

**DRAFT VOLUNTARY PLANNING AGREEMENT BETWEEN THE
NORTHERN BEACHES COUNCIL AND LONDON LAKES P/L
FOR THE CONSTRUCTION OF 10 PUBLIC CARPARKING
SPACES ON THE EASTERN SIDE OF ROAD RESERVE
BETWEEN LOT 7006 DP 1117451 AND LOT 7005 DP 1117451
WITHIN GOVERNOR PHILLIP PARK PALM BEACH**

PARTIES

The Northern Beaches Council 725 Pittwater Road, Dee Why, New South Wales
(Council)

And

London Lakes P/L Suite 2, Level 8, 333 George Street, Sydney NSW 2000
(Developer)

BACKGROUND

- A. On, XXX, the Developer made a Development Application to Council for Development Consent to carry out the Development on the Land.
- B. That Development Application was accompanied by an offer by the Developer to enter into this Agreement to construct 10 public carparking spaces if that Development consent was granted.



EXISTING UNPAVED/INFORMAL CARPARKING AREA TO BE REPLACED UNDER VPA

OPERATIVE PROVISIONS

1. Planning agreement under the Act

The Parties agree that this Agreement is a planning agreement governed by Subdivision 2 of Division 7.1 of Part 7 of the *Environmental Planning and Assessment Act 1979 (EP&A Act)* (The Act).

2. Application of this Agreement

Eastern side of Road Reserve between Lot 7006 DP 1117451 and Lot 7005 DP 1117451 as shown on **CANVAS ARCHITECTURE AND DESIGN DRAWING – SITE AND GROUND PLAN DA04 DATED 30/01/2021**.

3. Operation of this Agreement

This agreement takes effect when the consent authority issues Development Consent for the Demolition and Reconstruction of the Boathouse Café and ancillary works in, and adjacent to, Governor Phillip Park, Palm Beach.

4. Definitions and interpretation

4.1 In this Agreement the following definitions apply:

Act means the *Environmental Planning and Assessment Act 1979*.

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

Development means Demolition and Reconstruction of the Boathouse Café and ancillary works at in and adjacent to Governor Phillip Park Palm Beach.

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, the dedication of land free of cost or the provision of a material public benefit to be used for or applied towards a public purpose.

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 Eastern side of Road Reserve between Lot 7006 DP 1117451 and Lot 7005 DP 1117451.

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

Public Facilities means 10 Public Carparking spaces as illustrated in **CANVAS ARCHITECTURE AND DESIGN DRAWING – SITE AND GROUND PLAN DA04 DATED 30/01/2021**.

Regulation means the Environmental Planning and Assessment Regulation 2000.

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

SCHEDULE 1 – REFERENCE SCHEDULE

Specify the development contributions to be made under the agreement; when they are to be made; and the manner in which they are to be made.

Item	Name	Description
1	Advanced Payments	- Nil
2	Contributions	- Nil
3	Dedicated Land	- Nil
4	Public Benefits	- 10 Public Carparking spaces as illustrated in CANVAS ARCHITECTURE AND DESIGN DRAWING – SITE AND GROUND PLAN DA04 DATED 30/01/2021.

6. Application of the development contributions

SCHEDULE 2 – DEVELOPER'S WORK

Specify the times at which, the manner in which and the public purposes for which development contributions are to be applied.

Item of Work – Construction of 10 Public Carparking Spaces

Development Stage - Prior to final Occupation Certificate

Relevant Drawing Numbers - *SITE AND GROUND PLAN DA04*.

7. Application of section 7.11 and section 7.12 of the Act to the development

SCHEDULE 3 – PUBLIC BENEFITS

Public Benefits encompass the provision of an additional 10 Public Carparking Spaces for the use of visitors to the Governor Phillip Park.

8. Registration of this Agreement

Not required to be registered.

9. Review of this Agreement

Not required to be registered.

