

# **Attachment C**

**Draft Voluntary Planning Agreement**

# Planning Agreement

The Council of the City of Sydney

And

Niall Gerald Dolan and Jane Bernadette Murphy

For 40 Princess Avenue, Rosebery NSW 2018

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**THIS PLANNING AGREEMENT** is made on

2020.

**BETWEEN:**

- (1) **The Council of the City of Sydney ABN 22 636 550 790** of Town Hall House, 456 Kent Street, SYDNEY NSW 2000 (the **City**); and
- (2) **Niall Gerald Dolan and Jane Bernadette Murphy** both of 40 Princess Avenue, ROSEBERY NSW 2018 (the **Developer**).

**BACKGROUND**

- (A) The Developer is the owner of the Land and intends to undertake the Development on the Land.
- (B) The Developer has offered to enter into this document with the City to provide the Public Benefits on the terms of this document.

**THE PARTIES AGREE AS FOLLOWS:**

1. **INTERPRETATION**

1.1 **Definitions**

The following definitions apply in this document.

**Act** means the *Environmental Planning and Assessment Act 1979* (NSW).

**Authorisation** means:

- (a) an approval, authorisation, consent, declaration, exemption, permit, licence, notarisation or waiver, however it is described, and including any condition attached to it; and
- (b) in relation to anything that could be prohibited or restricted by law if a Government Agency acts in any way within a specified period, the expiry of that period without that action being taken,

including any renewal or amendment.

**Business Day** means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Sydney, Australia.

**City's Representative** means the person named in Item 3 of Schedule 1 or his/her delegate.

**Corporations Act** means the *Corporations Act 2001* (Cth).

**Costs** means the amount stated in Item 7 of Schedule 1 (being the reasonable costs and expenses associated with the preparation and giving of public notice of this document and the explanatory note prepared in accordance with the Regulation and for any consent the City is required to provide under this document).

**Dealing** means selling, transferring, assigning, novating, mortgaging, charging, or encumbering and, where appearing, **Deal** has the same meaning.

**Developer's Representative** means the person named in Item 4 of Schedule 1 or his/her delegate.

**Development** means the development of the Land by the Developer described at Item 2 of Schedule 1.

**Development Application** means the development application identified in Item 5 of Schedule 1 and includes all plans, reports models, photomontages, material boards (as amended supplemented) submitted to the consent authority before the determination of that Development Application.

**Development Consent** means the consent granted to the Development Application for the Development and includes all modifications made under section 4.55 of the Act.

**Dispute** means any dispute or difference between the parties arising out of, relating to or in connection with this document, including any dispute or difference as to the formation, validity, existence or termination of this document.

**Environmental Laws** means all laws and legislation relating to environmental protection, building, planning, health, safety or work health and safety matters and includes the following:

- (a) the *Work Health and Safety Act 2011* (NSW);
- (b) the *Protection of the Environment Operations Act 1997* (NSW); and
- (c) the *Contaminated Land Management Act 1997* (NSW).

**Government Agency** means:

- (a) a government or government department or other body;
- (b) a governmental, semi-governmental or judicial person; or
- (c) a person (whether autonomous or not) who is charged with the administration of a law.

**Gross Floor Area** has the meaning given to that term in the *Sydney Local Environment Plan* in effect at the date of this document.

**GST** means the same as in the GST Act.

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

**Land** means the land described in Item 1 of Schedule 1 of this document.

**Laws** means all applicable laws, regulations, industry codes and standards, including all Environmental Laws.

**Monetary Contribution** means the amount specified in Item 6 of Schedule 1 that comprises the Public Benefits to be paid by the Developer to the City in accordance with this document.

**Personal Information** has the meaning set out in the *Privacy Act 1988* (Cth).

**Personnel** means the Developer's officers, employees, agents, contractors or subcontractors.

**Public Benefits** means the provision of benefits to the community by the Developer comprised of the Monetary Contribution.

**Regulation** means the *Environmental Planning and Assessment Regulation 2000* (NSW).

**Tax** means a tax, levy, duty, rate, charge, deduction or withholding, however it is described, that is imposed by law or by a Government Agency, together with any related interest, penalty, fine or other charge.

