



HENRY DAVIS YORK
LAWYERS

28 March 2012

Our Ref JLD/SLB/3128090
Partner Jennifer Degotardi

EXPRESS POST
Mr Bruce McCann
Ryde City Council
Civic Centre
1 Devlin Street
RYDE NSW 2112

Dear Bruce

**DEXUS Funds Management Limited and Perpetual Trustee Company Limited -
Voluntary Planning Agreement
Wicks Road, North Ryde**

We **enclose** for Council's records, the following counterpart documents:

1. Voluntary Planning Agreement dated 6 December 2011; and
2. Implementation Deed dated 6 December 2011.

Please acknowledge receipt by signing and returning the enclosed copy of this letter.

Yours sincerely
Henry Davis York



Janet McKelvey
Senior Associate
+61 2 9947 6150
janet_mckelvey@hdy.com.au

Encl

28 March 2012

Our Ref JLD/SLB/3128090
Partner Jennifer Degotardi

DUPLICATE

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Civic Centre
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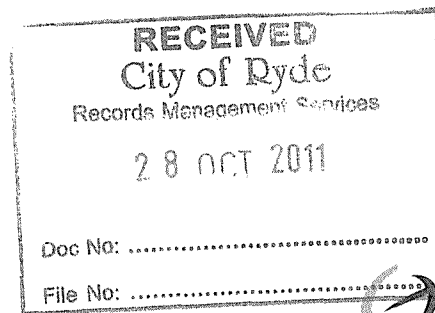
Janet McKelvey
Senior Associate
+61 2 9947 6150
janet_mckelvey@hdy.com.au

RECEIPT of the above documents
is acknowledged:

Encl

Signature

Date



HENRY DAVIS YORK
LAWYERS

Implementation Deed

Ryde City Council
ABN 81 621 292 610

DEXUS Funds Management Limited as trustee for the Wicks Road Trust
ABN 24 060 920 783

and

**DEXUS Wholesale Property Limited as responsible entity for the DEXUS
Wholesale Property Fund**
ABN 47 006 036 442

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KEY DETAILS

1	Date	See Execution page
2	Parties	
3	Council Name	Ryde City Council ABN 81 621 292 610
	Address	1 Devlin Street, Ryde, NSW
4	Developer Name	DEXUS Funds Management Limited as trustee for the Wicks Road Trust ABN 24 060 920 783 and DEXUS Wholesale Property Limited as responsible entity for the DEXUS Wholesale Property Fund ABN 47 006 036 442
	Address	Level 9, 343 George Street, Sydney, NSW

BACKGROUND

- A The Developer intends to redevelop the Land for commercial use with associated car parking.
- B The parties have entered into the Voluntary Planning Agreement pursuant to which, among other things, the Developer is to provide the Public Domain Works to Council.
- C The parties now wish to set out the process for finalising the design of the Public Domain Works and the terms by which the delivery of Public Domain Works will be implemented.

OPERATIVE PROVISIONS

1 Definitions and interpretation

1.1 In this Deed:

- (a) **Annexure** means an annexure to this Implementation Deed.
- (b) **Agreed Amount** means the cost of the Public Domain Works as set out in clause 12.2 of the VPA.
- (c) **Approval** means any approval by any Authority with respect to the Development.
- (d) **Builder** means the building contractor awarded the Building Contract.
- (e) **Building Contract** means the contract to carry out the Public Domain Works.
- (f) **Certificate of Practical Completion** means a certificate issued by the Project Certifier that the Public Domain Works have achieved Practical Completion.
- (g) **Condition** means a condition of Development Consent for the Development and conditions of any other Approval.
- (h) **Council's Representative** means the General Manager of Council or such other person who the General Manager of the Council notifies the Developer is the Council's representative from time to time.
- (i) **Date for Practical Completion** means the date for practical completion under the Building Contract for the Public Domain Works.
- (j) **Defects Liability Period** means in respect of the Public Domain Works the period of 12 months from the date on which the Dedicated Land is dedicated to Council.
- (k) **Detailed Design** means the final specifications and finishes for the Public Domain Works prepared in accordance with clause 3.

- (l) **Practical Completion** means in respect of the Public Domain Works, that stage in the construction of the Public Domain Works when construction of the Public Domain Works is complete except for minor omissions and minor defects:
 - (i) which do not prevent the Public Domain Works from being reasonably capable of being used for its intended purpose; and
 - (ii) rectification of which will not prejudice the convenient use of the Public Domain Works.
 - (m) **Project Certifier** means the person engaged under the Building Contract to certify Practical Completion of the Public Domain Works.
 - (n) **Public Domain Works Standards** means the standards set out in Annexure A.
 - (o) **Requirement** means any requirement, notice, order or direction given by any Authority.
 - (p) **Services** means all water, gas, electricity, television, drainage, sewerage, cable TV, data communications, telecommunications and other services which are required under a Development Consent or an Approval and which are necessary or desirable for the construction, operation or occupation of the Public Domain Works.
 - (q) **Variation Costs** means the variation costs over and above the Agreed Amount which arise because of a written request by the Council's Representative for a change to the Public Domain Works that is not contemplated in the Development Application or the Public Domain Works Standards.
 - (r) **Voluntary Planning Agreement** means the agreement entered into by the parties on or about the date of this Deed in respect of the Development.
- 1.2 A term which has a defined meaning in the Voluntary Planning Agreement has the same meaning when used in this Deed unless it is expressly defined in this Deed, in which case the meaning given to it in this Deed will prevail.
- 1.3 In the interpretation of this Deed, the following provisions apply unless the context otherwise requires:
- (a) Headings are inserted for convenience only and do not affect the interpretation of this Deed.
 - (b) If the day on which any act, matter or thing is to be done under this Deed is not a Business Day, the act, matter or thing must be done on the next Business Day.
 - (c) A reference in this Deed to dollars or \$ means Australian dollars and all amounts payable under this Deed are payable in Australian dollars.

- (d) A reference in this Deed to any law, legislation or legislative provision includes any statutory modification, amendment or reenactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- (e) A reference in this Deed to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- (f) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed.
- (g) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- (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.
- (j) References to the word 'include' or 'including' are to be construed without limitation.
- (k) A reference to this Deed includes the agreement recorded in this Deed.
- (l) A reference to a party to this Deed includes a reference to the servants, agents and contractors of the party, and the party's successors and assigns.
- (m) Any schedules and attachments form part of this Deed.

1.4 **No Partnership**

- (a) Nothing in this Deed:
 - (i) creates between the parties either the relationship of partnership or that of principal and agent;
 - (ii) constitutes the parties as parties to a joint venture; or
 - (iii) imposes on the parties any joint or joint and several liability.

1.5 **Proper law and submission to jurisdiction**

- (a) The validity, interpretation, and performance of this Deed is governed by the laws of New South Wales.
- (b) All parties are subject to the jurisdiction of the Supreme Court of New South Wales and the courts of the Commonwealth of Australia.

2 The Public Domain Works

- 2.1 The Developer agrees to procure and carry out the construction of the Public Domain Works as contemplated in this Deed.
- 2.2 The Developer must ensure that the Public Domain Works are carried out in accordance with:
- (a) the Public Domain Works Standards in Annexure A;
 - (b) the Development Consent for the Development and all other Approvals and the requirements of all laws.
- 2.3 All costs, other than Variation Costs, of the construction of the Public Domain Works must be borne by the Developer.

3 Development of the Detailed Design

3.1 Co-operation with Council

- (a) From the date the Developer notifies the Council in writing that it wishes to commence the detailed design of the Public Domain Works, Council and the Developer must:
- (i) work in consultation with each other to prepare and agree the Detailed Design; and
 - (ii) agree a date by which the Detailed Design must be prepared and agreed; and
 - (iii) prepare the Detailed Design in accordance with the Macquarie Park Corridor Public Domain Technical Manual and the AUSTRROADS Pavement Design Manual "A Guide to the Structural Design of Road Pavements" (1992).
- (b) Council and the Developer must both act reasonably and with due expedition in their consultations with each other.

3.2 Costs

- (a) Subject to clause 3.3, in preparing the Detailed Design, Council and the Developer must use reasonable endeavours to ensure that the cost of delivery of the Public Domain Works does not exceed the Agreed Amount.
- (b) Subject to clause 0, where the cost of the Public Domain Works is greater than the Agreed Amount, the Developer shall be obliged to accept that cost.

- (c) If the Council makes a written request to change the Detailed Design which a qualified Quantity Surveyor certifies will cause the Agreed Amount to increase by more than 5%, the Council must pay the Variation Costs to the Developer within 10 Business Days after delivery by the Developer to Council of a tax invoice for the payment together with reasonable details of the Claim for the additional cost payment.

3.3 Council Variations

- (a) Despite any other provision in clause 3, Council is not entitled to propose and the Developer has no obligation to consider or agree to any inclusion in respect of the Detailed Design which:
 - (i) exceeds the specifications set out in the Public Domain Works Standards in Annexure A;
 - (ii) does not comply with the conditions of Development Consent or any Approval for the Development;
 - (iii) would or may require the Developer to obtain new, additional or modified Development Consents or Approvals; or
 - (iv) would or may adversely affect the structural integrity, quality, efficiency, functionality or architectural or aesthetic design of any element of the Development or the Public Domain Works.

3.4 Developer Variations

- (a) The Developer may make a variation to the Detailed Design of Public Domain Works:
 - (i) to comply with the conditions of Development Consent, any Approval, laws and any Requirements;
 - (ii) which does not affect the structural integrity of the Development;
 - (iii) which does not impact adversely on the Services; and
 - (iv) which does not materially and adversely impact upon the Council's use of the Public Domain Works when they are completed.
- (b) The Developer may substitute alternative but not inferior finishes to those described in the Detailed Design and notify the Council of such substitution, subject to the Council's written agreement to such alternative finish (which agreement shall not be unreasonably withheld).
- (c) The Developer must pay the additional costs resulting from any variation under this clause.

3.5 Good faith

The parties must act promptly and in good faith to consult and agree in relation to the Detailed Design.

4 Council Right to Inspect

4.1 Council's Representative may, subject to:

- (a) the terms of the Building Contract (save for any clause of the Building Contract which prevents the Council from accessing the Site);
- (b) giving reasonable notice to the Developer, the Builder and the Project Certifier;
- (c) complying with all reasonable directions of the Developer, the Builder and the Project Certifier;
- (d) exercising its rights under this clause entirely at its own risk in all respects; and
- (e) being accompanied by the Project Certifier or its nominee, or as otherwise agreed,

enter the Land at reasonable times to inspect the progress of the Public Domain Works.

