

**Northern Beaches Council ABN 57 284 295 198**

**("Council")**

and

**Frasers Property AHL Limited ABN 12 008 443 696**

**("Developer")**

## **Planning Agreement**

*Environmental Planning and Assessment Act, 1979 (NSW)*

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**THIS Agreement** is dated

2018

**PARTIES:**

Northern Beaches Council (ABN 57 284 295 198) of 725 Pittwater Road, Dee Why, New South Wales  
(**Council**)

and

Frasers Property AHL Limited (ABN 12 008 443 696) of 1 Homebush Bay Drive, Rhodes, New South  
Wales (**Developer**)

**1 INTRODUCTION**

- A. Council owns Lot 5 in Deposited Plan 736961 (**Council Land**) and the Developer owns Lots 11, 12 and 13 in Deposited Plan 1092788 (**Developer Land**).
- B. Subject to the amendment of the Pittwater LEP, Council and the Developer have agreed to swap parts of Council Land and Developer Land (**the Land Swap**) to enable the Council to extend a proposed public park and to enable residential development on the land transferred to the Developer following the Land Swap.
- C. The Land Swap is the subject of a separate agreement between the Parties and is conditional upon the Parties entering into this Agreement.
- D. The Developer has made an offer to the Council to enter into this Agreement to ensure the provision at its cost of public benefits in connection with a development application proposed for the Developer Land, being the construction of an extension of Fern Creek Road and the construction of new east-west road connecting Fern Creek Road with the eastern half of Sector 9 of the Release Area, the provision of associated stormwater infrastructure and a 50% contribution towards the cost of undergrounding high voltage power lines that run along the current boundary at 9 and 12 Fern Creek Road.

**IT IS AGREED:**

**2 DEFINITIONS AND INTERPRETATION**

**2.1 Definitions**

In this **Agreement**, unless the context clearly indicates otherwise:

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

**Address for Service** means the address of each Party appearing in Schedule 2 or any new address notified by any Party to all other Parties as its new Address for Service.

**Agreement** means this planning agreement between the Parties.

**Approval** means any approvals, consents, certificates, permits, endorsements, licences, conditions or requirements (and any modifications or variations to them) which may be required by law or an Authority.

**Authority** means any Federal, State or local government or semi-governmental, statutory, judicial or public person, instrumentality or department.

**Business Day** means any day that is not a Saturday, Sunday, gazetted public holiday or bank holiday in Sydney, and concludes at 5 pm on that day.

**Commencing Date** means the date of this Agreement.

**Construction Certificate** has the same meaning as in the Act, granted in respect of any development consent given for the Developer Land.

**Conveyancing Act** means the *Conveyancing Act 1919* (NSW) (as amended).

**Council Contribution** means the contributions as set out in clause 5.2 and Schedule 5.

**Council Land** means Lot 5 in Deposited Plan 736961.

**Council's Representative** means the person specified in Schedule 2 who is duly authorised to give approval under this Agreement or such other person as notified by the Council from time to time.

**Covenant** means a binding agreement in form and terms capable of being registered by the Registrar-General in the relevant folio of the Register and may include a public positive covenant, a provision in a strata management statement or other form of registrable document.

**Development Application** means any development application made for residential subdivision or other development of the Developer Land, whether or not that application is made in conjunction with a proposal to develop adjoining land.

**Developer Contributions** means the aggregate of the:

- (a) Fern Creek Road Works;
- (b) East-West Road Works;
- (c) Stormwater Infrastructure Embellishment Contribution – Developer.

to be provided by the Developer at no cost or risk to Council and in accordance with this Agreement, and:

- (d) a 50% contribution towards the cost of undergrounding high voltage power lines that run along the current boundary at 9 and 12 Fern Creek Road;

as set out in Schedule 4.

**Developer Creek Line Corridor Land** means the land shown in dark green and marked "To 25 Metre Creek Corridor" on the Plan at Schedule 7.

**Developer Land** means Lots 11, 12 and 13 in Deposited Plan 1092788.

**Developer's Representative** means the person specified in Schedule 2 who is duly authorised to give and receive notices under this Agreement as agent for the Developer, or such other person as notified by the Developer to Council from time to time.

**Dispute** means a dispute or difference between the Parties under or in relation to this Agreement.

**East-West Road Works** means all works required for the construction of the new east-west road connecting Fern Creek Road with the eastern half of Sector 9 shown in the Plan at Schedule 6 to be completed by the Developer at the Developer's cost in accordance with clause 3 of Schedule 4, so that it complies with the requirements of a "Local Road" under the Warriewood Valley Roads Masterplan.

**Explanatory Note** means the note exhibited with a copy of this Agreement when this Agreement is made available for inspection by the public pursuant to the Act, as required by the Regulation.

**Fern Creek Road Works** means all works required for the northern extension of Fern Creek Road shown in the Plan at Schedule 6 to be completed by the Developer at the Developer's cost in accordance with clause 2 of Schedule 4, so that it complies with the requirements of a "Local Road" under the Warriewood Valley Roads Masterplan.

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

**GST Law** means the *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 (as amended).

**Improvements** means all structures, improvements, fixtures and equipment constructed, erected or installed on Council Land or Developer Land from time to time (including but not limited to any support columns, foundations or footings constructed).

**Land** means the land described in Schedule 3 of this Agreement, or any further subdivision, consolidation or amalgamation of those titles.

**Land Swap** means the land swap the subject of a separate agreement between the Parties as indicated on the proposed land swap plan at Schedule 7 of this Agreement.

**Law** means any constitution or provision, statute, act, regulation, rule, ordinance, proclamation, subordinate legislation, delegated legislation, by-law, judgment rule of common law or equity, rule approval consent or condition of approval or consent imposed by a competent entity exercising statutory jurisdiction in the relevant matter. Development Consent and/or this Agreement is invalid and includes but is not limited to any proceedings in which such a declaration is sought which are heard on remitter from another Court following an appeal.

**LEP** means the *Pittwater Local Environmental Plan 2014*.

**Lot** means each lot or individual parcel comprising the Land.

**LRS** means the Land Registry Services Division of the NSW Department of Finance and Services.

**Occupation Certificate** has the same meaning as in the Act and includes an interim Occupation Certificate.

**Party** means a party to this Agreement and includes their successors and assigns.

**Plan** means the plan at Schedule 6 of this Agreement showing the location of the Developer Contributions and the location and details of the Stormwater Infrastructure Embellishment Works – Council.