## 1.2 Rules for interpreting this document

Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
  - (i) a legislative provision or legislation (including subordinate legislation) is to that provision or legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
  - (ii) a document (including this document) or agreement, or a provision of a document (including this document) or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
  - (iii) a party to this document or to any other document or agreement includes a permitted substitute or a permitted assign of that party;
  - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
  - (v) anything (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural, and vice versa.
- (c) A word which suggests one gender includes the other genders.
- (d) If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.

- (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- (f) A reference to **including** means “including, without limitation”.
- (g) A reference to **dollars** or **\$** is to an amount in Australian currency.
- (h) A reference to **this document** includes the agreement recorded by this document.
- (i) Words defined in the GST Act have the same meaning in clauses about GST.
- (j) This document is not to be interpreted against the interests of a party merely because that party proposed this document or some provision in it or because that party relies on a provision of this document to protect itself.

## 2. **APPLICATION OF THE ACT AND THE REGULATION**

### 2.1 **Application of this document**

This document is a planning agreement within the meaning of section 7.4 of the Act and applies to:

- (a) the Land; and
- (b) the Development.

### 2.2 **Application of sections 7.11, 7.12 and 7.24 of the Act**

The application of sections 7.11, 7.12 and 7.24 of the Act are excluded to the extent set out in Schedule 2 to this document.

### 2.3 **City rights**

This document does not impose an obligation on the City to:

- (a) grant Development Consent for the Development; or
- (b) exercise any function under the Act in relation to a change to an environmental planning instrument, including the making or revocation of an environmental planning instrument.

### 2.4 **Explanatory note**

The explanatory note prepared in accordance with clause 25E of the Regulation must not be used to assist in construing this document.

## 3. **OPERATION OF THIS PLANNING AGREEMENT**

### 3.1 **Commencement**

This document will commence on the date of execution of this document by all parties to this document.



### 3.2 **Entire agreement**

- (a) This document contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this document and has no further effect.
- (b) Any right that a person may have under this document is in addition to, and does not replace or limit, any other right that the person may have.

## 4. **WARRANTIES**

### 4.1 **Mutual warranties**

Each party represents and warrants that:

- (a) **(power)** it has full legal capacity and power to enter into this document and to carry out the transactions that it contemplates; and
- (b) **(corporate authority)** it has taken all corporate action and holds each Authorisation that is necessary or desirable to authorise its entry into this document and to carry out the transactions contemplated.

## 5. **PUBLIC BENEFITS**

### 5.1 **Public Benefits to be made by Developer**

This clause 5 sets out the details of the:

- (a) Public Benefits to be delivered by the Developer;
- (b) time or times by which the Developer must deliver the Public Benefits; and
- (c) manner in which the Developer must deliver the Public Benefits.

### 5.2 **Developer to provide Public Benefits**

The Developer must, at its cost and risk, provide the Public Benefits to the City in accordance with this document.

### 5.3 **Payment of Monetary Contribution**

The Developer must pay the Monetary Contribution to the City on the date of this document in cash or by unendorsed bank cheque.

### 5.4 **Expenditure by the City**

- (a) The City will use the Monetary Contribution to achieve the public benefit of community infrastructure in Green Square.
- (b) The City is not required to separately account for the Monetary Contribution, report to the Developer regarding expenditure of the Monetary Contribution or comply with any request by the Developer to trace the Monetary Contribution.

## 5.5 **Enforcement**

The parties agree that a form of security is not required to be provided by the Developer in circumstances where the Monetary Contribution is payable on the date of execution of this document.

## 6. **REGISTRATION**

### 6.1 **Registration of this document**

The parties acknowledge and agree that this document is not required to be registered at the NSW Land Registry Services on the relevant folio for the Land in the Register.

## 7. **DISPUTE RESOLUTION**

### 7.1 **Application**

Any Dispute must be determined in accordance with the procedure in this clause 7.

