

**HEADS OF AGREEMENT TO ENTER INTO A VOLUNTARY PLANNING
AGREEMENT**

**9 GLOUCESTER ROAD AND 420-430 FOREST ROAD HURSTVILLE
PLANNING PROPOSAL**

Georges River Council (Council)

GTB Hurstville Pty Ltd (Developer)

Parties	<p>Georges River Council (Council) ABN 57 789 014 855</p> <p>GTB Hurstville Pty Ltd (Developer) ABN 76 600 247 345</p>
Background	<p>The Developer owns the Land.</p> <p>The Developer has lodged a Planning Proposal with the Council seeking to increase density and height of buildings on the Land for a mixed use redevelopment project.</p> <p>The Developer offers to enter into a planning agreement (the Agreement) with Council to make Development Contributions on the terms set out in this Heads of Agreement pursuant to s7.7(3) of the Act.</p>
Planning agreement under the Act	<p>The Agreement will be a planning agreement within the meaning of section 7.4 of the Act.</p>
Application of the Agreement	<p>The Agreement will apply to:</p> <ul style="list-style-type: none"> • the Land; • the commencement of the LEP Amendment, and • the Development.
Operation of the Agreement	<p>The Agreement will commence from the date the Agreement is fully executed by the parties.</p> <p>The obligation to provide Development Contributions operate on and from the date the LEP Amendment commences operation.</p>
Development Contributions	<p>The Developer agrees to make the following Development Contribution as set out in this Agreement:</p> <ul style="list-style-type: none"> • Monetary contribution for public facilities including public infrastructure amenities and services. This also includes the provision of key traffic and road infrastructure in the Hurstville City Centre
Agreed Estimated Value of Contributions	<p>The agreed estimated total amount of monetary contributions equate to \$3,619,308.00. The estimated total amount is based on a residual land value rates of \$1,073 per square metre of additional residential gross floor area and \$349 per square metre of additional non-residential gross floor area proposed under the Planning Proposal, as provided in the Hill PDA Assessment of Value Uplift report dated 12 April 2018, supporting Development Feasibility documentation and email dated 29 May 2018 in accordance with cl 5.13 - 5.15 of the Land Value Capture provision in Council's Policy of Planning Agreements. The total amount of monetary contributions to be paid is to be recalculated at the time of payment of the monetary contribution based on the actual additional residential gross floor area and non-residential gross floor area made permissible by the LEP Amendment.</p>
Monetary Contribution	<p>The Developer is to make payment to Council of a monetary contribution in the amount of \$3,619,308.00 to be used to Council's discretion for public works, including any public facilities, public domain and public road infrastructure.</p> <p>Immediately before the monetary contributions are required to be paid, the parties are to recalculate the amount of monetary contributions based on the above residual land value rates as provided in the Hill PDA Assessment of Value Uplift dated 12 April 2018 (as indexed) for the actual additional residential and non-residential gross floor area allowed in the amended LEP in accordance with cl5.13 - 5.15 and the land value capture formula in</p>

Council's Policy on Planning Agreements (2016). The residual land value rates are subject to indexation from the date the planning agreement is fully executed to the date of payment in the same way that monetary contributions are indexed under the Council's *Hurstville Section 94 Development Contributions Plan 2012 (Amendment No. 2)*.

Application of sections 7.11, 7.12 and 7.24 of the Act

The Agreement does **not** exclude the application of sections 7.11, 7.12 and 7.24 of the Act to the Development.

The benefits under the Agreement are not to be taken into consideration when determining a development contribution under s7.11 of the Act in relation to the Development.

Negotiation of Agreement

The parties agree to work together in good faith and to use to their reasonable endeavors to negotiate and reach agreement on the terms of the Agreement in accordance with this Heads of Agreement, prior to the Planning Proposal being publicly notified in accordance with any relevant Gateway determination issued by the Minister for Planning and to enter into the Agreement before the LEP Amendment commences.

Registration of the Agreement

Prior to the Council executing the Agreement, the Developer is to provide the Council with all documents in registrable form and all consents to registration necessary to enable the Council to register the Agreement under section 7.6 of the Act, and to produce the certificate of title for the Land to the Land Registry Services for the purposes of registering the Agreement.

Caveat

The Developer grants to the Council a fixed and specific charge over the Developer's right, title and interest in the Land, to secure the performance of the Developer's obligation to make Development Contributions under the Agreement, and any damages that may be payable to the Council, or any costs which may be incurred by the Council in the event of a breach of the Agreement by the Developer

The Council may lodge a caveat on the title of the Land or any part of it to which the charge applies and on which the Agreement is not registered. The Council is to release the charge and withdraw the caveat from the title to any lot on the earlier of the registration of the Agreement on that lot and the satisfaction by the Developer of its obligations under the Agreement to make Development Contributions in respect of the creation of the lot.

