
Council of the City of Ryde

ABN 81 621 292 610

and

Yuhu Property (Australia) Pty Ltd

ABN 68 163 794 296

Planning Agreement

Environmental Planning and Assessment Act 1979

152-186 Rowe Street, Eastwood, New South Wales

3-5 Rutledge Street, Eastwood, New South Wales

Planning Agreement

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Planning Agreement

Date

Parties

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

Yuhu Property (Australia) Pty Limited ABN 68 163 794 296 of Level 15, 201 Miller Street, North Sydney, New South Wales (**Owner**)

Recitals

- A The Owner is the registered proprietor of the Land.
- B The Owner is the applicant under the Development Application lodged with the Council (known as LDA2016/0378) 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.

Apartments mean the 1 bedroom residential apartments comprising part of the Development to be dedicated or transferred to Council in accordance with clause 5.2.

Apartment Contribution Number means 5 Apartments.

Apartment Works Defects Security means the Security for the Apartment Works (set out in the Security Schedule).

Apartment Finishes Schedule means the schedule of finishes for the Apartments contained in Schedule 15.

Apartment Works means that part of the Contribution Works relevant to the detailed design for Construction Certificate purposes, construction and delivery of the Apartments pursuant to 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;
 - (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).

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

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- (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 (unless none of the listed trading banks are able to provide an unlimited expiry in which case a minimum expiry of 5 years) 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.

Bond means a documentary performance bond which must be denominated in Australian dollars and be an unconditional undertaking with all the following requirements. It must:

- (a) be signed and issued by an Australian Prudential Regulation Authority [APRA] regulated authorised deposit taking institution or an insurer authorised by APRA to conduct new or renewal insurance business in Australia;
- (b) have at all times an investment grade security rating from an industry recognised rating agency of at least:
- (i) BBB + [Standard & Poors and Fitch]; or
 - (ii) Baa 1 [Moody's]; or
 - (iii) bbb [Bests].
 - (iv) Be issued on behalf of the Owner;
 - (v) Have no expiry or end date;
 - (vi) Have the beneficiary as the Council;
 - (vii) Be irrevocable;

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- (c) state either individually, or in total with other lodged compliant forms of Guarantees, the relevant minimum amount required to be lodged as security; and
 - (d) state the purpose of the deposit required in accordance with this Planning Agreement.

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.

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 been completed to Council's satisfaction 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.

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 Cost means the Costs of and directly attributable to the construction of the Contribution Works including:

- (a) preparation of detailed design and construction drawings for the Contribution Works;
- (b) cost of materials used or installed (as the case may be) as part of the Contribution Works; and
- (c) labour, equipment hire and other Costs directly associated with the excavation, , and construction of the Contribution Works.

Construction Terms means the terms set out in Schedule 4.

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

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- (a) the dedication or transfer to the Council (free of any Encumbrance and Cost except for Permitted Encumbrances) of the Contribution Land;
 - (b) the conduct of the Contribution Works; and
 - (c) payment of the Monetary Contribution.

Contribution Land means the land identified in Part 1 of Schedule 3 that must be dedicated or transferred (as the case may be) to the Council pursuant to this Deed (being the Apartments).

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 the Parts 1 and 2 of Schedule 3 for that Item.

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:

- (a) the Apartment Works; and
- (b) the Public Domain Works.

Contribution Works Concept Plans means plans, drawing, specification and other documents contained or referred to in that describe the Contribution Works, copies of which are contained or referred to in Schedule 5.

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 Australian Bureau of Statistics, 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:

- (a) in respect of the Public Domain Works the period of 12 months from the date on which the Certificate of Practical Completion is issued for the Public Domain Works; and
- (b) in respect of the Apartment Works, the period of 12 months from the date on which freehold title in the Apartments is transferred or dedicated to the Council.

Defects Securities means each of the Apartment Works Defects Security and the Public Domain Works Defects Security (or any one of them as the context may require).

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 and for the purposes of this Deed is development application filed with Council and identified as application LDA 2016 / 0378.

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 in respect of the Development Application 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 any agreement to create any of them or allow them to exist, in respect of that land. For the avoidance of doubt, the land in this definition does not include common property where the land is a strata unit.

Enforcement Security means the Security for the purpose described in clause 1.1 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).

GFA has the meaning given to the term *gross floor area* in the Ryde Local Environmental Plan 2014.

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).

Insurer means an insurer that is licensed by the Australian Prudential Regulatory Authority (APRA) to operate in Australia or has an investment grade rating from an industry recognised rating agency such as Moodies, Standard & Poors or Bests.

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 on a full indemnity basis or solicitor and own client basis, whichever is the higher.

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.

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

Monetary Contribution means the monetary contribution payable by the Owner under clause 4.4 that is calculated and adjusted in accordance with Part 3 of Schedule 3.

Monetary Contribution Security means the Security for the Monetary Contribution (set out in the Security Schedule).

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.

Permitted Encumbrance means each of:

- (a) easements benefitting statutory authorities or required by an Authority, encroachment, restrictions on use, positive covenants and other rights or interests authorised or necessitated by Approvals and environmental management requirements;
- (b) strata management statements or by-laws that Council acting reasonably considers do not unreasonably interfere with the intended use of the Apartments as residential housing; and
- (c) 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); and
 - (ii) such other agreement or arrangement,

the Council (acting reasonably) agrees in writing are permitted encumbrances;

- (d) 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.