**Release Area** means the land identified as Warriewood Valley Release Area on the *Urban Release Area Map* in the LEP.

**Stormwater Infrastructure Embellishment Works – Developer** means all works associated with the embellishment of the stormwater infrastructure to be undertaken by the Developer at the Developer's cost that is required to be located within the Fern Creek Road Works, in accordance with clause 4 of Schedule 4.

**Stormwater Infrastructure Embellishment Works – Council** means all works associated with the embellishment of the stormwater infrastructure to be undertaken by the Council at the Council's cost that are required to be located between the Fern Creek Road Works and Fern Creek, being an underground stormwater pipe detailed on the Plan, in accordance with clause 2 of Schedule 5.

**Subdivision Certificate** has the same meaning as in the Act, granted in respect of any development consent given for the Developer Land.

**Real Property Act** means the *Real Property Act 1900 (NSW)* (as amended).

**Register** means the Torrens title register maintained under the Real Property Act.

**Registrar-General** means the Registrar-General who maintains the Register.

**Regulation** means the *Environmental Planning and Assessment Regulation 2000 (NSW)* (as amended).

**Related Bodies Corporate** has the same meaning as in clause 50 of the *Corporations Act 2001 (Cth)*.

**Sector 9** means the land at Warriewood Valley with an approximate site area of 17.1 hectares that borders Fern Creek to the north, Garden Street to the east, Orchard Street to the south, and the escarpment to the west.

**Tax** means a tax, duty (including stamp duty and any other transaction duty), levy, impost, charge, fee (including a registration fee) together with all interest, penalties, fines and costs concerning them.

**Warriewood Valley Roads Masterplan** means Warriewood Valley Roads Master Plan 2018.

**Warriewood Valley Landscape Masterplan** means Warriewood Valley Landscape Masterplan and Design Guidelines (Public Domain) 2018.

## 2.2 Interpretation

In this Agreement unless the context clearly indicates otherwise:

- (a) a reference to **this Agreement** or another document means this Agreement or that other document and any document which varies, supplements, replaces, assigns or novates this Agreement or that other document;
- (b) a reference to **legislation** or a **legislative provision** includes any statutory modification, or substitution of that legislation or legislative provision and any subordinate legislation issued under that legislation or legislative provision;
- (c) a reference to a **body** or **authority** which ceases to exist is a reference to either a body or authority that the parties agree to substitute for the named body or authority or, failing agreement, to a body or authority having substantially the same objects as the named body or authority;
- (d) a reference to the **introduction**, a **clause**, **schedule** or **annexure** is a reference to the introduction, a clause, a schedule or an annexure to or of this Agreement;
- (e) **clause headings**, the **introduction** and the **table of contents** are inserted for convenience only and do not form part of this Agreement;
- (f) the **schedules** form part of this Agreement;
- (g) a reference to a **person** includes a natural person, corporation, statutory corporation, partnership, the Crown or any other organisation or legal entity;
- (h) a reference to a **natural person** includes their personal representatives, successors and permitted assigns;
- (i) a reference to a **corporation** includes its successors and permitted assigns;
- (j) a reference to a **right** or **obligation** of a Party is a reference to a right or obligation of that Party under this Agreement;
- (k) the obligations of a Party are **joint** and **several**, but an obligation of a Developer binds that Developer individually only;
- (l) a requirement to do **anything** includes a requirement to cause that thing to be done and a requirement not to do **anything** includes a requirement to prevent that thing being done;
- (m) **including** and **includes** are not words of limitation;
- (n) a **word** that is derived from a defined word has a corresponding meaning;
- (o) **monetary amounts** are expressed in Australian dollars and all amounts payable under this Agreement are payable in Australian dollars;
- (p) the **singular** includes the **plural** and vice-versa;
- (q) words importing one **gender** include all other genders;
- (r) a reference to a **thing** includes each part of that thing;
- (s) 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; and



- (t) a word defined in the Act has the same meaning in this Agreement, unless otherwise defined.

### **3 OPERATION AND APPLICATION OF THIS AGREEMENT**

#### **3.1 Operation**

- (a) This Agreement constitutes a planning agreement within the meaning of section 7.4 of the Act and is binding on each Party to it and their respective heirs, successors, transferees and assignees.
- (b) This Agreement operates from the Commencing Date and ends in accordance with clause 9 of this Agreement.
- (c) The Council and the Developer warrant and represent that this Agreement creates legally binding and valid obligations enforceable against the other Party in accordance with its terms.

#### **3.2 Planning Agreement under the Act**

This Agreement constitutes a planning agreement within the meaning of section 7.4 of the Act, governed by subdivision 2 of Division 7.1 of Part 7 of the Act.

### **4 APPLICATION OF SECTIONS 7.11, 7.12 or 7.24 OF THE ACT**

This Agreement does not exclude the application of sections 7.11, 7.12 or 7.24 of the Act to the development, and the Developer Contributions are not to be taken into consideration in determining any section 7.11 contribution relating to a Development Application.

### **5 CONTRIBUTIONS AND ACKNOWLEDGEMENTS**

#### **5.1 Developer to provide Contributions**

The Developer undertakes at its cost and risk, to provide to the Council, the Developer Contributions in accordance with Schedule 4 and otherwise in accordance with this Agreement.

#### **5.2 Council to provide Contributions**

The Council will provide the Council Contributions in accordance with Schedule 5 and otherwise in accordance with this Agreement.

#### **5.3 Dedication of Land**

- (a) A contribution comprising the dedication of land is made for the purposes of this Agreement when a deposited plan is registered in the register of plans held with the Registrar-General that dedicates the land the subject of the East-West Road Works and the land the subject of the Fern Creek Road Works as a public road under the *Roads Act 1993* (NSW).
- (b) The Developer must not dedicate any land for the purposes of this Agreement until:

- (i) the Developer has received confirmation in writing from the Council's Representative that the Council is satisfied the Developer Contributions have been carried out in accordance with clause 5.5(a) of this Agreement; and
- (ii) a Subdivision Certificate has been issued.

#### **5.4 Council acknowledgments**

- (a) The Council acknowledges that the land dedicated to the Council under this Agreement is free of all encumbrances and affectations except for:
  - (i) the encumbrances identified in Schedule 8;
  - (ii) any sewer, drainage, electricity, gas, telecommunication or other services or facilities as otherwise agreed in writing by the Council; and
  - (iii) any other encumbrances reasonably agreed in writing between the Parties.
- (b) Despite any other provision in this Agreement, after the land is dedicated to the Council in accordance with clause 5.3, the Council accepts ownership, possession and control of that land and of any Developer Contributions carried out on that land.