Review of the Agreement

The Agreement can be reviewed periodically and if either party is of the opinion that a change of circumstance has occurred, or is imminent, that materially affects the operation of the Agreement. Any amendments to the Agreement as a result of a review will need to be agreed in writing between the parties acting reasonably and in good faith.

Amendment

The Agreement can be amended in writing agreed between the parties.

Dispute Resolution

The Agreement is to allow for 2 dispute resolution methods, expert determination for matters which can be determined by an appropriately qualified expert and mediation for other matters.

Enforcement

The Agreement may be enforced by either party in any court of competent jurisdiction.

Assignments and Dealings

The Developer must not sell or transfer the Land or assign or novate the Agreement unless and until it enters into a tripartite assignment or novation deed with the purchaser/transferee/assignee/novatee and the Council in respect of the Agreement and:

1. the Council, acting reasonably and promptly (ie within 30 days), is satisfied that the purchaser/transferee/assignee/novatee is reasonably capable of performing the obligations under the

- Agreement, and
2. the Developer is not in breach of the Agreement.

Timing of Development Contributions and Payments and Security

Timing of Development Contributions

The monetary contribution is to be paid to Council within 28 days after the commencement of the LEP Amendment.

Security

A bank guarantee is to be provided to the Council at the time the VPA is executed for the full amount of the monetary contributions.

Costs

In accordance with Council's Policy on Planning Agreements the Developer shall make provision for payment of Council's reasonable costs of negotiating, preparing, and executing the Agreement, as well as costs for monitoring, enforcing and administering the Agreement.

Status of Heads of Agreement

The parties agree that the terms of this Heads of Agreement:

- constitute an irrevocable offer by the Developer, pursuant to s7.7(3) of the Act, to enter into Agreement on the terms set out in this Heads of Agreement, and
- are binding on the parties to the extent that they constitute an irrevocable offer by the Developer pursuant to s7.7(3) of the Act.

The Developer does not object to the Council imposing a condition of development consent in respect of the Development requiring an Agreement on the terms set out in this Heads of Agreement to be entered into and complied with.

Other Provisions

This Heads of Agreement contains the key commercial terms of a planning agreement to be entered into between the parties.

Nothing prevents the parties from requiring further terms to be included in the planning agreement which are consequential, incidental or supplemental to the terms in this Heads of Agreement.

Assignment of this Heads of Agreement or sale of Land

The Developer is not to assign its rights or obligations under this Heads of Agreement or novate this Heads of Agreement, or sell or transfer the Land or any part to any person unless and until it enters into a tripartite assignment or novation deed with the purchaser/transferee/assignee/novatee and the Council in respect of this Heads of Agreement, and the Council, acting reasonably and promptly (ie within 30 days), consents to the sale/transfer/assignment/novation.

Entire agreement

This Heads of Agreement contains everything to which the Council and the Developer 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 Heads of Agreement was executed, except as permitted by law.

Defined terms

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

Council means Georges River Council.

Developer is GTB Hurstville Pty Ltd.

Development means development on the Land the subject of a Development Consent that could only be granted as a result of the LEP Amendment.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

Development Contributions has the same meaning as in Council's Policy

on Planning Agreements, which became effective on 10 August 2016.

Land means the land at 9 Gloucester Road and 420-430 Forest Road Hurstville, described as Lot 30 in Deposited Plan 785238, and any lot created as a result of subdivision of that lot.

LEP means *Hurstville Local Environmental Plan 2012*.

LEP Amendment means an amendment to the LEP as made by the local plan-making authority under s3.36(2) of the Act in respect of the Planning Proposal.

Planning Proposal means the planning proposal, within the meaning of Section 3.33 of the Act with reference number PP2015/0005 (prepared by Dowling Urban Pty Ltd with supporting documents) that proposes amendments to the LEP to:

- Increase the maximum floor space ratio for the Land from 3:1 to 4.0:1 (including a minimum non-residential floor space ratio of 0.5:1); and
- Increase the maximum building height on the Land from 23m to a range of heights of 23m, 30m, 40m, 55m and 60m,

received by Council 30 May 2018 and considered by Council on 27 August 2018 pursuant to which a gateway determination was issued under s3.34 of the Act and as amended in May 2019 and as revised from time to time pursuant to s3.35 of the Act.

Dated:

Executed on behalf of the Council

General Manager

Witness

Mayor

Witness

Executed by GTB Hurstville Pty Ltd in accordance with s127(1) of the Corporations Act (Cth) 2001



Kun Deng

Sole Director and Sole Company Secretary