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 described in the Contribution Works Concept Plans.

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.

Security means each security set out in the Security Schedule (or any one of them as the context may require), each of which may either comprise a Bond or Bank Guarantee.

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

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

Schedule means a schedule to this Deed.

Standard Requirement means a requirement in order to comply with the Building Code of Australia, any applicable Australian Standard required by a governmental entity or any other applicable requirement of an Authority under an Approval.

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

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- (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.

1.2 Interpretations

In this Deed:

- (a) headings are for convenience only and do not affect interpretation;

and unless the context indicates a contrary intention:

- (b) *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;
- (c) a reference to a Party includes that Party's executors, administrators, successors and permitted assigns, including persons taking by way of novation;
- (d) a reference to a document (including this Deed) is to that document as varied, novated, ratified or replaced from time to time;
- (e) 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;

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- (f) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
 - (g) 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;
 - (h) 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;
 - (i) 'includes' in any form is not a word of limitation;
 - (j) a reference to '\$' or 'dollar' is to Australian currency;
 - (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 Condition Precedent

This Deed commences on the execution of this Deed by all Parties.

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 – Works and Land

- (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; and
 - (ii) dedicate or transfer (as the case may be) the Contribution Land to Council in accordance with Schedule 3 and Schedule 5.

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- (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 Contribution

4.1 Application of section 7.24 of the EP&A Act

This Deed does not exclude the application of section 7.24 of the EP&A Act to the Development.

4.2 Application of section 7.11 of the EP&A Act

This Deed excludes the application of section 7.11 of the EP&A Act to the Development.

4.3 Application of section 7.12 of the EP&A Act

This Deed excludes the application of section 7.12 of the EP&A Act to the Development.

4.4 Monetary Contribution

- (a) The Owner must pay the Monetary Contribution to the Council.
- (b) The Parties acknowledge that table 3 of the Contribution Schedule sets out the calculation of the Monetary Contribution.
- (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.
- (d) The Owner must pay the Monetary Contribution to the Council no later than the date of the first Construction Certificate for the Development.
- (e) 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.
- (f) 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 in the Council's bank account.
- (g) 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

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 Contribution Works (or any part of them) required under this Deed will be taken to have been completed for the purposes of this Deed when a Certificate of Practical Completion has been issued for the Contribution Works or relevant part of them.
- (c) The Parties agree and acknowledge that the Contribution Works serve the public purposes specified for each of the Contribution Works in the Contributions Schedule.

5.2 Apartments

- (a) Subject to this clause, the Parties agree that the Contributions to be provided by the Owner pursuant to this Deed include the vesting of freehold ownership to Council (by way of transfer) of a number of residential apartments in the Development equal to the Apartment Contribution Number:
 - (i) comprising 1 bedroom in each Apartment.
 - (ii) must include at least 0.6 car parking spaces for each of the Apartments and rounded up if it is not an even number; and
 - (iii) must include the fixtures, fittings and finishes set out in the Apartments Finishes Schedule.
- (b) Prior to the issue of an Occupation Certificate for the Development or any part of the Development, or in any event prior to the occupation of any part of the Development, the Owner must, at no cost to Council construct, finish and fit out the Apartments as part of the Development, in accordance with the Development Consent, the Construction Terms and the Apartment Finishes Schedule and the Detailed Design approved by the Parties under Schedule 4.
- (c) Within 15 Business Days after:
 - (i) the issue of an Occupation Certificate in respect of the Apartments; or
 - (ii) the registration of a strata plan for any part of the Development that includes the Apartments,

whichever occurs later, the Owner must transfer freehold title to the Apartments to the Council (and Council must promptly do all things necessary to accept the transfer) so that immediately on transfer, the Council will have an estate in fee simple in possession, free of any Encumbrance (except a Permitted Encumbrance), except as may be permitted by this Deed

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- (d) The obligations under this clause 5.2 will be taken to have been fulfilled for the purposes of this Deed when the transfer of the Apartments to the Council is shown on the Register.
 - (e) The Parties acknowledge and agree that the Apartments are to be constructed, finished and ownership vested in the Council (by way of transfer) under this Deed for the purposes of the provision of affordable housing and the Council may at its absolute discretion engage an approved community housing provider for the ongoing management of the Apartments.
 - (f) The Owner must, in accordance with the provisions of the Construction Terms, ensure that, on transfer of the Apartments, the Council will have the benefit of any defects liability warranty given by a Builder for the Development and the Apartments, together with any other warranties and guarantees in accordance with clause 7.3 of Schedule 4.
 - (g) Despite clause 5.2(b), the Owner reserves the right to change any finish or item specified in the Apartment Finishes Schedule provided that:
 - (i) the replacement item or finish is of at least equivalent quality to that finish or item originally specified in the Apartment Finishes Schedule; AND
 - (ii) the prior consent of the Council is obtained in relation to the proposed change.

