

Draft VOLUNTARY PLANNING AGREEMENT

VPA - 47

Residential Subdivision of Lot A in DP373652 and Lot 217 in DP2475

(47-59 Seventeenth Ave Austral)

DA-922/2021

Contents

1.	Interpretation	3
1.1	Definitions	3
1.2	Interpretation of words and phrases	4
2.	Status of deed.....	4
3.	Commencement of deed	4
4.	Application of other statutory provisions to require contributions	4
5.	Monetary Contribution.....	4
5.1	Developer to make Monetary Contribution.....	4
5.2	Purpose or use of the Monetary Contribution.....	5
6.	Dispute resolution generally.....	5
6.1	Application of this clause	5
7.	Representation and warranty	5
7.1	Execution and delivery of this deed.....	5
7.2	Performance and fulfilment of this deed.....	6
8.	Miscellaneous.....	6
8.1	Confidentiality of this deed.....	6
8.2	Costs	6
8.3	Further acts.....	6
8.4	Entire understanding.....	6
8.5	No waiver or variation	6
8.6	No partnership or agency	7
8.7	Severance	7
8.8	Counterparts	7

Dated

2022

Parties

Austral North Nominees Pty Ltd (ABN 24 647 661 710) of
[Address] ("**Developer**")

Liverpool City Council,
[Address] ("**Council**")

Background

- A. The Developer has lodged development application DA-922/2021 for the subdivision of the Land into 51 residential lots.
- B. The Developer has offered, and the Council has accepted to pay a proportion of the cost of the construction of the GPT, on the terms of this agreement.

Agreed terms

1. Interpretation

1.1 Definitions

In this Deed:

"**DA**" means development application number DA-922/2021 lodged with the Council;

"**Development**" means the development of the Land pursuant to the Development Consent for residential subdivision of the Land into 51 lots with associated works as described in the DA;

"**Development Consent**" means the approval of the DA under the EP&A Act;

"**EP&A Act**" means the *Environmental Planning & Assessment Act 1979* (as amended);

"**GPT**" means a gross pollutant trap which regulate the discharge of gross pollutants from the Land and other lands in the relevant catchment deemed to be served by the gross pollutant trap;

"**Land**" means the land within Lot A in DP 373652 and Lot 217 in DP 2475;

"**Monetary Contribution**" means the amount of \$95,000.00;

"**Notice**" means a written document to be given by a Party, or a person under this deed;

"**Subdivision**" has the same meaning as in section 6.2 of the EP&A Act;

"**Subdivision Certificate**" means the last subdivision certificate under Part 6 of the EP&A Act issued (or to be issued) in relation to the Development;

"VPA" means a voluntary planning agreement pursuant to section 7.4 of the EP&A Act.

1.2 Interpretation of words and phrases

In this deed unless the contrary intention appears:

- (a) a reference to a Party is to a Party to this deed;
- (b) clause headings are for convenience only and will be ignored in the interpretation of the Deed;
- (c) a reference to dollars or to a currency means Australian dollars;
- (d) "including" and similar expressions are not words of limitation;
- (e) a reference to a person includes a reference to a corporation, an association, joint venture, an unincorporated body, partnership, government or local authority or agency or other entity;
- (f) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;

2. Status of deed

Subject to clause **Error! Reference source not found.**, this deed constitutes a VPA.

3. Commencement of deed

- (a) Until this deed operates, this deed constitutes an irrevocable offer from the Developer to enter into this deed as a VPA if Development Consent is granted to the Development on the Land.
- (b) This deed operates only if:
 - (1) the carrying out of the Development is subject to a condition of the Development Consent imposed under section 7.7(3) of the EP&A Act requiring the deed to be entered into; and
 - (2) the deed is entered into as required by clause 25C(1) of the Environmental Planning & Assessment Regulation 2000 (NSW) (as amended).

4. Application of other statutory provisions to require contributions

- (a) The application of sections 7.11, 7.12 and 7.24 of the EP&A Act are not excluded by this Deed.
- (b) The Parties agree that this deed satisfies section 7.4(3) of the EP&A Act.

5. Monetary Contribution

5.1 Developer to make Monetary Contribution

The Developer must make the Monetary Contribution before the issue of the Subdivision Certificate for the Development.