#### **5.5 Developer and Council Contributions**

- (a) Without limiting any other provision of this Agreement, any Developer and Council Contributions that are required to be carried out by the Developer and/or the Council under this Agreement are to be carried out in accordance with any reasonable design or specification specified by the consent authority for the development and in accordance with any relevant Approval and any other applicable Law.
- (b) Developer Contributions required to be carried out by the Developer under this Agreement are completed for the purposes of this Agreement when they have been completed in accordance with clause 5.5(a) and a Subdivision Certificate for residential development of the Developer Land has been issued.
- (c) Council Contributions required to be carried out by Council under this Agreement are completed for the purposes of this Agreement when they have been completed in accordance with clause 5.5(a) and a Subdivision Certificate for residential development of the Developer Land has been issued.

### **6 REGISTRATION & ENFORCEMENT**

Within 30 days of the execution of this Agreement, the Developer will at its cost procure the registration of this Agreement in accordance with section 93H of the *Real Property Act 1900* (NSW) in the relevant folios of the register for the Land.

### **7 RELEASE**

#### **7.1 Release and discharge of Agreement by Council**

The Council must promptly do all things reasonably required by the Developer to release and discharge this Agreement from the title to the Land (such that the Agreement is no longer

registered by the Registrar-General under section 93H of the Act in relation to the Land) when requested by the Developer, upon the Council's Representative being satisfied, acting reasonably, that the Developer has provided all Developer Contributions under this Agreement.

## **8 DISPUTE RESOLUTION**

### **8.1 Dispute Resolution – mediation**

- (a) This clause applies to any Dispute arising in connection with this Agreement.
- (b) Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- (c) If a notice is given under clause 8.1(b), the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- (d) If the Dispute is not resolved within a further 28 days, the Parties are to mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and are to request the President of the Law Society to select a mediator.
- (e) If the Dispute is not resolved by mediation within a further 28 days, or such longer period as may be necessary to allow any mediation process which has been commenced to be completed, then the Parties may exercise their legal rights in relation to the Dispute, including by the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.
- (f) Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.
- (g) The Parties are to share equally the costs of the President, the mediator, and the mediation.

### **8.2 Not use information**

The Parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement under this clause 8 is to attempt to settle the Dispute. No party may use any information or documents obtained through any dispute resolution process undertaken under this clause 8 for any purpose other than in an attempt to settle the Dispute, except to the extent that such information or documents are otherwise publicly available or came into the possession of a Party other than during the dispute resolution process.

### **8.3 No prejudice**

This clause 8 does not prejudice the right of a Party to institute court proceedings for urgent injunctive or declaratory relief in relation to any matter arising out of or relating to this Agreement.

## **9 TERMINATION**

This Agreement ends on the first to occur of the following:

- (a) the Agreement is terminated by operation of law;



- (b) all the obligations on the Parties under this agreement are performed or satisfied by the Parties;
- (c) the Parties agree in writing that the development of the Developer Land will not proceed and any relevant development consent for the Developer Land is surrendered to Council;
- (d) any relevant development consent relating to the Developer Land lapses within the meaning of section 95 of the Act.

## 10 GST

### 10.1 Construction

In this clause 10:

- (a) unless there is a contrary indication, words and expressions which are not defined in this document but which have a defined meaning in the GST Law have the same meaning as in the GST Law;
- (b) GST Law has the same meaning given to that expression in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) or, if that Act does not exist for any reason, means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act; and
- (c) references to GST payable and input tax credit entitlements include:
  - (i) notional GST payable by, and notional input tax credit entitlements of the Commonwealth, a State or a Territory (including a government, government body, government corporation, authority, agency or instrumentality of the Commonwealth, a State or a Territory); and
  - (ii) GST payable by, and the input tax credit entitlements of, the representative member of a GST group of which the entity is a member

### 10.2 Consideration GST exclusive

- (a) Unless otherwise expressly stated, all consideration, whether monetary or non-monetary, payable or to be provided under or in connection with this document is exclusive of GST (**GST exclusive consideration**).

### 10.3 Application of Divisions 81 and 82

Without limiting the application of clauses 10.4 to 10.10 the Parties intend to apply Division 81 and Division 82 of the GST Law to supplies made under or in connection with this document to the extent permitted by law.

### 10.4 Payment of GST

If GST is payable on any supply made by:

- (a) a party; or

- (b) an entity that is taken under GST Law to make the supply by reason of the capacity in which a Party acts,

(**Supplier**) under or in connection with this document, the recipient of the supply, or the Party providing the consideration for the supply, must pay to the Supplier an amount equal to the GST payable on the supply.

#### 10.5 Timing of GST payment

The amount referred to in clause 10.4 must be paid in addition to the GST exclusive consideration at the same time and in the same manner (without any set-off or deduction) that the GST exclusive consideration for the supply is payable or to be provided.

#### 10.6 Tax Invoice

The Supplier must deliver a tax invoice or an adjustment note to the recipient of a taxable supply before the Supplier is entitled to a payment under clause 10.4.

#### 10.7 Adjustment event

If an adjustment event arises in respect of a supply made by a Supplier under or in connection with this document, any amount that is payable under clause 10.4 will be calculated or recalculated to reflect the adjustment event and a payment will be made by the recipient to the Supplier or by the Supplier to the recipient as the case requires.

#### 10.8 Reimbursements

- (a) Where a Party is required under or in connection with this document to pay for, reimburse or contribute to any expense, loss, liability or outgoing suffered or incurred by another Party or indemnify another Party in relation to such an expense, loss, liability or outgoing (**Reimbursable Expense**), the amount required to be paid, reimbursed or contributed by the first Party will be reduced by the amount of any input tax credits to which the other Party is entitled in respect of the Reimbursable Expense.
- (b) This clause 10.8 does not limit the application of clause 10.4, if appropriate, to the Reimbursable Expense as reduced in accordance with clause 10.8(a).

#### 10.9 No merger

This clause 10 will not merge on completion or termination of this Agreement.

### 11 ASSIGNMENT AND NOVATION

#### 11.1 Consent

No Party may assign the rights or benefits of this Agreement to any person except in accordance with clause 11.2 and 11.3 or otherwise with the consent of the other Party.

#### 11.2 Developers' rights to transfer Land

- (a) Subject to 11.2(b), the Developer must not sell or transfer to another person the whole or part of any part of the Land on which this Agreement remains registered under section 93H of the Act.

