



Hall&Wilcox
Lawyers

Council of the City of Ryde
ABN 81 621 292 610

and

The Trust Company Limited
ACN 004 027 749

and

**Stockland Trust Management Limited as Trustee for Advance
Property Fund**
ACN 001 900 741

and

Sydney North Planning Panel

Planning Agreement

11-17 Khartoum Road and 33-39 Talavera Road, Macquarie Park, NSW

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Date

2 DECEMBER 2019

Parties

The Trust Company Limited ACN 004 027 749 of Level 29, 133 Castlereagh Street, Sydney New South Wales (**Owner**)

Stockland Trust Management Limited as Trustee for Advance Property Fund ACN 001 900 741 of Level 29, 133 Castlereagh Street, Sydney New South Wales (**Trustee**)

City of Ryde Council ABN 81 621 292 610 of Level 1, 3 Richardson Place, North Ryde, New South Wales (**Council**)

Sydney North Planning Panel c/- Planning Panels Secretariat, 320 Pitt Street, Sydney, New South Wales (**Panel**)

Recitals

- A The Owner is the registered proprietor of the Land.
- B The Owner is the applicant under the Staged Development Application lodged with the Council (known as LDA 2017 / 0547) for Development Consent to carry out the Development on the Land.
- C The Owner has offered to make Contributions in connection with the carrying out of the Development if the Council grants the Development Consent.
- D The Owner has agreed to provide the Contributions on the terms and conditions set out in this Deed.

The parties agree

1 Definitions and interpretation

1.1 Definitions

The following words have these meanings in this Deed unless the contrary intention appears:

Adjustment Date means each 30 June every year after the date of this Deed.

Appeal means an appeal (including an application for any kind of leave to appeal) in a Court of competent jurisdiction against the decision of a lower court.

Appeal Notice means:

- (a) in proceedings in the Court of Appeal:
 - (i) an application for leave to Appeal;

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- (ii) a notice of intention to Appeal; or
 - (iii) if a valid notice of intention to Appeal has been lodged, a notice of appeal;
and
- (b) in proceedings in the High Court, an application for Special Leave to Appeal.

Application means an application for any Approval.

Approval means any approvals, consents, certificates, permits, endorsements, licences, conditions, permissions or requirements (and any modifications or variations to them) which may be required by Law for the commencement and carrying out of the Contributions Works or the Development generally and includes a Development Consent or other approval under the EP&A Act (or modification of that approval).

Approved GFA means the GFA of any Stage of the Development for which Development Consent has been granted.

Authority means any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity and includes an accredited certifier accredited under the *Building Professionals Act 2005* (NSW).

Bank Bill Rate means:

- (a) the average bid rate for Bills having a tenor of 90 days as displayed on the 'BBSY' page of the Reuters Monitor System on the day the relevant payment is due (**Due Date**); or
- (b) if the average bid rate is not displayed by 10:30 am on the Due Date or if it is displayed but there is an obvious error in that rate:
 - (i) the rate the Council calculates as the average of the bid rates quoted at approximately 10:30 am on that day by each of five or more institutions chosen by the Council which provide rates for display on the 'BBSY' page of the Reuters Monitor System for Bills of a 90 day tenor which are accepted by that institution (after excluding the highest and the lowest, or in the case of equality, one of the highest and one of the lowest bid rates); or
 - (ii) where the Council is unable to calculate a rate under paragraph (a) because it is unable to obtain the necessary number of quotes, the rate set by the Council in good faith at approximately 10:30 am on that day, having regard, to the extent possible, to the rates otherwise bid for Bills of a 90 day tenor at or around that time, and
- (c) The rate calculated or set must be expressed as a percentage rate per annum and be rounded up to the nearest fourth decimal place; and
- (d) The Council may calculate a rate under paragraph (a) or (b) before 11:00 am on the Due Date, but if the average bid rate appears on the 'BBSY' page by 11:00 am and there is no obvious error in it, the 'BBSY' page rate applies as the **Bank Bill Rate** under this Deed despite any calculation by the Council under paragraph (b).

Bank Guarantee means an irrevocable and unconditional undertaking without any expiry or end date in favour of the Council to pay an amount or amounts of money to the Council on demand issued by:

- (a) one of the following trading banks:
 - (i) Australia and New Zealand Banking Group Limited,
 - (ii) Commonwealth Bank of Australia,
 - (iii) Macquarie Bank Limited,
 - (iv) National Australia Bank Limited,
 - (v) St George Bank Limited,
 - (vi) Westpac Banking Corporation,
 - (vii) Bank of China (Australia) Limited, or
- (b) any other financial institution approved by the Council in its absolute discretion.

Bills means a bill of exchange as defined in the *Bills of Exchange Act 1909* (Cth), but does not include a cheque.

Builder means any entity contracted under the Construction Contract to carry out the Contribution Works or any part of them.

Building means a building proposed to be constructed on the Land.

Building A means the commercial "Building A" as generally shown on the **Staging Plan**.

Building B means the commercial "Building B" as generally shown on the **Staging Plan**.

Building C means the commercial "Building C" as generally shown on the **Staging Plan**.

Building D means the commercial "Building D" as generally shown on the **Staging Plan**.

Building E means the commercial "Building E" as generally shown on the **Staging Plan**.

Business Day means any day except for Saturday or Sunday or a day which is a public holiday in Sydney.

Cash Deposit has the same meaning as given to that term in clause 1.6 of Schedule 10.

Cash Deposit Account has the same meaning as given to that term in clause 1.6 of Schedule 10.

Certificate of Practical Completion means the certificate in writing confirming that the Contribution Works or any part of them have reached Practical Completion and issued under clause 7.1 of Schedule 4.

Claim means any claim, loss, liability, damage, proceeding, order, judgment or expense arising out of the operation of this Deed.

Compliance Certificate means a certificate referred to in section 6.4 of the EP&A Act.

Consent Authority means, in relation to an Application, the Authority having the function to determine the Application.

Contributions means all of the public benefits described in the Contributions Schedule that must be provided under this Deed including (without limitation):

- (a) the dedication to the Council (free of any Encumbrance and Cost) of the Road Land;
- (b) the registration of the Pedestrian Link Easement and;
- (c) the conduct of the Contribution Works.

Contribution Land means the land identified in Part 1 of Schedule 3 that must be dedicated to the Council pursuant to this Deed

Contributions Schedule means Schedule 3.

Contribution Value means in relation to each item specified in the Contributions Schedule the amount agreed between the Parties and stated in column 4 of Parts 1 and 2 of the Contributions Table in clause 1.1 of Schedule 3 for that Item subject to indexation adjustment in accordance with this Deed.

Contribution Value Schedule means the document at Exhibit A.

Contribution Works means each of the works described in Part 2 of Schedule 3 that must be undertaken by the Owner pursuant to this Deed being the Pedestrian Link Works, the Road Land Works and the Public Domain Works.

Construction Certificate means a certificate issued under section 6.4 of the EP&A Act.

Construction Contract means the contract to carry out the Contribution Works (whether or not that is a contract for the Contribution Works only or forms part of a contract for the building of other components of the Development).

Construction Terms means the terms set out in Schedule 4.

Costs include all reasonable costs, charges and expenses, including those incurred in connection with advisers.

Court means the New South Wales Land and Environment Court or any other court of competent jurisdiction.

CPI means the Sydney Consumer Price Index (All Groups) published by the Commonwealth Statistician, or if that index no longer exists, any similar index which the Council determines in its sole discretion.

Deed means this document and includes all annexures, exhibits and Schedules to it.

Defects Liability Period means the period of 12 months from the date on which the Certificate of Practical Completion is issued for the Public Domain Works and Pedestrian Link Works respectively.

Defects Securities means each of the Public Domain Works Defects Security, Pedestrian Link Works Defects Security and the Road Works Defects Security.

Detailed Design means the final specifications and finishes for the Contribution Works, prepared in accordance with clause 4.2 of Schedule 4 and will include the design of those Contribution Works, the location for those Contribution Works and the installation specifications for those Contribution Works.

Development means the development described in clause 2 of Schedule 2.

Development Application has the same meaning as in the EP&A Act.

Development Consent means each 'Development Consent' as that term is defined in the EP&A Act or an approval under Part 4 of the EP&A Act and includes any Modification granted with respect to a Development Consent.

Encumbrance, in relation to any land, means any:

- (a) security for the payment of money or performance of obligations, including a mortgage, charge, lien, pledge, trust, power or title retention;
- (b) right, interest or arrangement which has the effect of giving another person a preference, priority or advantage over creditors including any right of set-off;
- (c) right that a person (other than the owner) has to remove something from land (known as a profit à prendre), easement, public right of way, restrictive or positive covenant, lease, or licence to use or occupy; or
- (d) third party right or interest or any right arising as a consequence of the enforcement of a judgment; or
- (e) any agreement to create any of them or allow them to exist, in respect of that land.

Enforcement Security means the Security for the purpose described in clause 1.1 of Schedule 10 and set out in the table in clause 1.9 of Schedule 10.

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

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

Explanatory Note means the explanatory note relating to this Deed (being that required by clause 25E of the EP&A Regulation and Exhibit A to this Deed).

Further Development Applications means Development Application(s) lodged with Council for the Development relying on the Development Consent for the Staged Development Application.

GFA has the meaning given to the term *gross floor area* in the LEP.

GST has the meaning it has in the GST Act.

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

IFSR Rate means the rate of \$267.54 per square metre of incentive floor area and height subject to indexation adjustment in accordance with this Deed.

Interest Rate in relation to interest payable on any payment due under this Deed means the rate which is the Bank Bill Rate plus a margin of 2% per annum.

Item means the object of a Contribution specified in Column 1 of the tables in Schedule 3.

Land means the land described in clause 1 of Schedule 2 or any subsequent Subdivision of that land.

Law means:

- (a) the common law including principles of equity; and
- (b) the requirements of all statutes, rules, ordinances, codes, regulations, proclamations, by-laws or consents by an Authority.

Legal Costs means reasonable legal costs and expenses reasonably, properly and actually incurred.

Legal Challenge means proceedings in a Court in which a declaration that a Development Consent or Approval in relation to the Development is invalid, and includes, but is not limited to, any proceedings in which such a declaration is sought which are heard on remitter from another Court following an Appeal.

LEP means *Ryde Local Environmental Plan 2014*.

Modification means a 'modification' of a Development Consent within the meaning of section 4.55 of the EP&A Act.

Monetary Contribution means the amount(s) stated in Schedule 3 (which has been calculated in the manner set out in Exhibit A), subject to indexation adjustment in accordance with this Deed.

Occupation Certificate means a certificate referred to in section 6.4 of the EP&A Act and which may be interim or final as provided for in section 6.4 of the EP&A Act. **Party** means a party to this Deed, and **Parties** means both of them.

Pedestrian Link means pedestrian link access that enables public access by pedestrians without vehicles through the Land in the manner shown in the Staging Plan.

Pedestrian Link Easement means the easement for public access (being an easement in gross) on the terms set out in Schedule 16 in the location shown in the plan contained in Schedule 16 permitting public access over that part of the Land to which this easement relates.

Pedestrian Link Works means the works necessary to construct the Pedestrian Link.

Pedestrian Link Works Security means the Security for the Pedestrian Links Works.

Pedestrian Link Works Defects Security means the Security for the rectification of defects in the Pedestrian Link Works pursuant to clause 8 of Schedule 4.

Permitted Encumbrance means each of:

-
- (a) an Encumbrance benefitting statutory authorities, encroachments authorised by Approvals and environmental management requirements; and
 - (b) any of the following:
 - (i) an Encumbrance (other than a mortgage, charge, pledge, lien, security interest, title retention, contractual right of set-off, or any other security agreement or arrangement in favour of any person);
 - (ii) such other agreement or arrangement the Council (acting reasonably) agrees in writing are permitted encumbrances; and
 - (c) any Encumbrance that does not prevent the future use of the relevant land for the public purpose for which it is to be dedicated under this Deed, unless the Encumbrance is a charge arising as a result of unpaid taxes or charge.

Planning Agreement means this Deed.

Planning Controls means

- (a) Council's Development Control Plan 2014 adopted on 28 May 2013 in the form as at the date of this Deed; and
- (b) LEP in the form as at the date of this Deed.

Practical Completion means in relation to each Contribution Work, the point of time at which the Contribution Works are complete except for minor defects:

- (a) which do not prevent the Contribution Works from being used for their intended purpose; and
- (b) which do not, and their rectification will not, cause a work health and safety risk,

Proposed GFA means the estimated GFA for each Stage of the Development, as specified in **Exhibit A**.

Public Domain Manual means the *City of Ryde Public Domain Technical Manual Section 6 Macquarie Park Corridor* adopted on 20 January 2016 and as amended from time to time.

Public Domain Works means that part of the Contribution Works relevant to the design, construction and delivery of improvements to the public domain in the vicinity of the Land shown in the Staging Plan.

Public Domain Works Security means the Security for the Public Domain Works (set out in the Security Schedule).

Public Domain Works Defects Security means the Security for the rectification of defects in the Public Domain Works pursuant to clause 8 of Schedule 4 (being number 2 in the Security Schedule).

Real Property Act means the *Real Property Act 1900*.

Register means the Torrens title register maintained under the Real Property Act.

Road Land means the public road shown on the Staging Plan.

Road Land Works means the part of the Contribution Works relevant to the design, construction and delivery of the Road Land pursuant to this Deed.

Road Land Works Defects Security means the Security for the rectification of defects in the Road Land Works pursuant to clause 8 of Schedule 4.

Security means each security set out in the Security Schedule (or any one of them as the context may require), which must be provided by way of Bank Guarantee.

Security Amount means the amount of each Security stated in the Security Schedule (subject to indexation adjustment in accordance with clause 1.2 of Schedule 10).

Security Schedule means the matrix of Securities set out in clause 1.9 of Schedule 10.

Schedule means a schedule to this Deed.

Special Infrastructure Contribution means a contribution required under 7.24 of the EP&A Act.

Staged Development Application means the staged development application no. 2017/0547 lodged with Council on or about 21 December 2017.

Stage means a stage of the development as shown on the Staging Plan at Exhibit B.

Staging Plan means the plan at Exhibit B.

Standard Requirement means a requirement in order to comply with the Building Code of Australia, any applicable Australian Standard, any requirement, standard or specification applied by an Authority other than Council, the Works Specifications, the Public Domain Manual, the Planning Controls and any other engineering requirement to ensure a work is functional and suitable for its intended purpose.

Subdivision has the meaning given to 'subdivision of land' in section 6.2 of the EP&A Act and **Subdivide** has a similar meaning.

Subdivision Certificate has the same meaning as in the EP&A Act.

Superintendent means the superintendent appointed under any Construction Contract.

Suspension Period means the period of time from and including the date on which a document initiating a Legal Challenge has been served on the Council and the Owner and ending on:

- (a) subject to paragraphs (b) and (c), the date on which:
 - (i) the Legal Challenge is discontinued;
 - (ii) final orders (apart from any orders as to costs) are made in the Legal Challenge; or
 - (iii) for any other reason, the Legal Challenge no longer includes an application for a declaration that the Development Consent or Approval for the Development is invalid;

whichever is the earlier;

- (b) subject to paragraph (c), if an Appeal Notice is filed and served in connection with final orders in the Legal Challenge or an Appeal from the Legal Challenge (apart from any orders as to costs), the date on which:
 - (i) the Appeal is discontinued;
 - (ii) final orders (apart from any orders as to costs) are made in the Appeal; or
 - (iii) for any other reason, the Appeal no longer includes an appeal in respect of a Court decision regarding the validity of the Development Consent whichever is earlier,

unless the orders in the Appeal require the Legal Challenge to be remitted to another Court in relation to the validity of the Development Consent or Approval for the Development, in which case paragraph (a) re-applies; or

- (c) the date which is 15 Business Days after the date on which the period of time allowed for filing an Appeal Notice described in paragraph (b) has expired, if no valid Appeal Notice has been filed and served by that first-mentioned date.

For the avoidance of doubt, the Suspension Period continues if paragraph (b) applies.

Taxes means taxes, levies, imposts, deductions, charges and duties (including stamp and transaction duties), excluding GST (which is dealt with at clause 15), together with any related interest, penalties, fines and expenses in connection with them, except if imposed on, or calculated having regard to, net income of a person.

Works Specifications means those specifications for the Contribution Works attached at Schedule 5.

1.2 Interpretation

In this Deed headings are for convenience only and do not affect interpretation and unless the context indicates a contrary intention:

- (a) *person* includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (b) a reference to a Party includes that Party's executors, administrators, successors and permitted assigns, including persons taking by way of novation;
- (c) a reference to a document (including this Deed) is to that document as varied, novated, ratified or replaced from time to time;
- (d) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments, replacements and substitutions;
- (e) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;

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- (f) a reference to a Party, clause, schedule, exhibit, attachment or annexure is a reference to a Party, clause, Schedule, exhibit, attachment or annexure to or of this Deed, and a reference to this Deed includes all Schedules, exhibits, attachments and annexures to it;
 - (g) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
 - (h) 'includes' in any form is not a word of limitation;
 - (i) a reference to '\$' or 'dollar' is to Australian currency;
 - (j) a reference to any notice, claim, demand, consent, approval, authorisation, direction, notification, request, communication, or waiver being given or made by a Party is a reference to its being given or made in writing, and the expression notice includes any of the foregoing;
 - (k) no rule of construction applies to the disadvantage of a Party because that Party was responsible for the preparation of this Deed; and
 - (l) any capitalised term used, but not defined in this Deed, will have the meaning ascribed to it under, and by virtue of, the EP&A Act.

