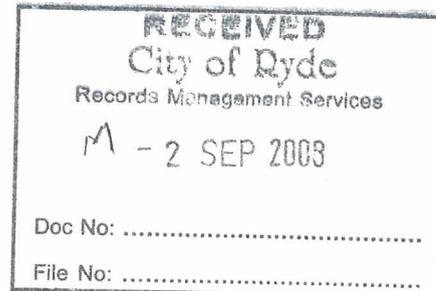




**Billbergia**  
creating communities®

28 August 2008

Attention: Michael Whittaker  
City of Ryde  
1 Devlin Street  
RYDE NSW 2112



Dear Sir,

**Re: JK DEVELOPMENTS PTY LTD  
LDA 235/2008  
15-17 Angas Street, Meadowbank**

We refer to your letter dated 14.8.2008 enclosing Voluntary Planning Agreement (as executed by Council) in duplicate.

We herein return fully executed Voluntary Planning Agreement dated 18.8.2008. We note that we have retained one original of the executed Voluntary Planning Agreement.

We further refer to your letter dated 14.8.2008 and acknowledge your election for the Monetary Contribution pursuant to Clause 6.2(b) of the Voluntary Planning Agreement

If there is anything further we can assist with please do not hesitate to contact our Office.

Yours faithfully,  
**JK DEVELOPMENTS PTY LTD**

Per:

Office Level 2, 25 Angas Street, Meadowbank NSW 2114  
Correspondence Locked Bag 1400, Meadowbank NSW 2114  
Tel (02) 8878 6900 Fax (02) 8878 6995  
Email [info@billbergia.com.au](mailto:info@billbergia.com.au) Web [www.billbergia.com.au](http://www.billbergia.com.au)  
JK Developments Pty Limited ABN 15 637 856 301

# VOLUNTARY PLANNING AGREEMENT

## PARTIES

1. City of Ryde,  
2 Devlin Street, Ryde (**Council**); and
2. Waterpoint Shepherds Bay Pty Limited (ACN 064 428 226)  
5 Bay Drive, Meadowbank (**Owner**).

## BACKGROUND

- A. The Owner and Council previously entered into a Voluntary Planning Agreement on 5 December 2006 with respect to the approval of 16 additional apartments on the property now known as 11 & 13 Bay Drive, Meadowbank on the following basis:-
  - (i) the Voluntary Planning Agreement allowed for Council to elect to either accept a Development Contribution in the form of:-
    - (a) the Car Park Development Contribution being the transfer of a Stratum lot comprising approximately 2,600 square metres of car parking area; or
    - (b) the Monetary Contribution comprising a \$737,500.00 payment within 7 days of Construction Certificate and a further \$737,500.00 payment within 7 days of Occupation Certificate for the development.
  - (ii) Council by letter dated 11 December 2006 elected to accept the Monetary Contribution.
  - (iii) The Owner has paid to Council the total Monetary Contribution payment of \$1,475,000.00.
- B. The Owner and Council also previously entered into a Voluntary Planning Agreement dated 25 July 2007 with respect to a development on the Land on the following basis:-
  - (iv) the Voluntary Planning Agreement allowed for Council to elect to either accept a Development Contribution in the form of:-
    - (a) the Child Care Centre Contribution comprising the transfer of the Land and the construction of a structural cold shell for a child care centre; or