6 Caveat

6.1 Caveatable Interest

The Owner acknowledges and agrees that 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 consequently the 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) will it seek to remove any caveat lodged by the Council.
- (b) If Council lodges a caveat in accordance with this clause 6, then the Council will:
 - (i) do all things reasonably required to ensure that the caveat does not prevent or delay either the registration of this Deed or any dealing in the Land which is not inconsistent with this Deed, provided the Owner is not in breach of any obligations under this Deed; and
 - (ii) provide consent as caveator to any proposed registration of a mortgage where the mortgagee has agreed to be bound by the provisions of this

Deed if it enters into possession of the Land. Council will provide such written consent within 5 Business Days of being given a signed document from the mortgagee; and

- (iii) provide consent as caveator to any proposed registration of a lease within 10 Business Days of being requested by the Owner.
- (c) The Council (as the caveator) will provide such other consent 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 and beneficial owner of the Land as at the date of this Deed

7.2 Registration on title

The Owner agrees to promptly do all things that are necessary for Council 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.

8 Release and Discharge

The Council agrees to release and discharge this Deed (including consent to withdrawal of its registration on the title of the Land) and remove any caveat lodged by the Council pursuant to clause 6 on the release and discharge terms contained in clause 6 and Schedule 9 to this Deed.

9 Breaches to be rectified

9.1 Council to give notice

If the Council considers that the Owner (**defaulting party**) have defaulted in the performance of any of their obligations under this Deed, then the Council may give written notice to the defaulting party which:

- (a) identifies the nature of the breach; and
- (b) provides at least 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) within which the defaulting party must rectify that breach and what action must be taken to rectify that breach or such longer period as is reasonable in the circumstances.

9.2 Schedule 6 applies

If the Council gives a written notice under clause 9.1 then the provisions of Schedule 6 will apply.

10 Additional 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 in relation to any proposed assignment or dealing in relation to the Land (or any part of it) or of a Party's interest in this Deed.

12 Review of Deed

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.

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 Overdue payments

14.1 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, during the period that it remains unpaid, 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.

14.2 Compounding

Interest not paid when due for payment may be capitalised by the Council at intervals which the Council determines from time to time or, if no determination is made, then on the first day of each month. Interest is payable on capitalised interest at the rate and in the manner referred to in this clause 14.

14.3 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 14.

- (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 14 but not both.

15 GST

15.1 Interpretation

- (a) Except where the context suggests otherwise, terms used in this clause 15 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 15.
- (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.

15.2 Consideration GST exclusive

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

15.3 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.

15.4 Additional amount of GST payable

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, whichever is appropriate in the circumstances.

15.5 No merger

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

16 Explanatory Note

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

17 Notices

17.1 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 faxed to that Party at its fax number set out below:

Council

Name: Council of the City of Ryde
Address: Level 1
3 Richardson Place
North Ryde NSW 2113
Fax: 9952 8222

For the attention of: General Manager

Owner

Name: Yuhu Property (Australia) Pty Ltd
Address: Level 15/201 Miller Street
North Sydney NSW
Fax: 8668 7356

17.2 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.

17.3 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 sent by post, 2 Business Days after it is posted; and
- (c) if it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.

17.4 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.

18 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.

19 General provisions

The Parties agree that the miscellaneous and general provisions set out in Schedule 13 to this Deed apply.

20 Obligations under this Planning Agreement

20.1 Legal Challenge

Subject to clauses 20.5 to 20.9, 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 20.5 applies.

20.2 Parties to meet

Subject to clause 20.3, 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:

- (a) 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:
 - (i) the suspension of the parties rights and obligations under this Deed; and
 - (ii) 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.

20.3 Legal advice

The Parties will not be required to meet or consult pursuant to clause 20.2 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.

20.4 Confidential

The Parties agree that any discussions held between the Parties under this clause 20 are confidential and that a common interest between them exists for the purposes of legal professional privilege in connection with those discussions.

20.5 Development may continue

Notwithstanding clause 20.1, the Owner may elect at its Cost and risk to proceed with the Development, in which circumstances, clause 20.1 will not apply and the Owner must continue to comply with all obligations under this Deed.

20.6 Termination

If this Deed is terminated as the result of any Legal Challenge the parties will meet in accordance with clause 20.2 to discuss any matters that may need to be addressed as a result of the commencement of the Contribution Works.

20.7 Invalid Approval

If any Approval is declared invalid, the parties will meet in accordance with clause 20.2 of this Deed to discuss their respective rights and obligations under this Deed as a consequence of that determination.

20.8 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.

20.9 Public safety

The parties agree that if this clause 20 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.

20.10 No merger

This clause 20 will not merge on completion or termination of this Deed.

Planning Agreement

Schedule 1 – Requirements set out in section 7.4 of the EP&A Act

The Parties acknowledge and agree that the table set out below summarises how the Planning Agreement complies with the requirements set out in section 7.34 of the EP&A Act.