2 Planning Agreement

2.1 Commencement

- (a) This Deed commences on the execution of this Deed by all Parties.
- (b) Notwithstanding clause 2.1(a), the Parties acknowledge that the Owner's obligation to deliver the Contributions to Council are in accordance with this Deed.

2.2 Planning agreement under the EP&A Act

This Deed constitutes a planning agreement within the meaning of section 7.4 of the EP&A Act.

2.3 Application of the Planning Agreement

This Deed applies to:

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

3 Development Contributions

3.1 Payment or Delivery of Contributions

- (a) The Parties agree that the Owner must (at its Cost and risk):

-
- (i) undertake the Contribution Works in accordance with Schedule 3 and Schedule 4;
 - (ii) except as modified by clause 5 of this Deed dedicate the Contribution Land to Council in accordance with Schedule 3; and
 - (iii) except as modified by clause 5 of this Deed grant the, Pedestrian Link Easement and procure their registration on the Register in accordance with Schedule 3 and clause 5.
- (b) The Parties agree that the provision of the Contribution Works and the dedication of the Contribution Land will serve the public purposes set out in Column 2 in the Tables to Schedule 3.

4 Monetary Contributions

4.1 Application of sections 7.11, 7.12 and 7.24 of the EP&A Act

- (a) This Deed does not exclude the application of section 7.24 of the EP&A Act to the Development.
- (b) This Deed excludes the application of sections 7.11 and 7.12 of the EP&A Act to the Development.
- (c) The Panel is a party to this Deed only for the purposes of section 7.4(3A) of the EP&A Act and does not exercise any functions as a planning authority for the purposes of Part 7, Division 7.1, Subdivision 2 of the EP&A Act under this Deed.

4.2 Review

- (a) The Parties agree that in the event that a Special Infrastructure Contribution is required to be paid pursuant to a condition of a Development Consent, Council and the Owner must meet to review this Deed using their best endeavours and acting in good faith.
- (b) Nothing in this clause 4.2 operates as a requirement for the Parties to amend this Deed because a Special Infrastructure Contribution is payable.

4.3 Payment contribution

- (a) The Owner covenants to pay the Monetary Contribution to the Council.
- (b) The Owner must pay the Monetary Contribution in accordance with Part 5 of Schedule 3.
- (c) Council must provide the Owner with an invoice or similar notice of monetary contributions payable within 10 Business Days of being requested to do so in respect of the Monetary Contribution received in the Council's bank account.
- (d) The Parties acknowledge and agree that the Monetary Contribution will be applied by the Council for the benefit of the community towards any public purpose as it thinks fit.

5 Contribution Works and Easements

5.1 Contribution Works

- (a) The Owner must carry out the Contribution Works in accordance with this Deed, including the Construction Terms and any Development Consent granted for the Contribution Works.
- (b) The Road Land Works required under this Deed will be taken to have been delivered to Council when:
 - (i) a Certificate of Practical Completion has been issued in respect of the Road Land Works; and
 - (ii) the Road Land on which the Road Land Works are located is dedicated to the Council.
- (c) The Public Domain Works required under this Deed will be taken to have been delivered to Council when a Certificate of Practical Completion has been issued in respect of the Public Domain Works.
- (d) The Pedestrian Link Works required under this Deed will be taken to have been delivered to Council when:
 - (i) a Certificate of Practical Completion in respect of the Pedestrian Link Works has been issued; and
 - (ii) the Pedestrian Link Easement has been registered in the Register.
- (e) The Parties agree and acknowledge that the Contribution Works serve the public purposes specified for each of the Contributions Works in the Contributions Schedule.

5.2 Pedestrian Link Easement

- (a) The Owner must:
 - (i) grant the Pedestrian Link Easement to the Council; and
 - (ii) procure the registration of the Pedestrian Link Easement in the Register.
- (b) The Owner's obligation to register the Pedestrian Link Easement will be satisfied when the Owner provides to the Council evidence of registration in the Register.
- (c) Subject to clause 5.3 the Owner must procure registration of the Pedestrian Link Easement in the Register no later than the date stated in Part 4 of Schedule 3
- (d) The Parties agree that the Pedestrian Link Easement under this clause will serve the public purpose of improving existing public open space areas in the vicinity of the Land.

5.3 Alteration to Staging

- (a) The Parties agree that the staging for delivery of Contributions under this Deed can be varied by the agreement of the Parties or as otherwise contemplated by this clause.
- (b) If the Owner cannot, for whatever reason, complete the Road Works or dedicate the Contribution Land in the time frame provided in Schedule 3 of this Deed the Parties agree that the dedication can be delayed to a subsequent stage, subject to clause 5.3(d).
- (c) If the Owner cannot, for whatever reason, register the Pedestrian Link Easement in the time frame set out in Schedule 3 of this Deed the Parties agree that the registration of the instrument can be delayed to a subsequent stage, subject to clause 5.3(d).
- (d) If the time frame is delayed to a subsequent stage as referred to in clause 5.3 (b) and / or (c) and despite the other clauses of this Deed, an Occupation Certificate can nevertheless be granted provided that:
 - (i) a licence is granted over the Contribution Land or Pedestrian Link Easement (as the case may be) if that land is landlocked; and
 - (ii) Council continues to hold the Enforcement Security as provided by the Owner in accordance with the Security Schedule in clause 1.9 of Schedule 10.
- (e) Any Bank Guarantee provided pursuant to clause 5.3(d)(ii) will be released by Council as soon as possible after the date on which the Contribution Land is dedicated and/or the date on which the Pedestrian Link Easement is registered (as the case may be).

6 Caveat

6.1 Caveatable interest

The Owner acknowledges and agrees that:

- (a) when this Deed is executed the Council is deemed to have acquired, and the Owner is deemed to have granted, an equitable estate and interest in the Land for the purposes of section 74F(1) of the Real Property Act; and
- (b) consequently Council has a sufficient interest in the Land in respect of which to lodge a caveat notifying that interest in the relevant folio of the Register.

6.2 Caveat prior to Registration

The Owner acknowledges and agrees that:

- (a) Subject to clause 7, the Council may lodge a caveat on the Land to protect its rights under this Deed and the Owner will not object to the Council lodging a caveat in the relevant folio of the Register for the Land nor (subject to the

provisions of this clause 6.2) will it seek to remove any caveat lodged by the Council.

- (b) If Council lodges a caveat in accordance with this clause 6.2, then the Council will do all things reasonably necessary and without delay to ensure that the caveat does not prevent or delay either the registration of this Deed or any dealing in the Land including providing consent to registration of any lease, mortgage and/or transfer which is not inconsistent with this Deed, provided the Owner is not in breach of any obligations under this Deed.
- (c) The Council (as the caveator) will provide any consent (consent not to be unreasonably withheld or delayed) the Owner may reasonably require to enable this Deed or any dealing in the Land to be registered in accordance with this clause 6.2.
- (d) The Council will promptly, following registration of this Deed, do all things reasonably necessary to remove the caveat from the relevant folio of the Register for the Land.

7 Registration of this Deed

7.1 Land Ownership

The Owner represents and warrants that it is the legal owner of Land, as at the date of this Deed.

7.2 Registration on title

- (a) Upon execution of the Deed, and prior to the release of the first Construction Certificate for the Development the Owner will use reasonable endeavours to procure the registration of this Deed in the relevant folio of the Register for the Land in accordance with section 7.6 of the EP&A Act and Schedule 8.
- (b) If the Owner is not able to comply with clause 7.2(a), Council acknowledges and agrees that the Owner can rely on the Enforcement Security provided in accordance with the Security Schedule in clause 1.9 of Schedule 10 to enable issue of the first Construction Certificate.
- (c) Upon registration of the Deed, any caveat lodged by Council pursuant to this Deed will be promptly released by Council.

8 Release and Discharge

Council agrees to release and discharge this Deed and remove any caveat lodged by the Council pursuant to clause 6.2 on the release and discharge terms contained in clause 5.3(a) and Schedule 9 to this Deed and / or if the Deed is terminated in accordance with clause 22 of this Deed.

9 Breaches to be rectified

9.1 Notice

If a Party (**Notifying Party**) considers that another party (**Notified Party**) has defaulted on the performance of any of its obligations under this Deed, then the Notifying Party may give written notice to the Notified Party which:

- (a) identifies the nature of the breach; and
- (b) provides at least 20 Business Days (except in the case of emergency or where there is an issue of public safety where less time may be specified) within which the Notified Party must rectify that breach and what action must be taken to rectify that breach.

9.2 Schedule 6 applies

If a Notifying Party gives a notice under this clause 9 then the provisions in Schedule 6 will apply.

10 Security

The Owner has agreed to provide security to the Council for performance of its obligations under this Deed on the terms and conditions of Schedule 10.

11 Assignment and other dealings

The Parties agree that provisions of Schedule 11 applies to any proposed assignment or dealing to the Land (or any part of it) or of a Party's interest in this Deed.

12 Review of Deed

- (a) The Parties may agree to review this Deed. Any review or modification will be conducted in the circumstances and in the manner determined by the Parties.
- (b) The consent of the Panel is not required for any modification of this Deed that does not involve an amendment to clause 4.1, provided that the Owner notifies the Panel of any proposed modification not less than 10 Business Days prior to executing any amendment deed.
- (c) Despite clause 12(b) if required to validate any amending deed, the Panel will execute the deed as soon as possible after receiving a request to do so by the other Parties.

13 Dispute Resolution

The Parties agree that any disputes under or in relation to this Deed will be resolved in accordance with the procedures set out in Schedule 7.

14 Custodian and Trustee provisions

The Parties acknowledge that:

- (a) the Owner enters into this Deed and performs its obligations under it as custodian for Stockland Trust Management Limited; and
- (b) Stockland Trust Management Limited is trustee for Advance Property Fund,

and that the custodian and trustee limitation provisions set out in Schedule 12 apply to the entry into and performance by those Parties of their obligations under this Deed.

15 Overdue Payments

15.1 Interest on overdue money

The Owner agrees to pay interest to the Council on any amount payable by it under this Deed from when it becomes due for payment, and until the amount payable is paid, on demand or at times determined by the Council, calculated on daily balances. The rate to be applied to each daily balance is the Interest Rate.

15.2 Not used

15.3 Interest on liability merged in judgment or order

- (a) If a liability under this Deed becomes merged in a judgment or order, then the Owner agrees to pay interest to the Council on the amount of that liability as an independent obligation. This interest accrues from the date the liability becomes due for payment both before and after the judgment or order until it is paid, at a rate that is the higher of the rate payable under the judgment or order and the rate referred to in this clause 15.
- (b) For the avoidance of doubt, if a liability under this Deed becomes merged in a judgment or order then the Owner will only be required to pay either interest payable under the judgment or order or interest calculated under this clause 15 but not both.

16 GST

16.1 Interpretation

- (a) Except where the context suggests otherwise, terms used in this clause 16 have the meanings given to those terms by the GST Act.
- (b) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 16.
- (c) A reference to something done (including a supply made) by a Party includes a reference to something done by any entity through which that Party acts.

16.2 Consideration GST exclusive

Unless otherwise expressly stated, all sums payable or consideration to be provided under this Deed is exclusive of GST.

16.3 GST not payable on Contributions

The Parties agree, in accordance with Class Ruling CR 2013/13 published by the Commissioner, that Contributions required to be made under this Deed are exempt from GST.

16.4 Additional amount of GST payable

- (a) If GST is imposed on any supply made under or in accordance with this Deed, the Owner must pay the GST or pay to Council an additional amount equal to the GST payable on or for the taxable supply (GST Amount), whichever is appropriate in the circumstances.
- (b) If GST is payable on any supply made by the Owner under or in accordance with this Deed, for which the Council provides consideration, the Council must pay to the Owner the GST Amount.
- (c) Subject to clause 16.4(d), the recipient must pay the GST Amount at the same time and in the same manner as the consideration for the supply is to be provided under this Deed in full and without deduction, set off, withholding or counterclaim (unless otherwise provided in this Deed).
- (d) The supplier must deliver a tax invoice or an adjustment note to the recipient of a taxable supply before the supplier is entitled to payment of an amount under clause 16.4.
- (e) Any payment or reimbursement to be made under this Deed that is calculated by reference to an amount paid or incurred will be limited to the total amount less any input tax credit to which an entity (or the representative member of a GST group of which that entity is a member) is entitled for an acquisition to which the amount relates. If the payment, reimbursement is subject to GST, an amount equal to that GST.
- (f) If the amount paid by the recipient to the party that made the supply (**Supplier**) in respect of the GST (whether because of an adjustment or otherwise):
 - (i) Is more than the GST on the relevant supply, then the Supplier will refund the excess to the recipient on demand;
 - (ii) Is less than the GST on the relevant Supply, then the recipient will pay the deficiency to the Supplier on demand (provided that, if an adjustment has occurred, the recipient has received an adjustment note).

16.5 No merger

This clause will not merge on completion or termination of this Deed.

17 Explanatory Note

The Explanatory Note must not be used to assist in construing this Deed.

18 Notices

18.1 Form

Any notice, consent, information, application or request that must or may be given or made to a Party under this Deed is only given or made if it is in writing and delivered or posted to that Party at its address set out below or, e-mailed to that Party at its e-mail address set out below:

Council

Name: Council of the City of Ryde
Address: Level 1
3 Richardson Place
North Ryde NSW 2113
Email: cityofryde@ryde.nsw.gov.au
For the attention of: General Manager

Owner

Name: The Trust Company
Address: Level 29,
133 Castlereagh Street
Sydney NSW 2000
E-mail: legal4@stockland.com.au
For the attention of: General Counsel and Company Secretary Trustee

Trustee

Name: Stockland Trust Management Limited as Trustee for
Advance Property Fund.
Address: Level 29
133 Castlereagh Street
Sydney NSW 2000
E-mail: legal4@stockland.com.au

For the attention of: General Counsel and Company Secretary.

Panel

Name: Sydney North Planning Panel

Address: 320 Pitt Street, Sydney, NSW

For the attention of: Panels Secretariat

18.2 Change of address

If a Party gives another Party 3 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 Receipt

Any notice, consent, information, application or request is to be treated as given or made at the following time:

- (a) if it is delivered, when it is left at the relevant address;
- (b) if it is e-mailed to the relevant e-mail addresses;
- (c) if it is sent by post, 2 Business Days after it is posted; and

18.4 Receipt- next Business Day

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, 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.

19 Schedules and Annexures to this Deed

The Parties agree:

- (a) that all the Schedules and Annexures form part of this Deed; and
- (b) to comply with the provisions of those Schedules and Annexures.

20 General Provisions

The Parties agree that the miscellaneous and general provisions set out in Schedule 14 to this Deed apply.

21 Obligations under this Planning Agreement

21.1 Legal Challenge

Subject to clauses 21.5 to 21.9, where a Legal Challenge is commenced the parties' obligations under this Deed are immediately suspended and the Owner shall not have any obligation to make any Contributions under this Deed until the expiration of the Suspension Period or where clause 21.9 applies.

21.2 Parties to meet

- (a) Subject to clause 21.3, where any Legal Challenge is commenced or where the Court declares or orders any Approval to be invalid or any of them, the Parties agree to:
 - (i) meet, no later than 5 Business Days after the date of service of commencement of the Legal Challenge and after any declaration or order that Approval is invalid, to discuss in good faith:
 - (ii) the suspension of the parties rights and obligations under this Deed; and
 - (iii) their intentions in relation to that declaration or order, including, without limitation, any intention to Appeal that declaration; and
- (b) consult regularly with the other in relation to any Appeal and must respond within a reasonable period to each other's questions, queries and enquiries and generally keep each other informed regarding the progress of any such Appeal.

21.3 Legal advice

The Parties will not be required to meet or consult pursuant to clause 21.2 in circumstances where any of the Parties receives legal advice that it should not so meet or consult with the other Party in connection with any such declaration or Appeal.

21.4 Confidential

The Parties agree that any discussions held between the Parties under this clause 21 are confidential and that a common interest between them exists for the purposes of legal professional privilege in connection with those discussions.

21.5 Development may continue

Notwithstanding clause 21.1, the Owner may elect at its Cost and risk to proceed with the Development, in which circumstances, clause 21.1 will not apply and the Owner must continue to comply with all obligations under this Deed.

21.6 Termination

If this Deed is terminated as the result of any Appeal the parties will meet in accordance with clause 21.2 to discuss any matters that may need to be addressed as a result of the commencement of the Contribution Works.

21.7 Invalid Approval

If any Approval is declared invalid, the parties will meet in accordance with clause 21.2 of this Deed to discuss their respective rights and obligations under this Deed as a consequence of that determination.

21.8 Indemnity

If the Owner elects to proceed with the Development notwithstanding the commencement of any Legal Challenge, then the Owner is liable for and indemnifies Council against all liability, loss, Costs and expenses (including Legal Costs) arising from or incurred in connection with the Owner proceeding with the Development despite the Legal Challenge.

21.9 Public safety

The parties agree that if this clause 21 applies and there is a suspension of the parties' obligations under this Deed, any Contribution Works that have been commenced, but not completed, will be left in a state that is safe to the public before those Contribution Works cease notwithstanding the commencement of any Suspension Period.

21.10 No merger

This clause 21 will not merge on completion or termination of this Deed.