5.2 Purpose or use of the Monetary Contribution

Council agrees that:

- (a) it will use the Monetary Contribution towards the construction of the GPT.
- (b) the Developer has no obligation to build the GPT.
- (c) the issue of the Subdivision Certificate is not conditional on the GPT having been constructed by Council or any other person;
- (d) payment of Monetary Contribution satisfies all of the Developer's obligations in relation to the GPT;
- (e) the Council must issue the Subdivision Certificate to the Developer, even if:
 - (1) the GPT has not been constructed at the time the Developer applies for the Subdivision Certificate;
 - (2) Council is not satisfied with the performance of the GPT or in relation to any water quality issue in relation to the Development, providing the Developer has satisfied all other relevant terms of section 6.15 of the EP&A Act.

6. Dispute resolution generally

6.1 Application of this clause

If any dispute arises as to any matter under this deed, the Parties will use their reasonable efforts to negotiate a resolution before pursuing any other forum for dispute resolution and in any case may commence proceedings 2 months after serving a Notice of dispute upon the other Party.

7. Representation and warranty

7.1 Execution and delivery of this deed

Each Party represents and warrants to the other that:

- (a) it has the capacity to unconditionally execute and deliver this deed;
- (b) it has taken all necessary action to authorise the unconditional execution and delivery of this deed;
- (c) its execution and delivery of this deed does not breach the following:
 - (1) a law;
 - (2) the Party's constituent documents;
 - (3) an agreement, instrument or other document to which it is a Party;
 - (4) an obligation to another person.
- (d) A person signing this deed as an attorney or delegate of a Party represents and warrants to the other Party that at the date of execution the person has not

received a Notice or information of the revocation of the power of attorney or delegation appointing that person.

- (e) A person signing this deed as an authorised officer, agent or trustee of a Party represents and warrants to the other Party that at the date of execution that person has the full authority to execute this deed in that capacity.

7.2 Performance and fulfilment of this deed

Each Party represents and warrants to the other that:

- (a) this deed constitutes the Party's valid and legally binding obligations;
- (b) the Party's compliance with its obligations does not breach the following:
 - (1) a law;
 - (2) the Party's constituent document;
 - (3) an agreement, instrument or other document to which it is a Party; and
 - (4) not to be taken as an implied waiver of another obligation or breach of an obligation; and
 - (5) not to be taken as an implied waiver of another obligation or breach of an obligation for any other occasion.

8. Miscellaneous

8.1 Confidentiality of this deed

This deed is not confidential.

8.2 Costs

Each of the Parties to this deed shall be responsible for its own costs and expenses of and in connection with the negotiation, preparation, execution, stamping, registration and completion of this deed and of any document contemplated by this deed.

8.3 Further acts

Each of the Parties will without further consideration sign, execute and deliver any document and shall perform any other act which may be necessary or desirable to give full effect to this deed

8.4 Entire understanding

This deed supersedes all prior representations, arrangements, understandings and agreements between the Parties relating to the subject matter of this deed and sets forth the entire and exclusive agreement and understanding between the Parties relating to the subject matter of this deed.

8.5 No waiver or variation

A provision of or a right created under this deed may not be waived or varied except in writing signed by the Party or Parties to be bound by the waiver or variation.

8.6 No partnership or agency

Nothing in this deed is intended to create or give rise to a relationship of partnership, joint venture or agency between the Parties.

8.7 Severance

If any provision of this deed is judged invalid or unenforceable for any reason whatsoever by a court of competent jurisdiction, such invalidity or unenforceability (unless deletion of such provision would materially adversely affect one of the Parties) will not affect the operation or interpretation of any other provision of this deed to the intent that the invalid or unenforceable provision will be treated as severed from this deed.

8.8 Counterparts

This deed may consist of a number of counterparts, each of which when executed shall be an original and all the counterparts together shall constitute one and the same instrument.

Executed as a deed on

2022

Executed by Liverpool City Council by its Attorney pursuant to Power of Attorney registered Book 4756 Number 447 in the presence of:

Signature:

Signature:

Name:

Name:

PLEASE PRINT

PLEASE PRINT

Witness

Witness

EXECUTED by Austral North Nominees Pty Ltd (ABN 24 647 661 710) in accordance with section 127 of the *Corporations Act 2001*:

Signature:

Signature:

Name:

Name:

PLEASE PRINT

PLEASE PRINT

Director

Director/Secretary *

* Delete as appropriate