Requirement under the EP&A Act	This Planning Agreement
Planning instrument and/or development application - (Section 7.4) The Owner has:	
(a) sought a change to an environmental planning instrument.	(a) No.
(b) made, or proposes to make, a Development Application.	(b) Yes.
(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.	(c) No.
Description of land to which this Deed applies - (Section 7.4)	The Land known as 152-186 Rowe Street and 3-5 Rutledge Street, Eastwood, NSW.
Description of change to the environmental planning instrument or the development to which this Deed applies - (Section 7.4) Describe:	
(a) the proposed change to the environmental planning instrument to which this Deed applies; and	(a) This does not apply.
(b) the development to which this Deed applies.	(b) The description of the Development is set out in Schedule 2.
The scope, timing and manner of delivery of contribution required by this planning agreement - (Section 7.4)	There are provisions relating to scope, delivery and manner of delivery of contributions required by the Deed in (without limitation) clause 3 and Schedule 3 of this Deed.
Applicability of Section 7.11 of the EP&A Act - (Section 7.4)	The application of section 7.11 of the EP&A Act is excluded in respect of the Development.
Applicability of Section 7.12 of the EP&A Act	The application of section 7.12 of the EP&A Act

Requirement under the EP&A Act	This Planning Agreement
- (Section 7.4)	is excluded in respect of the Development.
Applicability of Section 7.24 of the EP&A Act - (Section 7.4)	The application of section 7. 24 of the EP&A Act is not excluded in respect of the Development.
Consideration of benefits under this Deed if section 7.11 applies - (Section 7.4) Are the benefits under this Deed to be taken into consideration if Section 7.11 of the EP&A Act is not excluded?	The benefits under this Deed are not be taken into account because section 7.11 is excluded.
Mechanism for Dispute resolution - (Section 7.4) This Deed provides a mechanism for the resolution of disputes under the agreement?	The mechanism for despite resolution is contained in clause 13 and Schedule 7 of this Deed.
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.	There are provisions for enforcement by suitable means by or through (without limitation) clauses 5, 6, 7, 8, 9, 10 and 11 and Schedules 4, 5, 6, 8, 10 and 11 of this Deed.
Registration of this Deed The Parties agree that this Deed will be registered	Yes.
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 is addressed in clause 1.8 of Schedule 13.

Planning Agreement

Schedule 2 - Description of the Land and the Development

1 Title

ADDRESS	LOT/ DP	ADDRESS	LOT/ DP
152-160 Rowe Street	Lots 1, 2 and 3, DP 1082714 Lots 1 and 2, DP 15579 Lot 1, DP 315919 Lot 1, DP 583398 Lot A, DP 342118	178-180 Rowe Street	Lot 1, DP 173607 Lot 7, DP 656027 Lot A, DP 317789
168 Rowe Street	Lot 2, DP 583398	186 Rowe Street	Lot 8, DP 1098697

ADDRESS	LOT/ DP	ADDRESS	LOT/ DP
170 Rowe Street	Lot 1, DP 105344	188 Rowe Street	Lot 1, DP 331280
172-176 Rowe Street	Lots 1 and 2, DP 211809	190 Rowe Street	Lot 201, DP 1134152
		3-5 Rutledge Street	Lot A, DP 374497 Lot Pt25, DP 4231

2 Development

Development means:

- (a) Demolition of all buildings and associated structure across on the Land;
- (b) Construction of seven (7) buildings on the Land accommodating the following land uses:
 - (i) Retail and commercial uses at Lower Ground and Ground Levels, including a major supermarket, mini-major supermarket, specialty retail, fresh food, slow and fast food, kiosks, pharmacy, medical centre, gymnasium and commercial office space.
 - (ii) Shop top housing: 409 residential apartments across the upper levels of all buildings.
 - (iii) Four (4) levels of commercial office space (including ground level) within a buildings.

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- (iv) Four levels of basement car parking and loading to service all activities on the site;
 - (v) Two (2) new open air through site pedestrian links between Rowe Street and Rutledge Street and a publicly accessible market hall, supported by active frontages, outdoor seating and pedestrian amenities and public domain works on Rowe St Mall.
 - (vi) New vehicle access arrangements for residents, visitors, retail patrons and service vehicles; and
 - (vii) Landscape works on the Land;
- (c) Site preparation works including demolition, remediation and rehabilitation and bulk earth works on the Land, and

all in accordance with the Development Consent resulting from the determination of the Development Application.

Planning Agreement

Schedule 3 - Contributions Schedule

Contributions Tables

Part 1 – Contribution Land

Column 1 – Item	Column 2 – Public Purpose	Column 3 – Manner and Extent	Column 4 – Contribution Value	Column 5 - Date Contribution Land is to be transferred
1 Apartments	Key worker housing	The Owner must cause freehold title (under a strata scheme) to the Apartments being transferred to the Council at no cost in accordance with clause 5. The Apartments must be designed and constructed in accordance with Schedule 4 and generally in the location shown in the Contribution Works Concept Plans.	\$3,900,000	Within 15 Business Days after: (b) the issue of an Occupation Certificate in respect of the Apartments; or (c) the registration of a strata plan for any part of the Development that includes the Apartments, whichever occurs later.

Part 2 – Contribution Works

Column 1 – Item	Column 2 – Public Purpose	Column 3 – Manner and Extent	Column 4 – Contribution Value	Column 5 - Date Contribution Works are to be reach Practical Complete
1 Apartment Works	Key worker housing	The Owner to design, construct and fit out of the Apartments in accordance with clause 5 and generally in the location shown in the Contribution Works Concept Plans.	Included in the Contribution Value stated in table 1 above for the Apartments.	Prior to the transfer of the Apartments to Council in accordance with this Deed.