- (b) Notwithstanding clause 11.2(a), the Developer may sell or transfer the whole or any part of the Land (as the case may be) to a transferee if prior to the proposed sale or transfer the Developer satisfies the Council that it has received an acknowledgement from the transferee of its obligation to comply with this Agreement.
- (c) The Developers will pay the Council's reasonable costs and expenses incurred under this clause 11.2.

**11.3 Transfer of land between Developer and Related Bodies Corporate**

- (a) The provisions of clause 11.2 do not apply where a Developer transfers any part of the Land it owns to any of its Related Bodies Corporate.
- (b) The Related Body Corporate receiving the transfer under clause 11.3(a) must notify the Council in writing within 20 Business Days of the transfer indicating that the transfer has occurred and identifying that the Land, or any part thereof, has been transferred.

**12 CAPACITY**

**12.1 General warranties**

Each Party warrants to the other Party that this Agreement creates legal, valid and binding obligations, enforceable against the relevant Party in accordance with its terms.

**12.2 Power of attorney**

If an attorney executes this Agreement on behalf of any Party, the attorney declares that it has no notice of the revocation of that power of attorney.

**13 GENERAL PROVISIONS**

**13.1 Entire Agreement**

This Agreement constitutes the entire agreement between the Parties regarding the matters set out in it and supersedes any prior representations, understandings or arrangements made between all the Parties, whether orally or in writing.

**13.2 Variation**

This Agreement must not be varied except by a later written document executed by all Parties.

**13.3 Waiver**

A right 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 does not constitute a waiver of that right, nor will 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.

**13.4 Further assurances**

Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests that are necessary or desirable to give full effect to the arrangements contained in this Agreement.

**13.5 Time for doing acts**

(a) If:

- (i) the time for doing any act or thing required to be done; or
- (ii) 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 pm on the specified day, it is taken to have been done on the following Business Day.

**13.6 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.

**13.7 Severance**

If any clause or part of any clause is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or where possible, the offending part) is to be severed from this Agreement without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.

**13.8 Compliance with Laws**

If a Law is changed or a new Law comes into force (both referred to as "**New Law**") and the Developers are obliged by the New Law to do something or pay an amount for a purpose which it is already contractually obliged to do or pay under this Agreement then, to the extent only that the relevant obligation is required under both the New Law and this Agreement, compliance with this Agreement will constitute compliance with the New Law and compliance with the New Law will constitute compliance with this Agreement.

**13.9 Requirements under section 7.4 of the Act**

The Parties acknowledge and agree that the table in Schedule 1 provides for certain terms, conditions and procedures for the purpose of the Agreement complying with the Act.

**13.10 Preservation of existing rights**

The expiration or termination of this Agreement does not affect any right that has accrued to a Party before the expiration or termination date.



**13.11 No merger**

Any right or obligation of any Party that is expressed to operate or have effect on or after the completion, expiration or termination of this Agreement for any reason, will not merge on the occurrence of that event but will remain in full force and effect.

**13.12 Counterparts**

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

**13.13 Relationship of Parties**

Unless otherwise stated:

- (a) nothing in this Agreement creates a joint venture, partnership, or the relationship of principal and agent, or employee and employer between the Parties; and
- (b) no Party has the authority to bind any other Party by any representation, declaration or admission, or to make any contract or commitment on behalf of any other Party or to pledge any other Party's credit.

**13.14 No fetter**

Nothing in this Agreement shall be construed as requiring the Council to do anything that would cause the Council to breach any of the Council's or the Committee's obligations at law and without limitation, nothing in this Agreement shall be construed as limiting or fettering in any way the discretion of the Council in exercising any of the Council's or the Committee's statutory functions, powers, authorities or duties.

**13.15 Explanatory note**

The Parties agree that the Explanatory Note must not be used to assist in construing this Agreement.

**13.16 Expenses**

- (a) The Developers must pay their own and the Council's reasonable legal costs and disbursements in connection with the negotiation, preparation and execution of this Agreement.
- (b) The Developers must pay for all reasonable costs and expenses associated with the giving of public notice of this Agreement and the Explanatory Note in accordance with the Regulation.

**13.17 Notices**

- (a) Any notice, demand, consent, approval, request or other communication (**Notice**) to be given under this Agreement must be in writing and must be given to the recipient at its Address for Service by being:
  - (i) hand delivered; or

- (ii) sent by facsimile transmission; or
  - (iii) sent by prepaid ordinary mail within Australia.
- (b) A Notice is given if:
  - (i) hand delivered, on the date of delivery;
  - (ii) sent by facsimile transmission during any Business Day, on the date that the sending Party's facsimile machine records that the facsimile has been successfully transmitted; or
  - (iii) sent by prepaid ordinary mail within Australia, on the date that is 2 Business Days after the date of posting.
- (c) If a Party gives the other Party 10 Business Days' notice of a change of its postal address, 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.
- (d) 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.
- (e) The Developer appoints the Developer's Representative as its agent, for the sole purpose of giving and receiving notices under this Agreement, in accordance with the instructions of the Developer. However, any notices or communications from the Developer override those from the Developer's Representative if they are inconsistent.

Executed as an Agreement

Executed as an agreement on behalf of Northern Beaches Council by its ~~General Manager~~ pursuant to section 683 of the Local Government Act 1993 in the presence of:

CHIEF EXECUTIVE OFFICER

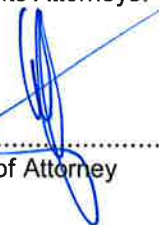
X Elisabeth Reeves  
Signature of witness

X   
Signature of General Manager  
CHIEF EXECUTIVE OFFICER

X Elizabeth Reeves  
725 Pittwater Road  
(Print) Full Name DEERBY NSW 2099

RAYMOND BROWNLEE  
(Print) Full Name

Executed as an agreement under power of attorney for NSW by Frasers Property AHL Limited by its Attorneys:

X   
Signature of Attorney

X   
Signature of witness

Nigel Edgar

(Print) Full Name

Tania Vitellaro

(Print) Full Name

Pursuant to Power of Attorney registered [insert] and we declare that we have no notice of the revocation of the said Power of Attorney

Book 4754 No 741

Complete POA details

## SCHEDULE 1

Table 1 – Requirements under section 7.4 of the Act (clause 3)

The Parties acknowledge and agree that the table set out below provides for certain terms, conditions and procedures for the purpose of the Agreement complying with the Act.