5 Completion

5.1 Practical Completion

- (a) The Developer must ensure that the Project Certifier gives to the Council and the Developer not less than 10 Business Days prior written notice of the anticipated date on which Practical Completion of the Public Domain Works will be achieved.
- (b) The Developer must arrange for the Developer, the Project Certifier and the Council to inspect the Public Domain Works after the notice in clause 5.1(a) is issued and before a Certificate of Practical Completion is issued.
- (c) Within 5 Business Days after the inspection contemplated in clause 5.1(b) the Developer, the Project Certifier and the Council must prepare and agree a list of works to be completed before the Public Domain Works has achieved Practical Completion (**Completion Works**).
- (d) If:
 - (i) the parties agree that there are no Completion Works required to be carried out before Practical Completion of the Public Domain Works is achieved, then the Project Certifier may issue a Certificate of Practical Completion for the Public Domain Works;
 - (ii) the parties agree a list of Completion Works for the Public Domain Works, then the Developer must ensure that the Completion Works

are carried out and completed and the Project Certifier may issue a Certificate of Practical Completion for the Public Domain Works once those Completion Works have been completed; and

- (iii) the parties cannot agree a list of Completion Works for the Public Domain Works then:
 - (A) Subject to the concurrence of Council, the Project Certifier may issue a Certificate of Practical Completion for the Public Domain Works when it considers that Practical Completion of the Public Domain Works has been achieved; and
 - (B) any dispute will be referred to an expert for determination under clause 6 and the expert must be requested to determine what further works, if any, are required to be completed before Practical Completion of the Public Domain Works has been achieved for the purposes of this Deed; and
 - (C) the Developer must, if, under clause 6, the expert determines further works are required to be carried out to achieve Practical Completion of the Public Domain Works, expeditiously carry out and complete those further works.

5.2 Defects and omission

- (a) The Council may notify the Developer of defects and omissions in any part of the Public Domain Works during the relevant Defects Liability Period.
- (b) The Developer must promptly upon receipt of a defects notice from the Council:
 - (i) procure the performance of the work required to rectify the defect; and
 - (ii) keep the Council reasonably informed of the action to be taken to rectify the defect.
- (c) If the Developer does not promptly procure the rectification of the defect, Council may carry out the rectification.
- (d) The Council must give the Developer and its contractors access to the Dedicated Land to carry out the rectification works.
- (e) The Developer must meet all costs of and incidental to rectification of defects under this clause 5.2.

5.3 Delivery of documents

- (a) The Developer must as soon as practicable, and no later than 25 Business Days after the date on which the Certificate of Practical Completion is issued in respect of the Public Domain Works:
 - (i) deliver to the Council, complete copies of:

- (A) all "as built" drawings, specifications and operation and service manuals relevant to the Public Domain Works;
 - (B) all necessary certificates including the certificates of any consultants of the Developer that the Council may reasonably require and which are relevant to the Public Domain Works; and
 - (C) consents and approvals of any Authority whose consent or approval is required for the occupation or use of the Public Domain Works, and
- (ii) provide the Council with a tour of the Public Domain Works and provide reasonable instructions on the operation and use of the Services within the Public Domain Works.

5.4 Warranties

- (a) The Developer must assign (as beneficial owner) or cause to be assigned to Council the benefit of any warranties and guarantees obtained by the Developer and the Builder (and capable of assignment) with respect to any material or goods incorporated in or forming part of the Public Domain Works.
- (b) To the extent that any such warranties or guarantees cannot be assigned, the Developer must at the request of Council do anything reasonably required by Council including enforcing such warranties or guarantees for the benefit of Council.

6 Dispute Resolution

A dispute under this Deed is to be dealt with using the dispute resolution mechanisms contained in clause 13 of the Voluntary Planning Agreement.

7 Insurance

- 7.1 Promptly after the issue of a Construction Certificate for the Public Domain Works, the Developer must ensure that the Builder effects the following insurances issued by an insurer approved by the Council and in a form approved by the Council (acting reasonably):
- (a) construction works insurance for the value of the Public Domain Works;
 - (b) public risk insurance for at least \$20 million;
 - (c) workers compensation insurance for personnel in respect of whom the Builder has an obligation at law to effect that insurance.

- 7.2 The Developer must, throughout the term of this Deed and upon request of the Council, provide evidence of the currency of the insurance required by clause 7.1.

8 Notices

- 8.1 Notices under this Deed are to given in accordance with clause 18 of the Voluntary Planning Agreement.

9 Goods and Services Tax

- 9.1 Goods and Services Tax is to be treated in accordance with clause 29 of the Voluntary Planning Agreement.

10 Termination

- 10.1 If the Voluntary Planning Agreement is terminated for any reason permitted under clause 17 of the Voluntary Planning Agreement, this Deed is taken to be terminated at the same time.

11 Intellectual Property Rights

- 11.1 The Council acknowledges that the Developer or its contractors holds all rights to copyright and any intellectual property which may exist in any document arising out of the Public Domain Works. To the extent the Developer has or receives intellectual property rights in any document arising out of the Public Domain Works, the Developer shall, at the request of the Council, grant Council a licence to use those rights for any purpose connected to the Public Domain Works.

12 Entire Agreement

- 12.1 With the exception of the agreement contained in the Voluntary Planning Agreement, this Deed:
- (a) is the entire agreement and understanding between the parties on everything connected with the subject matter of this Deed; and
 - (b) supersedes any prior agreement or understanding on anything connected with that subject matter.

13 Variation

An amendment or variation to this Deed is not effective unless it is in writing and signed by the parties.

14 Building Contract

The Developer shall, upon request, allow Council access to view a copy of the Building Contract.

EXECUTION

Executed as a Deed on 6 DECEMBER 2011


Signed, sealed and delivered by Ryde City Council under delegated authority pursuant to Section 377(1) of the *Local Government Act 1993* by John Neish, General Manager, City of Ryde, in the presence of:



Signature of witness


NATALIE DAINER

Name of witness (block letters)



Signature of General Manager

Signed, sealed and delivered by DEXUS Funds Management Limited ABN 24 060 920 783 by its duly authorised attorneys under Power of Attorney dated 15 June 2011 Registered Book 4615 No. 23 in the presence of:



Signature of Attorney

ROGER CRUICKSHANK


Name of Attorney



Signature of witness

DELE CORINNE ROCHFORD

Name of witness [block letters]




Signature of Attorney

JADE ANN SNG

Name of Attorney

Signed, sealed and delivered by DEXUS Wholesale Property Limited ABN 47 006 036 442 by its duly authorised attorneys under Power of Attorney dated 15 June 2011 Registered Book 4615 No. 28 in the presence of:



Signature of Attorney

ROGER CRUICKSHANK


Name of Attorney



Signature of witness

DELE CORINNE ROCHFORD

Name of witness [block letters]



Signature of Attorney

JADE ANN SNG

Name of Attorney

ANNEXURE A**Public Domain Works Standards****ROAD 3:**

- (a) Road 3 will be a Type 2 Public Street (secondary road) in accordance with the Macquarie Park Corridor Public Domain Technical Manual.
- (b) Total length 270m.
- (c) Road reserve will be 20.4m in general with a widening up to 22.6m along the bends to accommodate 8.8m medium rigid trucks.
- (d) Road bends and turning circles along Road 3 to accommodate 8.8m medium rigid trucks.
- (e) Lane width to be 3.5m (transitioning to 4.1m at bends) plus 1.2m provision for a cycle lane (total minimum lane width = 4.7m).
- (f) Provision will be made for 40 parallel car parking spaces. Spaces to be 6m in length and 2.5m in depth.
- (g) The roundabout at the western end (Future Road 16 Roundabout) of the road is sized to accommodate 8.8m long rigid trucks.
- (h) The left-in-left-out treatment at the eastern end of Road 3 (at the intersection with Wicks Road) is sized to accommodate 19m long articulated trucks.
- (i) Bio-swale areas are to be provided at regular intervals along the road in locations where the road grading allows stormwater to be collected in the bio-swales.
- (j) Road surface to be flexible bitumen pavement designed to the AUSTRROADS Pavement Design Manual "A Guide to the Structural Design of Road Pavements" (1992).
- (k) A 2m wide stone paved footpath will be provided adjacent to the property boundary. Footpath to be Pavement Type B, G684 Black Fuding (dark grey) granite pavers or approved equivalent, in accordance with Macquarie Park Public Domain Technical Manual, Section 3.2.
- (l) In-situ concrete kerb and gutter to be provided along the length of the road in accordance with Macquarie Park Public Domain Technical Manual, Section 3.5.
- (m) Tactile indicators will be provided at all pedestrian ramps in accordance with Macquarie Park Public Domain Technical Manual, Section 3.6.

ROAD 11

- (a) Road 11 will be a Type 2 Public Street (secondary road) in accordance with the Macquarie Park Corridor Street Network Structure Plan and the Environmental Standards Design Criteria – Public Civil Works document issues by Ryde City Council.
- (b) Total length to be 80m.
- (c) Road reserve will be 20.4m.
- (d) Termination roundabout at the end of Road 11 was designed to accommodate standard cars only.
- (e) Lane width to be 3.5m plus 1.2m provision for a cycle lane (total minimum lane width = 4.7m).
- (f) Provision will be made for 12 parallel car parking spaces. Spaces to be 6m in length and 2.5m in depth.
- (g) A pedestrian ramp and crossing to be provided at the intersection with Road 3.
- (h) Bio-swale areas are provided at regular intervals along the road in locations where the road grading allows stormwater to be collected in the bio-swales.
- (i) Road surface to be flexible bitumen pavement designed to the AUSTROADS Pavement Design Manual "A Guide to the Structural Design of Road Pavements" (1992).
- (j) A 2m wide stone paved footpath will be provided adjacent to the property boundary. Footpath to be Pavement Type B, G684 Black Fuding (dark grey) granite pavers or approved equivalent, in accordance with Macquarie Park Public Domain Technical Manual, Section 3.2.
- (k) In-situ concrete kerb and gutter to be provided along the length of the road in accordance with Macquarie Park Public Domain Technical Manual, Section 3.5.
- (l) Tactile indicators will be provided at all pedestrian ramps in accordance with Macquarie Park Public Domain Technical Manual, Section 3.6.

ROAD 16/ACCESS ROAD NO. 1

Access No.1 proposed in the Development Application will provide access to the northern parking entrance to Building 1 under Stage 1. This road is referred to in the Voluntary Planning Agreement as "Road 16" as it forms part of a future road, a Type 3 Public Street (tertiary road) between Waterloo and Epping Roads, under the Macquarie Park Corridor Street Network Structure Plan

- (a) Total length to be 98m.
- (b) Road reserve to be 7.75m.
- (c) Road bends and turning circles along Access No.1 to be designed to

accommodate 8.8m medium rigid trucks.