Column 1 – Item	Column 2 – Public Purpose	Column 3 – Manner and Extent	Column 4 – Contribution Value	Column 5 - Date Contribution Works are to be reach Practical Complete
2 Public Domain Works	Community and open space	The Owner must design and construct the Public Domain Works in accordance with Schedule 4 and generally in the location shown in the Contribution Works Concept Plans.	\$9,285,678	No later than the date of the first Occupation Certificate issued pursuant to the Development Consent.

Part 3 – Monetary Contribution

1 Calculation

The Monetary Contribution is the amount calculated in accordance with the following formula (subject to adjustment under clause 2 of this part 3 of Schedule 3):

$$\mathbf{MC = DC - OC}$$

where:

MC is the Monetary Contribution as at the date of this Deed

DC is the development contribution payable under section 7.11 of the EP&A Act in respect of the Development that would otherwise be stated or referred to in the Development Consent that authorises the Development if it were not for this Deed.

OC is the whole of the development contribution payable in respect of Civic and Urban Improvements under section 7.11 of the EP&A Act that Council has agreed in this Deed to offset under this Deed.

Below is a worked example for this calculation current as at the date of this Deed:

$$\mathbf{\$4,432,171.59 (MC) = \$5,356,522.38 (DC) - \$923,507 (OC)}$$

2 Adjustment

The Parties acknowledge and agree that the Monetary Contribution is adjusted in accordance with the following formula (so that it is indexed because it is payable after the date of this Deed):

			CPI as at the payment date
Adjusted MC =	MC	X	-----
			CPI as at the date of this Deed

where:

Adjusted MC is the adjusted amount of the Monetary Contribution payable as at the payment date.

MC is the amount of the Monetary Contribution calculated under clause 1 of this part 3 of Schedule 3.

CPI has the meaning given to that term in clause 1.1.

3 Timing

The Monetary Contribution must be paid to the Council prior to the issue of the first Construction Certificate for any stage of the Development, as the case maybe.

Planning Agreement

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 give a reasonable opportunity for the Council representative to be present at the meeting for Public Domain Works as required by Council.

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 the Contribution Works Concept Plans.
- (b) The Council and the Owner agree that the Contribution Works Concept Plans will be the basis for the Detailed Design.

4.2 Detailed Design

- (a) The Owner must provide a copy of the draft Detailed Design for the Public Domain Works to the Council for its approval prior to the issue of the Construction Certificate that relates to the Public Domain Works.
- (b) No later than 20 Business Days of receiving the Detailed Design for the Public Domain Works, the Council must give the Owner a notice:
 - (i) setting out suggested amendments (acting reasonably) to the Detailed Design; or
 - (ii) advising that the Detailed Design is acceptable.
- (c) The Council and the Owner must work in consultation with each other to prepare and agree the Detailed Design for the Public Domain Works and must both act reasonably and with due expedition in their consultations with each other.
- (d) If the Detailed Design for the Public Domain Works is not completed and agreed within 20 Business Days of the Council providing its suggested amendments in accordance with clause 4.2(b) of this Schedule 4, to avoid possible delays to the issue of a Construction Certificate, the Council will, in its sole discretion, be entitled to decide on any outstanding or undecided matter or item relating to the Public Domain Works, provided that any decision made by Council under this clause:
 - (i) is consistent with the obligation to provide the Contributions under this Deed;
 - (ii) is consistent with the Development Consent;

-
- (iii) does not materially and adversely affect the Development; and
 - (iv) is reasonable.
- (e) Any acceptance by the 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 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 Contribution Works Concept Plans.
- (c) The Owner will obtain any relevant standards (including design standards), specifications, or guidelines and any other requirements or policies referred to in clause 5.2(b)(ii) of this Schedule 4 from the Council if the Council fails to deliver them to the Owner.

5.3 Access and Damage

- (a) The Council permits the Owner to access and use any land it owns or has possession of that is necessary for the owner to carry out the Contribution Works.

-
- (b) 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 avoided; and
 - (iii) nuisances and unreasonable noise and disturbances are prevented.
 - (c) Without limiting clause 5.3(a) of this Schedule 4, 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 or as reasonably necessary to comply with its obligations under this Deed.

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 of the Public Domain Works which has been prepared as a result of consultation with the Owner (**Inspection Schedule**) to occur at specified stages of the construction of the Public Domain 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 Public Domain 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 Public Domain Works are located to inspect the progress of the Public Domain 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.
- (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. If the Parties cannot agree on the defect or rectification or the timing for rectification, the dispute shall be resolved adopting the procedures relating to expert evaluation under Schedule 7.
- (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 evaluation 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. However, it does not entitle Council to raise a defect or non-compliance at completion that is contrary to any direction issued by Council.

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 10 Business Days of receipt of the notice under clause 7.1(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 have been completed; 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 7.1(b)(ii) of this Schedule 4, the Owner will:
 - (i) 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 7.1(a) of this Schedule 4 for written certification that the Works have been completed; or
 - (ii) Notify a dispute which shall be resolved adopting the procedures relating to expert evaluation under Schedule 7.
- (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. Council agrees it will issue a Certificate of Practical Completion if an expert determination is made in accordance with Schedule 7 that determines Council's notice under clause 7.1(b)(ii) is not acceptable.