### 7.2 **Negotiation**

- (a) If any Dispute arises, a party to the Dispute (**Referring Party**) may by giving written notice to the other party or parties to the Dispute (**Dispute Notice**) refer the Dispute to the Developer's Representative and the City's Representative for resolution.
- (b) The Dispute Notice must:
  - (i) state that it is given pursuant to this clause 7; and
  - (ii) include or be accompanied by reasonable particulars of the Dispute.
- (c) Within 10 Business Days of the Referring Party issuing the Dispute Notice (**Resolution Period**), the Developer's Representative and the City's Representative must meet at least once to attempt to resolve the Dispute.
- (d) The Developer's Representative and the City's Representative may meet more than once to resolve a Dispute.

### 7.3 **Condition precedent to litigation**

Subject to clause 7.4, a party must not commence legal proceedings in respect of a Dispute unless the Resolution Period has expired.

### 7.4 **Summary or urgent relief**

Nothing in this clause 7 will prevent a party from instituting proceedings to seek urgent injunctive, interlocutory or declaratory relief in respect of a Dispute.

## 8. TAXES

### 8.1 Responsibility for Taxes

- (a) The Developer is responsible for any and all Taxes and other like liabilities which may arise under any Commonwealth, State or Territory legislation (as amended from time to time) as a result of or in connection with this document or the Public Benefits.
- (b) The Developer must indemnify the City in relation to any claims, liabilities and costs (including penalties and interest) arising as a result of any Tax or other like liability for which the Developer is responsible under clause 8.1(a).

## 9. GST

### 9.1 GST free supply

To the extent that Divisions 81 and 82 of the GST Law apply to a supply made under this document:

- (a) no additional amount will be payable by a party on account of GST; and
- (b) no tax invoices will be exchanged between the parties.

### 9.2 Supply subject to GST

To the extent that clause 9.1 does not apply to a supply made under this document, this clause 9.2 will apply.

- (a) If one party (**Supplying Party**) makes a taxable supply and the consideration for that supply does not expressly include GST, the party that is liable to provide the consideration (**Receiving Party**) must also pay an amount (**GST Amount**) equal to the GST payable in respect of that supply.
- (b) Subject to first receiving a tax invoice or adjustment note as appropriate, the receiving party must pay the GST amount when it is liable to provide the consideration.
- (c) If one party must indemnify or reimburse another party (**Payee**) for any loss or expense incurred by the Payee, the required payment does not include any amount which the Payee (or an entity that is in the same GST group as the Payee) is entitled to claim as an input tax credit, but will be increased under clause 9.2(a) if the payment is consideration for a taxable supply.
- (d) If an adjustment event arises in respect of a taxable supply made by a Supplying Party, the GST Amount payable by the Receiving Party under clause 9.2(a) will be recalculated to reflect the adjustment event and a payment will be made by the Receiving Party to the Supplying Party, or by the Supplying Party to the Receiving Party, as the case requires.
- (e) The Developer will assume the City is not entitled to any input tax credit when calculating any amounts payable under this clause 9.2.

- (f) In this document:
  - (i) consideration includes non-monetary consideration, in respect of which the parties must agree on a market value, acting reasonably; and
  - (ii) in addition to the meaning given in the GST Act, the term "GST" includes a notional liability for GST.

## 10. **DEALINGS**

### 10.1 **Dealing by the City**

- (a) The City may Deal with its interest in this document without the consent of the Developer if the Dealing is with a Government Agency. The City must give the Developer notice of the Dealing within five Business Days of the date of the Dealing.
- (b) The City may not otherwise Deal with its interest in this document without the consent of the Developer, such consent not to be unreasonably withheld or delayed.

### 10.2 **Dealing by the Developer**

- (a) The Developer may Deal with this document without the consent of the City only as a result of the sale of the whole of the Land (without subdivision) to a purchaser of the Land.
- (b) The Developer must not otherwise Deal with this document to a third party that is not a purchaser of the whole or any part of the Land without:
  - (i) the prior written consent of the City; and
  - (ii) the City, the Developer and the third party the subject of the Dealing entering into a deed of consent to the Dealing on terms acceptable to the City.
- (c) The Developer must pay the City's costs and expenses relating to any consent or documentation required due to the operation of this clause 10.2.

## 11. **TERMINATION**

- (a) The City may terminate this document by notice in writing to the Developer if the Development Consent lapses or is surrendered by the Developer.
- (b) If the City terminates this document then:
  - (i) the rights of each party that arose before the termination or which may arise at any future time for any breach or non-observance of obligations occurring prior to the termination are not affected; and
  - (ii) the Developer must take all steps reasonably necessary to minimise any loss the each party may suffer as a result of the termination of this document.

12. **NOTICES**

- (a) A notice, consent or other communication under this document is only effective if it is in writing, signed and either left at the addressee's address or sent to the addressee by mail or email. If it is sent by mail, it is taken to have been received 5 Business Days after it is posted. If it is sent by email, it is taken to have been received the same day the email was sent, provided that the sender has not received a delivery failure notice (or similar), unless the time of receipt is after 5:00pm in which case it is taken to be received on the next Business Day.
- (b) A person's address and email address are those set out in Schedule 1 for the City's Representative and the Developer's Representative, or as the person notifies the sender in writing from time to time.

13. **GOVERNING LAW**

- (a) This document is governed by the laws of New South Wales.
- (b) Each party submits to the exclusive jurisdiction of the courts exercising jurisdiction in New South Wales, and any court that may hear appeals from any of those courts, for any proceedings in connection with this document, and waives any right it might have to claim that those courts are an inconvenient forum.

14. **ACCESS TO INFORMATION**

In accordance with section 121 of the *Government Information (Public Access) Act 2009* (NSW), the Developer agrees to allow the City immediate access to the following information contained in records held by the Developer:

- (a) information that relates directly to the delivery of the Public Benefits by the Developer;
- (b) information collected by the Developer from members of the public to whom the Developer provides, or offers to provide, services on behalf of the City; and
- (c) information received by the Developer from the City to enable the Developer to deliver the Public Benefits.

15. **LIABILITY FOR EXPENSES**

The Developer must pay:

- (a) its own expenses incurred in negotiating, executing, registering, releasing, administering and enforcing this document; and
- (b) the Costs on the date of this document.

16. **RELATIONSHIP OF PARTIES**

- (a) Nothing in this document creates a joint venture, partnership, or the relationship of principal and agent, or employee and employer between the parties.
- (b) Nothing in this document creates any form of trust arrangement or fiduciary duty between the City and the Developer.
- (c) No party has the authority to bind any other party by any representation, declaration or admission, or to make any contract or commitment on behalf of any other party or to pledge any other party's credit.

17. **SEVERANCE**

If any clause or part of any clause is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or where possible, the offending part) is to be severed from this document without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.

18. **PRESERVATION OF EXISTING RIGHTS**

The expiration or termination of this document does not affect any right that has accrued to a party before the expiration or termination date.

19. **WAIVER OF RIGHTS**

A right may only be waived in writing, signed by the party giving the waiver, and:

- (a) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
- (b) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and
- (c) the exercise of a right does not prevent any further exercise of that right or of any other right.

20. **NO FETTER**

Nothing in this document in any way restricts or otherwise affects the City's unfettered discretion to exercise its statutory powers as a public authority.

## SCHEDULE 1

### Agreement Details

ITEM	TERM	DESCRIPTION
1.	<b>Land</b>	Folio Identifier 26/2/2269, known as 40 Princess Avenue, Rosebery NSW 2018
2.	<b>Development</b>	Construction of a new dwelling and associated rear yard works at 40 Princess Avenue, Rosebery.  The total Gross Floor Area of the Development on the Land is 163.2 square metres.
3.	<b>City's Representative</b>	Name: Director, Planning, Development and Transport  Address: Level 1, 456 Kent Street, Sydney NSW 2000  Email: <a href="mailto:planningsystemsadmin@cityofsydney.nsw.gov.au">planningsystemsadmin@cityofsydney.nsw.gov.au</a>
4.	<b>Developer's Representative</b>	Name: Mount Land Pty Ltd  Attention: Andrew Lu  Address: Suite 5, 171-173 Kingsgrove Road, Kingsgrove NSW 2208  Email: <a href="mailto:niall@npdconstructions.com.au">niall@npdconstructions.com.au</a>
5.	<b>Development Application</b>	D/2019/996
6.	<b>Monetary Contribution</b>	\$8,018.00
7.	<b>Costs</b>	\$1,432.50

## SCHEDULE 2

### Requirements under the Act and Regulation (clause 2)

The below table summarises how this document complies with the Act and Regulation.

ITEM	SECTION OF ACT OR REGULATION	PROVISION/CLAUSE OF THIS DOCUMENT
1.	<p><b>Planning instrument and/or development application</b> (section 7.4(1) of the Act)</p> <p>The Developer has:</p> <p>(a) sought a change to an environmental planning instrument;</p> <p>(b) made, or proposes to make, a Development Application; or</p> <p>(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.</p>	<p>(a) No</p> <p>(b) Yes</p> <p>(c) No</p>
2.	<p><b>Description of land to which this document applies</b> (section 7.4(3)(a) of the Act)</p>	Item 1 of Schedule 1.
3.	<p><b>Description of change to the environmental planning instrument to which this document applies and/or the development to which this document applies</b> (section 7.4(3)(b) of the Act)</p>	The Development as described in Item 2 of Schedule 1.
4.	<p><b>The nature and extent of the provision to be made by the Developer under this document, the time or times by which the provision is to be made and the manner in which the provision is to be made</b> (section 7.4(3)(c) of the Act)</p>	Clause 5



5.	<b>Whether this document excludes (wholly or in part) of does not exclude the application of section 7.11, 7.12 or 7.24 to the development</b> (section 7.4(3)(d) of the Act)	Section 7.11 not excluded Section 7.12 not excluded Section 7.24 not excluded
6.	<b>Applicability of section 7.11 of the Act</b> (section 7.4(3)(e) of the Act)	The application of section 7.11 of the Act is not excluded in respect of the Development and contributions (if any) under section 7.11 will be required to be paid.
7.	<b>Consideration of benefits under this document if section 7.11 applies</b> (section 7.4(3)(e) of the Act)	Benefits are not to be taken into consideration in determining a development contribution under section 7.11 of the Act.
8.	<b>Mechanism for Dispute Resolution</b> (section 7.4(3)(f) of the Act)	Clause 7
9.	<b>Enforcement of this document</b> (section 7.4(3)(g) of the Act)	Clause 5.5
10.	<b>No obligation to grant consent or exercise functions</b> (section 7.4(9) of the Act)	Clause 2.3
11.	<b>Registration of this document</b> (section 7.6 of the Act)	Registration is not required
12.	<b>Whether certain requirements of this document must be complied with before a construction certificate is issued</b> (clause 25E(2)(g) of the Regulation)	Yes. Monetary Contribution to be paid by Developer to the City on the date of this document.
13.	<b>Whether certain requirements of this document must be complied with before a subdivision certificate is issued</b> (clause 25E(2)(g) of the Regulation)	Yes. Monetary Contribution to be paid by the Developer to the City on the date of this document.
14.	<b>Whether certain requirements of this document must be complied with before an occupation certificate is issued</b>	Yes. Monetary Contribution to be paid by the Developer to the City on the date of this document.

	(clause 25E(2)(g) of the Regulation)	
<b>15.</b>	<b>Whether the explanatory note that accompanied exhibition of this document may be used to assist in construing this document</b> (clause 25E(7) of the Regulation)	Clause 2.4

DRAFT

**EXECUTED** as a deed.

**Signed, sealed and delivered** for  
**THE COUNCIL OF THE CITY OF  
SYDNEY** (ABN 22 636 550 790) by  
its duly authorised officer, in the  
presence of:

\_\_\_\_\_  
Signature of officer

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name of officer

\_\_\_\_\_  
Name of witness

\_\_\_\_\_  
Position of officer

456 Kent Street, Sydney NSW 2000  
Address of witness

**Executed** by **Niall Gerald Dolan** in the  
presence of:

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Signature of **Niall Gerald Dolan**

\_\_\_\_\_  
Name of Witness

\_\_\_\_\_  
Address of Witness

**Executed** by **Jane Bernadette Murphy**  
in the presence of:

---

Signature of Witness

---

Signature of **Jane Bernadette  
Murphy**

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Name of Witness

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Address of Witness

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