- (b) the Monetary Contribution comprising a \$1,000,000.00 payment within 14 days of Construction Certificate and a further \$1,000,000.00 payment within 7 days of Occupation Certificate for the development.
  - (v) Council by letter dated 23 July 2007 elected to accept the Monetary Contribution.
  - (vi) The Owner has already paid the initial Monetary Contribution payment of \$1,000,000.00. The balance of the Monetary Contribution is payable within 7 days of Occupation Certificate for the development.
- C. The Owner in addition to the two previous Voluntary Planning Agreements dated 5 December 2006 & 25 July 2007 now wishes to enter into another Voluntary Planning Agreement over the Land at 15-17 Angas Street, Meadowbank.
- D. On 10 April 2008, the Owner submitted the Development Application to the Council for Development Consent to carry out the Development on the Land.
- E. The Owner has agreed to enter into this Agreement to make a Development Contribution if the Development Consent is granted to the Development Application, in a manner which does not require any other or additional Development Contributions in connection with the development of the Land.
- F. Without limiting recital B, the parties have agreed the Owner has offered to make the Development Contribution contained in this Agreement on the following basis:
- (a) it is to be taken into consideration in determining a contribution or levy to be made under section 94, section 94A and section 94EF of the Act;
  - (b) it is intended to satisfy the Owner's obligations under the Act (and without limitation the Owner's obligations under sections 94, 94A and 94EF of the Act) to make a contribution or pay a levy;
  - (c) it is intended to satisfy the Owner's obligations under sections 94, 94A and 94EF of the Act to make a contribution (which the Owner has estimated to be \$432,000.00 in connection with the development of the Land) ; and

- (d) it is intended to satisfy the Owner's obligations under the Act to make a Development Contribution,

in respect of or in connection with the Development and subdivision activities of the Owner on the Land.

- G. The Owner notes that the following amounts have or will be paid to Council in the interests of Community Benefit pursuant to this Voluntary Planning Agreement and the Voluntary Planning Agreements previously executed between the parties dated 5 December 2006 & 25 July 2007:-

Owner Benefit (Apartments)	Owner Benefit (Levels)	Voluntary Planning Agreement (Community Benefit Contribution)	Actual Section 94 assessable
16 additional apartments on 11 & 13 Bay Dr	One level on both buildings	\$1,475,000	\$116,000
32 additional apartments	One full level & One half level	\$2,000,000	\$594,500
18 additional apartments	Two part levels	NIL (additional levels allowable pursuant to Draft DCP 2007)	\$194,400
22 additional apartments	One full level	\$1,200,000	\$237,600
<b>TOTAL</b>		<b>\$4,675,000</b>	<b>\$1,142,500</b>

## OPERATIVE PROVISIONS

### 1 Definitions

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In this Agreement, unless the contrary intention appears:

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

**Bowden Street Land** means the land identified as such in item 5 of Schedule 1.

**Construction Certificate** means the construction certificate under the Act in connection with the Owner Works.

**Dealing**, in relation to the Land, means selling, transferring, assigning, mortgaging, charging, encumbering or otherwise dealing with the Land.

**Development** means the works on the Land specified in Item 4 of Schedule 1 to be completed by the Owner in accordance with the Development Consent.

**Development Application** means development application numbered 235/2008 to carry out the Development on the Land and includes all documents, studies, reports, models, materials and samples submitted as part of that application.

**Development Consent** means the consent granted to the Development Application and includes any modification to that consent made under section 96 of the Act.

**Development Contribution** means payment of a monetary contribution, the dedication of land or the provision of a material public benefit (or any combination of them) to be used for or applied towards a public purpose in the manner contemplated by section 94F of the Act.

**Guarantee** means an unconditional bank guarantee, issued by a bank licensed to carry on business in Australia or other financial institution approved by the Council, that:

- (a) is in favour of the Council;
- (b) for the Guarantee Amount; and
- (c) on such terms and conditions the Council may approve from time to time.

**GST Act** means *A New Tax System (Goods & Services Tax) Act 1999*.

**GST** means the Goods & Services Tax payable under the GST Act and related Acts and regulations.

**Land** means the land identified in Item 3 of Schedule 1.

**Monetary Contribution** means the amount specified in Item 7 of Schedule 1.

**Occupation Certificate** means the Final Occupation Certificate issued under Part 4A of the Act for the Development.

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

**Public Benefit** means the public benefit described in Item 6 of Schedule 1 which is to be provided as a result of the Owner Works.

**Relevant Australian Standards** means the relevant Australian Standards for the nature of work as amended, supplemented or replaced from

time to time.