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) 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 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.

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 specifies:
 - (i) action required to be undertaken by the Owner to rectify that defect (**Rectification Works**); and
 - (ii) the date on which the defect must be rectified (**Rectification Date**).
- (b) The Owner must:
 - (i) comply with the Rectification Notice by:
 - (A) procuring the performance of the Rectification Works by the Rectification Date, or such other date as agreed between the Parties;
 - (B) keeping the Council reasonably informed of the action to be taken to rectify the defect; and
 - (C) carrying out the Rectification Works; or
 - (ii) notify a dispute which is to be resolved by expert evaluation under Schedule 7.
- (c) The Council must give the Owner and its contractors any access required to carry out the Rectification Works.

8.2 Rectification complete

- (a) When the Owner considers that the Rectification Works are complete, the Owner must notify the Council and provide documentation, plans or invoices which establish that the Rectification Works were carried out.
- (b) The Council may inspect the Rectification Works within 10 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.

8.3 Rectifications costs

- (a) The Owner must meet all costs of and incidental to rectification of defects under this clause 8 of this Schedule 4.
- (b) If the Owner fails to comply with a Rectification Notice or fails to notify a dispute under this clause or that dispute is resolved against the Owner, 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 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) at the time stated in clause 1.9 of Schedule 10 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:
 - (i) any Bond or Bank Guarantee 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 item of Contribution Works has expired Council must (if it has not called on it) return the Security referred to in clause 8.4(a) of this Schedule 4 for that item of Contribution Works (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 item of Contribution Works, 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 item of Contribution Works 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 and agents from and against all Claims in connection with the carrying out by the Owner of the Public Domain Works on Council land except to the extent such Claim arises either directly or indirectly as a result of the Council or its employees, officers, agents, contractors or workmen's negligence, default, act or omission.

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

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. To the extent the Owner have or receive intellectual property rights for the Contribution Works, the Owner shall assign those intellectual property rights to Council or permit use thereof.

11 Contamination risk

11.1 Responsibility

- (a) The Owner acknowledges and agrees that:
 - (i) it is responsible for the management of any contamination present upon or under the land on which Apartment 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 Public Domain Works are to be carried out;
and

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- (iii) at its Cost, it will do all things necessary to the manage any contamination present upon or under the land on which the Public Domain Works are to be carried out so as to make the Public Domain Works suitable for use;
and
 - (b) The Parties agree to conduct negotiations in good faith in order to reach agreement on what action is to be taken if contamination is identified on or in the land on which the Public Domain Works are to be carried out.
 - (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 Public Domain Works.

11.2 Certification

Prior to the dedication or transfer of the Apartments to Council, the Owner must provide to Council's reasonable satisfaction, certification by a qualified person, that the land on which the Apartments are located is suitable in light of any existing contamination for the proposed use.

Planning Agreement

Schedule 5 - Contribution Works Concept Plans

Planning Agreement

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 defaulting party must either:
- (i) rectify the breach identified in that notice within the time period specified in that notice; or
 - (ii) notify the Council in writing 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) 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:

- (i) taking any action under clause 2.1 of this Schedule 6;
- (ii) calling on the Securities in accordance with Schedule 10;
- (iii) 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.

- (b) 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 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 2.1 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 and mitigating its loss.
- (e) 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, except in the event that such Claim is caused by or contributed to by the negligence of the Council or 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.

Planning Agreement

Schedule 7 - Dispute Resolution

1 Dispute Resolution

1.1 Not commence

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

1.2 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.

1.3 Attempt to resolve

On receipt of notice under clause 1.2 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.

1.4 Mediation

If the Parties do not agree within 10 Business Days of receipt of notice under clause 1.3 (or any further period agreed in writing by them) as to:

- (a) the dispute resolution technique and procedures to be adopted;
- (b) the timetable for all steps in those procedures; or
- (c) the selection and compensation of the independent person required for such technique,

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.

1.5 Expert evaluation generally

- (a) If the Parties agree under clause 1.3 of this Schedule 7 that expert evaluation is the appropriate dispute resolution technique or clause 6.2, 7.1 or 8.1 of Schedule 4 require expert evaluation, expert evaluation must be carried out in accordance with this clause 1.5.
- (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:

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- (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 ARBN 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 1.5(c) considers the appointment of a lead expert appropriate

then the Parties must appoint a lead expert.

- (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 1.5(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;

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- (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.
 - (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.

1.6 Court proceedings

If the dispute is not resolved within 60 Business Days after notice is given under clause 1.2 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.

1.7 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.

1.8 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.

1.9 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.

Planning Agreement

Schedule 8 – Deed Registration

1 Deed registration

1.1 Consents

The Owner will obtain all consents to the registration of this Deed on the relevant folio of the Register for the Land as are necessary and in particular the consent of any mortgagee or lessee.

1.2 Mortgage

- (a) The Owner must produce to the Council together with this Deed for execution by the Council, a letter from the mortgagee (if any) and lessees of any registered lease on the Land (if any) consenting to the registration of this Deed accompanied by production information as evidence that the mortgagee (if any) has produced the Certificate of Title for the Land at Land and Property Information for the purpose of registration of the Deed and a bank cheque for the relevant registration fees.
- (b) If the Land is unencumbered by a mortgagee the Owner must produce the Certificate of Title for the Land at Land and Property Information and give a copy of the production slip to the Council.