22 Termination of Deed

- (a) Subject to clause 22(c), the Owner will be released from its obligations under this Deed if:
 - (i) it has fulfilled all its obligations in accordance with the Deed; or
 - (ii) it transfers or assigns its obligation in accordance with this Deed; or
 - (iii) the Land is subdivided and the obligations under the Deed with respect to that part of the Land have been met (but only to the extent of that portion of the Land); or
 - (iv) Development Consent in respect of the Staged Development Application is surrendered prior to the commencement of the Development or is declared invalid or lapses; or
 - (v) the Deed is terminated by mutual agreement.
- (b) If at the time of termination under this clause 22 the Development has not commenced, the Security Amount and any Bank Guarantee provided under this Deed will be released by Council to the Owner and any caveat or registration removed from the title to the Land.
- (c) If the Deed is terminated under clause 22(a) then:
 - (i) the rights of each Party that arose before the termination or which may arise at any future time for any breach or non-observance of obligations occurring prior to the termination are not affected; and

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- (ii) each Party must take all steps reasonably necessary to minimise any loss the other may suffer as a result of the termination of the Deed.

Schedule 1- Section 7.4 of the EP&A Act requirements

The Parties acknowledge and agree that the table set out below summarises how the Planning Agreement complies with the requirements set out in section 7.4 of the EP&A Act.

Requirement under the EP&A Act	This Planning Agreement
<p>Planning instrument and/or development application - (Section 7.4)</p> <p>The Owner has:</p> <p>(a) sought a change to an environmental planning instrument.</p> <p>(b) made, or proposes to make, a Development Application.</p> <p>(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.</p>	<p>(a) No.</p> <p>(b) Yes.</p> <p>(c) No.</p>
<p>Description of land to which this Deed applies - (Section 7.4)</p>	<p>The Land described in certificate of title folio identifier 1/633221 and known as 11-17 Khartoum Road and 33-39 Talavera Road, Macquarie Park</p>
<p>Description of change to the environmental planning instrument or the development to which this Deed applies - (Section 7.4)</p> <p>Describe:</p> <p>(a) the proposed change to the environmental planning instrument to which this Deed applies; and</p> <p>(b) the development to which this Deed applies.</p>	<p>(a) There are no proposed changes to any environmental planning instrument.</p> <p>(b) The Development</p>
<p>The scope, timing and manner of delivery of contribution required by this planning agreement - (Section 7.4)</p>	<p>The Contributions required under this Deed are to be delivered in accordance with Schedule 3 or as modified by clause 5 of this Deed.</p>
<p>Applicability of Section 7.11 of the EP&A Act - (Section 7.4)</p>	<p>The application of section 7.11 of the EP&A Act is excluded in respect of the Development.</p>
<p>Applicability of Section 7.12 of the EP&A Act - (Section 7.4)</p>	<p>The application of section 7.12 of the EP&A Act is excluded in respect of the Development.</p>
<p>Applicability of Section 7.24 of the EP&A Act - (Section 7.4)</p>	<p>The application of section 7.24 of the EP&A Act is not excluded in respect of the Development.</p>
<p>Consideration of benefits under this Deed if section 7.12 applies - (Section 7.4)</p> <p>Are the benefits under this Deed to be taken into consideration if Section 7.11 of the EP&A Act is not excluded?</p>	<p>Not applicable.</p>

Requirement under the EP&A Act

Mechanism for Dispute resolution - (Section 7.4)

This Deed provides a mechanism for the resolution of disputes under the agreement?

Enforcement of this Deed (Section 7.4) and section 7.6)

This Deed provides for enforcement by a suitable means in the event of a breach.

Registration of this Deed

The Parties agree that this Deed will be registered

No obligation to grant consent or exercise functions - (Section 7.4)

The Parties acknowledge that this Deed does not impose an obligation on a planning authority to grant a Development Consent, or to exercise any function under the EP&A Act in relation to a change to an environmental planning instrument.

This Planning Agreement

There is a mechanism for resolution of disputes set out in clause 13 and Schedule 7.

There are provisions for enforcement by suitable means by or through (without limitation) clauses 5, 5.3(a), 6.2(a), 7, 8, 9, 10 and 11 together with Schedule 4, Schedule 6, Schedule 10 and Schedule 11.

Yes.

This is addressed in clause 1.8 of Schedule 14.

Schedule 2 - Description of the Land and the Development

1 Title

The Land described in certificate of title folio identifier 1/633221 and known as 11-17 Khartoum Road and 33-39 Talavera Road, Macquarie Park.

2 Development

Development means the staged redevelopment (stages 1 to 4) of the Land comprising:

- (a) Four retail and support pavilions fronting the central open space;
- (b) A total floor space of 59,769sq.m (FSR 1.99:1) comprising the following land uses:
 - (i) Office;
 - (ii) Retail (café/restaurants and neighbourhood shops);
- (c) Varying building heights up to 10 storeys (45 metres);
- (d) Basement car parking for 987 vehicles;
- (e) New internal roads connecting between Khartoum Road and Talavera Road;
- (f) New Road 22 along the south-west boundary of the site connecting to Talavera Road;
- (g) New pedestrian through site link connecting to Talavera Road and future Road 1;
- (h) Landscaping works including a central publicly accessible open space,

described in the Staged Development Application and any Further Development Application.

Schedule 3 - Contributions Schedule

1 Contributions

1.1 Contributions Table

Part 1- Contribution Land

Road Land

Item	Public Purpose	Manner and Extent	Contribution Value	Date Contribution Land is to be transferred
Stage 2- Public Road Land (Road 22)	Public road	The Owner must dedicate or transfer to Council (at no cost) in accordance with clause 5, the Road Land generally shown in the location on the Staging Plan outside Building B and marked "g1" on the Staging Plan.	\$577,500	On or before the date the Occupation Certificate is issued for Building B, subject to clause 5.3.
Stage 4- Public Road Land (Road 22)	Public Road	The Owner must dedicate or transfer to Council (at no cost) and in accordance with clause 5, the Road Land, shown in the location on the Staging Plan outside Building C and D identified as Road 22 and in the location generally shown as "g2" on the Staging Plan.	\$1,162,500	On or before the date of the Occupation Certificate is issued for Building, C or D, whichever is the later in time, subject to clause 5.3.

Part 2 - Contribution Works

Pedestrian Link Works

Item	Public Purpose	Manner and Extent	Contribution Value	Date for delivery or transfer / dedication
Stage 2 – Pedestrian Link	Improved public access	The Owner is to construct the Pedestrian Link through the Land from Talavera Road being the part of the Pedestrian Link marked "b1" on the Staging Plan between Building A and Building B.	\$630,000	On or before the date the Occupation Certificate is issued for Building A or Building B, whichever is the later in time, subject to clause 5.3.
Stage 3 – Pedestrian Link	Improved public access	The Owner is to construct the Pedestrian Link through the Land from Talavera Road and connect to the part of the Pedestrian Link marked "b2" on the Staging Plan between Building E and Building D.	\$1,250,000	On or before the date the Occupation Certificate is issued for Building E or building D, whichever is the later in time, subject to clause 5.3.

Road Land Works

Item	Public Purpose	Manner and Extent	Contribution Value	Date for delivery or transfer / dedication
Stage 2- Road Land Works (Road 22)	Public Road	The Owner must construct the new road marked "g1" on the Staging Plan shown as adjacent to Building B along the South - Eastern boundary of the Land parallel to Khartoum Road, as shown on the Staging Plan.	\$880,000	On or before the date of the Occupation Certificate for Building B, subject to clause 5.3.
Stage 4- Road Land Works (Road 22)	Public Road	The Owner must construct the new road marked "g2" on the Staging Plan, and which is adjacent to Building C and Building D along the	\$2,240,000	On or before the date of the Occupation Certificate for Building C or D whichever is the later in time, subject to clause 5.3.

Item	Public Purpose	Manner and Extent	Contribution Value	Date for delivery or transfer / dedication
		South Eastern boundary of the Land linking to Talavera Road as shown on the Staging Plan.		

Public Domain Works

Item	Public Purpose	Manner and Extent	Contribution Value	Date for delivery or transfer / dedication
Stage 1- Road Works- Works outside boundary	Public road	The Owner must design and construct approximately 290 m ² of civil works on Khartoum Road, outside the Land boundary for Stage 1, in the location shown as "a1" on the Staging Plan outside Building A as shown on the Staging Plan	\$270,000	On or before the date of the Occupation Certificate for Building A. subject to clause 5.3.
Stage 2- Road Works- Works outside boundary	Public Road	The Owner must carry out approximately 902m ² of civil works in the location shown as "a2" on Staging Plan and outside Building E on the Staging Plan.	\$1,020,000	On or before the date of the Occupation Certificate for Building B or E whichever is the later in time, subject to clause 5.3.
Stage 4 - Road Works – Works outside boundary	Public Road	The Owner must carry out approximately 286m ² of civil works as shown as "a3" on the Staging Plan and outside of Building D on the Staging Plan.	\$330,000	On or before the date of the Occupation Certificate for Building C or D, whichever is later in time, subject to clause 5.3.

Part 4 - Pedestrian Link Easement

Item	Public Purpose	Manner and Extent	Contribution Value	Date for registration of the Public Reserve Easement
1 Pedestrian Link Easement	Community and open space	The Owner must grant the Pedestrian Link Easement and procure its registration on the Register at no cost to the Council.	No Contribution Value	On or before the date of the Occupation Certificate is issued for Building D or E, whichever is the later, subject to clause 5.3.

Part 5 - Monetary Contribution

Instalment	Public Purpose	Payment	Instalment amount	Date for payment
Monetary Contribution Stage 1	Macquarie Park Access Network and Open Space	Payment to be made in accordance with this Part 5 of Schedule 3	\$3,831,521.04	On or before the date of the Construction Certificate for Building A
Monetary Contribution Stage 2	Macquarie Park Access Network and Open Space	Payment to be made in accordance with this Part 5 of Schedule 3.	\$1,337,495.18	On or before the date of the Construction Certificate for Building B.
Monetary Contribution Stage 3	Macquarie Park Access Network and Open Space	Payment to be made in accordance with this Part 5 of Schedule 3.	Nil	
Monetary Contribution Stage 4	Macquarie Park Access Network and Open Space	Payment to be made in accordance with this Part 5 of Schedule 3.	\$472,997.96	On or before the date of the Construction Certificate for Building D.
Monetary Contribution Retail	Macquarie Park Access Network and Open Space	Payment to be made in accordance with this Part 5 of Schedule 3.	\$124,632.76	On or before the date of the Construction Certificate for Retail GFA (being GFA for any part of a Building that is to be used for retail purposes).
Monetary Contribution (total)			\$5,766,646.94	

1.2 Payment

- (a) The Owner must pay the Monetary Contribution by way of instalments in the amounts stated in the table above.
- (b) The Owner must pay each instalment of the Monetary Contribution to the Council no later than the date stated in the table for each instalment.
- (c) The Monetary Contribution must be paid by way of bank cheque in favour of the Council or by deposit by means of electronic funds transfer into an account specified by the Council.
- (d) The Monetary Contribution will be taken to have been made when the Council notifies the Owner in writing that the bank cheque has been received and cleared funds or electronic funds have been deposited.

1.3 CPI Adjustment

The Parties acknowledge and agree that the IFSR Rate, the Contribution Value and each instalment of the Monetary Contribution must be adjusted in accordance with the following formula (so that it is indexed because it is payable after the date of this Deed):

$$A = \frac{B \times D}{C}$$

where:

- A is the adjusted amount of the IFSR Rate, Contribution Value or Monetary Contribution instalment payable (as the case may be) as at the relevant payment date;
- B is the amount of the IFSR Rate, Contribution Value or Monetary Contribution instalment payable (as the case may be) immediately prior to the relevant payment date;
- C is the CPI for the quarter ending immediately before the date of this Deed; and
- D is the CPI for the Quarter ending immediately before the relevant payment date.

1.4 Increase in Monetary Contribution

If any Approved GFA for a Stage of the Development is more than the Proposed GFA for that Stage, the Monetary Contribution payable in accordance with the table in this Part 5 of Schedule 3 for that Stage will be increased by recalculating the Monetary Contribution following the approach set out in the Contribution Value Schedule (contained in Exhibit A), so that the amount payable consists of the contributions otherwise payable in respect of the new Proposed GFA under section 7.11 of the EP&A Act and the contributions payable based on the IFSR Rate, taking into account any credit given by Council, acting reasonably, for the costs of the Contribution Works and the Contribution Land.

1.5 Reduction in Monetary Contribution – Approved GFA

If any Approved GFA for a Stage of the Development is less than the Proposed GFA for that Stage, the Monetary Contribution payable in accordance with the table in this Part 5 of

Schedule 3 for that Stage will be reduced by recalculating the Monetary Contribution following the approach set out in the Contribution Value Schedule (contained in Exhibit A), so that the amount payable consists of the contributions otherwise payable in respect of the new Proposed GFA under section 7.11 of the EP&A Act and the contributions payable based on the IFSR Rate, taking into account any credit given by Council, acting reasonably, for the costs of the Contribution Works and the Contribution Land.

1.6 Total GFA

The Parties agree that nothing in this Deed, limits the determination of a Development Consent by a Consent Authority for the Development in relation to the Total GFA or height for a Building.

Schedule 4 - Contribution Works Procedures

1 Authority requirements

1.1 Construe

These Construction Terms must be read and construed subject to:

- (a) any requirements or conditions of any Development Consent;
- (b) the requirements of and conditions imposed by all relevant Authorities and all Laws relating to the Development and the construction of the Development.

1.2 Responsibility for Approvals

The Owner must (at its Cost) obtain all Approvals necessary to satisfy its obligations under this Deed and necessary to carry out the Contribution Works.

1.3 Compliance with Approvals

The Owner must ensure that the Contribution Works carried out under this Deed are undertaken:

- (a) in accordance with the relevant Development Consent for the Contribution Works and all Approvals and the requirements of all Laws, including without limitation, work health and safety legislation; and
- (b) in a good and workmanlike manner and so that they are diligently progressed until completion,

and it is acknowledged that to the extent that there is any inconsistency between this Deed and any Approval the terms of the Approval shall prevail.

2 Costs

All Costs of the Contribution Works must be borne by the Owner.

3 Project management and contractor engagement

3.1 Management

The Owner will be responsible for managing the Contribution Works.

3.2 Contractor engagement

The Owner must ensure that any contractor it engages to carry out the Contribution Works agrees to:

-
- (a) carry out the Owner's obligations in these Construction Terms as part of any Construction Contract; and
 - (b) request a Council representative to be present at each on-site meeting attended by the Superintendent and to ensure the Council representative is present at the meeting.

4 Design development and approval

4.1 Concept design

- (a) The Council and the Owner have worked in consultation with each other to prepare and agree that the Staging Plan.
- (b) The Council and the Owner agree that the Staging Plan will be the basis for the Detailed Design.

4.2 Detailed Design

- (a) The Owner must provide a copy of the draft Detailed Design to the Council for its approval prior to the issue of the Construction Certificate for the relevant item of the Contribution Works.
- (b) Subject to clause 4.2(c), Council must provide a response to the Owner within 20 Business Days of receiving the Detailed Design and:
 - (i) Council may, by notice in writing and acting reasonably, approve, vary or direct a variation to the Detailed Design so as to reflect the Standard Requirements; and
 - (ii) the Owner must comply with any direction given by Council under this clause unless it disputes the direction in which case the dispute is to be resolved by expert determination in accordance with Schedule 7.
- (c) If Council requires more than 20 Business Days to provide a written response to the Owner after receiving the Detailed Design in accordance with clause 4.2(b) Council must provide notice in writing to the Owner within 15 Business Days of receiving the Detailed Design that Council requires additional time of no more than 10 additional Business Days to provide a response to the Owner.
- (d) For the avoidance of doubt, if Council provides written notice to the Owner requesting additional time in accordance with clause 4.2(c) Council must provide a written response to the Owner no later than 30 Business Days after receiving the Detailed Design.
- (e) If Council does not provide a written notice to the Owner in accordance with:
 - (i) Clause 4.2(b), being within 20 Business Days of receiving the Detailed Design; or
 - (ii) clause 4.2(c) being within 30 Business Days of receiving the Detailed Design,

(whichever applies) the Detailed Design is deemed to have been approved by Council for the purposes of this Deed.

- (f) Any acceptance or deemed acceptance by Council of the Detailed Design under this clause 4.2 of this Schedule 4 is not to be taken as approval of or to any Construction Certificate for the Contribution Works or any part of them.

