

Voluntary Planning Agreement

Council of the City of Ryde

and

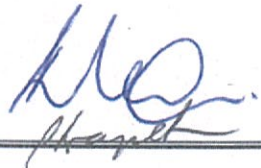
N & G Projects Pty Limited

CHURCH & GRACE

SOLICITORS AND ATTORNEYS

LEVEL 20, 1 CASTLEREAGH STREET
SYDNEY NSW 2000

TELEPHONE 61 2 9233 1155
FACSIMILE 61 2 9221 6771



Parties	<p>Council of the City of Ryde ABN 81 621 292 610 of 1 Devlin Street, Ryde, NSW (Council)</p> <p>N & G Projects Pty Limited ACN 137 858 578 of 1, 29 Holterman Street, Crows Nest, NSW (Developer)</p>
Background	
A.	The Developer has or will make the Development Application to the Council seeking Development Consent to carry out the Development on the Land.
B.	The Development Application will be accompanied by an offer by the Developer to enter into this Agreement to make the Contribution if Development Consent in respect of the Development Application was granted and the Development Consent activated.

Agreement

1. Definitions and interpretation

In this Agreement the following definitions apply:

- a. **Act** means the *Environmental Planning and Assessment Act 1979* (NSW).
- b. **Commencement Date** means the day that Development Consent is granted for the Development.
- c. **Contribution** means the sum of one hundred and fifty thousand dollars (\$150,000.00) subject to Council's quarterly CPI increase applied by City of Ryde Section 94 Plan.
- d. **Development** means the construction of a residential development as more particularly described in LDA 2011-611 and applying to the Land.
- e. **Development Application** means the Developer's application or applications, including subsequent applications (including applications for Section 96 Modifications) for, or that relate to, the Development.
- f. **Development Consent** means a development consent granted under the Act to the Development Application.

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- g. **GST** has the same meaning as the GST Law.
 - h. **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 GST.
 - i. **Land** means the land on which the Development will be undertaken being Lot A in DP401296 and Lot B in DP401296.
 - j. **Party** means a party to this Agreement, including their successors and assigns.
 - k. **Regulation** means the *Environmental Planning and Assessment Regulation 2000*.
 - l. **Section 96 Modification** means any modification pursuant to section 96 of the Act to the Development Consent granted in respect of the Development Application.
 - m. **Subdivision Certificate** means a subdivision certificate granted under the Act in respect of the Development.

1.1 Interpretations

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 government 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 refer 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.

2. Planning agreement under the Act

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

3. Application of this Agreement

- 3.1 This Agreement is made in respect of the Development Application and applies to the Land.

4. Commencement

- 4.1 This Agreement is effective on and from the Commencement Date.

5. Provision of the Contributions

- 5.1 The Developer will pay the Contribution prior to issuing of the Construction Certificate.

6. Application of s94 and s94A of the Act to the Development

- 6.1 This Agreement does not exclude the operation of Section 94 and 94A of the Act to any development Consent that is granted in respect of the Development Application.

7. Review of this Agreement

- 7.1 This Agreement may be varied or amended only by the express written approval of both parties and in compliance of the Act.

8. Dispute Resolution

8.1 Notice of a 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 8.

8.2 Response to Notice

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

8.3 Negotiation

The nominated representatives must:

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

8.4 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 8.5 or by expert determination under clause 8.6.

8.5 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 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 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;

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- c. the Mediator appointed pursuant to this clause 8.5 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 this duties;
 - e. the parties must within 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.

8.6 Expert Determination

If the dispute is not resolved under 8.3 or 8.5, 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) agreed upon and appointed jointly by the Council and the Developer; or
 - (ii) 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. the expert must be appointed in writing and the terms of appointment must not be inconsistent with this clause;
- c. 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. 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;

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- e. 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. 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.

8.7 Litigation

If the dispute is not finally resolved in accordance with this clause 8 either party is at liberty to litigate the dispute.

8.8 Continue to perform obligations

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

9. Termination

9.1 This Agreement terminates on the happening of any of the following events:

- a. the lapse of the Development Consent; or
- b. a declaration by a Court of competent jurisdiction that the Development consent is invalid.

10. Notices

10.1 Any notice, consent, information, application or request that must or may be given or made to a party under this Agreement is only given or made if it is in writing and sent in one of the following ways:

- a. Delivered or posted to that Party at its address set out below.
- b. Faxed to that Party at its fax number set out below.
- c. Emailed to that Party at its email address set out below.

