

VOLUNTARY PLANNING AGREEMENT

PARTIES

HORNSBY SHIRE COUNCIL

(Council)

AND

TRUMEN NORMAN THORNELIGH PTY LTD

ACN 625 229 496

(Developer)

DATED

2 October 2019

VOLUNTARY PLANNING AGREEMENT No. 1 of 2019

Section 93F of the Environmental Planning and Assessment Act 1979

THIS AGREEMENT dated 2 October 2019

Parties

Hornsby Shire Council of 296 Peats Ferry Road Hornsby NSW 2077 (Council)

and

Trumen Norman Thornleigh Pty Ltd of National Trust Centre, Upper Fort Street, Observatory Hill, Millers Point NSW 2000 (Developer).

Background

- A. The Developer owns the land identified at Lot 2, DP 211095, commonly known as 35 Sefton Road Thornleigh NSW (**the Land**).
- B. On 30 May, 2018 the Developer lodged a Development Application for subdivision of the existing allotment into 6 allotments at the Land (**the Development**).
- C. On 6 August the Developer made an offer to Council to enter into a Voluntary Planning Agreement (**VPA**) with Council pursuant to 7.4 of the Environmental Planning and Assessment Act (**the EPA**).
- D. The offer made by the Developer on 6 August 2018 was essentially to make a Development Contribution to offset any impacts of the Development in accordance with Council's Green Offsets Code dated 9 September, 2015 (**the Policy**).

Operative provisions

1 Planning agreement under the Act

The Parties agree that this Agreement is a VPA governed by Subdivision 2 of Division 6 of Part 4 of the Act.

2 Application of this Agreement

This VPA applies to the land which forms the subject matter of the Development Application No. 510/2018 situated at 35 Sefton Road Thornleigh and as shown on the Detailed Survey Plan which is attached as Schedule 1 to this Agreement.

3 Operation of this Agreement

The parties agree that this VPA takes effect on the signature of this planning agreement by the parties to it. The signing of this planning agreement is to occur within twenty-eight (28) days of the Development Consent being granted for DA No. 510/2018.

4 Definitions and interpretation

4.1 In this Agreement the following definitions apply:

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

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

Development the subdivision of the existing allotment into 6 allotments as proposed under Development Application No. 510/2018.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

Development Contribution means a monetary contribution over and above any other monetary contribution to be levied under s7.11 of the Act.

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 or administration of the GST.

Land means Lot 2, DP 211095 situated at 35 Sefton Road Thornleigh.

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

Regulation means the Environmental Planning and Assessment Regulation 2000.

Subdivision Certificate has same meaning as in the Act

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

(a) Headings are inserted for convenience only and do not affect the interpretation of this Agreement.

(b) A reference in this Agreement to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.

(c) If the day on which any act, matter or thing is to be done under

this

Agreement is not a business day, the act, matter or thing must be done on the next business day.

(d) A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.

(e) A reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.

- (f) A reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- (g) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
- (h) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- (i) Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- (j) A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- (k) References to the word 'include' or 'including' are to be construed without limitation.
- (l) A reference to this Agreement includes the agreement recorded in this Agreement.
- (m) A reference to a party to this Agreement includes a reference to the servants, agents and contractors of the party, and the party's successors and assigns.
- (n) Any schedules and attachments form part of this Agreement.

5 Development Contributions to be made under this Agreement

- 5.1 In accordance with the Policy, the Developer agrees to pay Council a Monetary Contribution in the amount specified below prior to the issuance of a Subdivision Certificate.
- 5.2 The offset is to be calculated by using the following formula:

- *The area of vegetation required to be removed as part of the Development is 0.1533 hectares and has a multiplier under the Green Offsets Code of x 2;*
- *The offset is calculated by using the following formula:
Offsets required = Area to be cleared (in hectares) x offsets multiplier x 2 plus 10% management fee.*

The offset calculation is therefore:

$$0.1533 \times 2 \times \$235,660 + 10\% = \$72,253.00 + \$7,225.00 = \$79,478.00$$

Total Development Contribution required = \$79,478.00.

- 5.3 The Developer will, prior to the issue of a Subdivision Certificate, make payment of the Monetary Contribution (\$79,478) by way of bank cheque to Council. Upon payment of the Monetary Contribution, the Council will issue the Subdivision Certificate within 5 business days.

6 Application of the Development Contributions

- 6.1 The Monetary Contribution made by the Developer is to be used by the Council in accordance with the Policy.
- 6.2 The public benefit created by the Development contribution is that:
- (a) It ensures Council in protecting significant vegetation in the Hornsby Shire Council Local Government Area; and
 - (b) It provides for environmental enhancement and restoration of endangered ecological communities or other significant vegetation.

7 Registration of this Agreement

This Planning Agreement is not required to be registered on the title to the land.

8 Review of this Agreement

The parties may agree to review this Deed. Any review or modification will be conducted in the circumstances and manner determined in writing by the parties.

