

# Offer to enter into a Voluntary Planning Agreement to provide Park Land

Pursuant to s.93F of the Environmental Planning and Assessment Act 1979 (Act)

## Applicant's Outline of Offer

### Background

1. This offer is made by the developer, Henroth Investments Pty Ltd, in connection with an application proposed to be made by the developer for a concept plan for a project.
2. The proposed project is the redevelopment of the former Kirrawee Brick Pit site at 566 – 594, Princes Highway, Kirrawee NSW. The proposal is for a mixed use development comprising residential, retail and commercial uses and building envelopes between 5 and 15 storeys, and basement car parking and landscape works.
3. The developer offers to enter into a voluntary planning agreement, where the parties to that agreement are the developer, the Minister for Planning (**Minister**), and Sutherland Shire Council (**Council**).

### Council's current obligations

4. A portion of the site, being approximately a 9000 sqm area at the south western corner of the site (**the Park Land**), is zoned 'Zone 13 Open Space' and is therefore reserved for open space purposes under the *Sutherland Shire Local Environmental Plan 2006*.
5. Pursuant to Sutherland Shire Council's *Section 94A Developer Contributions Plan (October 2007)* (**94A Plan**), Council is collecting development contributions from other approved development (within the area to which that contributions plan applies) for the purpose of applying those moneys towards the embellishment of the Park Land. The 94A plan identifies that \$96 per square metre (in 2006 dollars) is required in order to embellish and construct all improvements upon the Park Land, after its acquisition.
6. Under the *Shire Wide Open Space and Recreational Facilities Section 94 Contributions Plan 2005*, as at 30 June 2005, the developer understands that the Council had already collected approximately \$2.6M (in 2005 dollars) in development contributions for open space acquisition of three specific sites, including the Park Land.
7. In order to construct and embellish a public park on the Park Land as required under the 94A plan, Council will, after acquiring that land, also be required to fill and compact the Park Land, using its section 94A funds to do so..
8. The developer estimates that the compensation that the Council would be required to pay to the developer for the acquisition of the filled and compacted Park Land, pursuant to the *Land Acquisition (Just terms) Compensation Act 1991*, is approximately \$8 - 10M.

## **Developer's potential liability under s 94 and s 94A Contributions Plans**

9. Pursuant to Council's 94A Plan, the total developer contribution that the developer is required to pay to the Council, under Council's 94A Plan, in respect of the total proposed redevelopment of the Brick Pit Site, is approximately \$2.4M (being 1% of \$240M). This is the extent of the developer's legal liability for contribution toward the park, once the Council has acquired it from the developer.
10. Alternatively, the developer may be liable to pay developer contributions on the residential portion of the proposed development under the *Shire Wide Open Space and Recreational Facilities Section 94 Contributions Plan 2005* and the *Community Facilities in Sutherland Shire Contribution Plan 2003*, of approximately \$4M in total.
11. The developer's total liability for developer contributions is therefore either \$2.4M under the s 94A plan, or \$4M under the two application s 94 plans.

## **Developer's Offer**

12. The developer offers to dedicate the filled and compacted but unembellished Park Land to Council at no cost to Council. As part of the proposed development, the developer shall subdivide the Park Land from the remainder of the Site to facilitate its transfer to Council.
13. In the event that a commuter car park is constructed within the Park Land substratum (to be dedicated to RailCorp), the developer will subdivide the Park Land and will dedicate only the upper stratum to Council (ie. Council will not have ownership or responsibility for any part of the commuter car park).
14. If no commuter car park is constructed within the Park Land, the developer will fill the Park Land with VENM<sup>1</sup> to an RL of at least 94m and will dedicate all of the Park Land to Council.
15. The developer will also either:
  - a. construct and embellish the park to its complete design form, in accordance with any relevant planning approval; or
  - b. provide a monetary contribution of \$96 per square metre of the area of the park to the Council, for Council to apply within a reasonable time strictly towards the design and embellishment of the proposed park and all improvements upon the Park Land, including the design and construction of any water body within the Park Land.
16. In the case of 15(b) above, details of the preferred park design for the Park Land are to be the responsibility of the Council, not the developer. Council's design must comply with, as a minimum, the Concept Design Principles contained at annexure A.

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<sup>1</sup> Virgin Excavated Natural Material

17. In the case of 15(a) above, the developer agrees to consult with Council in the preparation of the final design for the Park Land. Council, as a party to the VPA and not as a consent authority, will not unreasonably withhold its approval of the design, provided it is generally in accordance with the Concept Design Principles contained at annexure A.
18. The voluntary planning agreement would exclude (wholly or in part) the application of section 94, 94A or 94EF to any future approvals for the development approved by the Concept Plan Approval.

### **Negotiation of details of VPA**

19. The Minister is to direct, pursuant to s. 93K of the Act, that the parties or their representatives are to meet on a not less than fortnightly basis for a maximum of 3 months, to negotiate the details of the agreement. If no agreement satisfactory to the developer, and consistent with the terms of this offer, can be reached within that 3 month period, this offer will be formally withdrawn by the developer.
20. If this offer is withdrawn in the circumstances identified at paragraph 19, the developer may, at its discretion either:
- a. construct the park itself, in which case an exemption or offset would sought from the development contributions which would otherwise be payable under s 94 or s 94A; or
  - b. pay the development contributions which would be payable under s 94 or s 94A.

Dated:

Signed (Director, Henroth Investments Pty Ltd)

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## **ANNEXURE A**

### **Concept Design Principles**