Council

Attention: General Manager

Address: 1 Devlin Street, Ryde, NSW

Fax number: 9952 8070

Email: cityofryde@ryde.nsw.gov.au

Developer

N & G Projects Pty Limited

Attention: Mr John Goubran

Address: Unit 11, 43 College Street, Gladesville NSW 2011

Email: john@jg.com.au

- 10.2 Any notice, consent, information, application or request is to be treated as given or made at the following time:
- a. If it is delivered, when it is left at the relevant address.
 - b. If it is sent by post, 2 business days after it is posted.
 - c. If it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.
- 10.3 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

- 11.1 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

- 12.1 The Developer must not sell, transfer, assign or novate or similarly deal with (**Dealing**) its right, title or interest in the land (if any) or its rights or obligations under this Agreement unless, prior to any such sale, transfer, assignment, charge, encumbrance or novation, the Developer:
- a. gives the Council no less than 10 business days notice in writing of the proposed Dealing; and
 - b. procures that the transferee, assignee or novate executes and delivers to the Council prior to any such Dealing taking effect, a deed in favour of the Council in form and substance acceptable to the Council (acting reasonably) whereby:

- (i) the transferee, assignee or novate becomes contractually bound with the Council to perform all of the Developer's obligations (including obligations which may have arisen before the transfer, assignment or novation takes effect); and
- (ii) the Developer is released from any obligations under or by virtue of this Agreement which at the time of any proposed assignment or novation contemplated by this clause are required to be performed or satisfied by the Developer at any time from or after the date on which that assignment or novation takes effect under this Agreement.

13. Costs

- 13.1 Each party will bear their own costs of negotiating, preparing and executing this Agreement.

14. Entire Agreement

- 14.1 This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with. No party can rely on an earlier, document or anything said or done by another Party or by a director, officer agent or employee of that Party, before this agreement was executed, except as permitted by law.

15. Further acts

- 15.1 Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to affect, perfect or complete this Agreement and all transactions incidental to it.

16. Governing law and jurisdiction

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

17. Joint and individual liability and benefits

- 17.1 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 person is for the benefit of them jointly and each of them individually.

18. No fetter

- 18.1 Nothing in this Agreement shall be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

19. Representations and warranties

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

20. Severability

- 20.1 If a clause or part of a clause of this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement but the rest of this Agreement is not affected.

21. Modification

- 21.1 No modification of this Agreement will be of any force or effect unless it is in writing and signed by the Parties to this Agreement.

22. Waiver

- 22.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this agreement does not amount to a waiver of any obligation of, or breach of obligation by, another Party. A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given it is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

23. GST

- 23.1 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 was not priced to include GST, the recipient of the supply must pay an additional amount equal to the GST on that supply.
- 23.2 Where as a result of the operation of this clause the Council is required to pay GST to the Developer, the Developer shall not require the Council to remit such GST to the Developer until 7 days after receiving an input tax credit for that GST amount. On receipt

of a tax invoice from the Developer, the Council must apply for the input tax credit as soon as practicable.

24. Compliance with laws

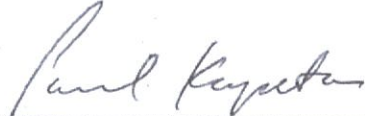
- 24.1 If a Law is changed or a new Law comes into force (both referred to as new Law) and the Developer is obliged by the New Law to do something or pay an amount which it is already contractually obliged to do or pay under this Agreement then, to the extent only that the relevant obligation is required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

25. Confidentiality

- 25.1 The parties agree that the terms of this planning agreement are not confidential and this planning agreement may be treated as a public document and exhibited or reported without restriction by any party.

Executed as an Agreement

SIGNED on behalf of the **Council of the City of Ryde** by Roy Newsome, Acting General Manager, under the Delegated Authority under Section 377 of the Local Government Act 1993



Signature of witness

PAUL KAPETAS

Full Name [PRINT]



ROY NEWSOME

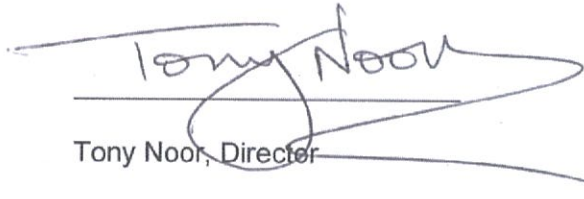
30/4/2014

Executed by N & G Projects Pty Limited

In accordance with section 127 of the *Corporations Act 2011* in the presence of:



John Goubran, Director



Tony Noor, Director