- (d) Lane width to be 3.5m.
- (e) Provision will be made for a 24m long, 3m deep loading zone.
- (f) No provision will be made for pedestrian access along this access road.
- (g) A bio-swale area will be provided at the northern end of the access where the road grading allows stormwater to be collected into the bio-swales.
- (h) Road surface to be flexible bitumen pavement designed to the AUSTROADS Pavement Design Manual "A Guide to the Structural Design of Road Pavements" (1992).
- (i) In-situ concrete kerb and gutter to be provided along the length of the road in accordance with Macquarie Park Public Domain Technical Manual, Section 3.5.



HENRY DAVIS YORK
LAWYERS

Voluntary Planning Agreement

Ryde City Council
ABN 81 621 292 610

DEXUS Funds Management Limited as trustee for the Wicks Road Trust
ABN 24 060 920 783

and

**DEXUS Wholesale Property Limited as responsible entity for the DEXUS
Wholesale Property Fund**

ABN 47 006 036 442

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KEY DETAILS

1 **Date** See Execution page

2 **Parties**

3 **Council**
Name

Ryde City Council
ABN 81 621 292 610

Address

1 Devlin Street, Ryde, NSW

4 **Developer**
Name

DEXUS Funds Management Limited as trustee for the
Wicks Road Trust
ABN 24 060 920 783
and
DEXUS Wholesale Property Limited as responsible entity
for the DEXUS Wholesale Property Fund
ABN 47 006 036 442

Address

Level 9, 343 George Street, Sydney, NSW

BACKGROUND

- A. On or about 27 November 2007, the Council gave consent for the Preliminary Development.
- B. In August 2008, the Developer lodged the Development Application with the Council seeking Development Consent to carry out the Development on the Land.
- C. Further and separate development applications for the construction of other development on or adjacent to the Land may be made in the future by the Developer.
- D. The Developer has made an offer to the Council to enter into this Agreement under which it proposes to make various Contributions to the Council.

OPERATIVE PROVISIONS

1 Definitions and interpretation

1.1 In this Agreement the following definitions apply:

- (a) **Act** means the *Environmental Planning and Assessment Act 1979* (NSW).
- (b) **Authority** means any Commonwealth, state or local government department, body or instrumentality or any other authority or statutory body which has jurisdiction over the Development (including Council) or with whose system the Development is or will be connected.
- (c) **Business Day** means any day which is not a Saturday, Sunday, State wide public holiday in New South Wales or 27, 28, 29, 30 and 31 December.
- (d) **Claim** includes any claim for an increase in Contributions, payment of money (including damages)
 - (i) under, arising out of, or in any way in connection with this Agreement or the Development, including any direction of the Project Certifier;
 - (ii) arising out of or in connection with the Development or either party's conduct; or
 - (iii) otherwise at law or in equity including:
 - (A) by statute
 - (B) in tort for negligence or otherwise, including negligent misrepresentation; or

- (C) for restitution.
- (e) **Commencement Date** means the day that Development Consent is granted for the Development Application.
- (f) **Construction Certificate** means a construction certificate issued pursuant to the Act in respect of the Development or parts of the Development.
- (g) **Consumer Price Index** means the consumer price index released by the Australian Bureau of Statistics for "Sydney – All Groups" or such other consumer price index that might replace it.
- (h) **Contribution Item** means any single item of the Contributions listed in Schedule 3.
- (i) **Contributions** means all of:
- (i) the payment of the Section 94 Sum to the Council by the Developer;
 - (ii) the dedication of the Dedicated Land by the Developer to the Council; and
 - (iii) the completion of the Public Domain Works by the Developer.
- (j) **Dedicated Land** means the land identified as the Dedicated Land in the plan in Schedule 5.
- (k) **Defects Liability Period** has the same meaning as in the Implementation Deed.
- (l) **Development** means the development described at Item 1 of Schedule 1.
- (m) **Development Application** means the Developer's development application assigned by the Council reference DA2008/53, including subsequent applications (including applications for Section 96 Modifications), in respect of the Development.
- (n) **Development Consent** has the same meaning as in the Act.
- (o) **Guarantee** means an insurance bond from QBE or a similar AA rated insurer or an unconditional bank guarantee issued by an institution or bank registered under the Banking Act 1959 (Cth) and approved by Council (or other form of security acceptable to the Council acting reasonably) which are to be procured by the Developer in favour of the Council as security for the obligations of the Developer under this Agreement, in the amounts set out in Clause 14.
- (p) **Implementation Deed** means the separate agreement between the parties, on the terms of the Implementation Deed in Schedule 4, to be executed in accordance with clause 8.2 of this Agreement pursuant to which that part of the Contributions relating to the Public Domain Works will be performed.

- (q) **Land** means the land on which the Development will be undertaken as shown in the plan in Schedule 2.
- (r) **Law** means any applicable law including any present or future law of the Commonwealth of Australia or any State or Territory including statute, common law and equity.
- (s) **Occupation Certificate** has the same meaning as in the Act.
- (t) **Party or Parties** means a party or parties to this Agreement (as the context requires), and includes their successors and assigns.
- (u) **Practical Completion** has the same meaning as in the Implementation Deed.
- (v) **Preliminary Development** means the development described at Item 2 of Schedule 1.
- (w) **Project Certifier** has the same meaning as in the Implementation Deed.
- (x) **Public Domain Works** means:
 - (i) the Public Domain Works Roads, and
 - (ii) the Public Domain Works Roundabout.
- (y) **Public Domain Works Roads** means the works described as such in Schedule 3.
- (z) **Public Domain Works Roundabout** means the works described as such in Schedule 3.
- (aa) **Regulations** mean the *Environmental Planning and Assessment Regulation 2000*.
- (bb) **Road 16** means the area of land so identified on the plan in Schedule 5 and as shown on the plan showing Public Domain Works Roads referred to in Schedule 3.
- (cc) **Section 94 Sum** means 120% of the amount that would, but for this Agreement, be otherwise payable by the Developer to the Council under section 94 of the Act less the estimated cost of the Public Domain Works and is as set out clause 12.3.
- (dd) **Section 96 Modification** means any modification pursuant to section 96 of the Act to a Development Consent granted in respect of the Development.
- (ee) **Stage Inspection** means an inspection undertaken by the Project Certifier during construction of the Public Domain Works.

- 1.2 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) 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.
 - (c) A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
 - (d) A reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or reenactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
 - (e) A reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
 - (f) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
 - (g) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
 - (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.
 - (j) References to the word 'include' or 'including' are to be construed without limitation.
 - (k) A reference to this Agreement includes the agreement recorded in this Agreement.
 - (l) 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.
 - (m) 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 on the Land and applies to the Land in that regard.

4 Commencement

- 4.1 This Agreement is effective on and from the Commencement Date, notwithstanding any delay in execution of this Agreement.
- 4.2 The Parties must execute this Agreement as soon as possible after the Commencement Date.

5 Development Application

- 5.1 The Parties acknowledge and agree that the Developer has lodged the Development Application with the Council seeking Development Consent for:
- (a) construction of a building with a gross floor area of 27,340m²;
 - (b) a building floor plate in the order of approximately 2,000 m²;
 - (c) construction of 324 car-parking spaces;
 - (d) constructions of roads; and
 - (e) a building height of 6 storeys (measured from the highest point on the Land).

6 Development Contributions to be made under this Agreement

- 6.1 The Developer must provide the Contributions in accordance with this Agreement and the Implementation Deed.
- 6.2 The parties may vary the timing for the provision of the Contributions but only in writing.

7 Provision of the Contributions

- 7.1 The Developer must dedicate, by way of transfer and at no cost to Council, the Dedicated Land within three months of the Public Domain Works reaching Practical Completion.
- 7.2 The Developer must commence the construction of the Public Domain Works Roads no later than 28 Business Days after receiving a Construction Certificate for the Public Domain Works Roads.
- 7.3 The Developer must commence the construction of the Public Domain Works Roundabout no later than 28 Business Days after receiving a Construction Certificate for the Public Domain Works Roundabout.
- 7.4 The Developer must complete the Public Domain Works as soon as reasonably practical and no later than 5 years from the date of the issue of the Construction Certificate
- 7.5 The Developer must pay the Section 94 Sum to Council in accordance with Clause 12.
- 7.6 The Parties acknowledge and agree that other than the Contributions, no further contributions or levies under sections 94 or 94A of the Act will be payable by or on behalf of the Developer arising out of or in connection with the Development or the Land and to the extent permitted by law, the Developer will not be liable upon any Claim by any Authority (including the Council) for any contribution or levy under sections 94 or 94A of the Act (other than the Contributions) arising out of or in any way in connection with the Development or the Land.

8 Implementation Deed

- 8.1 The Developer must design, construct and commission the Public Domain Works in accordance with the Implementation Deed.
- 8.2 The parties must execute the Implementation Deed (in the form set out in Schedule 4 to this Agreement) as soon as reasonably practical after the Commencement Date. For the avoidance of doubt, the parties acknowledge that the Implementation Deed take effect from the Commencement Date notwithstanding any delay in execution.

9 The Public Domain Works

- 9.1 The Developer must pay all development costs associated with the Public Domain Works.
- 9.2 The Council acknowledges and agrees that from the date of transfer of the Dedicated Land to the Council, all risk in the Public Domain Works will lie with Council and Council will be fully responsible for the care, maintenance and insurance of the Public Domain Works.

10 Special Provisions in relation to Road 16

- 10.1 The parties acknowledge and agree that Road 16 forms part of a proposed road linking Epping Road and Waterloo Road that Council proposes to construct in the future (the **Future Road**).
- 10.2 The parties acknowledge and agree that Road 16 forms part of the Dedicated land.
- 10.3 Council acknowledges that it will need to incorporate Road 16 into the Future Road which may require the modification of Road 16.
- 10.4 Council acknowledges and agrees that the modification of Road 16 to facilitate the incorporation of Road 16 into the Future Road will be carried out at Council's cost.
- 10.5 Council acknowledges that the modification of Road 16 and the construction of the Future Road will impact on vehicular and pedestrian access to the basement of the building proposed as part of the Development (the **Basement Access**).
- 10.6 Council agrees to design and construct the intersection of the Future Road and the Basement Access in a manner satisfactory to the Developer, acting reasonably.
- 10.7 During the construction of the Future Road, Council agrees to maintain at all times vehicular and pedestrian access to the basement of the building proposed as part of the Development.
- 10.8 Any parts of Road 16 that do not form part of the roadway of the Future Road but will be dedicated to Council in accordance with this Agreement (such as those parts of the turning circle adjacent to the Basement Access) must be landscaped by Council as part of the construction of the Future Road (the **Future Landscaped Areas**).
- 10.9 Council agrees to maintain the Future Landscaped Areas.
- 10.10 For the avoidance of doubt, Council agrees and acknowledges that the Developer will have no liability:
- (a) in relation to Road 16 once Road 16 has been dedicated to Council pursuant to this Agreement; and
 - (b) in relation to the Future Road; and
 - (c) for the Future Landscaped Areas.
- 10.11 The Developer agrees to endeavour to gain pedestrian access from the northern end of Road 16 to Waterloo Road adjacent to the hockey field.