1.3 Council to lodge

Subject to clause 1.2 of this Schedule 8, the Council will lodge this Deed with Land and Property Information for registration on the relevant folio of the Register for the Land as soon as reasonably practicable, but in any event no later than 10 Business Days after receiving the documents referred to in clause 1.2 of this Schedule 8.

1.4 Registration requisitions

The Owner must promptly comply with any requisitions that may be raised with regard to registration of the Deed in the relevant folio of the Register for the Land.

1.5 Registration notification

The Council will notify the Owner of registration of the Deed and forward a copy of the registered instrument to them.

1.6 Costs

The Owner must pay the Council's reasonable Costs of registering this Deed upon receipt of a notice from the Council as to the amount of those Costs.

Planning Agreement

Schedule 9 - Release and Discharge Terms

1 Release and discharge terms

1.1 Full release

Once the Council is satisfied that the Owner have 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 clause 3.1 of this Deed have been met;
- (b) the Owner has provided the Council with a Security in accordance with Schedule 10 for the purpose of, rectifying any defects in the Contribution Works or; monetary Contributions that are required under Schedule 3 of this Deed have been paid; and
- (c) the Owner is not otherwise in default of any of its obligations under this Deed (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 this 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.

1.4 Surrender

The Parties agree that if the Owner surrenders the Development Consent for the Development without implementing the Development Consent by means of physical works on the Land pursuant to the Development Consent, then the Owner is released and discharged from the obligations under this Deed and Council will enable the withdrawal of any caveat on the Land and/or the registration of the Deed on the Land.

Planning Agreement

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) The Securities referred to in paragraph 1.1(b) of this clause, secure:
 - (i) 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
 - (ii) in respect of the Public Domain Works Defects Security, the performance by the Owner of its obligations under this Deed to rectify Defects in the Public Domain Works;
 - (iii) in respect of the Apartment Works Defects Security, the performance by the Owner of its obligations under this Deed to rectify Defects in the Apartment Works; and
 - (iv) in respect of the Enforcement Security, the performance by the Owner of its obligations under this Deed pending delivery of the Public Domain Works Security.
- (d) The Parties agree that the Enforcement Security is security for Costs that Council may incur in the enforcement of this Deed pending delivery of the Public Domain Works Security. The Enforcement Security must be returned to the Owner when the Public Domain Security has been provided.

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;

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 in accordance with the terms of this Deed.
- (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 1.2(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 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 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 and Security return

- (a) 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.
- (b) No later than 20 Business Days after a request from the Owner, the Council will return the Enforcement Security if:
 - (i) the Public Domain Works Security has been provided;
 - (ii) there is no subsisting default by the Owner in respect of obligations to which the Enforcement Security relates as at the date of the request and at the due date for delivery (which has not been waived by the Council); and
 - (iii) there is no unresolved Dispute between the Parties being dealt with under the dispute resolution under Schedule 7 as at the date of the request and at the due date for delivery.
- (c) No later than 20 Business Days after a request from the Owner, the Council will return a Security (other than the Enforcement Security) if:
 - (i) in the case of the Public Domain Works Security:
 - (A) the Public Domain Works Defects Security has been provided;
 - (B) there is no subsisting default by the Owner in respect of obligations to which the Public Domain Works Security relates as at the date of the request and at the due date for delivery (which has not been waived by the Council); and
 - (C) there is no unresolved Dispute between the Parties being dealt with under the dispute resolution under Schedule 7 as at the date of the request and at the due date for delivery;

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- (ii) in the case of the Public Domain Works Defects Security:
 - (A) there is no subsisting default by the Owner in respect of obligations to which the Public Domain Works Defects Security relates as at the date of the request and at the due date for delivery (which has not been waived by the Council); and
 - (B) there is no unresolved Dispute between the Parties being dealt with under the dispute resolution under Schedule 7 as at the date of the request and at the due date for delivery;
 - (iii) in the case of the Apartment Works Defects Security:
 - (A) there is no subsisting default by the Owner in respect of obligations to which the Apartment Works Defects Security relates as at the date of the request and at the due date for delivery (which has not been waived by the Council); and
 - (B) there is no unresolved Dispute between the Parties being dealt with under the dispute resolution under Schedule 7 as at the date of the request and at the due date for delivery.

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, in the event that:
 - (i) the Owner breaches its obligations under this Deed pending delivery of the Public Domain Works Security;
 - (ii) the Owner breaches its obligation to carry out and complete any of the part of the Public Domain Works to which the Security relates in accordance with this Deed; or
 - (iii) the Owner breaches its obligation to rectify defects in or maintain any Contribution Works in accordance with Schedule 4;and provided:
 - (iv) a notice has been issued by Council requiring the Owner to remedy the breach in accordance with the requirements of Schedule 6; and
 - (v) there is no outstanding dispute to be resolved under Schedule 7 to which the relevant Security relates; and
 - (vi) the breach remains unremedied following the expiry of the rectification period specified in that notice; and
 - (vii) the claim relates to the non-performance of obligations secured by that Security.
- (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

The Parties agrees that the table below is the Security Schedule setting the Securities, their amount and when they are to be provided