**Section 94 Contribution** means a contribution under or in accordance with section 94 of the Act.

## **2 Interpretation**

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In this Agreement, unless the contrary intention appears:

- (a) a word defined in the Act has the same meaning when used in this Agreement;
- (b) singular includes the plural and vice versa;
- (c) headings are for convenience only and do not affect interpretation;
- (d) 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;
- (e) 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;
- (f) a reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars;
- (g) 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;
- (h) 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;
- (i) 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; and
- (j) a reference to a drawing number or issue referred to in this Agreement and the Development Consent includes any subsequent issue or drawing number approved under a modification to the Development Consent or a further development application.

### **3 Planning Agreement under the Act**

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

### **4 Application of this Agreement**

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This Agreement applies to:

- (a) the Land and the Development on the Land; and
- (b) the transfer of the Bowden Street Land to the Council, at no cost to the Council, as contemplated by this Agreement.

### **5 Operation of this Agreement**

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This Agreement takes effect on the earlier of:

- (a) execution of this agreement; and
- (b) the date the Development Consent is granted for the Development.

### **6 Development Contribution to be made under this Agreement**

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#### **6.1 Development Contribution**

The parties acknowledge the Development Contribution contemplated by this Agreement is either (at the Council's election as provided by clause 6.2):-

- (a) the transfer to Council, at no cost to Council, of title to the Bowden Street Land.
  - (i) The parties agree that the transfer of the Land is subject to its classification as 'Operational Land'.
- (b) the Monetary Contribution.

#### **6.2 Election of the Development Contribution**

- (a) The Council's election of the Development Contribution must be made in the manner contemplated by this clause.
- (b) By written notice to the Owner no earlier than the date of issue of the Development Consent and no later than 7 days after the

date of issue of the Development Consent, the Council may elect whether it requires the Development Contribution by way of the Bowden Street Land (Development Contribution) or the Monetary Contribution.

- (c) If the Council makes no election within the 7 day period as contemplated by clause 6.2(b), at the election of the Owner the Development Contribution shall be either the Bowden Street Land (Development Contribution) or the Monetary Contribution. The Owner must advise the Council of its election within 21 days after issue of the Development Consent.

### **6.3 Bowden Street Land (Development Contribution)**

- (a) The parties agree the Bowden Street Land will be transferred to Council within twenty eight (28) days of the issue of the Final Occupation Certificate for the Development.
- (b) The parties acknowledge the Bowden Street Land (Development Contribution) provides the Public Benefit described in Item 6 of Schedule 1.
- (c) The Owner agrees that the Bowden Street Land will be fully remediated prior to being transferred to the Council.
- (d) The parties acknowledge that such remediation will be in accordance with the Remediation Action Plan issued at the time of the demolition of the structure located on the Bowden Street Land (pursuant to the Development Consent for Demolition issued by City of Ryde in 2006).

### **6.4 Monetary Contribution (Development Contribution)**

- (a) If the Development Contribution is the Monetary Contribution as determined by clause 6.2, then it must be made by the Owner within 7 days of issue of the Occupation Certificate for the Development or if there are several Occupation Certificates for the Development, then the Occupation Certificate which relates to or includes the additional floors to the Development (the subject of this Agreement).

## **7 Application of section 94, section 94A and section 94EF of the Act**

- (a) In respect of the Development Contribution the subject of this Agreement (which the parties agree will have, at the time of the transfer of the Bowden Street Land, an approximate value of \$1,000,000.00) , the Council and the Owner acknowledge and

agree the Owner has offered to make the Development Contribution on the following basis:

- (i) it is to be taken into consideration in determining a contribution or levy to be made under section 94, section 94A and section 94EF of the Act;
- (ii) it satisfies the Owner's obligations under the Act (and without limitation the Owner's obligations under sections 94, 94A and 94EF of the Act) to make a contribution or pay a levy;
- (iii) it satisfies the Owner's obligations under sections 94, 94A and 94 EF of the Act (which the Owner estimates to be \$432,000.00 in connection with the development of the Land) ; and
- (iv) it satisfies the Owner's obligations under the Act to make a Development Contribution,

in respect of or in connection with the Development on the Land, the development and subdivision activities of the Owner on the Bowden Street Land.