REQUIREMENT UNDER THE ACT	THIS AGREEMENT
<p><b>Planning instrument and/or development application – (section 7.4(1))</b></p> <p>The Developer has:</p> <p>(a) sought a change to an environmental planning instrument.</p> <p>(b) made, or proposes to make, a Development Application.</p> <p>(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.</p>	<p>(a) Yes</p> <p>(b) No</p> <p>(c) Yes</p>
<p><b>Description of land to which this Agreement applies – (section 7.4(3)(a))</b></p>	<p>The whole of the Land</p>
<p><b>Description of change to the environmental planning instrument to which this Agreement applies and/or the development to which this Agreement applies – (section 7.4(3)(b))</b></p>	<p>Planning Proposal to create Central Local Park</p>
<p><b>The nature and extent, timing and manner of delivery of contribution required by this Agreement – (section 7.4(3)(c))</b></p>	<p>See Schedule 4 and 5</p>
<p><b>Applicability of sections 7.11 and 7.12 of the Act – (section 7.4(3)(d))</b></p>	<p>The application of section 7.11 and 7.12 of the Act are not excluded in respect of this Agreement.</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 this Agreement.</p>
<p><b>Consideration of benefits under this Agreement if section 7.11 applies – (section 7.4(5))</b></p>	<p>Developer Contributions under this Agreement are not to be taken into consideration.</p>
<p><b>Mechanism for Dispute Resolution – (section 7.4(3)(f))</b></p>	<p>See clause 8</p>
<p><b>Enforcement of this Agreement – (section 7.4(3)(g))</b></p>	<p>See clause 6</p>

<b>No obligation to grant consent or exercise functions – (section 7.4(9))</b>	See clause 13.14
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Table 2 – Other matters

<b>REQUIREMENT UNDER THE ACT OR REGULATION</b>	<b>THIS AGREEMENT</b>
<b>Registration of the Agreement – (section 7.6 of the Act)</b>	Yes (see clause 6)
<b>Whether the Agreement specifies that certain requirements of the agreement must be complied with before a Construction Certificate is issued – (clause 25E(2)(g) of the Regulation)</b>	No
<b>Whether the Agreement specifies that certain requirements of the agreement must be complied with before an Occupation Certificate is issued – (clause 25E(2)(g) of the Regulation)</b>	No
<b>Whether the Agreement specifies that certain requirements of the agreement must be complied with before a subdivision certificate is issued – (clause 25E(2)(g) of the Regulation)</b>	Yes

**SCHEDULE 2**

**Address for Service (clause 2.1)**

**COUNCIL**

**NORTHERN BEACHES COUNCIL (ABN 57 284 295 198)**

**Contact:** Chief Executive Officer

**Address:** 725 Pittwater Rd, Dee Why, New South Wales, 2099

**Facsimile No:** (02) 9970 1200

**Council Representative:**

**DEVELOPER**

**FRASERS PROPERTY AHL LIMITED (ABN 12 008 443 696)**

**Contact:** Company Secretary

**Address:** 1 Homebush Bay Drive,  
Building C, Level 3, Rhodes, New South Wales, 2138

**Facsimile No:** 02 9767 2900

**SCHEDULE 3****Land (clause 2.1)**

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	<b>Deposited Plan</b>
<b>Item</b>	<b>Address</b>	<b>Lot Number</b>	
1	9 Fern Creek Road	5	736961
2	11 Fern Creek Road	11	1092788
3	12 Fern Creek Road	12	1092788
4	13 Fern Creek Road	13	1092788

**SCHEDULE 4****Developer Contributions (clause 5)****1. Contributions**

The Developer agrees to provide the Developer Contributions in accordance with this Schedule in the manner set out in the table below:

	<b>Column 1</b>	<b>Column 2</b>
<b>Item</b>	<b>Contributions</b>	<b>Delivery Event and Timing</b>
1	<b>Fern Creek Road Works</b>	Construction of an extension of Fern Creek Road, including new on-street parking, street trees and footpath (but excluding parking bays on the reserve side) and dedication of land to the Council by the Developer at no cost to the Council in accordance with clause 2 of this Schedule 4 prior to the issue of any Subdivision Certificate for residential development of the Developer Land.
2	<b>East-West Road Works</b>	Construction of a new east-west road connecting Fern Creek Road with the eastern half of Sector 9, including new on-street parking, street trees and footpath (but excluding parking bays on the reserve side) and dedication of land to the Council by the Developer at no cost to the Council in accordance with clause 3 of this Schedule 4 prior to the issue of any Subdivision Certificate for residential development of the Developer Land.
3	<b>Stormwater Infrastructure Embellishment Works – Developer</b>	Construction of the section of stormwater infrastructure that is required to be located within the Fern Creek Road Works at no cost to the Council in accordance with clause 4 of this Schedule 4 prior to the issue of any Subdivision Certificate for residential development of the Developer Land.
4	<b>Monetary contribution to undergrounding power lines</b>	Contribution of 50% of the total cost to Council of undergrounding the high voltage power lines that run along the current boundary at 9 and 12 Fern Creek Road to be undertaken prior to the issue of any Subdivision Certificate for residential development of the Developer Land.

**2. Fern Creek Road Works**

The Developer must (at its cost):

- (a) carry out the Fern Creek Road Works in a good and workmanlike manner and otherwise in accordance with the provisions of this Agreement and generally in



accordance with the locations shown on the Plan by the time specified in column 2 of the table in clause 1 of this Schedule 4. The works should comply with the requirements of a 'Local Street' under the Warriewood Valley Roads Masterplan and the Warriewood Valley Landscape Masterplan; and

- (b) dedicate and transfer to the Council the land shown on the Plan as being set aside for the extension of Fern Creek Road.

### **3. East-West Road Works**

The Developer must (at its cost):

- (a) carry out the East-West Road Works in a good and workmanlike manner and otherwise in accordance with the provisions of this Agreement and generally in accordance with the locations shown in the Plan by the time specified in column 2 of the table in clause 1 of this Schedule 4. The works should comply with the requirements of a 'Local Street' under the Warriewood Valley Roads Masterplan and the Warriewood Valley Landscape Masterplan; and
- (b) dedicate and transfer to the Council the land shown in the Plan as being set aside for the East-West Road.

### **4. Stormwater Infrastructure Embellishment Works – Developer**

- (a) The Developer must (at its cost) carry out the Stormwater Infrastructure Embellishment Works – Developer in a good and workmanlike manner and otherwise in accordance with the provisions of this Agreement and generally in accordance with the location shown on the Plan by the time specified in column 2 of the table in clause 1 of this Schedule 4.