4.3 Variations

- (a) The design or specification of the Contribution Work or any part of it that is required to be carried out by the Owner under this Deed may be varied by agreement in writing between the Parties, acting reasonably, without the necessity for an amendment to this Deed.
- (b) Without limiting clause 4.3(a), the Owner may make a written request to the Council to approve a variation to the design or specification of the Contribution Work (or any part of it) in order to enable it to comply with the requirements of any Authority imposed in connection with any Approval relating to the carrying out of the Contribution Work.
- (c) Council is not to unreasonably delay or withhold its approval to a request made by the Owner under clause 4.3(b). Subject to clause 4.3(d), Council is to provide a written response to the request for a variation within 20 Business Days of the Owner's submission in writing being received.
- (d) If Council requires more than 20 Business Days to provide a written response to the request for variation, Council is to provide a notice in writing to the Owner within 15 Business Days of receiving the Owner's request for variation, that Council requires additional time of no more than 10 additional Business Days to provide a response to the request.
- (e) For the avoidance of doubt, if additional time is requested by Council in accordance with clause 4.3(d), Council must provide a response to the request for variation no later than 30 Business Days after receiving the Owner's request for variation.
- (f) If a written response to a request for variation is not be provided by Council to the Owner:
 - (i) within 20 Business Days in accordance with 4.3(c) or
 - (ii) within 30 Business Days in accordance with clause 4.3(d);(whichever applies) the variation request is deemed to have been approved by Council for the purpose of this Deed.
- (g) Prior to the grant of a Construction Certificate for any part of the Contribution Works, Council may request a change to the design for those works that will result in a variation to the Contribution Works.
- (h) If an amendment is required under clause 4.3(g) of this Schedule 4 the Owner will provide an estimate of the cost of such a variation to Council.
- (i) The estimate of the costs of the variation provided by the Owner under clause 4.3(h) of this Schedule 4 must be accompanied by:

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- (i) a report prepared by a quantity surveyor for any works; and
 - (ii) a valuation report for any additional Contribution Land, identifying any compensation claimed for the land calculated in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991*, and taking into account any adjustment to contributions that will be available to the Owner under clauses 1.4 and 1.5 of Part 5 of Schedule 3 of this Deed.
- (j) If after receiving the estimated costs of the variation, Council determines to proceed with the variation:
- (i) If the estimated costs of the variation exceed the value of the Contribution Work and/or Contribution Land in the Contribution Value Schedule at Exhibit A, then on Practical Completion of the Contribution Work that has been varied, Council must pay the costs of the variation to the Owner provided that:
 - (A) A Certificate of Practical Completion has been issued for the relevant works;
 - (B) the Owner provides Council a tax invoice for the payment of the costs; and
 - (C) the Owner provides documentary evidence to Council of the costs incurred by the Owner in completing the relevant works, including an itemised account specifying the costs of the variation.
 - (ii) If the estimated costs of the valuation are less than the value of the Contribution Work and/or Contribution Land in the Contribution Value Schedule (contained in Exhibit A), then the Owner is not obliged to pay any increase in the amount of the Monetary Contribution otherwise payable in accordance with this Deed.
- (k) If after receiving the estimated costs of the evaluation, Council determine not to proceed with the variation, Council must pay the costs of the two reports referred to in clause 4.3(i) above to the Owner, provided that the Owner provides Council a tax invoice for the payment of the costs of the reports.

4.4 Good faith

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

5 Conduct of the Contribution Works

5.1 Communication

The Owner must:

- (a) keep the Council reasonably informed of progress of the Contribution Works; and
- (b) provide to the Council such information about the Contribution Works as the Council reasonably requests.

5.2 Standard of Contribution Works

- (a) Unless otherwise provided, the Owner must, and must cause the Builder to, use suitable new materials and proper and tradesman like workmanship when carrying out the Contribution Works.
- (b) The qualitative standard of the design and finishes for the Construction Works must be no less than those described in the following documents:
 - (i) any relevant Standard Requirements;
 - (ii) any relevant design standards or guidelines and any other requirements or policies applied by the Council from time to time in assessing the adequacy of any works or improvements proposed for the public domain or to be accessible to the public in accordance with this Deed.
 - (iii) the specification and finishes contained in the Staging Plan.
- (c) If the Council does not provide any of the Council's policies, standards and specifications forming part of the Standard Requirements, the Owner must request those documents from Council
- (d) Subject to the provisions of this Deed, including but not limited to the Owner's obligations in clause 8 of this Schedule 4, the Council accepts and assumes responsibility for the Contribution Works following or dedication to Council of that part of the Contribution Land on which the Contribution Works are located or on Practical Completion where the Contributions Works are on Council land subject to any continuing obligation of the Owner in respect of the Contribution Works or the Contribution Land.

5.3 Damage

- (a) Subject to and Development Consent granted to the Development, the Owner is to ensure to the fullest extent reasonably practicable that, in performing its obligations under this Deed:
 - (i) all necessary measures are taken to protect people and property;
 - (ii) unnecessary interference with the passage of people and vehicles is minimised; and
 - (iii) nuisances and unreasonable noise and disturbances are minimised.
- (b) Subject to any Development Consent granted to the Development, the Owner is not to obstruct, interfere with, impair or damage any public road, public footpath, public cycleway or other public thoroughfare, or any pipe, conduit, drain, watercourse or other public utility or service on any land except as authorised in writing by the Council or any relevant Authority.

6 Inspection

6.1 Inspection schedule

- (a) On completion of the Detailed Design, the Council will provide a schedule of inspections to be undertaken by Council which has been prepared as a result of consultation with the Owner (**Inspection Schedule**) to occur at specified stages of the construction of the Contribution Works (**Inspection Stage**).
- (b) If the Council does not provide the Inspection Schedule, the Owner must request the Inspection Schedule from the Council prior to the Contribution Works commencing.

6.2 Inspection process

- (a) No less than 5 Business Days prior to reaching an Inspection Stage as set out in the Inspection Schedule, the Owner must notify the Council of the proposed inspection date (**Inspection Date**).
- (b) On the Inspection Date, or other agreed date, the Owner must ensure that any employees, contractors, agents or representatives of the Council have access to and may enter the Land to inspect the Contribution Works.
- (c) In addition to carrying out inspections in accordance with the Inspection Schedule, the Council may enter the Land or any part of the Land on which the Contribution Works are located to inspect the progress of the Contribution Works, subject to:
 - (i) the terms of the Construction Contract (save for any clause of the Construction Contract which prevents the Council from accessing the Land);
 - (ii) giving reasonable notice to the Owner;
 - (iii) complying with all reasonable directions of the Owner; and
 - (iv) being accompanied by the Owner or a nominee, or as otherwise agreed.
- (d) The Council may, acting reasonably, within 5 Business Days of carrying out an inspection (either under clause 6.2(b) or (c) of this Schedule 4), notify the Owner of any defect or non-compliance in the Contribution Works and direct the Owner to carry out work to rectify that defect or non-compliance within a reasonable period of time. Such work may include, but is not limited to:
 - (i) removal of defective or non-complying material;
 - (ii) demolishing defective or non-complying work;
 - (iii) reconstructing, replacing or correcting any defective or non-complying work; and
 - (iv) not delivering any defective or non-complying material to the site of the Contribution Works.

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- (e) If the Owner is issued a direction to carry out further work under clause 6.2(d) of this Schedule 4, the Owner must, at its cost, rectify the defect or non-compliance specified in the Notice within the time period specified in the notice, provided that it is reasonable having regard to the nature of the works.
 - (f) If the Owner fails to comply with a direction to carry out work given under clause 6.2(d) of this Schedule 4 (and where there is a dispute, a direction confirmed by a binding expert determination under Schedule 7), the Council will be entitled to refuse to accept that the Contribution Works (or the relevant part of the Contribution Works) meet the Council's standards and specifications and may refuse to issue a Certificate of Practical Completion, until the required Contribution Works have been completed to the Council's satisfaction, acting reasonably.
 - (g) For the avoidance of doubt, any acceptance by the Council that the Owner has rectified a defect or non-compliance identified in a notice issued under clause 6.2(d) of this Schedule 4 does not constitute:
 - (i) acceptance by the Council that the Contribution Works comply with all Approvals and Laws; or
 - (ii) an Approval by the Council in respect of the Contribution Works; or
 - (iii) an agreement or acknowledgment by the Council that the Contribution Works or the relevant part of the Contribution Works are complete and may be delivered to the Council in accordance with this Deed.

7 Completion

7.1 Practical Completion

- (a) When the Owner considers that the Contribution Works, or any part of them, are complete, the Owner must send a notice to the Council accompanied by complete works as executed plans, any relevant certificates or consents of any public utility authority and a request for written certification from the Council that the Contribution Works or relevant part of them are complete.
- (b) Within 20 Business Days of receipt of the notice under clause 7(a) of this Schedule 4, the Council will carry out an inspection of the Contribution Works or relevant part of them and will, acting reasonably, within a further 10 Business Days or other period of time as agreed between the Parties, either:
 - (i) provide written certification to the Owner that the Contribution Works or relevant part of them has reached Practical Completion which must include a list of defects that do not prevent Practical Completion; or
 - (ii) notify the Owner of any additional information required or matters which must be addressed by the Owner prior to the certification being issued.
- (c) If the Owner is required to provide additional information or address any matters under clause 7(b)(ii) of this Schedule 4, the Owner will provide that information to the Council or address those matters within 10 Business Days of receiving the notice or within a reasonable period of time and make a further request under clause 7(a) of this Schedule 4 for written certification that the Works have been completed.

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- (d) Practical Completion will be achieved in relation to the Contribution Works or any relevant part of them when a Certificate of Practical Completion has been issued for those works by Council (acting reasonably). If there is a dispute between the parties as to Practical Completion, then it is to be referred for expert determination in accordance with clause 1.6 of Schedule 7 and Council must promptly issue a Certificate of Practical Completion consistent with the determination.

7.2 Delivery of documents

The Owner must as soon as practicable, and no later than 20 Business Days after the date on which the Certificate of Practical Completion is issued in respect of the Contribution Works or any relevant part of them, provide the Council with a tour of the Land.

7.3 Assignment of warranties

- (a) If possible, the Owner must assign (as beneficial owner) or cause to be assigned to the Council the benefit of any warranties and guarantees obtained by the Owner and the Builder (and capable of assignment) with respect to any material or goods incorporated in or forming part of the Contribution Works.
- (b) To the extent that any such warranties or guarantees (as referred to in clause 7.3(a) above) cannot be assigned, the Owner must at the request of the Council do anything reasonably required by the Council to enforce such warranties or guarantees for the benefit of the Council at Council's cost.

8 Defects liability

8.1 Obligation to rectify

- (a) During the Defects Liability Period, the Council (acting reasonably) may give to the Owner a notice (**Rectification Notice**) in writing that identifies a defect in the Contribution Works and:
- (i) specifies the works which Council considers are required to be undertaken by the Owner to rectify that defect (**Rectification Works**);
 - (ii) allows the Owner a reasonable period to rectify such works (**Rectification Date**).
- (b) If there is a dispute between the parties as to a Rectification Notice, then it is to be referred for expert determination in accordance with clause 1.6 of Schedule 7.
- (c) The Owner must comply with the Rectification Notice by:
- (i) procuring the performance of the Rectification Works by the Rectification Date, or such other date as agreed between the Parties;
 - (ii) keeping the Council reasonably informed of the action to be taken to rectify the defect; and
 - (iii) carrying out the Rectification Works.

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- (d) The Council must give the Owner and its contractors or agents any access required to carry out the Rectification Works.

8.2 Rectification complete

When the Owner considers that the Rectification Works are complete, either the Owner must notify the Council and provide documentation, plans or invoices which establish that the Rectification Works were carried out.

- (a) The Council may inspect the Rectification Works within 15 Business Days of receiving a notice from the Owner under clause 8.2(a) of this Schedule 4 and, acting reasonably:
 - (i) issue a further Rectification Notice if it is not reasonably satisfied that the Rectification Works are complete; or
 - (ii) notify the Owner in writing that it is satisfied the Rectification Works are complete. If there is a dispute between the parties as to completion of Rectification Works, then it is to be referred for expert determination in accordance with clause 1.6 of Schedule 7.
- (b) For the avoidance of doubt, the issuing of a Rectification Notice by Council or the need to undertake Rectification Works will not prohibit the issuing of a certificate of Practical Competition.

8.3 Rectifications costs

- (a) The Owner must meet all costs to rectify the defects outlined in the Rectification Notice. If the Owner fails to comply with a Rectification Notice, then the Council may do such things or take such action as is necessary to carry out the Rectification Works, including accessing and occupying any part of the Land without further notice to the Owner, and may:
 - (i) call upon any Security provided to the Council under clause 8.4 of this Schedule 4 to meet its costs of carrying out Rectification Works; and
 - (ii) recover as a debt due to the Council by the Owner in a court of competent jurisdiction, any difference between the amount of the security deposit and the reasonable costs incurred by the Council in carrying out Rectification Works.

8.4 Security for defects liability

- (a) The Owner must deliver to Council each Defects Security:
 - (i) on the date specified in the Security Schedule for the relevant Defects Security; and
 - (ii) in the relevant Security Amount.
- (b) The Owner advises and the Council acknowledges its awareness that the Securities may be supplied by the Builder and form a part of the security held by the Owner from the Builder under the terms of the Construction Contract, provided that:

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- (i) any Security provided by the Builder benefits the Council and satisfies the requirements of this Deed; and
 - (ii) the Owner procures an agreement from the Builder that the Council will be entitled to call on any Security provided by the Builder, in accordance with the terms of this Deed and the terms of any Construction Contract.
- (c) Within 10 Business Days after the Defects Liability Period for a particular element of Contribution Works in a Stage has expired Council must (if it has not called on it) return the Security referred to in clause 8.4 of this Schedule 4 for that element of Contribution Works in a Stage (or any remaining balance of it) to the Owner.
- (d) Notwithstanding clause 8.4(c) of this Schedule 4, if during the Defects Liability Period for a particular element of Contribution Works in a Stage, the Council issues a Rectification Notice and the Rectification Notice is not complied with, then the Council need not deliver the balance of any Defects Security provided to it in respect of that element of Contribution Works in a Stage until that defect has been rectified.
- (e) The Council must deliver the balance of any Defects Security to the Owner in accordance with Schedule 10.

9 Risk and insurance

9.1 Risk

The Owner undertakes the Contribution Works entirely at its own risk.

9.2 Indemnities

The Owner indemnifies the Council, its employees, officers, agents and contractors from and against all Claims incurred by Council arising from the wilful or negligent acts or omissions or default of the Owner in connection with the carrying out by the Owner of the Contribution Works except to the extent such Claim arises either directly or indirectly as a result of the negligence of Council or its employees, officers, agents or contractors.

9.3 Insurance

- (a) Prior to the commencement of the Contribution Works or any part of them, the Owner must ensure the Builder effects and the Owner must produce evidence to the Council of the following insurances issued by an insurer approved by the Council (acting reasonably) in a form approved by the Council (acting reasonably):
- (i) construction works insurance for the value of the Contribution Works;
 - (ii) public risk insurance for at least \$20 million;
 - (iii) workers compensation insurance as required by Law.
- (b) The Owner must provide evidence of currency of insurance required by clause 9.3(a) of this Schedule 4 upon request by the Council, acting reasonably, throughout the term of this Deed.

10 Intellectual Property Rights

- (a) The Council acknowledges that the Owner or its contractors hold all rights to copyright and any intellectual property which may exist in the Contribution Works.
- (b) To the extent the Owner has or receives intellectual property rights for the Contribution Works, and the Owner has the written consent and/or written agreement of the owner of the intellectual property rights to assign to Council or provide an irrevocable licence to Council to use the intellectual property rights, the Owner shall:
 - (i) assign those intellectual property rights to Council; or
 - (ii) grant Council an irrevocable licence to use the intellectual property rights in perpetuity for no fee.

11 Contamination risk

11.1 Responsibility

- (a) The Owner acknowledges and agrees:
 - (i) that it is responsible for the management and remediation of any contamination present upon or under the Land on which the Contribution Works are to be carried out;
 - (ii) it is responsible for the management of any contamination present upon or under the land on which the Contribution Works are to be carried out; and
 - (iii) at its Cost, it will do all things necessary to manage any contamination present upon or under the land on which the Contribution Works are to be carried out so as to make the Contribution Works suitable for use.
- (b) The parties agree to conduct negotiations in good faith in order to reach an agreement on:
 - (i) what action is to be taken if contamination is identified on or in the land on which the Contribution Works are to be carried out; and
 - (ii) the party responsible for:
 - (A) managing and/or carrying out the remediation of any contamination identified; and
 - (B) the payment of the Costs of managing and/or carrying out the remediation of any contamination identified.
- (c) Council agrees to disclose all information within its knowledge in relation to the contamination status of the land owned by Council which is reasonably necessary for the Owner to protect its workers undertaking the Contribution Works.

11.2 Certification

Prior to the dedication to Council of any part of the Land to Council, the Owner must provide to Council's reasonable satisfaction, certification by a qualified person, that the land on which the Contribution Works are carried out is suitable, in light of any existing contamination, for the proposed use.

Schedule 5 - Not Used

Schedule 6 - Notification and rectification of breach

1 Notice of breach

1.1 Response to Notice

- (a) Promptly upon receipt of a notice under clause 9, the Notified Party must either:
 - (i) rectify the breach identified in that notice within the time period specified in that notice; or
 - (ii) advise the Notifying Party in writing within 20 Business Days of receipt of the notice under clause 9 that it does not agree that the breach identified in that notice has occurred, and refer the matter for dispute resolution in accordance with clause 13 and Schedule 7.
- (b) In the absence of a manifest error on the face of the notice, nothing in clause 1.1(a)(ii) of this Schedule 6 will constrain or limit the Council's rights of recourse under this Deed.