Number	Security	Security Amount	Date for delivery
1	Public Domain Works Security	\$9,285,678.00	The Owner must deliver this Security to the Council on or before the date of the first Construction Certificate.
2	Public Domain Works Defects Security being 10% of Public Domain Works Security	\$928,567.80	The Owner must deliver this Security to the Council on or before the date of stated in Schedule 3 by which Practical Completion of the Public Domain Works must be achieved.
3	Apartment Works Defects Security being 10% of the agreed value of the apartments	\$390,000.00	The Owner must deliver this Security to the Council on or before the date of stated in Schedule 3 by which the freehold title in the Apartments must be transferred to the Council.
4.	Enforcement Security	\$300,000	The Owner must deliver this Security to the Council on or before the date of this Deed.

Planning Agreement

Schedule 11 - Assignment and Dealing

1 Assignment and Dealing

1.1 Dealing by the Owner

- (a) Unless the matters specified in 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 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 12, completed in a manner reasonably 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 or incoming party provides to the satisfaction of Council (acting reasonably) a Bond and any other documents required under Schedule 10 to secure the outstanding obligations under this Deed;
 - (iv) the Owner or incoming party 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.
- (c) 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.

1.2 Dealing with the Land by the Owner

- (a) The Owner must not sell or transfer the whole or any part of 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 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 this Schedule 11 are satisfied.

- (b) 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.
- (c) The Council acknowledges that before the date of this Deed the Owner may have entered into land sale contract for dwellings proposed as part of the Development. Despite anything else stated in this Deed:
 - (i) the consent of the Council under this Schedule 11 is not required for any such land sale contract entered into before the date of this Deed; and
 - (ii) nothing in this Deed prohibits the Owner undertaking marketing and sale of lots proposed as part of the Development.

1.3 Council's Costs

The Owner or the Owner (as the case may be) 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.

Planning Agreement

Schedule 12 - Pro-forma Novation Deed

Planning Agreement

Schedule 13 - 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, all reasonably and properly incurred Legal Costs relating to this Deed are to be borne by the Owner in the amount specified in Schedule 14 and are payable on demand.
- (b) Without limiting clause 1.2(a) of this Schedule 13, the Owner agrees to pay or reimburse the Council on demand for:
 - (i) reasonably and properly incurred Legal Costs of the Council in connection with:
 - (A) enforcing or preserving, or, 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) 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 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;

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- (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 13.

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 from any Claim, liability or loss arising from, and Costs and Legal Costs incurred in connection with, the Owner's obligation to provide the Contributions.
- (b) The Owner indemnifies the Council against all liabilities or loss arising from, and any Costs and Legal Costs 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.

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- (c) The indemnity in paragraph 1.14(b) of this Schedule 13 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 13.

Planning Agreement

Schedule 14 - Costs

The Owner is to pay Council's Legal Costs associated with the preparation and execution of this Deed.

Planning Agreement

Schedule 15- Apartment Finishes Schedule

Each Apartment (including the car space and any storage forming part of it) must comply the following requirements:

- (a) The quality and standards of construction and finish of an Apartment (including the car space and any storage forming part of it) must the same as any other similar residential apartment dwellings in the Development.
- (b) All fixtures, fittings and inclusions in an Apartment (including the car space and any storage forming part of it) must be consistent with and of the same quality and standards as other residential apartment dwellings in the Development unless otherwise required to comply with Australian Standards 1428 and/or Australian Standard 4299, or as otherwise agreed between the Parties.
- (c) An Apartment (including the car space and any storage forming part of it) must comply with appropriate Australian Standards and the Building Code of Australia.
- (d) An Apartment must be equipped with the following minimum fittings unless otherwise agreed between the Parties:
 - (i) floor coverings to all rooms (tiled kitchens, bathrooms, laundries and hallways; and carpet in living, lounge and bedroom/s);
 - (ii) light fittings fit for purpose in each room;
 - (iii) electric clothes dryer;
 - (iv) telephone and television aerial points in the lounge and main bedroom;
 - (v) cable television fittings if provided in the Building;
 - (vi) allocation of car and storage spaces consistent with other units;
 - (vii) all sliding windows and sliding doors to have window furnishings and fly screens; ;
 - (viii) at least one balcony door is to have a fly screen,
 - (ix) provision of air conditioning to living area and bedroom/s; and
 - (x) security and/or intercom system.
- (e) There must be not less than 2 accessible Apartments (including their related car spaces and storage spaces) and they must comply with Australian Standard 1428 (AS1428). An accessible Apartment must include features in place to facilitate use by a person with a disability or progressive frailty.
- (f) Where specified provision of an adaptable Apartment including car spaces will comply with Australian Standard 4299 (AS4299). An adaptable Apartment must be designed in such a way that it can be modified easily in the future to become accessible to both occupants and visitors with disabilities or progressive frailties.

Planning Agreement

Signing page

Executed as a deed

Signature by Council

Signed for an 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

Name of and position of the Authorised Officer

Signature by the Owner

Executed by **Yuhu Property (Australia) Pty Limited** in accordance with section 127 of the *Corporations Act 2001*

Signature of Director / Secretary

Signature of Director

Signature of Director / Secretary

Name of Director