### **5. Undergrounding power lines**

- (a) The Developer must provide the Council with a 50% contribution toward the total cost of undergrounding the high voltage power lines that run along the current boundary at 9 and 12 Fern Creek Road. The Developer's contribution must be paid within 5 business days of a receipt of a valid tax invoice from Council .

**SCHEDULE 5****Council Contributions (clause 5)****1. Contributions**

The Council agrees to provide the contributions in accordance with this Schedule and in the manner set out in the table below:

	<b>Column 1</b>	<b>Column 2</b>
<b>Item</b>	<b>Contribution</b>	<b>Delivery Event and Timing</b>
1	Stormwater Infrastructure Embellishment Works – Council	Construction of the section of stormwater infrastructure that is between the Fern Creek Road Works (as constructed by the Developer) and Fern Creek in accordance with clause 2 of this Schedule 5 prior to the issue of any Subdivision Certificate for residential development of the Developer Land.
2	Undergrounding power lines	Completion of works to underground the high voltage power lines that run along the current boundary at 9 and 12 Fern Creek Road prior to the issue of any Subdivision Certificate for residential development of the Developer Land.

**2. Stormwater Infrastructure Embellishment Works – Council**

- (a) The Council must (at its cost) complete the Stormwater Infrastructure Embellishment Works – Council in a good and workmanlike manner and otherwise in accordance with the provisions of this Agreement and generally in accordance with the location and details shown on the Plan by the time specified in column 2 of the table in clause 1 of this Schedule 5.

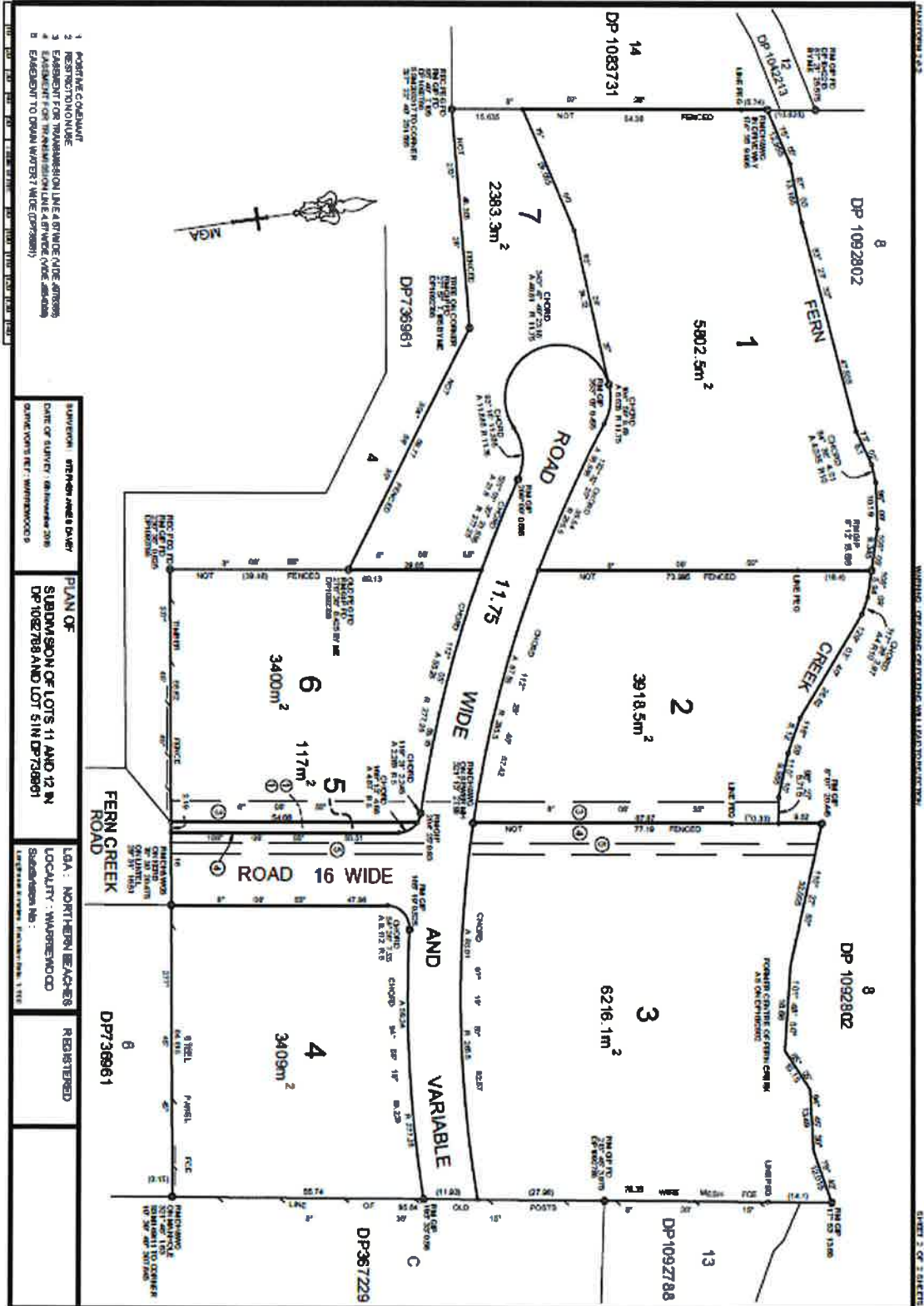
**3. Undergrounding power lines**

- (a) The Council must complete works to underground the high voltage power lines that run along the current boundary at 9 and 12 Fern Creek Road prior to the issue of any Subdivision Certificate for residential development of the Developer Land.

SCHEDULE 6

Plan showing the location and details of the relevant Contributions

Exempt Development Subdivision Plan



- 1 POSTAL CODE
- 2 RESTRICTION NUMBER
- 3 EASEMENT FOR TRANSMISSION LINE 4 SERVICE WIDE (METERS)
- 4 EASEMENT FOR TRANSMISSION LINE 4 SERVICE WIDE (METERS)
- 5 EASEMENT TO DRAIN WATERS (METERS)