1.2 Rights of the Council after Giving Notice

- (a) This clause 1.2 of this Schedule 6 applies where Council is the Notifying Party.
- (b) If:
 - (i) the defaulting party does not take either of the actions outlined in clause 1.1(a) of this Schedule 6; or
 - (ii) any dispute notified by the defaulting party is resolved in favour of the Council,

then the Council may take any or all of the actions available to it under this Deed including:

- (iii) taking any action under clause 1.2 of this Schedule 6;
- (iv) on providing notice to the Owner, calling on the Securities in accordance with Schedule 10;
- (v) issuing a notice to the defaulting party which:
 - (A) identifies the nature of the breach; and
 - (B) specifies that the breach must be rectified by the Owner within a reasonable period of time which must not be less than 20 Business Days (except in the case of an emergency or where there is an issue of public safety where less time may be specified) of the Council's notice,

and the provisions of clauses 1.1 and 1.2 of this Schedule 6 will apply in respect of that notice (with the necessary changes having been made) and

if the defaulting party does not take either of the actions outlined in clause 1.1(a) of this Schedule 6 then the Council may have recourse against the Owner in relation to the breach.

- (c) The rights of the Council under this Deed, and any action taken by it as referred to in this clause 1.2 of this Schedule 6 or otherwise, are without derogation from the other rights and remedies available to the Council under this Deed, at law and in equity in relation to any default of the defaulting party.

2 Council may rectify breach

2.1 Council may perform obligations

- (a) This clause 2.1 of this Schedule 6 applies only if the Council has first complied with clause 1 of this Schedule 6.
- (b) Before exercising its rights under the remainder of this clause 2.1 of this Schedule 6, the Council will give not less than 20 Business Days' (except in the case of an emergency or where there is an issue of public safety where less time may be specified) written notice to the defaulting party of its intention to exercise those rights.
- (c) The Council may (but is not obliged to):
 - (i) perform the defaulting party's obligations where the defaulting party fails to:
 - (A) rectify the breach identified in the notice referred to in clause 9 within the time period specified in that notice; or
 - (B) notify the Council in writing that it does not agree that the breach identified in the notice referred to in clause 9 has occurred and refer the matter for dispute resolution in accordance with clause 13 and Schedule 7;
 - (ii) rectify any breach of this Deed;
 - (iii) carry out other works that are necessary to be carried out; and
 - (iv) otherwise do anything which the defaulting party should have done under this Deed.
- (d) Without limiting clause 1.1 of this Schedule 6 the defaulting party agrees that the Council, its employees, agents and contractors, may enter onto the Land and do whatever is necessary to remedy the breach, in the absolute discretion of the Council, subject to compliance with the reasonable directions of the defaulting party relating to work, health and safety and compliance with all Laws.
- (e) Subject to clause 2.1(f) of this Schedule 6 the defaulting party indemnifies and will keep the Council indemnified from and against all claims, actions, demands, losses, damages, Costs and Legal Costs (**Claim**) incurred by the Council or for which the Council may become liable in the exercise or purported exercise of the rights of the Council under this clause 2.1 of this Schedule 6, and where the Council has exercised its rights in breach of this Deed, and may call on any relevant Security provided to it under Schedule 10 to satisfy any such Claim.

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- (f) Council indemnifies the Owner and will keep the Owner indemnified from and against all Claims incurred by the Owner or for which the Owner may become liable, arising from the Council's wilful or negligent acts or omissions or default in connection with the carrying out of by Council of its rights under clause 2 of this Schedule 6.

Schedule 7 - Dispute Resolution

1 Dispute Resolution

1.1 Application

- (a) This Schedule does not apply to the Panel.
- (b) Nothing in this clause:
 - (i) requires the panel to enter into a dispute resolution process with the other Parties; or
 - (ii) the Owner and Council to ensure that the Panel is involved in dispute resolution processes prior to engaging in that process.
- (c) Despite anything else stated in this Deed, the Party issuing a dispute notice must give a copy of the notice to the Panel.

1.2 Not commence

A Party must not commence any court proceedings relating to a dispute unless it complies with the provisions of this Schedule 7.

1.3 Written notice of dispute

A Party claiming that a dispute has arisen under or in relation to this Deed must give written notice to the other Party specifying the nature of the dispute.

1.4 Attempt to resolve

On receipt of notice under clause 1.3 of this Schedule 7, the parties must endeavour in good faith to resolve the dispute expeditiously using informal dispute resolution techniques such as mediation, expert evaluation or other techniques agreed by them.

1.5 Mediation

- (a) If the Parties do not agree within 10 Business Days of receipt of notice under clause 1.4 of this Schedule 7 (or any further period agreed in writing by them) as to:
 - (i) the dispute resolution technique and procedures to be adopted;
 - (ii) the timetable for all steps in those procedures; or
 - (iii) the selection and compensation of the independent person required for such technique.
- (b) The Parties must mediate the dispute in accordance with the Mediation Rules of the Law Society of NSW. The Parties must request the president of the Law Society of NSW or the president's nominee to select the mediator and determine the mediator's remuneration.

1.6 Expert evaluation generally

- (a) If the Parties agree under clause 1.4 of this Schedule 7 that expert evaluation is the appropriate dispute resolution technique or clause 7 of Schedule 4 requires expert evaluation, expert evaluation must be carried out in accordance with this clause 1.6.
- (b) Where the Parties are not able to agree on an appropriate expert, the expert is to be appointed by the President of the appropriate institute or association.
- (c) If the Parties cannot agree on which institute or association is appropriate in the circumstances (within the same 10 Business Days), either Party may refer the selection of the institute or association to the President of the Bar Association of New South Wales to select the most appropriate institute or association.
- (d) The institutes or associations from which the expert may be appointed are:
 - (i) if an architect: the Royal Australian Institute of Architects, New South Wales Chapter;
 - (ii) if an engineer: Engineers Australia,
 - (iii) if a valuer: the Australian Property Institute Incorporated ABN 49 007 505 866, New South Wales Division;
 - (iv) if an expert in decontamination: Engineers Australia - Environmental College
 - (v) if an expert in insurance: the Australian and New Zealand Institute of Insurance and Finance, New South Wales Branch;
 - (vi) if a real estate agent: the Real Estate Institute of New South Wales;
 - (vii) if a quantity surveyor: the Australian Institute of Quantity Surveyors, New South Wales Chapter;
 - (viii) if a barrister: the New South Wales Bar Association;
 - (ix) if an accountant: the Institute of Chartered Accountants, New South Wales Division;
 - (x) if a solicitor or mediator: the Law Society of New South Wales
- (e) If:
 - (i) more than two types of experts are required to determine the dispute; or
 - (ii) the Parties agree to appoint a lead expert; or
 - (iii) the President of the Bar Association exercising his or her functions in accordance with clause 1.6(c) considers the appointment of a lead expert appropriate

then the Parties must appoint a lead expert.

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- (f) The lead expert must be a solicitor who has practised for not less than 15 years and who has not less than 5 years' experience in alternative dispute resolution. The lead expert must be agreed by the Parties and failing agreement will be appointed by the President of the Law Society of New South Wales.
- (g) If a lead expert is appointed the functions of that person are:
- (i) to determine the type of expert required to determine the dispute;
 - (ii) in the absence of agreement between the Parties as to the identity of the expert, to request the appropriate institute or association referred to in clause 1.6(b) ('Institutes and associations') to appoint an expert;
 - (iii) to determine the questions to be put to the expert and, if there is more than one expert, to co-ordinate and determine the timing of each expert determination;
 - (iv) if the dispute requires determination by an expert solicitor, to perform that function;
 - (v) if the expert determinations obtained are ambiguous, contradictory or in conflict, to determine the ambiguity, contradiction or conflict;
 - (vi) on receipt of the expert determinations to deliver to the Parties a final determination of the dispute;
 - (vii) to determine any question of procedure concerning the dispute resolution process.
- (h) The expert is to be engaged on his standard terms of engagement subject to any amendments required to ensure consistency with this clause.
- (i) Both Parties may, within 20 Business Days of the date of appointment of the expert, make written submissions to the expert on the matter the subject of the dispute. If a Party makes a written submission to the expert, it must give a copy of the submission to the other Party at the same time as it gives the submission to the expert. Submissions must include all particulars upon which a Party seeks to rely in support of its position in relation to the dispute. The expert will determine the procedure for determining the dispute.
- (j) When any dispute or difference referred to in this clause has been referred for determination, the Parties will each use their best endeavours to make available to the expert all facts and circumstances which the expert may require to settle or determine the dispute or difference and must ensure that their respective employees, agents and consultants are available to appear at any hearing or enquiry called for by the expert. The Parties record their agreement that the hearing be concluded within 20 Business Days, and the expert's decision given within 20 Business, of the date of appointment of the expert, and shall use their best endeavours to see that these time frames are met.
- (k) The expert's decision is final and binding on the Parties. The cost of the expert's decision is to be borne by the Parties in the shares as the expert determines and in the absence of a determination equally between the Parties.

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- (l) The expert will also determine the amount of the costs and expenses of the reference of such dispute to him. In default of such decision, those costs and expenses will be borne by the Parties in equal shares.

1.7 Court proceedings

If the dispute is not resolved within 60 Business Days after notice is given under clause 1.3 of this Schedule 7, then any Party which has complied with the provisions of this Schedule 7, may in writing terminate any dispute resolution process undertaken under this clause and may then commence court proceedings in relation to the dispute.

1.8 Not use information

The Parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement under the provisions of this Schedule 7, is to attempt to settle the dispute. No Party may use any information or documents obtained through any dispute resolution process undertaken under the provisions of this Schedule 7 for any purpose other than in an attempt to settle the dispute.

1.9 No prejudice

The provisions of this Schedule 7 do not prejudice the right of a Party to institute court proceedings for urgent injunctive or declaratory relief in relation to any matter arising out of or relating to this Deed.

1.10 Costs

- (a) The Costs of appointing a mediator under this Schedule 7, will be borne equally by the Parties
- (b) Each Party will be responsible for its own Legal Costs with respect to any dispute resolution process.

Schedule 8 - Registration of Deed

1 Registration of Deed

1.1 Application

Subject to clause 7.2, the Parties agree to procure registration of this Deed in the relevant folio of the Register for the Land pursuant to section 7.6 of the EP&A Act.

1.2 Deliver to Council

The Owner must deliver to Council:

- (a) a signed counterpart of this Deed;
- (b) a consent to registration from any registered mortgagee of the Land;
- (c) a consent to registration from any registered lessees under any registered lease of the Land;
- (d) evidence that the certificate for the Land has been produced at Land Registry Services for the purpose of registration of the Deed; and
- (e) a bank cheque for the relevant registration fees.

1.3 Council to lodge

Without delay after receipt of the items specified in clause 1.2 of this Schedule 8, Council will attend to lodgement of this Deed with Land Registry Services for registration in the relevant folio of the Register

1.4 Registration requisitions

The Owner must promptly comply with any requisitions from Land Registry Services in relation to registration of the Deed registration in the relevant folio of the Register.

1.5 Registration notification

Council will:

- (a) notify the Owner of registration of this Deed in the relevant folio of the Register without delay after being notified of such registration by Land Registry Services by the Council;
- (b) deliver to the Owner the registered Deed.

Schedule 9 - Release and Discharge Terms

1 Release and discharge terms

1.1 Full release

Once the Council is satisfied (acting reasonably) that the Owner has complied with all of their obligations under this Deed, at the Owner's request (and Cost), the Council must within 10 Business Days of being requested to do so by the Owner:

- (a) provide a full release and discharge of this Deed with respect to the whole of the Land and documentation (in registrable form) required to remove the notation of this Deed from the relevant folio of the Register for the Land; and
- (b) (should the Council not already have done so) sign such documentation as is necessary to remove any caveat lodged by the Council from the relevant folio of the Register for the Land.

1.2 Partial release

Despite clause 1.1 of this Schedule 9, from time to time, the Owner may request and the Council is to provide a release and discharge of this Deed so that it may remove the notation of this Deed from the Register in respect of any part of the Land provided that:

- (a) all obligations under clauses 3, 4 and 5 of this Deed have been met with respect to that portion;
- (b) the Owner has provided the Council with a Security in accordance with Schedule 10 for the purpose of completing the outstanding, rectifying any defects in the Contribution Works or carrying out any maintenance of the Contribution Works as required by Schedule 4; Monetary Contributions that are required under Schedule 3 of this Deed to be paid for the Development on that part of the Land (if any) have been paid; and
- (c) the Owner is not otherwise in default of any of its obligations under this Deed for that portion (as determined by the Council (acting reasonably), at the time of the Owner's request, unless the Council waives the default.

1.3 Outstanding obligations

For the avoidance of doubt, a release under clause 1.2 of Schedule 9 does not operate as a release from any outstanding obligation under this Deed, and is intended only to allow removal of the notation of this Deed from the Register in respect of the relevant part of the Land.

Schedule 10- Security

1 Securities

1.1 Owner to provide

- (a) Clauses 1.1 to 1.8 of this Schedule apply in relation to the Contributions.
- (b) The Owner must provide each Security to the Council (in the relevant Security Amount) on or before the times set out in the Security Schedule.
- (c) Council and the Owner agree that the Securities referred to in paragraph (b) of this clause, secure:
 - (i) in respect of the Pedestrian Link Works Security, the performance by the Owner of its obligations under this Deed in respect of the Pedestrian Link Works including causing the Pedestrian Link Works to achieve Practical Completion and registration of the Pedestrian Link Easement;
 - (ii) in respect of the Road Land Works Security, the performance by the Owner of its obligations under this Deed in respect of the Road Land Works including causing the Road Land Works to achieve Practical Completion and the dedication of the Road Land to Council;
 - (iii) in respect of the Public Domain Works, the performance by the Owner of its obligations under this Deed in respect of the Public Domain Works including causing the Public Domain Works achieve Practical Completion and registration of the Pedestrian Link Easement; and
 - (iv) in respect of the Enforcement Security, the performance by the Owner of its obligations under this Deed generally.
- (d) The Owner authorises Council to compulsory acquire the Road Land and/ or an easement in gross over the Pedestrian Link Works on the Land for \$1.00 if the Owner fails to deliver the Road Land Works and or the Pedestrian Link Works in the time frame required under this Deed. Upon the compulsory acquisition occurring, the Owner will have met its obligations under this Deed in respect of the Contribution Land.

1.2 Adjustment of Security Amounts

- (a) On each Adjustment Date each Security Amount is to be adjusted to the Revised Security Amount as determined in accordance with the following formula:

$$RBA = \frac{BA \times A}{B}$$

where:

RBA is the Revised Security Amount applicable from the relevant Adjustment Date;

BA is the Security Amount that is current on the relevant Adjustment Date;

A is the CPI published immediately before the relevant Adjustment Date; and

B is the CPI published immediately before the date of this Deed and, in the case of subsequent adjustments, the immediately preceding Adjustment Date.

No increase or other change will be made to a Revised Security Amount where B is greater than A.

- (b) The Council must give the Owner written notice of each Revised Security Amount to apply from the relevant Adjustment Date.
- (c) The Owner must give the Council replacement or further Securities so that the Council holds each Security for an amount equal to the revised Security Amounts no later than 15 Business Days after receipt of a notice given under paragraph (b) of this clause.

1.3 Expiry of Security

If, despite the requirements of this Deed, any Security provided by the Owner is expressed as expiring on a certain date, the Owner must provide the Council with a replacement Security 20 Business Days prior to the expiry of any Security.

1.4 Failure to replace expired Security

If the Owner fails to provide the Council with a replacement Security in accordance with clause 1.3 of this Schedule 10, the Council may call on the full amount of such Security after giving 10 Business Days prior written notice to the Owner.

1.5 No limitation of obligations

The provision of the Security does not:

- (a) relieve the Owner from any of its obligations under any other provision of this Deed; or
- (b) other than as expressly set out in this Deed, limit the right of the Council to recover from the Owner in full all money payable to the Council under this Deed, including without limitation, interest on any such amounts or damages or other losses actually incurred by the Council.

1.6 Cash Deposit

- (a) If the Council makes demand under any Security pursuant to clause 1.4 of this Schedule 10, the Council must hold the full amount so paid to the Council as a cash deposit (**Cash Deposit**) in a separate account opened with any body corporate that is an ADI (authorised deposit-taking institution) for the purposes of the *Banking Act, 1959* in the name of the Council and with beneficial ownership vesting at all times in the Council (**Cash Deposit Account**). The Cash Deposit will operate to secure the same obligations under this Deed that the relevant Security secured.
- (b) As beneficial owner of the Cash Deposit, the Council may, at any time and without notice to the Owner, withdraw money (including accrued interest) from the Cash

Deposit Account and retain that money absolutely to satisfy or reimburse the Council for any liability, loss, cost, charge or expense incurred by the Council because of failure by the Owner to comply with those of the Owner's obligations under this Deed that the relevant Security secured.

- (c) All Costs, charges, duties and Taxes payable in connection with the Cash Deposit Account or interest accruing on moneys credited to the Cash Deposit Account may be satisfied by the Council withdrawing money from the Cash Deposit Account and applying the money for that purpose.
- (d) If no moneys are, or may become, payable to the Council under this Deed in connection with the obligations under this Deed secured by the relevant Security and the Owner has satisfied all of its obligations under this Deed which were secured by the relevant Security, the Council must (as soon as possible) and no later than 20 Business Days, pay the balance of the Cash Deposit Account, less all Costs, charges, duties and Taxes payable in connection with such payment, to the Owner.
- (e) For the avoidance of doubt, the Owner has no right to require the Council to release the Cash Deposit until the Council is reasonably satisfied that no moneys are, or may become, payable to the Council under this Deed in relation to obligations secured by the relevant Security.

1.7 Release of Cash Deposit

The Council must release the Cash Deposit to the Owner if the Owner provides the Council with a replacement Security complying with the requirements of clause 1.3 of this Schedule 10.