9 Dispute Resolution

9.1 Dispute

If any dispute arises out of this Agreement (*Dispute*) a party to the agreement must not commence any court or arbitration proceedings unless the parties to the Dispute have complied with the following

paragraphs of this clause except where a party seeks urgent interlocutory relief.

9.2 **Notice of Dispute**

A party to this Agreement claiming that a dispute has arisen out of or in relation to this Agreement must give written notice (*Notice*) to the other party to this Agreement specifying the nature of the dispute.

9.3 **Dispute resolution**

If the parties do not agree within 7 days of receipt of the Notice (or such further period as agreed in writing by them) as to:

- (a) the dispute resolution technique (eg expert determination) and procedures to be adopted.
- (b) the timetable for all steps in those procedures; and
- (c) the selection and compensation of the independent person required for such technique.

The parties must mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales as published by the Law Society of New South Wales from time to time, and, the President of the Law Society of New South Wales or the President's nominee will select the mediator and determine the mediator's remuneration.

10 **Notices**

10.1 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: The General Manager
Address: Hornsby Shire Council, PO Box 37 Hornsby 1630
Fax Number: 98476999
Email: hsc@hornsby.nsw.gov.au

Developer: Trumen Norman Thornleigh Pty Ltd
Attention: Mr Brent Rae
Address: National Trust Centre, Upper Fort Street, Observatory
Hill, Millers Point NSW 2000
Ph: (02) 9247 3957
Mob: 0411 193 232
Email: brent@trumen.com.au

- 10.2 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 party if it is delivered, posted or faxed to the latest address or fax number.
- 10.3 Any notice, consent, information, application or request is to be treated as given or made at the following time:
- (a) if it is delivered, when it is left at the relevant address.
 - (b) If it is sent by post, 2 business days after it is posted.
 - (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.
- 10.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

11 Approvals and consent

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 absolute discretion and subject to any conditions determined by the Party. A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

12 Assignment and Dealings

The Developer may not assign or in any way deal with its rights or obligations under the terms of this agreement to any third party unless:

- (a) The developer has, at no cost to Council, first procured the execution by that person of all necessary documents in favour of Council by which that person agrees to be bound by the Agreement as if they were a party to the original Agreement; and
- (b) The party is not in breach of this Agreement.

13 Costs

The Developer agrees to pay all costs (including Council's costs) associated with the preparation, public notification, legal costs, stamp duty, registration & administration costs of the Voluntary Planning Agreement.

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 another Party, or by a director, officer, agent or employee of that Party, before this Agreement was executed, except as permitted by law.

15 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.

16 Governing law and jurisdiction

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

17 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.

18 No fetter

Nothing in this Agreement shall be construed as requiring 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.

19 Representations and warranties

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

20 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.

21 Modification

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.

22 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.

23 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 recipient of the supply must pay an additional amount equal to the GST on that supply.

24 Discharge of Developers Obligations

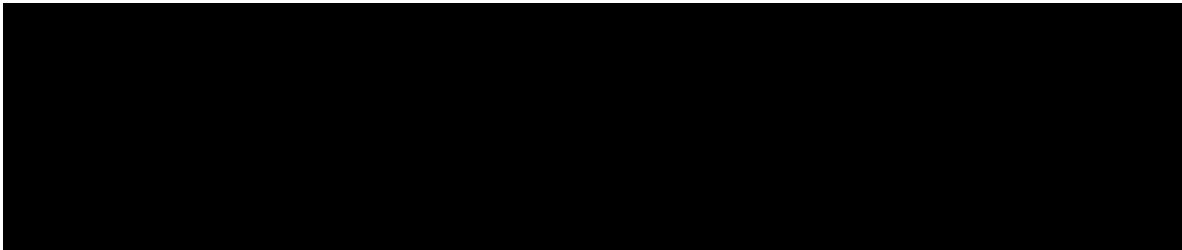
The Developer's obligations under this agreement shall be discharged on the occurrence of any of the following:

- (a) The developer's obligations have been fully carried out in accordance with the agreement; or
- (b) The development consent to which the agreement relates has lapsed; or
- (c) The development consent to which the agreement relates has been modified to such an extent that the planning obligations may not be appropriate; or
- (d) The performance of the planning agreement has been frustrated by an event or events beyond the reasonable control of the parties; or
- (e) The developer has fully and completely assigned the developer's interest under the agreement in accordance with its terms; or
- (f) Other material changes affecting the operation of the planning agreement have occurred; or
- (g) Council and the developer otherwise agree to the modification or discharge of the agreement.

EXECUTED AS AN AGREEMENT

ON BEHALF OF HORNSBY SHIRE COUNCIL:

The Seal of Hornsby Shire Council was affixed in accordance with a resolution passed at a duly convened meeting held on _____ in the presence of:



Signature (Council staff member)

Name

SIGNED by **Trumen Norman Thornleigh Pty Ltd** (Developer):