SUBDIVISION: STRATHMORE DAIRY  
 DATE OF SURVEY: 08 November 2016  
 QUANTITIES REF: METERS/FEET

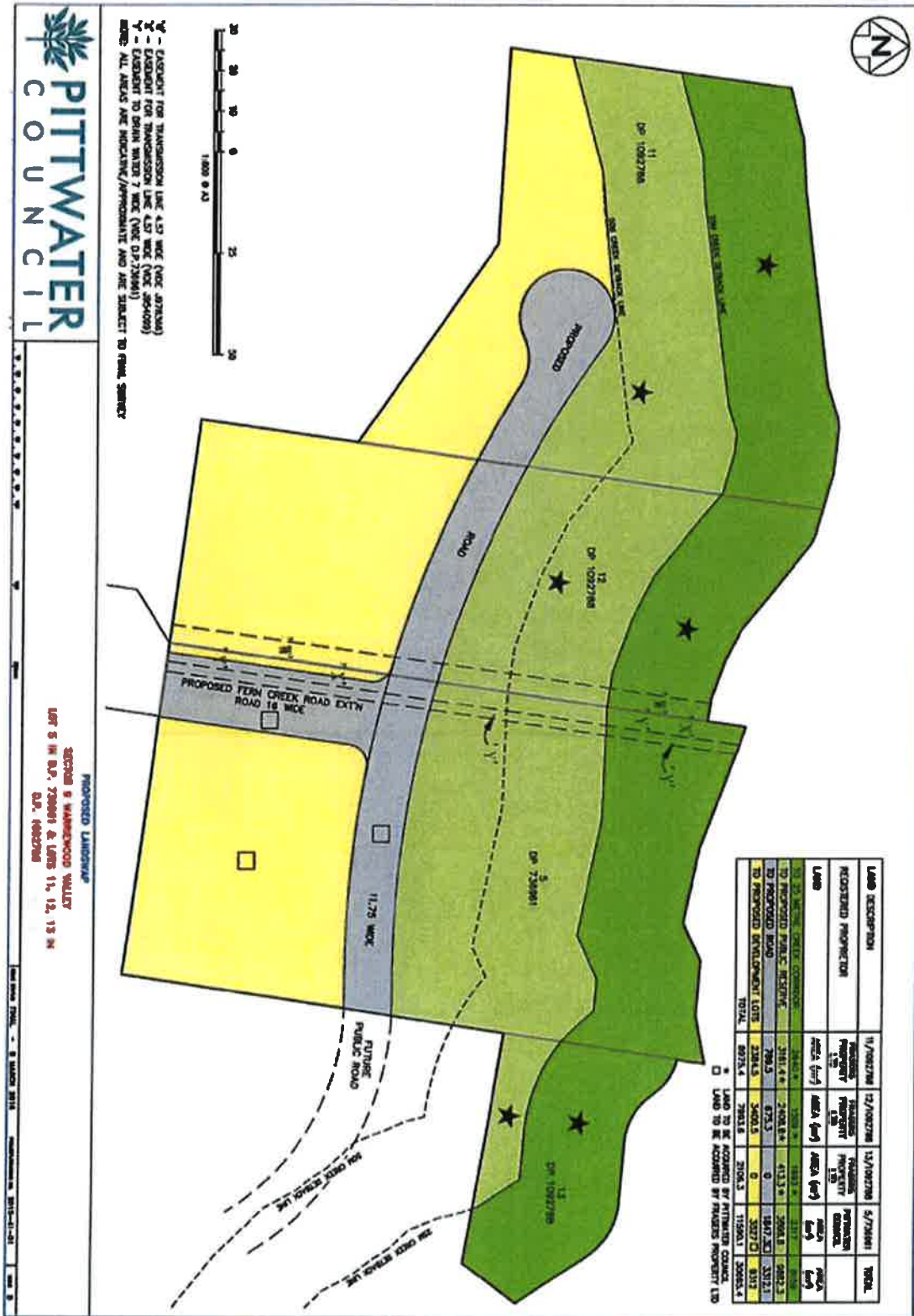
PLAN OF  
 SUBDIVISION OF LOTS 11 AND 12 IN  
 DP 1082788 AND LOT 5 IN DP 738861

L.S.A.: NORTHERN BEACHES  
 LOCALITY: MARGRENOID  
 SUBDIVISION NO.:

REGISTERED

SCHEDULE 7

Proposed Landswap Plan 2015-41-01 Issue A prepared by the Council showing Sector 9 Warriewood Valley



**SCHEDULE 8**  
**Encumbrances**

**1. Lot 11 DP 1092788**

**1.1 1 notification**

As at the date of this Agreement, the title search for the above property indicates 1 notification in Schedule 2, being:

- (a) Reservations and conditions in the Crown Grant(s)

**2. Lot 12 DP 1092788**

**2.1 2 notifications**

As at the date of this Agreement, the title search for the above property indicates 2 notifications in Schedule 2, being:

- (a) Reservations and conditions in the Crown Grant(s)
- (b) J978366 Easement for transmission line 4.75 metres wide affecting the parts shown so burdened in the title diagram.

**Lot 13 DP 1092788**

**2.2 1 notification**

As at the date of this Agreement, the title search for the above property indicates 1 notification in Schedule 2, being:

- (a) Reservations and conditions in the Crown Grant(s)

## EXPLANATORY NOTE

Proposed Draft Planning Agreement: Land Swap between Northern Beaches Council and Frasers Property to provide for the southern portion of Central Local Park.

### Introduction

The purpose of this Explanatory Note is to provide a plain English summary to support the notification of a draft Planning Agreement (the “**Planning Agreement**”) under Section 7.4 of the *Environmental Planning & Assessment Act 1979* (the “**EPA Act**”) prepared in connection the attached Development Application.

Frasers Property Australia (the “**Developer**”) and Northern Beaches Council (the “**Council**”) have entered into an agreement to exchange parcels of land and provide for roadworks, drainage and undergrounding of the electricity lines. The Developer will give land on the southern side of Fern Creek to Council for the creation of the southern section of Central Local Park and the Council will give land to the Developer at the southern section of their property Lot 5 , DP 736961 – 9 Fern Creek Road, Warriewood to the south of the proposed new road, for the construction of housing.

*This explanatory note has been prepared jointly between the parties as required by Clause 25E of the Environmental Planning & Assessment Regulation 2000.*

### 1 Parties

Northern Beaches Council (the “**Council**”)  
Frasers Property Australia (the “**Developer**”)

### 2 Description of subject land

The land to which this Planning Agreement applies is described as follows:

Lot 5, DP 736961 – 9 Fern Creek Road, Warriewood  
Lot 11, DP 1092788 – 11 Fern Creek Road Warriewood  
Lot 12, DP 1092788 – 12 Fern Creek Road, Warriewood  
Lot 13, DP 1092788 – 13 Fern Creek Road Warriewood

### 3 Description of changes to environmental planning instrument/development application

This Voluntary Planning Agreement should be read in conjunction with the changes have been made to Pittwater LEP 2014, following gazettal of Planning Proposal PP0002/16, which occurred on 20 April 2018 :

*Zoning Changes – Pittwater LEP 2014*

The land along Fern Creek at Lot 5, DP 736961, Lot 11, DP 1092788 & Lot 12, DP 1092788 (9, 11 and 12 Fern Creek Road) has been changed from being zoned entirely R3 Medium Density Residential to being zoned partially R3 Medium Density Residential and partially RE1 Public Recreation.