1.8 Claims under Securities

- (a) The Owner agrees that the Council may after giving at least 10 Business Days prior written notice to the Owner make claims (in full or in part) under a Security provided by it.
- (b) The Council may retain and use any money it has obtained by making a claim under this clause in its discretion to compensate the Council for the Owner's breach of those obligations.

1.9 Security Schedule

- (a) The Parties agree that the table below is the Security Schedule setting out:
 - (i) the Securities;
 - (ii) the Security Amount for each Security;
 - (iii) when a Security must be provided to Council; and
 - (iv) when a Security must be returned by Council.

Security	Security Amount	Date for delivery	Date for return
Enforcement Security	\$300,000	The date of this Deed	The later of the date on which: <ul style="list-style-type: none"> (a) this Deed is terminated; or (b) the Owner has satisfied all of its obligations under this Deed.
Stage 1 Total Security amount for Stage 1 Contributions Works is \$270,000			
Public Domain Works Security for Stage 1 outside boundary marked "a1" on the Staging Plan	\$270,000	The date of any Construction Certificate that authorises the carrying out of the Public Domain Works being the design and construction of civil works as shown as "a1" on the Staging Plan.	Either the later of: <ul style="list-style-type: none"> (b) the date of the Certificate of Practical Completion in respect of the Public Domain Works for Stage 1 being that which is marked "a1" on the Staging Plan, if at the relevant time there is no subsisting default by the Owner under this Deed; or (c) when Council considers that the Owner is not in default of its obligations under this Deed if as at the date of the Certificate of Practical Completion in respect of the Public Domain Works for Stage 1 being that which is marked "a1" on the Staging Plan if at the relevant time there is no subsisting default by the Owner under this Deed; or (d) by agreement of Council and the Owner acting reasonably.
Stage 2 The total Security Amount for Stage 2 is \$2,087,500 comprising 3 separate Securities as outlined below:			

Stage 2 Contribution Works	\$2,087,500 comprising 3 Bank Guarantees for the amounts set out below.	The Security for all of the Stage 2 Contribution Works must be provided on or before the date of any Construction Certificate that authorises the carrying out of the Stage 2 Contributions Works (or any part of them).	The Security for each element of the Stage 2 Contribution Works must be returned on or before the dates stated below.
Pedestrian Link Works for Stage 2 marked "b1" on the Staging Plan	For this element of the Stage 2 Contribution Works, \$630,000.		<p>The Security for the amount of \$630,000 is to be returned either:</p> <ul style="list-style-type: none"> (a) by the date of the Certificate of Practical Completion in respect of that part of the Pedestrian Link Works being that which is marked "b1" on the Staging Plan if at the relevant time there is no subsisting default by the Owner under this Deed; or (e) by agreement of Council and the Owner acting reasonably.
Road Works for Stage 2 marked "g1" on the Staging Plan	For this element of the Stage 2 Contribution Works, \$880,000		<p>The Security for the amount of \$880,000 is to be returned either:</p> <ul style="list-style-type: none"> (a) by the date of the Certificate of Practical Completion in respect of that part of the Pedestrian Link Works being that which is marked "g1" on the Staging Plan if at the relevant time there is no subsisting default by the Owner under this Deed; or (b) by agreement of Council and the Owner acting reasonably.

Road Land for Stage 2 marked "g1" on the Staging Plan	For this element of the Stage 2 Contribution Works, \$577,500		The Security for the amount of \$577,500 is to be returned either : (a) on the date on which the Road Land marked "g1" is dedicated to Council; or (b) by agreement of Council and the Owner acting reasonably.
Stage 3 The total Security Amount for Stage 3 is \$2,270, 000 comprising 2 separate Securities as outlined below:			
Stage 3 Contribution Works	\$2,270,000 comprising 2 Bank Guarantees for the amounts set out below.	The Security for all of the Stage 3 Contribution Works must be provided on or before the date of any Construction Certificate that authorises the carrying out of the Stage 3 Contributions Works (or any part of them).	The Security for each element of the Stage 3 Contribution Works must be returned on or before the dates stated below.
Pedestrian Link Works for Stage 3 marked "b2" on the Staging Plan	For this element of the Stage 3 Contribution Works, \$1, 250,000.		The Security for the amount of \$1,250,000 is to be returned either: (a) by the date of the Certificate of Practical Completion in respect of that part of the Pedestrian Link Works being that which is marked "b2" on the Staging Plan if at the relevant time there is no subsisting default by the Owner under this Deed; or (b) by agreement of Council and the Owner acting reasonably.
Public Domain Works for Stage 3 outside the boundary marked as "a2"	For this element of the Stage 3 Contribution Works,		The Security for the amount of \$1,020,000 is to be returned: (a) by the date of the Certificate of Practical Completion in respect of

on the Staging Plan	\$1, 020,000.		<p>that part of the Road Works being that which is marked "a2" on the Staging Plan if at the relevant time there is no subsisting default by the Owner under this Deed; or</p> <p>(b) by agreement of Council and the Owner acting reasonably.</p>
Stage 4 – Total Securities in the amount of \$3,732,500 comprising 3 separate Securities as outlined below:			
Stage 4 Contribution Works	\$3,732,500 comprising 3 Bank Guarantees for the amounts set out below.	The Security for all of the Stage 4 Contribution Works must be provided on or before the date of any Construction Certificate that authorises the carrying out of the Stage 4 Contributions Works (or any part of them).	The Security for each element of the Stage 4 Contribution Works must be returned on or before the dates stated below.
Road Land Works for Stage 4 marked "g2" on the Staging Plan	For this element of the Stage 4 Contribution Works, \$2,240,000.		<p>The Security for the amount of \$2,240,000 is to be returned either:</p> <p>(a) by the date of the Certificate of Practical Completion in respect of that part of the Road Works being that which is marked "g2" on the Staging Plan if at the relevant time there is no subsisting default by the Owner under this Deed; or</p> <p>(b) by agreement of Council and the Owner acting reasonably.</p>
Dedication of Road Land for Stage 4 as marked "g2"	For this element of the Stage 4		The Security for the amount of \$1,162,500 is to be returned either:

	Contribution Works, \$1,162, 500.		(a) on the date on which the Road Land marked "g2" is dedicated to Council; or (b) by agreement of Council and the Owner acting reasonably.
Public Domain Works for Stage 4 outside the boundary marked "a3" on the Staging Plan	For this element of the Stage 4 Contribution Works, \$330,000.		The Security for the amount of \$330,000 is to be returned either: (a) by the date of the Certificate of Practical Completion in respect of that part of the Road Works being that which is marked "a3" on the Staging Plan if at the relevant time there is no subsisting default by the Owner under this Deed; or (b) by agreement of Council and the Owner acting reasonably.
Enforcement Securities for Defects			
Pedestrian Link Works Defects Security	An amount equal to 10% of the value of the Pedestrian Link Works	The date of the Certificate of Practical Completion in respect of the Pedestrian Link Works (or any works package that includes those works).	In accordance with clause 8.4 of Schedule 4 of this Deed.
Road Land Works Defects Security	An amount equal to 10% of the value of the Road Land Works	The date of the Certificate of Practical Completion in respect of the Road Land Works (or any works package that includes those works)	In accordance with clause 8.4 of Schedule 4 of this Deed.
Public Domain Works Defects Security	An amount equal to 10% of the value of the Public Domain Works	The date of the Certificate of Practical Completion in respect of the Public Domain Works (or any works package that includes those works)	In accordance with clause 8.4 of Schedule 4 of this Deed.

Schedule 11 - Assignment and Dealing

1 Assignment and Dealing

1.1 Dealing by the Owner

- (a) Unless the matters specified in clause 1.1 (c) of this Schedule 11 are satisfied, the Owner is not to assign or novate to any person their rights or uncompleted obligations under this Deed.
- (b) Except in relation to a mortgage, the Owner must not assign or novate to any person its rights or uncompleted obligations under this Deed unless the prior written consent of Council is obtained. The Council must not unreasonably withhold its consent in circumstances where the following matters in 1.1(c) have been satisfied.
- (c) The Council must not unreasonably withhold its consent in circumstances where the following matters have been satisfied:
 - (i) the Owner has, at no cost to the Council, first procured the execution by the person to whom the Owner's rights or uncompleted obligations under this Deed are to be assigned or novated (**incoming party**), of a deed in favour of the Council in the form similar to Schedule 13, completed in a manner satisfactory to the Council. Such deed includes covenants that the incoming party:
 - (A) will perform the relevant obligations of the Owner under this Deed; and
 - (B) is bound by the terms and conditions of this Deed (relevant to the Owner) as if the incoming party had executed the Deed;
 - (ii) the Owner is not in breach of this Deed or the Council has waived a subsisting breach;
 - (iii) the Owner provides to the satisfaction of Council (acting reasonably) a Security and any other documents required under Schedule 10 to secure the outstanding obligations under this Deed;
 - (iv) the Owner provides to the satisfaction of Council (acting reasonably) copies of insurances or any other documents required under this Deed for the carrying out of any outstanding Contribution Works.
- (d) Subject to compliance with this clause, the Owner may register a mortgage on some or all of the Land, and Council will consent to the registration of the mortgage if the Owner supplies Council with a signed deed (on terms satisfactory to Council acting reasonably) whereby the mortgagee agrees to be bound by the terms of this Deed if it enters into possession of the land the subject of the registered mortgage.
- (e) The consent of the Panel is not required for the assignment or novation of any obligations by the Owner under this Deed, provided that the Owner notifies the Panel of the proposed assignment or novation not less than 10 Business Days

prior to executing any agreement or deed giving effect to the assignment or novation.

- (f) Despite clause 1.1(e) of this Schedule 11, if required to validate any assignment or novation deed, the Panel will execute the deed as soon as possible after receiving a request to do so from the other Parties.
- (g) Upon execution of a Deed of Novation, the Owner is released from its obligations under this Deed

1.2 Dealing with the Land by the Owner

- (a) The Owner may, while continuing to be bound to perform its' obligations under this this Deed:
 - (i) grants easements, subdivide, mortgage, charge or encumber the Land or any part of it;
 - (ii) subcontract or delegate the performance of any right, obligation, benefit or interest under the Deed to any person;
 - (iii) give security, in any form including a mortgage, lien, charge, pledge or trust in respect to any right, benefit or interest under the Deed to any person;
 - (iv) enter into any lease or licence arrangements in relation to the Land or register any type of interest or right in the title of the Land including any easement; and
 - (v) enter into any joint venture or similar type of arrangement in respect of the Development and/or the Land.
- (b) The Owner must not sell or transfer the whole or any part of the Land or any of their interest in the Land (and must procure that the whole or any part of the Land is not sold or transferred) unless before any such sale, transfer or disposal of any such part of the Land or such part of their interest in the Land to another person (**transferee**) the Owner obtains the Council's prior written consent. The Council must not unreasonably withhold its consent in circumstances where the requirements specified in clause 1.1(c) of this Schedule 11 are satisfied.
- (c) This clause 1.2 of this Schedule 11 does not apply to the transfer of any part of the Land, in respect of which the Council has provided a release and discharge of this Deed in accordance with Schedule 9.

1.3 Council's Costs

The Owner must pay to the Council (or reimburse the Council on demand) for all the Costs and Legal Costs incurred by the Council in connection with any assignment or dealing proposed under clauses 1.1 or 1.2 of this Schedule 11.

1.4 Council's assignment of rights

Council may assign its rights under this Deed to any successor in title.

1.5 Council to act promptly

The Council must act promptly in dealing with any application made by the Owner or the Owner (as the case may be) in respect of any proposed assignment or dealing proposed under clauses 1.1 or 1.2 of this Schedule 11.

Schedule 12 - Custodian and Trustee limitation provisions

1 Capacity and liability

1.1 Interpretation

All provisions of this Deed will have effect and be applied subject to this clause. For the purpose of this clause:

Obligations means all obligations and liabilities of whatsoever kind, undertaken or incurred by, or devolving upon the Custodian as Lessor under or in respect of this Deed or any other deed, agreement or other instrument collateral to this Deed or given or entered into pursuant to this Deed whether express or implied by statute or other legal requirements or arising otherwise howsoever.

Assets includes all assets, property and rights of personal or any nature whatsoever.

Constitution means the constitution of the Trust created by deed dated 11 June 1999 (as amended, replaced or supplemented from time to time).

Trustee means Stockland Trust Management Limited ACN 001 900 741 or such other party as is the Trustee for the time being of the Trust as the term "Trustee" is defined in the *Corporations Act 2001* (Cth).

Custodian means The Trust Company Limited ACN 004 027 749 or such other party as is the custodian for the time being appointed by the Trustee in relation to the Trust.

Trust means the Advance Property Fund ABN 24 976 581 817.

1.2 Custodian's capacity

The Custodian must carry out the Obligations to the extent that the same are capable of being carried out by it as Custodian and are not capable of being carried out by the Trustee.

1.3 Trustee's capacity

The Trustee must (and will be entitled) to perform the Obligations with the exception of those Obligations referred to in clause 1.2 and must procure that the Custodian performs the Obligations in clause 1.2.

1.4 Custodian's limitation of liability

- (a) The Custodian enters into this Deed as agent of the Trustee and as custodian of the assets of the Trust. The Custodian can only act in accordance with the terms of the agreement under which it is appointed as the Trustee's agent and is not liable under any circumstances to any party under this Deed. This limitation of the Custodian's liability applies despite any other provisions of this Deed and extends to all Obligations of the Custodian in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this Deed.

-
- (b) The Custodian is not obliged to do or may refrain from doing anything under this Deed (including, without limitation, incur any liability) unless the Custodian's liability is limited in the same manner as set out in clause 1.4(a).
 - (c) No attorney, agent, receiver or receiver and manager appointed has authority to act on behalf of the Custodian in a way which exposes the Custodian to any liability.

1.5 Trustee's limitation of liability

- (a) Any liability of the Trustee arising in connection with this Deed is limited to the extent that the Trustee is able to be indemnified for that liability out of the assets of the Trust under the Constitution. The Lessee acknowledges and agrees that it may enforce its rights against the Trustee with respect to the non-observance of the Trustee's obligations under this Deed only to the extent necessary to enforce the Lessee's rights, powers and remedies against the Trustee in respect of the assets of the Trust by subrogation or otherwise.
- (b) However, despite anything in this clause, the Trustee is liable to the extent that a liability under this Deed arises out of the Trustee's own fraud, gross negligence, wilful default, breach of trust or breach of duty which disentitles it from an indemnity out of the assets of the Trust in relation to the relevant liability.

Schedule 13 - Pro-forma Novation Deed

Novation Deed

Council of the City of Ryde

The Trust Company Limited ACN 004 027 749

**Stockland Trust Management Limited as Trustee for Advance Property Fund
ACN 001 900 741**

Sydney North Planning Panel

[# transferee name #]

Novation Deed

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Novation Deed

Date

Parties

Council of the City of Ryde of ABN 81 621 292 610 of Level 1, 3 Richardson Place, North Ryde, New South Wales (**Council**)

The Trust Company Limited ACN 004 027 749 of Level 29, 133 Castlereagh Street, Sydney New South Wales (**Owner**)

Stockland Trust Management Limited as Trustee for Advance Property Fund ACN 001 900 741 of Level 29, 133 Castlereagh Street, Sydney New South Wales (**Trustee**)

Sydney North Planning Panel c/- Planning Panels Secretariat, 320 Pitt Street, Sydney, New South Wales (**Consent Authority**)

[# insert details of the new party #] (**Transferee**)

Recitals

- A Council, the Consent Authority, the Owner and the Trustee are parties to the Original Agreement.
- B The Original Agreement relates to the whole of the Land.
- C The parties to this deed have agreed to the novation of all of the Owner(s) obligations under the Original Agreement to the Transferee.
- OR
- D The parties to this Deed have agreed to the novation of the part of the Owner's obligations under the Original Agreement that are relevant to the part of the Land to be transferred, to the Transferee.

This deed provides

1 Definitions and interpretation

1.1 Definitions

Unless the context otherwise requires:

Effective Date means [# insert date #].

Land has the meaning given to that term in the Original Agreement.

Original Agreement means the voluntary planning agreement dated [# insert date #] and made between the Council and the Landowner.

Required Obligations means [# insert - whole or part of the terms of the Original Agreement as is required to suit the circumstances #].

1.2 References to certain general terms

In this deed unless the contrary intention appears:

- (a) a reference to this deed or another instrument includes any variation or replacement of them;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (c) the singular includes the plural and vice versa;
- (d) the word person includes a firm, body corporate, an unincorporated association or an authority;
- (e) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and assigns;
- (f) an agreement, representation or warranty on the part of or in favour of two or more persons binds or is for the benefit of them severally;
- (g) a reference to anything (including, without limitation, any amount) is a reference to the whole or any part of it and a reference to a group of persons is a reference to anyone or more of them;
- (h) 'include' in any form when introducing a list of items does not limit the meaning of the words to which the list relates to those items or to items of a similar nature; and
- (i) capitalised terms which are used in this deed but are not otherwise defined have the meaning given to them in the Original Agreement.

1.3 Headings

Headings are inserted for convenience and do not affect the interpretation of this deed.