11 Application of s94 and s94A of the Act to the Development

- 11.1 This Agreement excludes the operation of Sections 94 and 94A of the Act to any Development Consent that is granted in respect of the Development.

- 11.2 Section 94(6) of the Act does not apply to the Contributions provided pursuant to this Agreement in respect of any other development for which Development Consent is sought by the Developer in relation to development not contemplated by any Development Application for the Development.

12 Section 94 Sum

- 12.1 Council acknowledges and agrees that as at the date of this Agreement, the total contribution payable pursuant to section 94 of the Act that, but for this Agreement, would be payable by the Developer in connection with the Development is \$3,182,233.37.
- 12.2 Council acknowledges and agrees that the Developer must complete the Public Domain Works, the estimated cost of which is \$2,635,984 (excluding GST).
- 12.3 Subject to clauses 12.5 and 12.6, the Section 94 Sum is 120% of the amount set out in clause 12.1 less the amount set out in clause 12.2, being \$1,182,696.04 (excluding GST).
- 12.4 Subject to clauses 12.5 and 12.6, the Developer is to pay the Section 94 Sum prior to the issue of the Occupation Certificate for the Development.
- 12.5 The amounts in clauses 12.1 shall be indexed in accordance with the applicable provisions of the relevant section 94 contributions plan applying at the relevant date and clause 12.2 shall be indexed in accordance with the Consumer Price Index.
- 12.6 Notwithstanding any provision of this Agreement, if the Council (or the Land and Environment Court on appeal) grants Development Consent for the Development or grants consent to a Section 96 Modification with conditions that increase or decrease the gross floor area of the Development compared to the gross floor area set out in the Development Application, then the amount in clause 12.1 is to be increased or decreased by an amount (calculated in accordance with the section 94 contributions plan in force at that time) which reflects the actual amount of gross floor space permitted by the Development Consent or Section 96 Modification.
- 12.7 Notwithstanding any provision in this Agreement, if the Developer does not obtain a Occupation Certificate within 5 years after the date of the grant of the relevant Construction Certificate, the amount payable under this clause shall be that amount that is payable pursuant to Council's section 94 contributions plan that applies at the expiry of the 5 year period less the cost of the Public Domain Works set out in clause 12.2.

13 Dispute Resolution

13.1 Notice of 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 13.

13.2 **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.

13.3 **Negotiation**

The nominated representatives must:

- (i) meet to discuss the matter in good faith within 5 Business Days after service by the Respondent of notice of its representative, and
- (ii) use reasonable endeavours to settle or resolve the dispute within 15 Business Days after they have met.

13.4 **Further Notice if dispute 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 13.5 or by expert determination under clause 13.6.

13.5 **Mediation**

If a party gives a Dispute Notice calling for the dispute to be mediated:

- (a) the parties must agree 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 & 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 Chair of the institute of Arbitrators & Mediators Australia (NSW Chapter) to appoint a mediator (the **Mediator**);
- (c) the Mediator appointed pursuant to this clause 13.5 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 or she 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 or her knowledge by reason of his or her appointment and performance of his or her 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.

13.6 Expert determination

If the dispute is not resolved under clause 13.3 or 13.5, 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 after the parties agree in writing to expert determination, appointed on application of a party by the Chair of the Institute of Arbitrators & Mediators Australia (NSW Chapter);
- (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;
- (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.

13.7 **Litigation**

If the dispute is not finally resolved in accordance with this clause 13 either party is at liberty to litigate the dispute.

13.8 **Continue to perform obligations**

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

14 **Guarantees**

14.1 Prior to obtaining the Construction Certificate for the Development, the Developer must deliver to Council two Guarantees for the following amounts in respect of the following items:

- (a) Public Domain Works - \$2,570,087.33(97.5% of the construction costs in clause 12.2); and
- (b) Retention sum in respect of defects - \$65,899.60 (2.5% of the construction costs in clause 12.2).

14.2 Each Guarantee will be for a period that does not exceed 5 years after the date on which the Guarantees are provided under clause 14.1.

14.3 If following a Stage Inspection, the Project Certifier is satisfied that the works up to the relevant Stage Inspection are completed, the Developer may reduce the amount of the Guarantee referred to in clause 14.1(a) by an amount approximate to the costs of the works undertaken up to that Stage Inspection.

14.4 Without limiting clause 14.2, if:

- (a) the Development Consent for the Development lapses; and
- (b) the Developer has not commenced any part of the Public Domain Works,

then the Council must return the Guarantees to the Developer within 20 Business Days of the Developer providing a written request to the Council to return the Guarantees.

14.5 If the Developer does not provide the Contributions in accordance with this Agreement or the Implementation Deed then, without limiting any other remedies available to the Council, the Council may call on the Guarantees in respect of the Public Domain Works without notice to the Developer.

14.6 Within 20 Business Days after the Project Certifier certifies that the Public Domain Works have reached Practical Completion, Council must (if it has not called on it)

return the Guarantee referred to in clause 14.1(a) (or any remaining balance of it) to the Developer or as the Developer directs.

- 14.7 Within 20 Business Days after the Defects Liability Period has expired Council must (if it has not called on it) return the Guarantee referred to in clause 14.1(b) (or any remaining balance of it) to the Developer or as the Developer directs.
- 14.8 If during the Defects Liability Period, the Council notifies the Developer of a defect and if, at the expiration of the Defects Liability Period, that defect has not been rectified by the Developer to the Council's satisfaction (acting reasonably), then:
- (a) the Council need not deliver the Guarantee referred to in clause 14.1(b) (or any remaining balance of it) until that defect has been rectified; and
 - (b) the Council may call upon the Guarantee in order to rectify that defect; and
 - (c) if there is any surplus amount following completion of the rectification of the defect by the Council, the Council must return that amount promptly to the Developer.
- 14.9 Any request for return of a Guarantee must be made in writing and be accompanied by appropriate certification by the Project Certifier acceptable to both parties (acting reasonably).

15 Registration on Title

- 15.1 Prior to the issue of the Construction Certificate for the Development, the Developer must register or procure registration of this Agreement on the relevant folios of the Torrens title register held by New South Wales Land and Property Information pertaining to the Land. The Developer shall be responsible for obtaining the consent of any mortgagee or other person with an interest in the Land to such registration.
- 15.2 Upon full satisfaction of the Developer's obligations under this Agreement, or if for any reason the Development Consent for the Development should be deemed invalid or otherwise lapse, the Council agrees to provide a release and discharge of this Agreement with respect to the Land or any lot, including a strata lot, created on subdivision of the Land, within 10 Business Days of receiving a written request from the Developer and to do all things reasonably necessary, including to execute any necessary documentation, to enable the Developer to remove the notation of this Agreement on the relevant folios of the Torrens title register held by New South Wales Land and Property Information pertaining to the Land.

16 Assignment

16.1 Agreement may be assigned

This Agreement may be assigned by either party with the written consent of the other party. Such consent may not be unreasonably withheld.

17 Termination

17.1 General

If a party to this Agreement fails to comply with the terms and conditions of this Agreement, the non-defaulting party may, if the default is capable of remedy, serve notice on the defaulting party to remedy the default by a date that is not less than a date 5 Business Days from the date of the notice.

17.2 If:

- (a) the Development Consent for the Development lapses;
- (b) there is a declaration by a Court of competent jurisdiction that the Development Consent is invalid;
- (c) the defaulting party does not remedy the breach by the date specified in the notice;
- (d) the breach of the Agreement is not capable of remedy,
- (e) the Developer surrenders the Development Consent for the Development on the Land prior to physical commencement (as defined in the Act),

then:

- (i) either party may in the circumstances described in clause 17.2(a) and 17.2(b); or
- (ii) the non-defaulting party may in the circumstances described in clauses 17.2(c) and 17.2(d))
- (iii) the Developer may in the circumstances described in clauses 17.2(e)

terminate this Agreement by no less than 10 Business Days' notice in writing to the other party.

17.3 Effect of termination

- (a) If this Agreement is validly terminated for any reason:
 - (i) the provisions of this Agreement will cease to have effect other than those obligations which expressly or by their nature survive termination; and
 - (ii) except as provided otherwise, each party retains the rights it has against any other party in respect of any breach of or unperformed obligation under this Agreement.

17.4 Rights and Obligations

The termination of this Agreement pursuant to this clause shall be without prejudice to the rights of a party and shall not affect or determine the obligations of a party that

have accrued under this Agreement or the relevant provision prior to the effective date of such termination.

18 Notices

- 18.1 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.
 - (d) Council:
 - (i) Attention: General Manager
 - (ii) Address: 1 Devlin Street, Ryde, NSW
 - (iii) Fax Number: 02 9952 8070
 - (e) Developer
 - (i) Attention: Head of Development
 - (ii) Address: Level 9, 343 George Street, Sydney NSW
 - (iii) Fax Number: 02 9017 1109
- 18.2 If a Party gives the other Party no less than 5 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.
- 18.3 Any notice, consent, information, application or request is to be treated as given or made at the following time:
- (a) if it is hand 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.
- 18.4 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.

18.5 A notice sent or delivered in a manner provided by clause 18.1 must, subject to clauses 18.2 - 18.4, be treated as validly given to and received by the Party to which it is addressed even if:

- (a) the addressee has been liquidated or deregistered or is absent from the place at which the notice is delivered or to which it is sent; or
- (b) the notice is returned unclaimed.

19 Approvals and Consent

19.1 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.

20 Entire Agreement

20.1 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.

21 Further Acts

21.1 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.

22 Governing Law and Jurisdiction

22.1 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.

23 Joint and Individual Liability and Benefits

23.1 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 persons is

for the benefit of them jointly and each of them individually.

24 No Fetter

- 24.1 Nothing in this Agreement or the Implementation Deed 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.

25 Representations and Warranties

- 25.1 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.

26 Severability

- 26.1 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.

27 Variation

- 27.1 No variation of this Agreement have any force or be of any effect unless it is in writing and signed by both Parties to this Agreement.

28 Waiver

- 28.1 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.

29 GST

29.1 Meanings

In this clause:

- (a) **GST** means GST as defined in the A New Tax System (Goods and Services) Tax Act 1999 as amended from time to time (**GST Act**) or any replacement or other relevant legislation and regulations;
- (b) words used in this clause which have a particular meaning in the GST law (as defined in the GST Act, and also including any applicable legislative determinations and Australian Taxation Office public rulings) have the same meaning, unless the context otherwise requires;
- (c) any reference to GST payable by a party includes any corresponding GST payable by the representative member of any GST group of which that party is a member; and
- (d) if the GST law treats part of a supply as a separate supply for the purpose of determining whether GST is payable on that part of the supply or for the purpose of determining the tax period to which that part of the supply is attributable, such part of the supply is to be treated as a separate supply.