## **8 Registration of this Agreement**

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- (a) The Council and the Owner expressly agree this Agreement creates and vests in the Council an interest in the Bowden Street Land. The Owner must promptly:
  - (i) obtain such consents to the registration of this Agreement as are necessary to the registration of this Agreement pursuant to section 93H of the Act;
  - (ii) lodge the Agreement for registration with the Land & Property Information Office and take all steps to procure registration of the Agreement pursuant to section 93H of the Act;
  - (iii) produce to the Council within 35 days of execution of this Agreement details of lodgement of the Agreement with the Land & Property Information Office; and
  - (iv) following registration of the Agreement, notify the Council of registration by enclosing a title search of the Bowden Street Land confirming the registration.

## **9 Dispute Resolution**

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### **9.1 Process Open to Both**

If a dispute arises between the parties in relation to this Agreement, then either party may seek to resolve the dispute in accordance with this clause 9.

### **9.2 Notice of Dispute**

The party wishing to commence dispute resolution processes must notify the other in writing of:

- (a) the nature, or subject matter, of the dispute, including a summary of any efforts made to resolve other than by way of this clause 9;
- (b) the intent to invoke this clause 9;
- (c) (if practicable) the outcomes which the notifying party wishes to achieve; and
- (d) any material impact which the dispute has upon the completion of the Owner Works, (and in particular the Mandatory Elements) or the Development.

The contents of a notice issued under this clause 9 is deemed to be confidential. The party issuing the notice may (but is not obliged to) assert legal professional privilege in respect of the contents.

### **9.3 Chief Executive Officers of Parties to Meet**

The Chief Executive Officers of the parties must promptly (and in any event within 14 days of written notice) meet in good faith to attempt to resolve the notified dispute. The parties may, without limitation:

- (a) resolve that dispute during the course of that meeting;
- (b) agree that further material or consideration is needed to effectively resolve the dispute, (in which event the parties will in good faith agree a timetable for resolution);
- (c) agree that the parties are unlikely to resolve the dispute and in good faith agree a form of alternative dispute resolution (including expert determination, arbitration, or mediation) which is appropriate for resolution of the relevant dispute.

For the purposes of this clause 9.3, a principal of the Council may be the General Manager or such officer of the Council as is nominated by the General Manager for the purposes of the dispute.

#### 9.4 Neither Party May Constrain

If:

- (a) at least one meeting has been held in accordance with clause 0; and
- (b) the parties have been unable to reach an outcome identified in 0(a) to (c); and
- (c) either of the parties (acting in good faith) forms the view that dispute is reasonably unlikely to be resolved on 0,

then the party may, by 7 days' notice in writing to the other, terminate the dispute resolution process in respect of that dispute. The termination of the process set out in this clause 11 does not of itself amount to a breach of this Agreement.

#### 10 Notices

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- (a) 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:
  - (i) Delivered or posted to that Party at its address set out in Item 8 of Schedule 1.
  - (ii) Faxed to that Party at its fax number set out in Item 8 of Schedule 1.
- (b) 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 other Party if it is delivered, posted or faxed to the latest address or fax number.
- (c) Any notice, consent, information, application or request is to be treated as given or made at the following time:
  - (i) If it is delivered, when it is left at the relevant address.
  - (ii) If it is sent by post, 2 business days after it is posted.
  - (iii) 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.
- (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.

## **11 Approvals and consent**

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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**

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### **12.1 Dealings with Land**

The Owner must not have any Dealings with the Land unless the Owner first informs the proposed assignee, purchaser or other party (the **"Incoming Party"**) of this Agreement and provides the Incoming Party with a copy of this Agreement and transfers the relevant portion of the obligations of this Agreement to that party.

## **13 Costs**

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### **13.1 Legal and Administrative Costs**

The Owner must pay the costs incurred in the preparation and registration of this Agreement.

### **13.2 Stamp Duty**

The Council must pay any stamp duty:

- (a) on or relating to this Agreement: and
- (b) relating to the transfer of the Bowden Street Land to the Council.