2 Novation

2.1 Original Agreement

Subject to clause 2.4 and with effect from the Effective Date:

- (a) the Transferee is substituted for the Owner as a party to the Original Agreement insofar as the Original Agreement relates to the Required Obligations, and agrees to perform the Required Obligations;
- (b) the Transferee will be bound by the Original Agreement, and will be entitled to the benefit of the Original Agreement, as if the Transferee was a party to the Original Agreement instead of the Owner insofar as the Original Agreement relates to the Required Obligations; and
- (c) the Owner is released and discharged from all obligations and liabilities, and from

all claims (whether for Costs, Legal Costs, damages, fees or otherwise), arising under the Original Agreement insofar as the Original Agreement relates to the Required Obligations.

2.2 Performance by Transferee

- (a) The Transferee must perform all of the Required Obligations under the Original Agreement required to be provided on and from the Effective Date, as if named as the Owner including, but not limited to the delivery of all the Contributions to Council.
- (b) On the Effective Date the Transferee must provide to Council one or more Bank Guarantees which meet the requirements of clause 1.9 and Schedule 10 of the Original Agreement in substitution for any Bank Guarantee or Bond provided by the Owner under clause 9 of the Original Agreement.

2.3 Release of Guarantees

The parties expressly acknowledge and agree that:

- (a) Council will release any Bank Guarantee or Bond provided to Council by the Owner under the provisions of the Original Agreement to the Owner (or as the Owner otherwise directs in writing) promptly and in any event within 14 days of the provision of replacement Bank Guarantee by the Transferee pursuant to clause 2.2(b) of this Deed; and
- (b) Nothing in this clause 2.3 will be read or construed as a waiver of any right held by Council relating to or arising from the performance of the Original Agreement by the Owner before the date of this Deed.

2.4 Liability before Effective Date

Notwithstanding clause 2.1, the Owner is not released, relieved or discharged from liability under the Original Agreement before the Effective Date, or any breach of any provision of the Original Agreement by the Owner occurring before the Effective Date (to the extent that it is not remedied by the Effective Date) in so far as the Original Agreement relates to the Required Obligations, subject to any waiver by Council under the Original Agreement.

2.5 Custodian and Trustee Provisions

The liabilities of the Owner and the Trustee are outlined in Schedule 1 to this Deed.

2.6 Indemnities

On and from the Effective Date, the Transferee indemnifies the Owner against all costs, expenses, liabilities, claims, loss or damages suffered or incurred by the Owner in connection with:

- (c) the Original Agreement in so far as the Original Agreement relates to the Required Obligations; and
- (d) any failure by the Transferee to comply with its obligations under this deed.

3 Affirmation of the Original Agreement

The Original Agreement will be read and construed subject to this deed, and in all other respects the provisions of the Original Agreement are ratified and confirmed, and, subject to the variation and novation contained in this deed, the Original Agreement will continue in full force and effect.

4 GST

4.1 Definitions and Interpretation

In this clause 4:

- (a) words or expressions which are defined in the GST Law have the same meaning, except where the context suggests otherwise;
- (b) **GST Law** has the meaning given to that term in the A New Tax System (Goods and Services Tax Act) 1999 (Cth);
- (c) any part of a supply which is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) is treated as a separate supply;
- (d) references to GST payable and to input tax credit entitlement include GST payable by, and input tax credit entitlement of, the representative member for a GST group of which the entity is a member; and
- (e) references to something done (including a supply made) by a Party includes something done by any entity through which that Party acts.

All consideration for a supply made under or in connection with this deed is exclusive of GST, unless specified to be GST inclusive. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 4.

4.2 Passing-on provision

If GST is payable in relation to a supply made under or in connection with this deed, then any party (**Recipient**) that is required to provide consideration to another party (**Supplier**) for that supply must pay an additional amount to the Supplier equal to the amount of that GST at the same time as any other consideration is to be first provided for that supply.

4.3 GST Invoice

The Supplier must deliver a tax invoice to the Recipient of the supply no later than the time at which the Recipient is required to provide the consideration for the taxable supply.

4.4 Variation

- (a) Where there is a variation to the consideration provided in relation to a taxable supply for which a GST Amount was paid under clause 4.2:
 - (i) the Supplier will recalculate the amount of the GST Amount properly payable and will provide a corresponding refund or credit to, or will be

entitled to receive the amount of the variation of the GST Amount from, the Recipient. The amount paid, refunded or credited is taken to form part of the GST Amount should a subsequent adjustment event occur; and

- (ii) where the variation is an adjustment event the Supplier must deliver an adjustment note to the Recipient as soon as reasonably practicable after the Supplier becomes aware of the adjustment event.
- (b) Any payment or reimbursement required to be made under this deed that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates.

5 Representations and warranties

- (a) Each Party individually represents and warrants that:
- (i) it has power to enter into this deed and comply with its obligations under the deed;
 - (ii) this deed does not contravene its constituent documents (if any) or any law or obligation by which it is bound or to which any of its assets are subject, or cause a limitation on its powers or the powers of its officers to be exceeded;
 - (iii) it has in full force and effect the authorisations necessary for it to enter into this deed, to comply with its obligations and exercise its rights under this deed and to allow this deed to be enforced;
 - (iv) its obligations under this deed are valid and binding and are enforceable against it in accordance with the terms of the deed;
 - (v) it does not have immunity from the jurisdiction of a court or from legal process; and
 - (vi) it benefits by entering into this deed to which it is a party.
- (b) Each party acknowledges that each other party has entered into this deed in reliance on the representations and warranties in this clause 5.

6 Stamp duty and costs

- (a) The Owner is liable for the Legal Costs of Council and the Consent Authority of and incidental to the negotiation, preparation and execution of this deed, and must reimburse Council and the Consent Authority for such Legal Costs reasonably, properly and actually incurred, promptly on demand.
- (b) The Transferee will pay all stamp duty arising directly or indirectly from this Deed.

7 Further acts

- (a) Each party will take all steps, execute all deeds and do everything reasonably required by any other party to give effect to any of the actions contemplated by this deed.
- (b) This deed binds each party which signs it even if other parties do not, or if the execution by other parties is defective, void or voidable.

8 Governing law

This deed is governed by the law in force in the place specified in the New South Wales and the parties submit to the non-exclusive jurisdiction of the courts of that place.

9 Counterparts

This deed may consist of a number of counterparts and the counterparts taken together constitute one and the same instrument.

Novation Deed

Schedule 1 – Custodian and Trustee limitation provisions

1 Capacity and liability

1.1 Interpretation

All provisions of this Deed will have effect and be applied subject to this clause. For the purpose of this clause:

Obligations means all obligations and liabilities of whatsoever kind, undertaken or incurred by, or devolving upon the Custodian as Lessor under or in respect of this Deed or any other deed, agreement or other instrument collateral to this Deed or given or entered into pursuant to this Deed whether express or implied by statute or other legal requirements or arising otherwise howsoever.

Assets includes all assets, property and rights of personal or any nature whatsoever.

Constitution means the constitution of the Trust created by deed dated 11 June 1999 (as amended, replaced or supplemented from time to time).

Trustee means Stockland Trust Management Limited ACN 001 900 741 or such other party as is the Trustee for the time being of the Trust as the term "Trustee" is defined in the *Corporations Act 2001* (Cth).

Custodian means The Trust Company Limited ACN 004 027 749 or such other party as is the custodian for the time being appointed by the Trustee in relation to the Trust.

Trust means the Advance Property Fund ABN 24 976 581 817.

1.2 Custodian's capacity

The Custodian must carry out the Obligations to the extent that the same are capable of being carried out by it as Custodian and are not capable of being carried out by the Trustee.

1.3 Trustee's capacity

The Trustee must (and will be entitled) to perform the Obligations with the exception of those Obligations referred to in clause 1.2 and must procure that the Custodian performs the Obligations in clause 1.2.

1.4 Custodian's limitation of liability

- (a) The Custodian enters into this Deed as agent of the Trustee and as custodian of the assets of the Trust. The Custodian can only act in accordance with the terms of the agreement under which it is appointed as the Trustee's agent and is not liable under any circumstances to any party under this Deed. This limitation of the Custodian's liability applies despite any other provisions of this Deed and extends to all Obligations of the Custodian in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this Deed.

- (b) The Custodian is not obliged to do or may refrain from doing anything under this Deed (including, without limitation, incur any liability) unless the Custodian's liability is limited in the same manner as set out in clause 1.4(a).
- (c) No attorney, agent, receiver or receiver and manager appointed has authority to act on behalf of the Custodian in a way which exposes the Custodian to any liability.

1.5 Trustee's limitation of liability

- (a) Any liability of the Trustee arising in connection with this Deed is limited to the extent that the Trustee is able to be indemnified for that liability out of the assets of the Trust under the Constitution. The Lessee acknowledges and agrees that it may enforce its rights against the Trustee with respect to the non-observance of the Trustee's obligations under this Deed only to the extent necessary to enforce the Lessee's rights, powers and remedies against the Trustee in respect of the assets of the Trust by subrogation or otherwise.
- (b) However, despite anything in this clause, the Trustee is liable to the extent that a liability under this Deed arises out of the Trustee's own fraud, gross negligence, wilful default, breach of trust or breach of duty which disentitles it from an indemnity out of the assets of the Trust in relation to the relevant liability.

EXECUTED as a deed.

Novation Deed

Signing page

Signature by Council

Signed sealed and delivered for and on behalf of the **Council of the City of Ryde** by a duly authorised officer (who by their signature testifies that they are duly authorised to sign this instrument) in the presence of:

Signature of witness

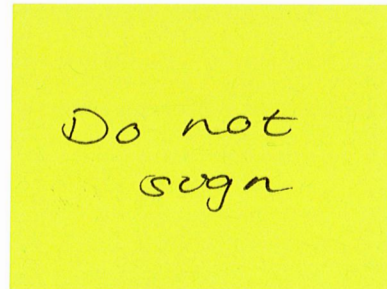
Signature of the Authorised Officer

Name of witness
(please print)

Name and position of the Authorised Officer
(please print)

Signature by the Owner

Signed sealed and delivered for and on behalf of **The Trust Company Limited ACN 004 027 749** by its Attorney pursuant to Power of Attorney Book _____ No. _____, and the Attorney declares that the Attorney has not received any notice of the revocation of such Power of Attorney, in the presence of:



Signature of Witness

Signature of Attorney

Name of Witness
(please print)

Name of Attorney *(please print)*

Signature by the Trustee

Signed sealed and delivered for and on behalf of the **Stockland Trust Management Limited ACN 001 900 741**

by its Attorney pursuant to Power of Attorney Book _____ No. _____

, and the Attorney declares that the Attorney has not received any notice of the revocation of such Power of Attorney, in the presence of:

Signature of witness

Signature of Attorney

Name of witness *(please print)*

Name of Attorney *(please print)*

Signature by the Consent Authority

Signed sealed and delivered for and on behalf of the **Sydney North Planning Panel** by each of its members in accordance with a resolution of the Panel made on _____ in the presence of:

Signature of witness

Signature of Panel members

Name of witness *(please print)*

Signature by the Transferee

[# insert execution block #]

Schedule 14 - General Provisions

1 General Provisions

1.1 Approvals and Consent

Except as otherwise set out in this Deed, and subject to any statutory obligations, a Party will not unreasonably withhold an approval or consent to be given under this Deed but may give its approval or consent subject to any conditions reasonably determined by that Party.

1.2 Costs

- (a) Unless otherwise specified in this Deed, the Owner must pay to Council and the Panel all reasonably and properly incurred Legal Costs in relation to the preparation, negotiation, signature and registration of this Deed. All Legal Costs payable by the Owner under clause 1.2(a) of this Schedule 14 must be paid on demand.
- (b) Without limiting clause 1.2(a) of this Schedule 14, the Owner agrees to pay or reimburse the Council and the Panel on demand for:
 - (i) reasonably and properly incurred Legal Costs of the Council in connection with:
 - (A) exercising, enforcing or preserving, or attempting to exercise, enforce or preserve, rights under this Deed, including in connection with the Owner default;
 - (B) any waiver, variation, release or discharge of this Deed; and
 - (ii) Taxes and fees (including, without limitation, registration fees and stamp duty) and fines and penalties in respect of fees which may be payable or determined to be payable in connection with this Deed or a payment or receipt or any transaction contemplated by this Deed.

1.3 Effect of terms and conditions in Schedules and Annexures

The Parties agree to comply with the terms and conditions contained in the Schedules and Annexures as if those terms and conditions were expressly set out in full in the operative parts of this Deed.

1.4 Entire agreement

To the extent permitted by law, in relation to its subject matter only, this Deed:

- (a) embodies the entire understanding of the Parties, and constitutes the entire terms agreed by the Parties; and
- (b) supersedes any prior written or other agreement of the Parties.

1.5 Further acts

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

1.6 Governing Law and jurisdiction

This Deed 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.

1.7 Enforcement

- (a) This Deed may be enforced by any Party in any court of competent jurisdiction.
- (b) For the avoidance of doubt, nothing in this Deed prevents:
 - (i) a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Deed or any matter to which this Deed relates; and
 - (ii) an Authority or the Council from exercising any function under the EP&A Act or any other Law relating to the enforcement of any aspect of this Deed or any matter to which this Deed relates.

1.8 No fetter

Nothing in this Deed is to be construed as requiring an Authority (including the Council and the Panel) to do anything that would cause it to be in breach of any of its obligations at Law, and without limitation:

- (a) nothing in this Deed is to be construed as limiting or fettering in any way the exercise of any statutory discretion or duty; and
- (b) nothing in this Deed imposes any obligation on an Authority (including the Panel) to:
 - (i) grant any Development Consent; or
 - (ii) exercise any function or power under the EP&A Act in relation to a change, or a proposed change, in an environmental planning instrument.

1.9 Representations and warranties

- (a) Each Party individually represents and warrants that:
 - (i) it has power to enter into this Deed and comply with its obligations under the Deed;
 - (ii) this Deed does not contravene its constituent documents (if any) or any law or obligation by which it is bound or to which any of its assets are subject, or cause a limitation on its powers or the powers of its officers to be exceeded;

-
- (iii) it has in full force and effect the authorisations necessary for it to enter into this Deed, to comply with its obligations and exercise its rights under this Deed and to allow this Deed to be enforced;
 - (iv) its obligations under this Deed are valid and binding and are enforceable against it in accordance with the terms of the Deed;
 - (v) it does not have immunity from the jurisdiction of a court or from legal process; and
 - (vi) it benefits by entering into this Deed to which it is a Party.
- (b) Each Party acknowledges that each other Party has entered into this Deed in reliance on the representations and warranties in this clause 1.9 of this Schedule 14.

1.10 Severability

- (a) If a clause or part of a clause of this Deed 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.
- (b) 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 Deed, but the rest of this Deed is not affected.

1.11 Modification

No modification of this Deed will be of any force or effect unless it is in writing and signed by the Parties as a Deed.

1.12 Waiver

- (a) The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Deed, does not amount to a waiver of any obligation of, or a breach of obligation by, another Party.
- (b) A waiver by a Party is only effective if it is in writing.
- (c) 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.

1.13 Confidentiality

The Parties agree that the terms of this Deed are not confidential and this Deed may be treated as a public Deed and exhibited or reported without restriction by any Party.

1.14 Release and indemnity

- (a) The Owner agrees that the obligation to provide the Contributions is at the risk of the Owner. The Owner releases the Council and the Panel from any Claim, liability or loss arising from, and Costs and Legal Costs reasonably and properly incurred in connection with, the Owner's obligation to provide the Contributions.

-
- (b) The Owner indemnifies the Council and the Panel against all liabilities or loss arising from, and any Costs and Legal Costs reasonably and properly incurred in connection with the Council enforcing the Owner's obligation to provide the Contributions in accordance with this Deed or the Council exercising the Council's rights under or by virtue of this Deed or both.
 - (c) The indemnity in paragraph 1.14(b) of this Schedule 14 is a continuing obligation, independent of the Owner's other obligations under this Deed and continues after this Deed ends.
 - (d) It is not necessary for a Party to incur expense or to make any payment before enforcing a right of indemnity conferred by this paragraph 1.14.
 - (e) A Party must pay on demand any amount it must pay under an indemnity in this clause 1.14 of this Schedule 14.

Schedule 15 - Costs

1 Costs

1.1 Limit for Legal Costs

There is no limit.

Schedule 16- Pedestrian Link Easement

1 Pedestrian Link Easement

1.1 Terms of Easement for Pedestrian Link

- (a) The Council, Authorised Users and the public have the right to the surface only of the Easement Site to:
 - (i) go, pass and repass over the site of the Easement;
 - (A) on foot;
 - (B) with wheelchairs or other accessible aids; and
 - (C) without animals (except for guide dogs or hearing dogs for the visually or hearing impaired);
 - (ii) for the purposes of pedestrian access on those parts of the Easement Site;
 - (iii) at all times.
- (b) The Grantor must keep the Easement Site in a clean condition to Council's satisfaction, acting reasonably.
- (c) The Grantor must maintain the Easement Site, including all structures, lighting and landscaping within the Easement Site.
- (d) The Grantor must maintain and pay for the electricity supply to all lighting within the Easement Site and ensure that such lighting is kept in good working order and is operating in non-daylight hours.
- (e) The Grantor has the right to temporarily suspend access to the Pedestrian Link Easement for the time and extent necessary, for the following:
 - (i) security;
 - (ii) safety;
 - (iii) building works to be undertaken on the Land;
 - (iv) maintenance or upgrades including to the adjoining land;
 - (v) installation or maintenance of services
 - (vi) installation of furniture or improvements;
 - (vii) in the case of an emergency; or
 - (viii) with the agreement of Council.