29.2 Unless GST is expressly included, the consideration expressed to be payable under any other clause of this Deed for any supply made under or in connection with this Deed or any other value expressed in this Deed does not include GST.

29.3 Subject to clause 29.6, to the extent that any supply made under or in connection with this Deed is a taxable supply, the GST exclusive consideration otherwise payable for that supply is increased by an amount equal to that consideration multiplied by the rate at which GST is imposed in respect of the supply, and is payable at the same time.

29.4 Each party agrees to do all things, including providing tax invoices and other documentation, that may be necessary or desirable to enable or assist the other party to claim any input tax credit, adjustment or refund in relation to any amount of GST paid or payable in respect of any supply made under or in connection with this Deed.

29.5 If a payment to a party under this Deed is a payment by way of reimbursement or indemnity and is calculated by reference to the GST inclusive amount of a loss, cost or expense incurred by that party, then the payment is to be reduced by the amount of any input tax credit to which that party is entitled in respect of that loss, cost or expense before any adjustment is made for GST pursuant to clause 29.3.

29.6 Where as a result of the operation of clause 29 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 5 Business 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.

30 Force Majeure

- 30.1 Subject to clause 30.6, if a Party is unable by reason of force majeure to carry out wholly or in part its obligations under this Agreement, it must:
- (a) give to the other Party prompt notice of the force majeure with reasonably full particulars; and
 - (b) suggest an alternative method, if any, of satisfying its obligations under this Agreement.
- 30.2 The Parties agree that force majeure includes the commencement of any legal proceedings by any person challenging the validity of the Development Consent or any provision of this Agreement.
- 30.3 If a Party is unable to satisfy its obligations under this Agreement by an alternative method, the obligations of the Parties, and any time periods, so far as they are affected by the force majeure are then suspended during continuance of the force majeure and any further period as may be reasonable in the circumstances.
- 30.4 The Party giving such notice under this clause must use all reasonable efforts and diligence to remove the force majeure or ameliorate its effects as quickly as practicable.
- 30.5 The Parties agree that any costs associated in ameliorating a force majeure event will be apportioned, if necessary, in such manner as may be fair and reasonable.
- 30.6 The Parties agree that this force majeure provision does not apply to an obligation of a Party to transfer and or to pay money.
- 30.7 If the Parties are unable to agree on the existence of an event of force majeure or the period during which the obligations of the Parties, and any time periods, are suspended during the continuance of the force majeure, that dispute must be referred for determination under clause 13.
- 30.8 If a force majeure event cannot be resolved to the mutual satisfaction of Council and the Developer and as a result of a force majeure event the Developer, in its sole discretion, determines that it is unable to undertake the Development, the Developer may terminate this agreement by notice to Council in which event neither Party will have any Claim against the other under this Agreement.

31 Compliance with Laws

- 31.1 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.

32 Confidentiality

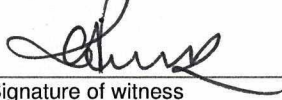
32.1 The parties agree that the terms of this Agreement are not confidential and this Agreement may be treated as a public document and exhibited or reported without restriction by any party.

EXECUTION

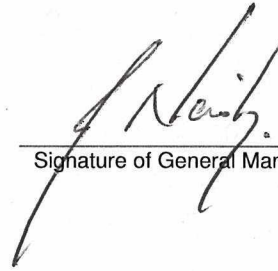
Executed as an Agreement on

2011

Executed under delegated authority pursuant to section 377(1) of the *Local Government Act 1993* by John Neish, General Manager, **City of Ryde**, in the presence of:



Signature of witness

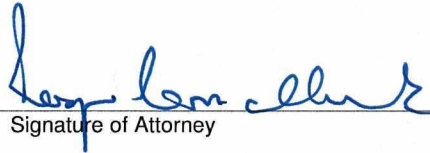


Signature of General Manager

NATALIE DAINER

Name of witness (block letters)

Executed by DEXUS Funds Management Limited ABN 24 060 920 783 by its duly authorised attorneys under Power of Attorney dated 15 June 2011 Registered Book 4615 No. 23 in the presence of:



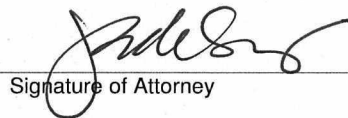
Signature of Attorney

ROGER CRUICKSHANK

Name of Attorney



Signature of witness



Signature of Attorney

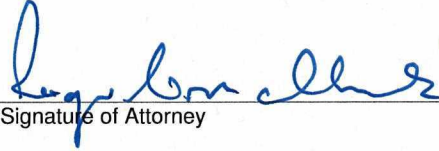
JADE ANN SNG

Name of Attorney

DELE CORINNE ROCHFORD

Name of witness [block letters]

**Executed by DEXUS Wholesale
Property Limited** ABN 47 006 036 442 by
its duly authorised attorneys under Power
of Attorney dated 15 June 2011
Registered Book 4615 No. 28 in the
presence of:



Signature of Attorney

ROGER CRUICKSHANK

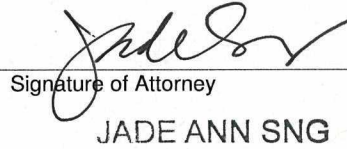
Name of Attorney



Signature of witness

DELE CORINNE ROCHFORD

Name of witness [block letters]



Signature of Attorney

JADE ANN SNG

Name of Attorney

Schedule 1: Reference Schedule

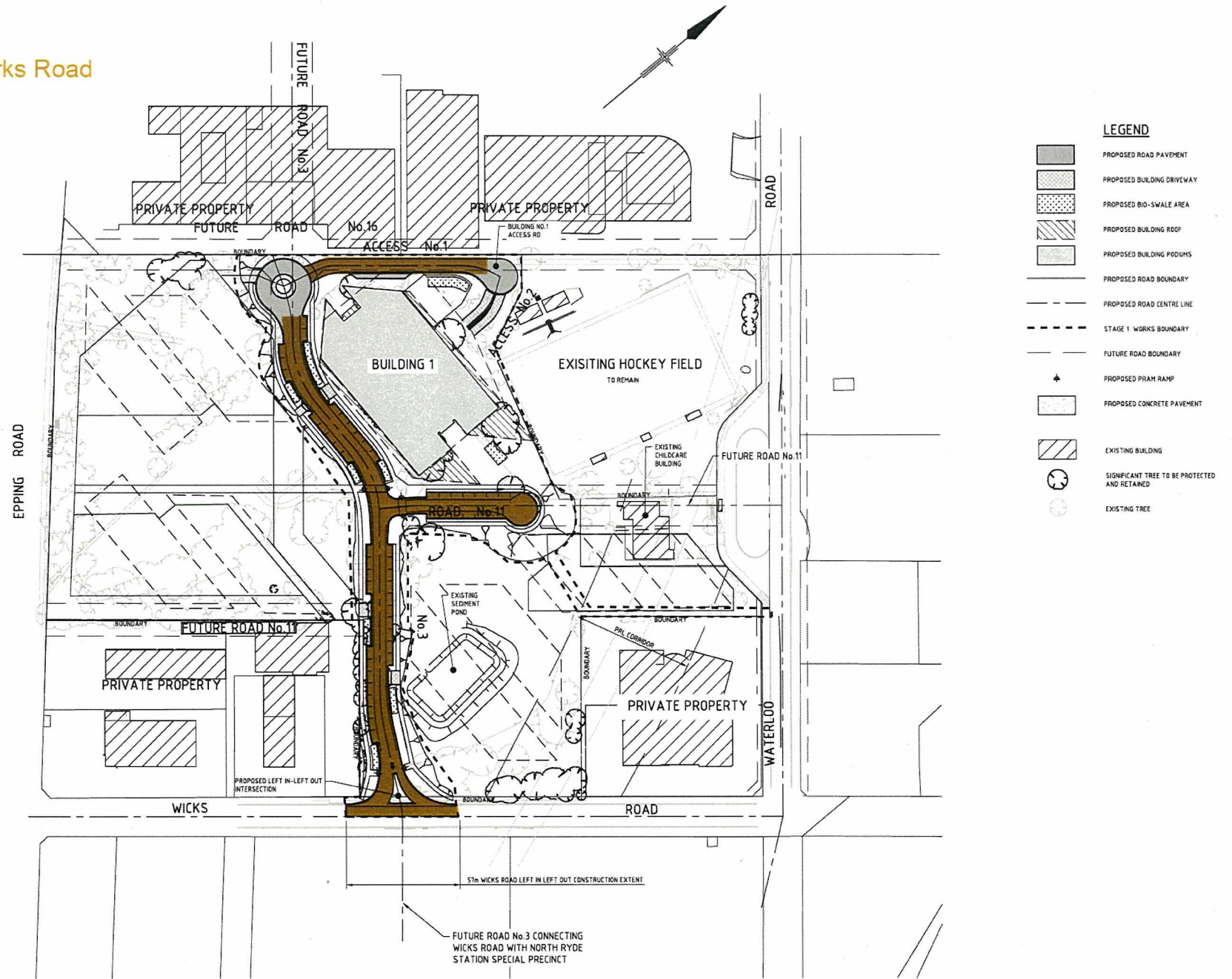
Item	Name	Description
1	Development	The construction of a 6 storey commercial building with a gross floor area of 27,340m ² and associated road works.
2	Preliminary Development	DA LDA 807/2007 The demolition of the existing school buildings on the Land, preliminary erosion and sediment control works, perimeter fencing and associated signage.

Schedule 2: The Land

Schedule 3: Contributions

Item	Description
Section 94 Sum	\$1,182,696.04 or an amount determined in accordance with clause 12.
Public Domain Works Roads	Construction of: <ul style="list-style-type: none"> <li data-bbox="676 573 1321 703">(a) Road 3 between Wicks Road and the northern boundary of the Land to a width of 20.4 metres including reserve to realign road at Wicks Road as shown in Plan A below; <li data-bbox="676 741 1321 775">(b) Road 16 as shown in Plan A below; <li data-bbox="676 813 1321 1003">(c) Part Road 11 as shown in Plan A below to the specifications contained in "Environmental Standards Development Criteria – Public Civil Works" issued by Ryde City Council.
Public Domain Works Roundabout	The roundabout intersection at the intersection of Road 3 and Road 16 and the turning circle at the end of Road 16 as shown in Plan B below.
Dedicated Land	The land to be dedicated by the Developer to the Council as shown in the plan in Schedule 5.

Schedule 3
Plan A: Public Domain Works Road

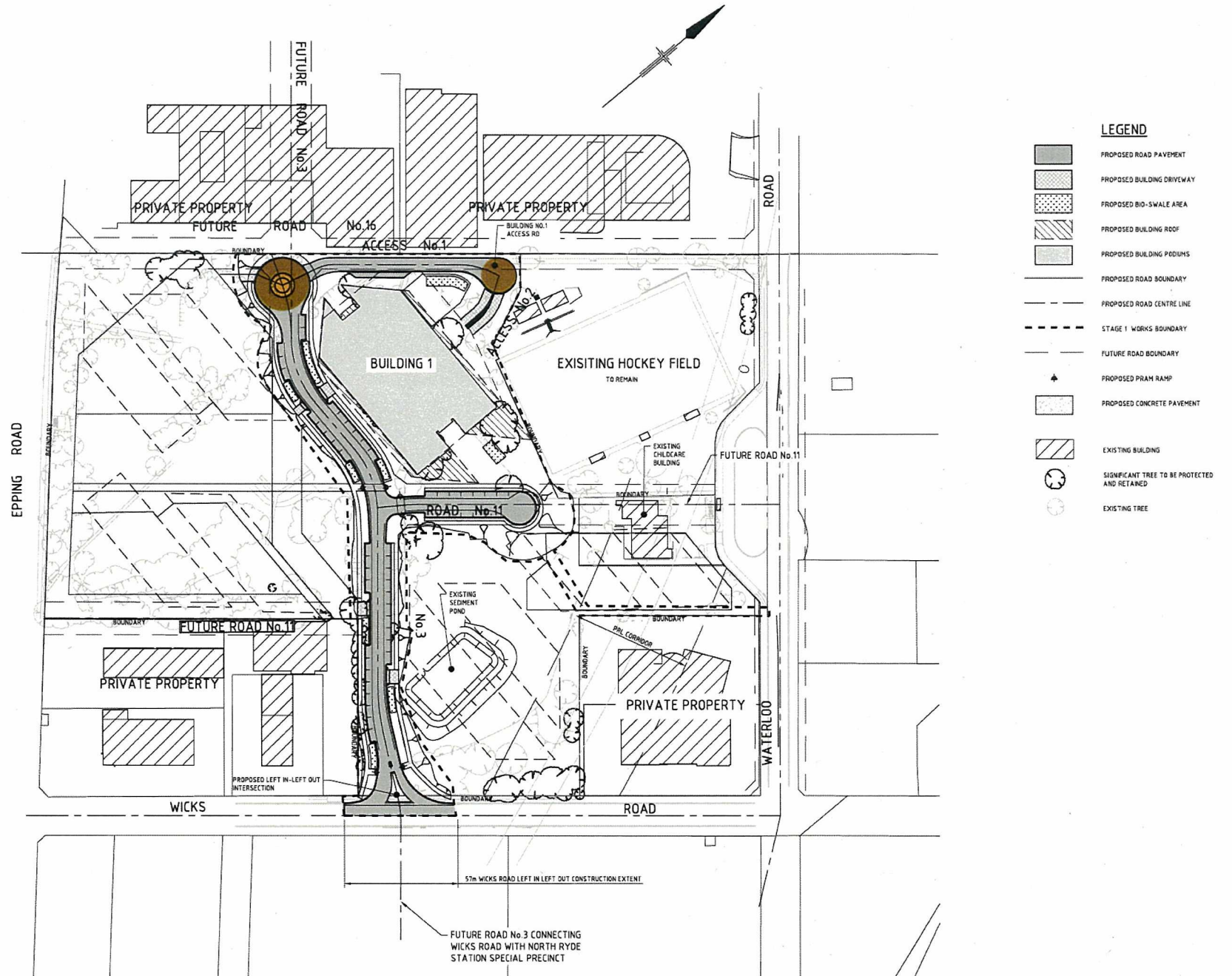


LEGEND















- PROPOSED ROAD PAVEMENT
- PROPOSED BUILDING DRIVEWAY
- PROPOSED BIO-SWALE AREA
- PROPOSED BUILDING ROOF
- PROPOSED BUILDING PODIUMS
- PROPOSED ROAD BOUNDARY
- PROPOSED ROAD CENTRE LINE
- STAGE 1 WORKS BOUNDARY
- FUTURE ROAD BOUNDARY
- PROPOSED PRAM RAMP
- PROPOSED CONCRETE PAVEMENT
- EXISTING BUILDING
- SIGNIFICANT TREE TO BE PROTECTED AND RETAINED
- EXISTING TREE

FUTURE ROAD No. 3 CONNECTING WICKS ROAD WITH NORTH RYDE STATION SPECIAL PRECINCT

Schedule 3
 Plan B: Public Domain
 Works Roundabout



LEGEND

-  PROPOSED ROAD PAVEMENT
-  PROPOSED BUILDING DRIVEWAY
-  PROPOSED BIO-SWALE AREA
-  PROPOSED BUILDING ROOF
-  PROPOSED BUILDING PODIUMS
-  PROPOSED ROAD BOUNDARY
-  PROPOSED ROAD CENTRE LINE
-  STAGE 1 WORKS BOUNDARY
-  FUTURE ROAD BOUNDARY
-  PROPOSED PRAM RAMP
-  PROPOSED CONCRETE PAVEMENT
-  EXISTING BUILDING
-  SIGNIFICANT TREE TO BE PROTECTED AND RETAINED
-  EXISTING TREE

Schedule 4: Implementation Deed



HENRY DAVIS YORK
LAWYERS

Implementation Deed

Ryde City Council
ABN 81 621 292 610

DEXUS Funds Management Limited as trustee for the Wicks Road Trust
ABN 24 060 920 783

and

**DEXUS Wholesale Property Limited as responsible entity for the DEXUS
Wholesale Property Fund**
ABN 47 006 036 442

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KEY DETAILS

1	Date	See Execution page
2	Parties	
3	Council	
	Name	Ryde City Council ABN 81 621 292 610
	Address	1 Devlin Street, Ryde, NSW
4	Developer	
	Name	DEXUS Funds Management Limited as trustee for the Wicks Road Trust ABN 24 060 920 783 and DEXUS Wholesale Property Limited as responsible entity for the DEXUS Wholesale Property Fund ABN 47 006 036 442
	Address	Level 9, 343 George Street, Sydney, NSW

BACKGROUND

- A The Developer intends to redevelop the Land for commercial use with associated car parking.
- B The parties have entered into the Voluntary Planning Agreement pursuant to which, among other things, the Developer is to provide the Public Domain Works to Council.
- C The parties now wish to set out the process for finalising the design of the Public Domain Works and the terms by which the delivery of Public Domain Works will be implemented.

OPERATIVE PROVISIONS

1 Definitions and interpretation

1.1 In this Deed:

- (a) **Annexure** means an annexure to this Implementation Deed.
- (b) **Agreed Amount** means the cost of the Public Domain Works as set out in clause 12.2 of the VPA.
- (c) **Approval** means any approval by any Authority with respect to the Development.
- (d) **Builder** means the building contractor awarded the Building Contract.
- (e) **Building Contract** means the contract to carry out the Public Domain Works.
- (f) **Certificate of Practical Completion** means a certificate issued by the Project Certifier that the Public Domain Works have achieved Practical Completion.
- (g) **Condition** means a condition of Development Consent for the Development and conditions of any other Approval.
- (h) **Council's Representative** means the General Manager of Council or such other person who the General Manager of the Council notifies the Developer is the Council's representative from time to time.
- (i) **Date for Practical Completion** means the date for practical completion under the Building Contract for the Public Domain Works.
- (j) **Defects Liability Period** means in respect of the Public Domain Works the period of 12 months from the date on which the Dedicated Land is dedicated to Council.
- (k) **Detailed Design** means the final specifications and finishes for the Public Domain Works prepared in accordance with clause 3.

- (l) **Practical Completion** means in respect of the Public Domain Works, that stage in the construction of the Public Domain Works when construction of the Public Domain Works is complete except for minor omissions and minor defects:
 - (i) which do not prevent the Public Domain Works from being reasonably capable of being used for its intended purpose; and
 - (ii) rectification of which will not prejudice the convenient use of the Public Domain Works.
 - (m) **Project Certifier** means the person engaged under the Building Contract to certify Practical Completion of the Public Domain Works.
 - (n) **Public Domain Works Standards** means the standards set out in Annexure A.
 - (o) **Requirement** means any requirement, notice, order or direction given by any Authority.
 - (p) **Services** means all water, gas, electricity, television, drainage, sewerage, cable TV, data communications, telecommunications and other services which are required under a Development Consent or an Approval and which are necessary or desirable for the construction, operation or occupation of the Public Domain Works.
 - (q) **Variation Costs** means the variation costs over and above the Agreed Amount which arise because of a written request by the Council's Representative for a change to the Public Domain Works that is not contemplated in the Development Application or the Public Domain Works Standards.
 - (r) **Voluntary Planning Agreement** means the agreement entered into by the parties on or about the date of this Deed in respect of the Development.
- 1.2 A term which has a defined meaning in the Voluntary Planning Agreement has the same meaning when used in this Deed unless it is expressly defined in this Deed, in which case the meaning given to it in this Deed will prevail.
- 1.3 In the interpretation of this Deed, the following provisions apply unless the context otherwise requires:
- (a) Headings are inserted for convenience only and do not affect the interpretation of this Deed.
 - (b) If the day on which any act, matter or thing is to be done under this Deed is not a Business Day, the act, matter or thing must be done on the next Business Day.
 - (c) A reference in this Deed to dollars or \$ means Australian dollars and all amounts payable under this Deed are payable in Australian dollars.

- (d) A reference in this Deed to any law, legislation or legislative provision includes any statutory modification, amendment or reenactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- (e) A reference in this Deed to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- (f) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed.
- (g) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- (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.
- (j) References to the word 'include' or 'including' are to be construed without limitation.
- (k) A reference to this Deed includes the agreement recorded in this Deed.
- (l) A reference to a party to this Deed includes a reference to the servants, agents and contractors of the party, and the party's successors and assigns.
- (m) Any schedules and attachments form part of this Deed.

1.4 **No Partnership**

- (a) Nothing in this Deed:
 - (i) creates between the parties either the relationship of partnership or that of principal and agent;
 - (ii) constitutes the parties as parties to a joint venture; or
 - (iii) imposes on the parties any joint or joint and several liability.

1.5 **Proper law and submission to jurisdiction**

- (a) The validity, interpretation, and performance of this Deed is governed by the laws of New South Wales.
- (b) All parties are subject to the jurisdiction of the Supreme Court of New South Wales and the courts of the Commonwealth of Australia.

2 The Public Domain Works

- 2.1 The Developer agrees to procure and carry out the construction of the Public Domain Works as contemplated in this Deed.
- 2.2 The Developer must ensure that the Public Domain Works are carried out in accordance with:
- (a) the Public Domain Works Standards in Annexure A;
 - (b) the Development Consent for the Development and all other Approvals and the requirements of all laws.
- 2.3 All costs, other than Variation Costs, of the construction of the Public Domain Works must be borne by the Developer.

