITH THE LOCAL GOVERNMENT'S COMMUNITY COOPERATION STRATEGIC FRAMEWORK.
- 23. THE PROPOSED DEVELOPMENT IS CONSISTENT WITH THE LOCAL GOVERNMENT'S COMMUNITY COLLABORATION STRATEGIC FRAMEWORK.
- 24. THE PROPOSED DEVELOPMENT IS CONSISTENT WITH THE LOCAL GOVERNMENT'S COMMUNITY SUPPORT STRATEGIC FRAMEWORK.
- 25. THE PROPOSED DEVELOPMENT IS CONSISTENT WITH THE LOCAL GOVERNMENT'S COMMUNITY ASSISTANCE STRATEGIC FRAMEWORK.
- 26. THE PROPOSED DEVELOPMENT IS CONSISTENT WITH THE LOCAL GOVERNMENT'S COMMUNITY CARE STRATEGIC FRAMEWORK.
- 27. THE PROPOSED DEVELOPMENT IS CONSISTENT WITH THE LOCAL GOVERNMENT'S COMMUNITY PROTECTION STRATEGIC FRAMEWORK.
- 28. THE PROPOSED DEVELOPMENT IS CONSISTENT WITH THE LOCAL GOVERNMENT'S COMMUNITY PROMOTION STRATEGIC FRAMEWORK.
- 29. THE PROPOSED DEVELOPMENT IS CONSISTENT WITH THE LOCAL GOVERNMENT'S COMMUNITY ENHANCEMENT STRATEGIC FRAMEWORK.
- 30. THE PROPOSED DEVELOPMENT IS CONSISTENT WITH THE LOCAL GOVERNMENT'S COMMUNITY IMPROVEMENT STRATEGIC FRAMEWORK.

WARNING - A DETAILED STUDY OF THE LOCATION OF UNDERGROUND SERVICES WILL NEED TO BE UNDERTAKEN PRIOR TO COMMENCEMENT OF DESIGN WORK OR EXCAVATION

THIS PLAN IS NOT VALID FOR CONSTRUCTION PURPOSES UNLESS IT IS ACCOMPANIED BY THE FOLLOWING: A DETAILED STUDY OF THE LOCATION OF UNDERGROUND SERVICES WILL NEED TO BE UNDERTAKEN PRIOR TO COMMENCEMENT OF DESIGN WORK OR EXCAVATION.



<p>PROJECT TITLE GREAT WESTERN HWY, WERRINGTON TOWNSHIP PLAN</p>		<p>DATE OF ISSUE 13/08/2015</p>		<p>SCALE 1:1250 @ A1</p>		<p>CLIENT STATEWIDE PLANNING PTY LTD</p>		<p>PROJECT NO. 13768-005</p>		<p>DATE OF ISSUE 13/08/2015</p>		<p>PROJECT LOCATION WERRINGTON A</p>	
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Schedule 5 Landscape Plan for the Riparian Corridor