-
- (f) The Grantor must insure in any occurrence based policy against public liability covering the public use of the Easement Site for a sum determined by the Grantor, which must not be less than \$20 million, and must provide evidence of insurances to Council as soon as practicable after receiving a written request to do so
- (g) The Grantor, acting reasonably (and having regard to the nature of the use of, or activity carried on the Lot Burdened) may remove (in a lawful manner) any person from the Easement Site, if the person:
- (i) is not adequately clothed;
 - (ii) is drunk or under the influence of drugs;
 - (iii) loiters or causes excessive noise;
 - (iv) behaves in a manner reasonably likely to cause harm, offence, embarrassment or inconvenience to persons on the Lot Burdened; and/or
 - (v) is engaging in criminal behaviour.
- (h) The Grantor agrees to indemnify the Council from and against any loss suffered or incurred by the Council arising from or as a consequences of the exercise of rights in this instrument by the Council, Authorised Users or the public, unless the loss is caused by the negligence of the Council, including but not limited to:
- (i) damage to any property of the Council, Authorised User or member of the public located on the Easement Site or the Lot Burdened; and
 - (ii) injury to any person on the Easement Site or the Lot Burdened.
- (i) In this instrument:

Authorised User means any person entering the Pedestrian Link Easement and includes any member of the public

Council means Council of the City of Ryde.

Easement means easements, restrictions on the use of land and positive covenants numbered in the Plan.

Easement Site means in relation to this easement:

- (i) the site of the easement identified in the Plan; and
- (ii) all items within the site of the Easement identified in the Plan which are the subject of the Easement.

Grantee means the owner of the Lot Benefited or Council.

Grantor means the owner of the Lot Burdened.

Lot Benefited means the whole or any part of the lot having the benefit of an Easement.

Lot Burdened means the whole or any part of the lot having the burden of an Easement.

Plan means a plan to which this Instrument relates.

Name of authority empowered to release, vary or modify the right of access numbered ## in the plan:

Council of the City of Ryde

EXHIBIT A – Contributions Value Schedule

(See separate exhibit coversheet.)

EXHIBIT B – Stage Plan

Use separate exhibit coversheet.

Signing page

2 DECEMBER 2014

SIGNED as a Deed

Signature by Council

Signed sealed and delivered for and on behalf of the **Council of the City of Ryde** by a duly authorised officer (who by their signature testifies that they are duly authorised to sign this instrument) in the presence of



Signature of Witness

David Matthews

Name of Witness
(please print)



Signature of Authorised Officer

GEORGE DEISE

Name of and position of Authorised Officer

Signature by the Owner

Signed sealed and delivered for and on behalf of **The Trust Company Limited ACN 004 027 749** by its Attorney pursuant to Power of Attorney 18/09/2014 Book 4676 No. 134, and the Attorney declares that the Attorney has not received any notice of the revocation of such Power of Attorney, in the presence of:



Signature of Witness

Senay Sevgi
Client Service Officer

Name of Witness
(please print)



Signature of Attorney

Trent Franklin
Manager Custody

Name of and Attorney (please print)

Signature by the Trustee

Signed for and on behalf of the **Stockland Trust Management Limited ACN 001 900 741**


by its Attorney pursuant to Power of Attorney Book 6741 No. 742, and the Attorney declares that the Attorney has not received any notice of the revocation of such Power of Attorney, in the presence of:



Signature of witness

NICOLE TAYLOR

Name of witness (please print)



Signature of Attorney

LOUISE MASON

Name of Attorney (please print)

Signature by the Consent Authority

Executed for and on behalf of the **Sydney North Planning Panel** by ~~each of its~~ SE FRANCIS members in accordance with a resolution of the Panel made on 2 DECEMBER 19 in the presence of:



Signature of witness

Kim Holt

Name of witness (please print)



Signature of Panel members SE

Planning Agreement

Environmental Planning and Assessment Act 1979
11-17 Khartoum Road and 33-39 Talavera Road, Macquarie Park, New South Wales

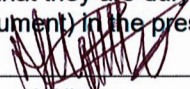
Exhibit A

The Contributions Value Schedule is Exhibit A to the Planning Agreement between Council of the City of Ryde, The Trust Company Limited as custodian for Stockland Trust Management Limited as Trustee for Advance Property Fund, Stockland Trust Management limited as Trustee for Advance Property Fund and Sydney North Planning Panel.

Date: 2/12/19

Signature by Council

Signed sealed and delivered for and on behalf of the **Council of the City of Ryde** by a duly authorised officer who by their signature testifies that they are duly authorised to sign this instrument in the presence of



Signature of Witness

David Matthews

Name of Witness
(please print)



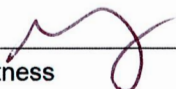
Signature of Authorised Officer

GEORGE DEDET

Name of and position of Authorised Officer

Signature by the Owner


Signed sealed and delivered for and on behalf of **The Trust Company Limited ACN 004 027 749** by its Attorney pursuant to Power of Attorney 18/09/2014
Book 4674 No. 131
, and the Attorney declares that the Attorney has not received any notice of the revocation of such Power of Attorney, in the presence of:



Signature of Witness

Senay Sevgi
Client Service Officer

Name of Witness
(please print)



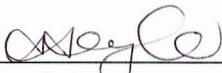
Signature of Attorney

Trent Franklin
Manager Custody

Name of Attorney *(please print)*

Signature by the Trustee

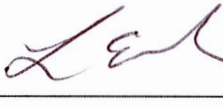
Signed sealed and delivered for and on behalf of the **Stockland Trust Management Limited ACN 001 900 741** by its Attorney pursuant to Power of Attorney Book 4741 No. 742, and the Attorney declares that the Attorney has not received any notice of the revocation of such Power of Attorney, in the presence of:



Signature of witness

NICOLE TAYLOR

Name of witness (please print)




Signature of Attorney

LOUISE MASON

Name of Attorney (please print)

Signature by the Consent Authority

Executed for and on behalf of the **Sydney North Planning Panel** by ~~each of its~~ ^{SP SUE FRANKS} members in accordance with a resolution of the Panel made on 2 DECEMBER 11 in the presence of:



Signature of witness

KIM HOLT

Name of witness (please print)



Signature of Panel members ^{SP}

VPA Calculations

	Proposed	Existing GFA	Demolished Use	Demolished	Nett	S94 per stage	Incentive per Stage Ratio	Incentive GFA per stage	Incentive Contribution per stage	Total per Stage before Offsets (Incentive + S94)	Offsets	Monetary Contributions after Offsets
Stage 1 Building A	17,759	16,217	Office		4,680	13,079 \$ 1,738,774.62	30%	8831	\$ 2,362,746.42	\$ 4,101,521.04	\$ 270,000.00	\$ 3,831,521.04
Stage 2 Building B	12,600	11,537				12,600 \$ 1,748,628.00	21%	6266	\$ 1,676,367.18	\$ 3,424,995.18	\$ 2,087,500.00	\$ 1,337,495.18
Stage 3 Building E	10,050	4,270	Office		7,267	2,783 \$ 386,224.74	17%	4998	\$ 1,337,102.40	\$ 1,723,327.14	\$ 2,270,000.00	\$ -
Stage 4 Building C	9,460		Wharehouse		4,270	5,190 \$ 952,001.10	16%	4704	\$ 1,258,605.84	\$ 2,210,606.94	\$ 3,732,500.00	\$ -
Stage 4 Building D	9,350					9,350 \$ 1,297,593.00	16%	4650	\$ 1,243,970.89	\$ 2,541,563.89	\$ -	\$ 472,997.96
Retail	550					550 \$ 51,458.00	1%	274	\$ 73,174.76	\$ 124,632.76	\$ -	\$ 124,632.76
TOTAL	59,769				16,217	43,552 \$ 6,174,679.46	100%	29,722	\$ 7,951,967.48	\$ 14,126,646.94	\$ 8,360,000.00	\$ 5,766,646.94

TOTAL 59,769 GFA for the site as applied for \$ 4,554,679.46 S94 Amount after Public Domian Offsets \$ 1,211,967.48 Incentive amount after Road 22 Contruction and Acquisition Costs and \$ - Variation test

S94 Applicable GFA 43,552 Site Area 30046.89204 sqm 3.004689204 ha
 Base GFA 30,047
 Incentive GFA Max 60,094

Incentive GFA subject to Incentive Rate 29,722 \$ 5,766,646.94 TOTAL VALUE OF MONETARY CONTRIBUTIONS
 \$ 8,360,000.00 TOTAL VALUE OF PUBLIC BENEFITS
 Incentive Rate \$ 250.00 (not indexed)
 Index Base 108.3 Sydney CPI \$ 14,126,646.94 TOTAL VALUE OF VPA
 Today 115.9 Sydney CPI
 factor 1.070175439

Incentive Rate Indexed \$ 267.54

Incentive Contribution \$ 7,951,967.48

S94 Liability \$ 6,174,679.46

Subtotal Contributions \$ 14,126,646.94

These Rates adjusted in accordance with the s7.11 Plan

S94 Com per sqm \$ 138.78
 S94 Retail per Sqm \$ 93.56
 S94 Ind per Sqm \$ 84.51

CPI Calculator for Public benefits

Index Base 115.9 Sydney CPI
 Today 115.9 Sydney CPI
 factor 1

	Base (date VPA Executed)	CPI'd value
S94 Offsets Road 22		
Road Area sqm	2784	
Construction \$ per sqm	\$1,121	\$1,121
Land Value \$ per sqm	\$625	\$625
Land Dedication Value	\$ 1,740,000	\$ 1,740,000
Cost of Works by QS exc GST	\$ 3,120,000	\$ 3,120,000
TOTAL Road Offset	\$ 4,860,000	\$ 4,860,000
S94 Offsets Pedestrian Links		
ped path Area sqm	1056	
Construction \$ per sqm	\$1,780	\$1,780.30
Land Value \$ per sqm	\$0	
Land Dedication Value	\$ -	
Cost of Works by QS	\$ 1,880,000	\$ 1,880,000
TOTAL Ped Path Offset	\$ 1,880,000	\$ 1,880,000
S94 Offsets Public Domain Works		
Public Domain Area sqm	1410	
Construction \$ per sqm	\$1,149	\$1,148.94
Land Value \$ per sqm	\$0	
Land Dedication Value	\$ -	
Cost of Works by QS	\$ 1,620,000	\$ 1,620,000
TOTAL Pub Domain Offset	\$ 1,620,000	\$ 1,620,000

Planning Agreement

Environmental Planning and Assessment Act 1979

11-17 Khartoum Road and 33-39 Talavera Road, Macquarie Park, New South Wales

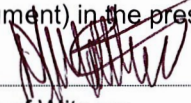
Exhibit B

The Stage Plan is Exhibit B to the Planning Agreement between Council of the City of Ryde, The Trust Company Limited as custodian for Stockland Trust Management Limited as Trustee for Advance Property Fund, Stockland Trust Management limited as Trustee for Advance Property Fund and Sydney North Planning Panel.

Date: 2/12/19

Signature by Council

Signed sealed and delivered for and on behalf of the **Council of the City of Ryde** by a duly authorised officer who by their signature testifies that they are duly authorised to sign this instrument) in the presence of


Signature of Witness

David Matthews
Name of Witness
(please print)


Signature of Authorised Officer

GEORGE PEDET
Name of and position of Authorised Officer

Signature by the Owner

Signed sealed and delivered for and on behalf of **The Trust Company Limited ACN 004 027 749** by its Attorney pursuant to Power of Attorney 1810912014 Book 4676 No. 134, and the Attorney declares that the Attorney has not received any notice of the revocation of such Power of Attorney, in the presence of:


Signature of Witness

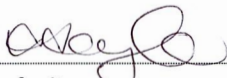
Senay Sevgi
Client Service Officer
Name of Witness
(please print)


Signature of Attorney

Trent Franklin
Manager Custody
Name of and Attorney *(please print)*

Signature by the Trustee


Signed sealed and delivered for and on behalf of the **Stockland Trust Management Limited ACN 001 900 741** by its Attorney pursuant to Power of Attorney Book 4741 No. 742, and the Attorney declares that the Attorney has not received any notice of the revocation of such Power of Attorney, in the presence of:



Signature of witness

NICOLE TAYLOR

Name of witness (please print)



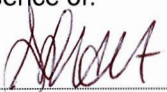
Signature of Attorney

LOUISE MASON

Name of Attorney (please print)

Signature by the Consent Authority

Executed for and on behalf of the **Sydney North Planning Panel** by ~~each of its~~ SF SUE FRANCIS ~~members~~ in accordance with a resolution of the Panel made on 2 DECEMBER 19 in the presence of:



Signature of witness

Kim Holt

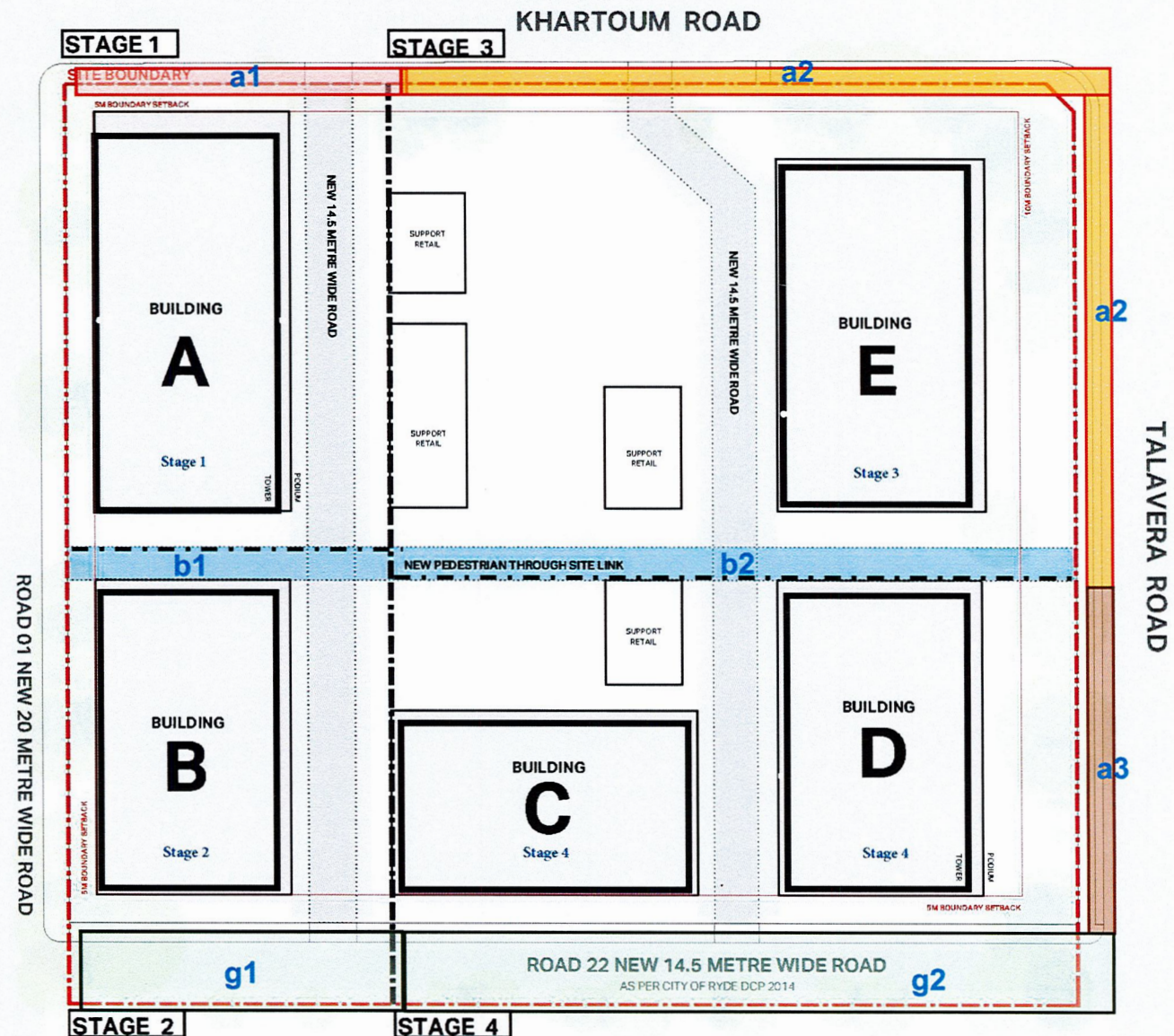
Name of witness (please print)



Signature of Panel members SF

M_Park Staging Plan

Marked in Plan	Item	Stage	Area (sqm)
a1	Public Domain Roadworks outside boundary	1	222 sqm
b1	Pedestrian Link	2	350 sqm
g1	Road 22	2	924 sqm
a2	Public Domain Roadworks outside boundary	3	902 sqm
b2	Pedestrian Link	3	706 sqm
a3	Public Domain Roadworks outside boundary	4	286 sqm
g2	Road 22	4	1860 sqm



PROJECT NAME
Staging Plan
 11-17 KHARTOUM ROAD &
 33-39 TALAVERA ROAD
 MACQUARIE PARK, NSW

DRAWING AUTHOR
3XN
REGISTERED ARCHITECTS
 3XN AUSTRALIA PTY LTD
 508/19A BOUNDARY STREET
 DARLINGHURST, NSW 2010

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PROJECT NUMBER
 550002

STATUS
DEVELOPMENT APPLICATION

PROJECT NORTH

 SCALE@A3
 1:1000

DRAWING
STAGING PLAN
 DRAWING NUMBER
 DA-012