3 Development of the Detailed Design

3.1 Co-operation with Council

- (a) From the date the Developer notifies the Council in writing that it wishes to commence the detailed design of the Public Domain Works, Council and the Developer must:
- (i) work in consultation with each other to prepare and agree the Detailed Design; and
 - (ii) agree a date by which the Detailed Design must be prepared and agreed; and
 - (iii) prepare the Detailed Design in accordance with the Macquarie Park Corridor Public Domain Technical Manual and the AUSTRROADS Pavement Design Manual "A Guide to the Structural Design of Road Pavements" (1992).
- (b) Council and the Developer must both act reasonably and with due expedition in their consultations with each other.

3.2 Costs

- (a) Subject to clause 3.3, in preparing the Detailed Design, Council and the Developer must use reasonable endeavours to ensure that the cost of delivery of the Public Domain Works does not exceed the Agreed Amount.
- (b) Subject to clause 0, where the cost of the Public Domain Works is greater than the Agreed Amount, the Developer shall be obliged to accept that cost.

- (c) If the Council makes a written request to change the Detailed Design which a qualified Quantity Surveyor certifies will cause the Agreed Amount to increase by more than 5%, the Council must pay the Variation Costs to the Developer within 10 Business Days after delivery by the Developer to Council of a tax invoice for the payment together with reasonable details of the Claim for the additional cost payment.

3.3 Council Variations

- (a) Despite any other provision in clause 3, Council is not entitled to propose and the Developer has no obligation to consider or agree to any inclusion in respect of the Detailed Design which:
 - (i) exceeds the specifications set out in the Public Domain Works Standards in Annexure A;
 - (ii) does not comply with the conditions of Development Consent or any Approval for the Development;
 - (iii) would or may require the Developer to obtain new, additional or modified Development Consents or Approvals; or
 - (iv) would or may adversely affect the structural integrity, quality, efficiency, functionality or architectural or aesthetic design of any element of the Development or the Public Domain Works.

3.4 Developer Variations

- (a) The Developer may make a variation to the Detailed Design of Public Domain Works:
 - (i) to comply with the conditions of Development Consent, any Approval, laws and any Requirements;
 - (ii) which does not affect the structural integrity of the Development;
 - (iii) which does not impact adversely on the Services; and
 - (iv) which does not materially and adversely impact upon the Council's use of the Public Domain Works when they are completed.
- (b) The Developer may substitute alternative but not inferior finishes to those described in the Detailed Design and notify the Council of such substitution, subject to the Council's written agreement to such alternative finish (which agreement shall not be unreasonably withheld).
- (c) The Developer must pay the additional costs resulting from any variation under this clause.

3.5 Good faith

The parties must act promptly and in good faith to consult and agree in relation to the Detailed Design.

4 Council Right to Inspect

4.1 Council's Representative may, subject to:

- (a) the terms of the Building Contract (save for any clause of the Building Contract which prevents the Council from accessing the Site);
- (b) giving reasonable notice to the Developer, the Builder and the Project Certifier;
- (c) complying with all reasonable directions of the Developer, the Builder and the Project Certifier;
- (d) exercising its rights under this clause entirely at its own risk in all respects; and
- (e) being accompanied by the Project Certifier or its nominee, or as otherwise agreed,

enter the Land at reasonable times to inspect the progress of the Public Domain Works.

5 Completion

5.1 Practical Completion

- (a) The Developer must ensure that the Project Certifier gives to the Council and the Developer not less than 10 Business Days prior written notice of the anticipated date on which Practical Completion of the Public Domain Works will be achieved.
- (b) The Developer must arrange for the Developer, the Project Certifier and the Council to inspect the Public Domain Works after the notice in clause 5.1(a) is issued and before a Certificate of Practical Completion is issued.
- (c) Within 5 Business Days after the inspection contemplated in clause 5.1(b) the Developer, the Project Certifier and the Council must prepare and agree a list of works to be completed before the Public Domain Works has achieved Practical Completion (**Completion Works**).
- (d) If:
 - (i) the parties agree that there are no Completion Works required to be carried out before Practical Completion of the Public Domain Works is achieved, then the Project Certifier may issue a Certificate of Practical Completion for the Public Domain Works;
 - (ii) the parties agree a list of Completion Works for the Public Domain Works, then the Developer must ensure that the Completion Works

are carried out and completed and the Project Certifier may issue a Certificate of Practical Completion for the Public Domain Works once those Completion Works have been completed; and

- (iii) the parties cannot agree a list of Completion Works for the Public Domain Works then:
 - (A) Subject to the concurrence of Council, the Project Certifier may issue a Certificate of Practical Completion for the Public Domain Works when it considers that Practical Completion of the Public Domain Works has been achieved; and
 - (B) any dispute will be referred to an expert for determination under clause 6 and the expert must be requested to determine what further works, if any, are required to be completed before Practical Completion of the Public Domain Works has been achieved for the purposes of this Deed; and
 - (C) the Developer must, if, under clause 6, the expert determines further works are required to be carried out to achieve Practical Completion of the Public Domain Works, expeditiously carry out and complete those further works.

5.2 Defects and omission

- (a) The Council may notify the Developer of defects and omissions in any part of the Public Domain Works during the relevant Defects Liability Period.
- (b) The Developer must promptly upon receipt of a defects notice from the Council:
 - (i) procure the performance of the work required to rectify the defect; and
 - (ii) keep the Council reasonably informed of the action to be taken to rectify the defect.
- (c) If the Developer does not promptly procure the rectification of the defect, Council may carry out the rectification.
- (d) The Council must give the Developer and its contractors access to the Dedicated Land to carry out the rectification works.
- (e) The Developer must meet all costs of and incidental to rectification of defects under this clause 5.2.

5.3 Delivery of documents

- (a) The Developer must as soon as practicable, and no later than 25 Business Days after the date on which the Certificate of Practical Completion is issued in respect of the Public Domain Works:
 - (i) deliver to the Council, complete copies of:

- (A) all "as built" drawings, specifications and operation and service manuals relevant to the Public Domain Works;
 - (B) all necessary certificates including the certificates of any consultants of the Developer that the Council may reasonably require and which are relevant to the Public Domain Works; and
 - (C) consents and approvals of any Authority whose consent or approval is required for the occupation or use of the Public Domain Works, and
- (ii) provide the Council with a tour of the Public Domain Works and provide reasonable instructions on the operation and use of the Services within the Public Domain Works.

5.4 Warranties

- (a) The Developer must assign (as beneficial owner) or cause to be assigned to Council the benefit of any warranties and guarantees obtained by the Developer and the Builder (and capable of assignment) with respect to any material or goods incorporated in or forming part of the Public Domain Works.
- (b) To the extent that any such warranties or guarantees cannot be assigned, the Developer must at the request of Council do anything reasonably required by Council including enforcing such warranties or guarantees for the benefit of Council.

6 Dispute Resolution

A dispute under this Deed is to be dealt with using the dispute resolution mechanisms contained in clause 13 of the Voluntary Planning Agreement.

7 Insurance

- 7.1 Promptly after the issue of a Construction Certificate for the Public Domain Works, the Developer must ensure that the Builder effects the following insurances issued by an insurer approved by the Council and in a form approved by the Council (acting reasonably):
- (a) construction works insurance for the value of the Public Domain Works;
 - (b) public risk insurance for at least \$20 million;
 - (c) workers compensation insurance for personnel in respect of whom the Builder has an obligation at law to effect that insurance.

- 7.2 The Developer must, throughout the term of this Deed and upon request of the Council, provide evidence of the currency of the insurance required by clause 7.1.

8 Notices

- 8.1 Notices under this Deed are to given in accordance with clause 18 of the Voluntary Planning Agreement.

9 Goods and Services Tax

- 9.1 Goods and Services Tax is to be treated in accordance with clause 29 of the Voluntary Planning Agreement.

10 Termination

- 10.1 If the Voluntary Planning Agreement is terminated for any reason permitted under clause 17 of the Voluntary Planning Agreement, this Deed is taken to be terminated at the same time.

11 Intellectual Property Rights

- 11.1 The Council acknowledges that the Developer or its contractors holds all rights to copyright and any intellectual property which may exist in any document arising out of the Public Domain Works. To the extent the Developer has or receives intellectual property rights in any document arising out of the Public Domain Works, the Developer shall, at the request of the Council, grant Council a licence to use those rights for any purpose connected to the Public Domain Works.

12 Entire Agreement

- 12.1 With the exception of the agreement contained in the Voluntary Planning Agreement, this Deed:
- (a) is the entire agreement and understanding between the parties on everything connected with the subject matter of this Deed; and
 - (b) supersedes any prior agreement or understanding on anything connected with that subject matter.

13 Variation

An amendment or variation to this Deed is not effective unless it is in writing and signed by the parties.

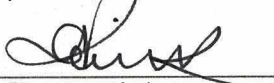
14 Building Contract

The Developer shall, upon request, allow Council access to view a copy of the Building Contract.

EXECUTION

Executed as a Deed on 6 DECEMBER 2011

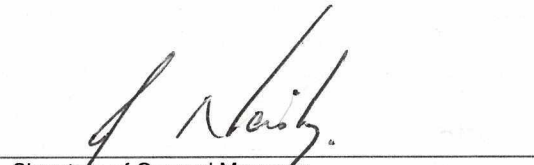
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Signature of witness

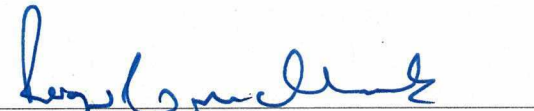
NATALIE DAINER

Name of witness (block letters)



Signature of General Manager

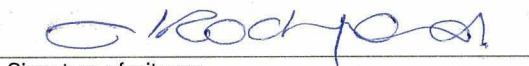
Signed, sealed and delivered by DEXUS Funds Management Limited ABN 24 060 920 783 by its duly authorised attorneys under Power of Attorney dated 15 June 2011 Registered Book 4615 No. 23 in the presence of:



Signature of Attorney

ROGER CRUICKSHANK


Name of Attorney



Signature of witness

DELE CORINNE ROCHFORD

Name of witness [block letters]




Signature of Attorney

JADE ANN SNG


Name of Attorney

Signed, sealed and delivered by DEXUS Wholesale Property Limited ABN 47 006 036 442 by its duly authorised attorneys under Power of Attorney dated 15 June 2011 Registered Book 4615 No. 28 in the presence of:




Signature of Attorney
ROGER CRUICKSHANK

Name of Attorney



Signature of witness
DELE CORINNE ROCHFORD

Name of witness [block letters]