## **14 Governing law and jurisdiction**

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This Agreement is governed by the law of New South Wales and the parties submit to the jurisdiction of the courts of that state.

## **15 No fetter**

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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.

## **16 Representations and warranties**

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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.

## **17 Severability**

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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.

## **18 Modification**

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No modification of this Agreement will be of any force or effect unless:

- (a) it is in writing and signed by the Parties to this Agreement; and
- (b) it is notified in accordance with the Act .

## **19 Waiver**

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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.

## **20 GST**

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- 20.1 The parties acknowledge that payment of the contributions under this Agreement are not consideration for the purposes of the GST Act

because they are exempt under the *A New Tax System (Goods & Services Tax) (Exempt Taxes, Fees and Charges) Determination 2006 No. 2*. (paragraph 19.45 *Developer Contributions*) pursuant to Section 81-5(2) of the GST Act.

- 20.2 Notwithstanding the acknowledgement in 20.1 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 is not priced to include GST, then the recipient of the supply must pay an additional amount equal to the GST on that supply.
- 20.3 It is an essential condition that if a Party is required to pay GST pursuant to Clause 20.2 a valid Tax Invoice noting the GST payable must be served prior to that Party being required to make the GST payment pursuant to Clause 20.2.
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**SCHEDULE 1  
REFERENCE SCHEDULE**

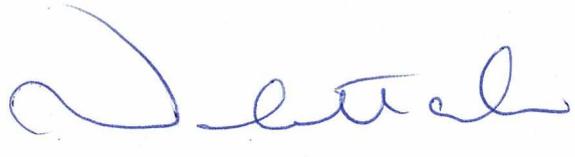
<b>Item</b>	<b>Name</b>	<b>Description</b>
1	Owner's name	Waterpoint Shepherds Bay Pty Limited ACN 064 428 226 Unit 101, 25 Angas Street Meadowbank NSW 2114
2	Owner's Representative	
3	Land	The land at 17-19 Angas Street, Meadowbank being the land in Auto-Consol 8026-23 and the land at 15 Angas Street being the land in lot 1 DP 943634.
4	Development	The construction of a six and seven storey mixed use building above a three level basement car park comprising: <ul style="list-style-type: none"> <li>(1) approximately 121 residential dwellings of various sizes;</li> <li>(2) landscaped courtyard;</li> <li>(3) associated basement parking and storage;</li> <li>(4) associated services; and</li> <li>(5) public domain works immediately adjacent to the building.</li> </ul>
5	Bowden Street Land	Lot 42 DP 659394.
6	Public Benefit	The benefit to the public of the Bowden Street Land being in the ownership of the Council thereby assisting the Council to satisfy the planning needs of the emerging residents, visitors and users in the area arising from redevelopment within the Meadowbank Employment Area. This benefit comprises one of a number of measures contemplated by the Council to provide amenities in connection with the development of the Meadowbank Area.
7	Monetary Contribution	One Million Dollars (\$1,000,000.00)
8	Notices <b>Council</b>	City of Ryde

Attention Address Fax Number	Michael Whittaker 1 Devlin Street, Ryde NSW 2112 9952 8070
<b>Owner</b> Attention Address Fax Number	Waterpoint Shepherds Bay Pty Limited  5 Bay Drive, Meadowbank 9808 5989

**EXECUTED** as a deed.

Dated: 18<sup>th</sup> day of AUGUST, 2008

City of Ryde by its duly appointed )  
attorney, Michael Whittaker, pursuant )  
to Power of Attorney registered )  
number 726 book 4523 in the )  
presence of: )



\_\_\_\_\_  
Attorney



Witness: Angela Steunke

Executed on behalf of Waterpoint )  
Shepherds Bay Pty Limited ACN 064 )  
428 226 by authority of its Board of )  
Directors in the presence of: )



Signature:

JOHN KINSELLA

Name:

DIRECTOR

Position:



Signature:

WILLIAM KINSELLA

Name:

DIRECTOR

Position: