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# Explanatory Note

## Planning Agreement

### Cardinal Gilroy Village – 45 Barcom Street, Merrylands West

#### 1 Introduction

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The purpose of this Explanatory Note is to provide a plain English summary to support the notification of a draft voluntary Planning Agreement (**Planning Agreement**) under s7.4 of the *Environmental Planning and Assessment Act 1979* (NSW) (**Act**).

This Explanatory Note has been prepared jointly between the parties as required by clause 25E of the *Environmental Planning and Assessment Regulation 2000* (**Regulations**).

This Explanatory Note is not to be used to assist in construing the Planning Agreement.

#### 2 Parties to the Planning Agreement

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The parties to the Planning Agreement are

- (1) Cumberland City Council (ABN 22 798 563 329) (**Council**); and
- (2) Southern Cross Care (NSW & ACT) Limited (ABN 76 131 082 374) (**Developer**).

#### 3 Description of the Land to which the Planning Agreement applies

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The Planning Agreement applies to the land contained in the following folio identifiers:

- (1) 5/701151;
- (2) 8/732058; and
- (3) 11/1075418,

known as 45 Barcom Street, Merrylands West NSW 2160 (**Land**).

#### 4 Description of the Development to which the Planning Agreement applies

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The development to which the Planning Agreement applies is the development of the Land permitted after planning proposal number PP\_2020\_CUMBE\_002\_00 (**Planning Proposal**) to amend the Holroyd Local Environmental Plan 2013 is made to allow:

- (1) rezoning of the Land from R2 Low Density Residential to R4 High Density Residential;
- (2) amendment of the Height of Building Control for the Land from 9m to 15m;

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- (3) amendment of the Floor Space Ratio (FSR) control for the Land from 0.5:1 to 0.85:1; and
  - (4) the addition of a clause to Part 6 Additional Local Provisions of Holroyd LEP 2013 limiting retail/commercial uses to 1,480m<sup>2</sup> (formerly referred to as non-residential uses),

as described in the Gateway Determination issued with respect to the Land and the Planning Proposal (referred to as the **Development**).

## **5 Summary of Contribution, Objectives, Nature and Effect of the Planning Agreement**

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The Planning Agreement separates the Land into two (2) *Precincts* for the purpose of the payment of the Monetary Contribution. Those Precincts are shown on the Plan attached as Annexure 1 to the Planning Agreement.

The Developer is required to provide the following monetary contribution in accordance with the Planning Agreement:

(1) Monetary Contribution

One million five hundred thousand dollars (\$1,500,000), in instalments as follows:

- (a) The First Instalment being seven hundred and fifty thousand dollars (\$750,000.00) prior to the first to occur of the following:
  - (i) the issue of a Construction Certificate in respect of any Development involving the construction of new Gross Floor Area within the first Precinct to be developed, resulting in the aggregate of Approved Gross Floor Area within that Precinct being greater than 10,000 m<sup>2</sup>; and
  - (ii) 30 November 2026.
- (b) The Second Instalment being seven hundred and fifty thousand dollars (\$750,000.00) prior to the first to occur of the following:
  - (i) the issue of a Construction Certificate in respect of any Development involving the construction of new Gross Floor Area within the other Precinct (that is, the Precinct not referable to the First Instalment), resulting in the aggregate of Approved Gross Floor Area within that Precinct being greater than 10,000 m<sup>2</sup> and
  - (ii) 30 November 2026.

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(2) Additional Monetary Contribution

An amount of \$375.50 for each square metre (or part thereof) of Gross Floor Area which forms part of the Development in excess of 63,240 sqm\*, prior to the issue of the Construction Certificate for any part of the Development with respect to which the Additional Monetary Contribution will be required to be paid,

(together the **Contribution**).

\*The anticipated GFA of the Development in the event that the Planning Proposal is made is 63,240 sqm, consisting of an additional GFA of 26,040 sqm (i.e. the “uplift”).

As security for the Developer providing the Monetary Contribution, the Developer must provide to Council a Bank Guarantee in an amount equal to ten percent (10%) of the sum (as indexed in accordance with the Planning Agreement) of the Monetary Contribution.

Council also has security under the Planning Agreement in that any Subdivision Certificate, Construction Certificate and Occupation Certificate in respect of the Development cannot be issued if at the relevant time the Developer is in breach of any obligation to make a Contribution required to be made under the Planning Agreement at that time.

The **objective** of the Planning Agreement is to provide benefits for the wider community and to facilitate the delivery of the Contribution to community infrastructure, amenities and resources.

The **nature** of the Planning Agreement is a contractual relationship between the Council and the Developer for providing the Contribution.

The **effect** of the Planning Agreement is that the Developer will provide the Contribution in the manner provided for by the Planning Agreement.

## **6 Assessment of the Merits of the Planning Agreement and Impact on the public**

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The Planning Agreement promotes:

- (1) the public interest; and
- (2) the Objects of the Act.

The Planning Agreement will:

- (1) provide certainty for the Developer and the Council as to provision of the Contribution; and

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- (2) promote the provision of public amenities and public services.

## **7 Identification of how the Planning Agreement promotes the public interest**

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The Planning Agreement supports the public interest in the following ways:

- (1) By promoting the social and economic welfare of the community and a better environment by the proper management, development and conservation of the community's natural, historical and other resources.
- (2) By facilitating ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment.
- (3) By promoting the orderly and economic use and development of land.
- (4) By providing increased opportunity for community participation in environmental planning and assessment.

## **8 How the Planning Agreement promotes the Guiding Principles for Councils**

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The Planning Agreement promotes a number of the Guiding Principles for Councils under section 8A of the *Local Government Act 1993* (NSW), as follows:

- (1) To plan strategically, using the integrated planning and reporting framework, for the provision of effective and efficient services and regulation to meet the diverse seniors housing needs of the Merrylands West and surrounding local community.
- (2) To manage land and other assets so that current and local community needs can be met in an affordable way.
- (3) To act fairly, ethically and without bias in the interests of the local community.
- (4) To have regard to the long term and cumulative effects of its decisions on future generations.
- (5) Transparent decision-making and active engagement with local communities, through the use of the integrated planning and reporting framework and other measures
- (6) Providing strong and effective representation, leadership, planning and decision-making.

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- (7) Applying the integrated planning and reporting framework in carrying out functions so as to achieve desired outcomes and continuous improvements.
  - (8) Working with others to secure appropriate seniors housing services for local community needs.

## **9 Identification of whether the Planning Agreement conforms with the Council's capital works program**

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The Planning Agreement conforms with Council's capital works program.

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