10. Dispute resolution

10.1 Notice of Dispute

If a party claims that a dispute has arisen under this Agreement (Claimant), it must give written notice to the other party (Respondent) stating the matters in dispute and designating as its representative a person to negotiate the dispute (Claim Notice). No party may start court proceedings (except for proceedings seeking interlocutory relief) in respect of a dispute unless it has first complied with this clause 10.

10.2 Response to Notice

Within ten (10) business days of receiving the Claim Notice, the Respondent must notify the Claimant of its representative to negotiate the dispute.

10.3 Negotiation

The nominated representative must:

- a) meet to discuss the matter in good faith within five (5) business days after service by the Respondent of notice of its representative;
- b) use reasonable endeavours to settle or resolve the dispute within 15 business days after they have met.

10.4 Further Notice if Not Settled

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

10.5 Mediation

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

- a) the parties must agree to the terms of reference of the mediation within five (5) business days of the receipt of the Dispute Notice (the terms shall include a requirement that the mediation rules of the Institute of Arbitrators and Mediators Australia (NSW Chapter) apply);
- b) the Mediator will be agreed between the parties, or failing agreement within five (5) business days of receipt of the Dispute Notice, either party may request the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter) to appoint a mediator;
- c) the Mediator appointed pursuant to this clause 10.5 must:
 - i. have reasonable qualifications and practical experience in the area of the dispute; and
 - ii. have no interest or duty which conflicts or may conflict with his function as mediator, he being required to fully disclose any such interest or duty before his appointment;
- d) the Mediator shall be required to undertake to keep confidential all matters coming to his knowledge by reason of his appointment and performance of his duties;
- e) the parties must within five (5) business days of receipt of the Dispute Notice notify each other of their representatives who will be involved in the mediation;
- f) the parties agree to be bound by a mediation settlement and may only initiate judicial proceedings in respect of a dispute which is the subject of a mediation settlement for the purpose of enforcing that mediation settlement;
- g) in relation to costs and expenses:
 - i. each party will bear their own professional and expert costs incurred in connection with the mediation; and
 - ii. the costs of the Mediator will be shared equally by the parties unless the Mediator determines a party has engaged in vexatious or unconscionable behaviour in which case the Mediator may require the full costs of the mediation to be borne by that party.

10.6 Expert Determination

If the dispute is not resolved under clause 10.3 or 10.5, the dispute may, by agreement between the parties, both acting reasonably having regard to the nature of the dispute, be resolved by expert determination, in which event:

- a) The dispute must be determined by an independent expert in the relevant field:
 - i. (a) agreed upon and appointed jointly by Council and the Developer; or

- ii. (b) in the event that no agreement is reached or appointment made within 30 business days, appointed on application of a party by the then current President of the Law Society of New South Wales;
- b) (2) the expert must be appointed in writing and the terms of appointment must not be inconsistent with this clause;
- c) (3) the determination of the dispute by such expert will be made as an expert and not as an arbitrator and will be in writing and contain the reasons for the determination;
- d) (4) the expert will determine the rules for the conduct of the process but must conduct the process in accordance with the rules of natural justice;
- e) (5) each party will bear its own costs in connection with the process and the determination by the expert together with an equal proportion of the expert's fees and costs; and
- f) (6) any determination made by an expert pursuant to this clause is final and binding upon the parties except where the determination is in respect of, or relates to, termination or purported termination of this agreement by any party, in which event the expert is deemed to be giving a non-binding appraisal and any party may commence litigation in relation to the dispute if it has not been resolved within 20 business days of the expert giving his or her decision.

10.7 Litigation

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

10.8 Continue to perform obligations

Each party must continue to perform its obligations under this Agreement, notwithstanding the existence of a dispute.

11. Enforcement

11.1 Nothing in this Agreement prevents Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Agreement (including the breach of this Agreement by the Developer) or any matter to which this Agreement relates.