Lot 13, DP 1092788 (13 Fern Creek Road) has been rezoned in its entirety from R3 Medium Density Residential to RE1 Public Recreation.

#### *Amendments to Pittwater LEP 2014*

Amendments to Land Zoning Map Sheet LZN\_012 – Rezone the northern portion of the subject sites between the proposed extension to Fern Creek Road and Fern Creek RE1.

Amendment to Height of Buildings Map Sheet HOB\_012 – Amendment of the maximum height of buildings to 8.5 metres for the land rezoned RE1 Public Recreation and 10.5 metres for the R3 zoned portion of 9 Fern Creek Road.

Part 6, Clause 6.1(3) amended to replace wording  
“Sectors 901C & 901G Not more than 28 dwellings or less than 23 dwellings” and “9 Fern Creek Road – No dwellings”

with

“Sectors 901C, 901G and 9 Fern Creek Road – Not more than 52 dwellings”.

#### **4 Summary of objectives, nature and effect of the proposed draft Planning Agreement**

Adopted by the then Pittwater Council on 15 December 2014. The S.94 Contributions Plan has identified the subject land as forming the southern section of Central Local Park and providing passive open space for residents.

The land swap will allow for a one (1) hectare parcel of land (exclusive of the creekline corridor) adjacent to Fern Creek to be developed as the southern portion of the existing Central Local Park (Rocket Park) on the northern side of Fern Creek. It is Council's intention that the park will be generally linear in shape, will be joined to the northern sector of park by a footbridge over Fern Creek and will provide passive recreation opportunities along with picnic tables, bbqs and shelters.

Benefit can also be seen in the transfer of Council owned land that is more suitable for development to Frasers Property so that this land can be developed for housing in an economic and orderly manner in accordance with the provisions of the *Warriewood Valley Strategic Review* and *Warriewood Valley Strategic Review Addendum Report*.

#### **5 Timing of delivery of the public community benefit.**

**Note: Information is to be provided on the timing of delivery of the proposed benefits in relation to the issuing of construction, occupation or subdivision certificates.**

Once this Voluntary Planning Agreement has been signed and the land parcels transferred to their new owners, Council can commence work on the Southern section of Central Local Park. These works will include the piping of stormwater from the road. Money has been allocated in the 2018/2019 budget for these works. This Voluntary Planning Agreement requires the Developer to:

- (a) construct an extension of Fern Creek Road and new east-west road connecting Fern Creek Road with the eastern half of Sector 9 of the Release Area,
- (b) the provision of associated stormwater infrastructure
- (c) 50% contribution towards the cost of undergrounding high voltage power lines that run along the current boundary at 9 and 12 Fern Creek Road.

All works will require the necessary approvals to be obtained prior to any works being completed.

**6 The assessment of the merits of the proposed draft Planning Agreement will be assessed against:**

**a) The planning purposes served by the proposed draft Planning Agreement**

In accordance with Section 7.4(2) of the EPA Act 1979, this planning agreement proposed the following public purpose;

- *The provision of (or the recoupment of the cost of providing) public amenities or public services.*

The parties have assessed this Planning Agreement and state that the provisions of this Planning Agreement, being the swapping of land between the parties to promote the orderly and economic development of the land for its best and highest use, provide a reasonable means of achieving the public purpose. In particular, this Planning Agreement helps achieve the public open space requirements of the *Warriewood Valley S.94 Contributions Plan* for the provision of public open space in Warriewood Valley and the housing requirements of the *Warriewood Valley Strategic Review* and *Warriewood Valley Strategic Review Addendum Report*.

**b) How the proposed draft Planning Agreement promotes the objects of the Environmental Planning and Assessment Act 1979**

In accordance with the EPA Act 1979, this Planning Agreement promotes its intent to encourage

*(ii) the promotion and coordination of the orderly and economic use and development of the Land; and*

*(v) the provision and co-ordination of community services and facilities;*

The Planning Agreement achieves these objectives by transferring land better suited to open space to Council and land better suited to residential development to the Developer.

**c) How the proposed draft Planning Agreement promotes the Public Interest**

This Planning Agreement's intent is to promote the Public Interest through the swapping of Council owned land not ideally suited in shape or location for public open space with Developer owned land that is better located and suited for this purpose. This has been achieved without Council spending additional money on land purchase.



This ensures that public open space is located in an accessible area and is of sufficient size to provide long term enjoyment and a variety of recreational opportunities for local residents into the future.

The provision of housing in an orderly and economic fashion in accordance with the requirements of the *Warriewood Valley Strategic Review*, *Warriewood Valley Strategic Review Addendum Report* and *A Plan for Growing Sydney* is another public benefit of the Planning Agreement.

**d) How the proposed draft Planning Agreement promotes the elements of Council's charter under Section 8 of the Local Government Act 1993**

This Planning Agreement promotes the following elements of the Council's Charter:

- to properly manage, develop, protect, restore, enhance and conserve 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
- to have regard to the long term and cumulative effects of its decisions
- to bear in mind that it is the custodian and trustee of public assets and to effectively plan for, account for and manage the assets for which it is responsible
- to engage in long-term strategic planning on behalf of the local community
- to exercise its functions in a manner that is consistent with and promotes social justice principles of equity, access, participation and rights

The Planning Agreement promotes the above elements of the Council's Charter by providing appropriately located and sized public open space to benefit current and future residents of Warriewood and surrounding areas while ensuring that adequate land for residential development purposes is maintained.

**e) Whether the proposed draft Planning Agreement conforms with Council's capital works program**

The Planning Agreement confirms with Council's capital works program as money for the completion of the southern section of Central Local Park has been allocated in the 2018/2019 capital works budget.

**f) The impact of the proposed draft Planning Agreement on the public or any section of the public**

The Planning Agreement will have a positive impact on members of the public through the provision of well designed, high quality public open space which is linked by a series of pedestrian routes and cycleways to other public open space and facilities in the Warriewood locality.

**State whether the agreement, amendment or revocation specifies that certain requirements of the agreement must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued.**

There are no requirements which need to be met prior to the release of construction certificate, occupation certificate or subdivision certificate.

Signed and Dated by All Parties