Signature of Attorney
JADE ANN SNG

Name of Attorney

ANNEXURE A**Public Domain Works Standards****ROAD 3:**

- (a) Road 3 will be a Type 2 Public Street (secondary road) in accordance with the Macquarie Park Corridor Public Domain Technical Manual.
- (b) Total length 270m.
- (c) Road reserve will be 20.4m in general with a widening up to 22.6m along the bends to accommodate 8.8m medium rigid trucks.
- (d) Road bends and turning circles along Road 3 to accommodate 8.8m medium rigid trucks.
- (e) Lane width to be 3.5m (transitioning to 4.1m at bends) plus 1.2m provision for a cycle lane (total minimum lane width = 4.7m).
- (f) Provision will be made for 40 parallel car parking spaces. Spaces to be 6m in length and 2.5m in depth.
- (g) The roundabout at the western end (Future Road 16 Roundabout) of the road is sized to accommodate 8.8m long rigid trucks.
- (h) The left-in-left-out treatment at the eastern end of Road 3 (at the intersection with Wicks Road) is sized to accommodate 19m long articulated trucks.
- (i) Bio-swale areas are to be provided at regular intervals along the road in locations where the road grading allows stormwater to be collected in the bio-swales.
- (j) Road surface to be flexible bitumen pavement designed to the AUSTRROADS Pavement Design Manual "A Guide to the Structural Design of Road Pavements" (1992).
- (k) A 2m wide stone paved footpath will be provided adjacent to the property boundary. Footpath to be Pavement Type B, G684 Black Fuding (dark grey) granite pavers or approved equivalent, in accordance with Macquarie Park Public Domain Technical Manual, Section 3.2.
- (l) In-situ concrete kerb and gutter to be provided along the length of the road in accordance with Macquarie Park Public Domain Technical Manual, Section 3.5.
- (m) Tactile indicators will be provided at all pedestrian ramps in accordance with Macquarie Park Public Domain Technical Manual, Section 3.6.

ROAD 11

- (a) Road 11 will be a Type 2 Public Street (secondary road) in accordance with the Macquarie Park Corridor Street Network Structure Plan and the Environmental Standards Design Criteria – Public Civil Works document issues by Ryde City Council.
- (b) Total length to be 80m.
- (c) Road reserve will be 20.4m.
- (d) Termination roundabout at the end of Road 11 was designed to accommodate standard cars only.
- (e) Lane width to be 3.5m plus 1.2m provision for a cycle lane (total minimum lane width = 4.7m).
- (f) Provision will be made for 12 parallel car parking spaces. Spaces to be 6m in length and 2.5m in depth.
- (g) A pedestrian ramp and crossing to be provided at the intersection with Road 3.
- (h) Bio-swale areas are provided at regular intervals along the road in locations where the road grading allows stormwater to be collected in the bio-swales.
- (i) Road surface to be flexible bitumen pavement designed to the AUSTRROADS Pavement Design Manual "A Guide to the Structural Design of Road Pavements" (1992).
- (j) A 2m wide stone paved footpath will be provided adjacent to the property boundary. Footpath to be Pavement Type B, G684 Black Fuding (dark grey) granite pavers or approved equivalent, in accordance with Macquarie Park Public Domain Technical Manual, Section 3.2.
- (k) In-situ concrete kerb and gutter to be provided along the length of the road in accordance with Macquarie Park Public Domain Technical Manual, Section 3.5.
- (l) Tactile indicators will be provided at all pedestrian ramps in accordance with Macquarie Park Public Domain Technical Manual, Section 3.6.

ROAD 16/ACCESS ROAD NO. 1

Access No.1 proposed in the Development Application will provide access to the northern parking entrance to Building 1 under Stage 1. This road is referred to in the Voluntary Planning Agreement as "Road 16" as it forms part of a future road, a Type 3 Public Street (tertiary road) between Waterloo and Epping Roads, under the Macquarie Park Corridor Street Network Structure Plan

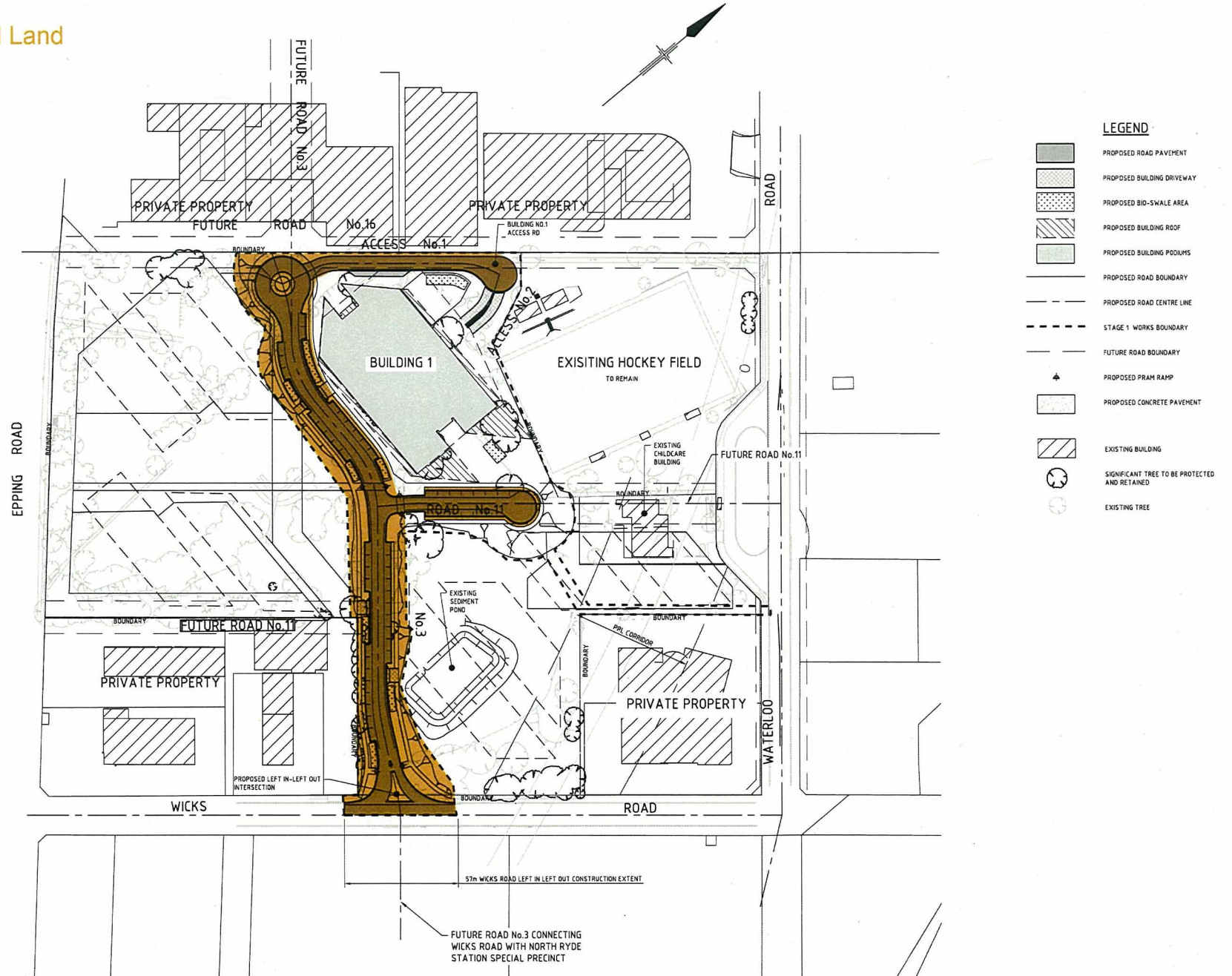
- (a) Total length to be 98m.
- (b) Road reserve to be 7.75m.
- (c) Road bends and turning circles along Access No.1 to be designed to

accommodate 8.8m medium rigid trucks.

- (d) Lane width to be 3.5m.
- (e) Provision will be made for a 24m long, 3m deep loading zone.
- (f) No provision will be made for pedestrian access along this access road.
- (g) A bio-swale area will be provided at the northern end of the access where the road grading allows stormwater to be collected into the bio-swales.
- (h) Road surface to be flexible bitumen pavement designed to the AUSTROADS Pavement Design Manual "A Guide to the Structural Design of Road Pavements" (1992).
- (i) In-situ concrete kerb and gutter to be provided along the length of the road in accordance with Macquarie Park Public Domain Technical Manual, Section 3.5.

Schedule 5: Dedicated Land

Schedule 5: The Dedicated Land



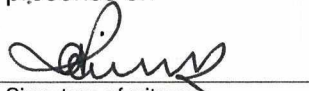
PROJECT: VOLUNTARY PLANNING TERMS

COUNCIL: CITY OF RYDE COUNCIL (ABN 81 621 292 610)

**DEVELOPER: DEXUS Funds Management Limited as trustee for the Wicks Road Trust (ABN 24 060 920 783)
and
DEXUS Wholesale Property Limited as responsible entity for the DEXUS Wholesale Property Fund (ABN 47 006 036 442)**

EXHIBIT 1 TO THE VOLUNTARY PLANNING AGREEMENT

Executed under delegated authority pursuant to section 377(1) of the *Local Government Act 1993* by John Neish, General Manager, **City of Ryde** in the presence of:



Signature of witness


NATALIE DAINER

Name of witness (block letters)



Signature of General Manager

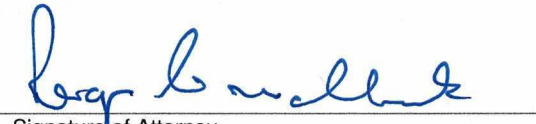
Executed by DEXUS Funds Management Limited ABN 24 060 920 783 by its duly authorised attorneys under Power of Attorney dated 15 June 2011 Registered Book 4615 No. 23 in the presence of:



Signature of witness

DELE CORINNE ROCHFORD

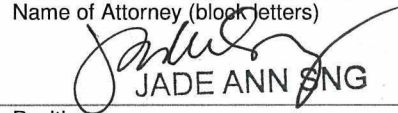
Name of witness (block letters)



Signature of Attorney

ROGER CRUICKSHANK

Name of Attorney (block letters)



Position, **JADE ANN SNG**

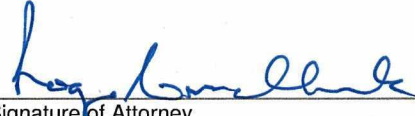
**Executed by DEXUS Wholesale
Property Limited** ABN 47 006 036 442 by
its duly authorised attorneys under Power
of Attorney dated 15 June 2011
Registered Book 4615 No. 28 in the
presence of:



Signature of witness

DELE CORINNE ROCHFORD


Name of witness (block letters)



Signature of Attorney

ROGER CRUICKSHANK

Name of Attorney (block letters)



~~Position~~

JADE ANN SNG