11.2 Until such time as the proposed works in the public domain have been commenced, the Developer must:

- a) Notify Council in writing of the name and contact details of any Certifying Authority to which it has applied for a Construction Certificate at the same time that such application is made;
- b) At the time it lodges any application for a construction certificate notify the Certifying Authority in writing of the existence and terms of this Agreement;

c) Procure and provide to Council a written acknowledgement from the Certifying Authority addressed to Council confirming that the Certifying Authority will not issue a Construction Certificate until Council provides written confirmation that the VPA is acceptable.

12. Notices

12.1 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: CEO, Northern Beaches Council Address: PO Box 82 Manly, NSW, 1655
Fax Number: 02 9971 4522

Email: council@northernbeaches.nsw.gov.au

Developer

Attention: Lance Doyle

Address:

Fax Number:

Email: Lance@Doyleconsulting.com.au

12.2 If a Party gives the other Party three (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.

12.3 Any notice, consent, information, application or request is to be treated as given or made at the following time: If it is delivered, when it is left at the relevant address.

- a) If it is sent by post, two (2) business days after it is posted.
- b) 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.

12.4 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.

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.

13. Assignment and dealings

Until the proposed works, the subject of this agreement are completed, the final Occupation Certificate is not to be issued by the Certifying Authority.

14. Costs

Council's costs of and incidental to the preparation and execution of this Agreement and any related documents and registration of same shall be borne by the Developer.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

24. GST

Not applicable, works in kind only.

Execution

Dated:

Executed as an Agreement:

Proposed Draft Planning Agreement

Under Section 7.4 of the Environmental Planning and Assessment Act 1979

1. Parties

Northern Beaches Council (Planning Authority)

London Lakes P/L (Developer)

2. Description of subject land

Eastern side of Road Reserve between Lot 7006 DP 1117451 and Lot 7005 DP 1117451.

3. Description of proposed change to environmental planning instrument/development application

No changes are proposed.

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

The objectives of the VPA are to provide a total of 10 Public Carparking spaces in conjunction with the development of the Boathouse Café, Palm Beach in a manner that will improve the environmental performance of the area, substantially reduce councils expenditure and maintaining an unpaved informal area and will improve the usability of the area by providing a more pedestrian friendly surface, particularly during and after rainfall events.

5. Timing of delivery of the public community benefit

Prior to issue of final Occupation Certificate for proposal.

6. Other Matters

Nil

Signed and dated by all Parties



SUBJECT CARPARK, NOTE WATER RETENTION AND SEDIMENT ON ROADWAY

Attachment C – Potential Public Benefits

The proposed construction of the 10 Public Car parking spaces will be carried out in order to achieve a material public benefit by replacing the existing unpaved and informal car parking spaces illustrated in the photographs following with a paved and formally marked out car parking area for the use of public, including residents and visitors to Governor Phillip Park and the numerous attractions therein.

Currently, the subject car parking spaces are severely impacted by adverse weather conditions due to the unpaved nature of the surface and lack of suitable gradient to drain the area which results in significant water retention in puddles throughout the area rendering the area unsuitable for pedestrians, drivers and passengers of vehicles endeavouring to park within this area.

The proposal, the subject of this Voluntary Planning Agreement will enable the paved and marked car parking area to be used in a safe manner throughout all weather conditions resulting in a year-long public benefit which will supplant the limited useability of the current car parking area.

This benefit is demonstrable both visually and environmentally as it will prevent the off-site migration of sediment and dust due to the currently unpaved nature of the area and will improve safety by providing a hard paved area for pedestrians and occupiers of vehicles parked within the area.

The works will be carried out prior to the completion of works on the proposed development and at no cost to Council.

The final Occupation Certificate for the works, the subject of this Development Application will not be issued until such time as Council provide written confirmation that the proposed works to the car parking area have been carried out in accordance with the plans, specifications and terms of the subject Voluntary Planning Agreement.

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