
COUNCIL OF THE CITY OF RYDE

(Council)

AND

**KAMIRICE PTY LIMITED
(ACN 073 395 016)**

(Developer)

PLANNING AGREEMENT

1 Eden Park Drive, Macquarie Park

**COUNCIL OF THE CITY OF RYDE
Level 1, Building 0, Binary Centre
3 Richardson Place
NORTH RYDE NSW 2113**



PLANNING AGREEMENT

Section 7.4 of the Environmental Planning and Assessment Act, 1979

THIS DEED is made on 24 NOVEMBER 2020

PARTIES

COUNCIL OF THE CITY OF RYDE (ABN 81 621 292 610) of Level 1, Building 0, Binary Centre, 3 Richardson Place, North Ryde NSW 2113 (**Council**)

AND

KAMIRICE PTY LIMITED (ACN 073 395 016) of Level 26, 500 Collins Street, Melbourne VIC 3000 (**Developer**)

BACKGROUND

- A. The Developer is the registered proprietor of the Land.
- B. The Council is the local authority constituted under the Local Government Act 1993 and the planning and consent authority constituted under the Act.
- C. On 22 January 2020 the Developer lodged the Development Application with Council to carry out Development on the Land. The Development Application is yet to be determined.
- D. The Developer has offered to make the Development Contributions in accordance with its letter of offer dated 23 March 2020 (updated by emails to Council dated 30 July 2020 and 16 September 2020) if Development Consent is granted to the Development Application.
- E. This Deed is consistent with the Developer's offer referred to in Recital D.

OPERATIVE PROVISIONS:

1 PLANNING AGREEMENT UNDER THE ACT

The parties agree that this Deed is a planning agreement governed by Section 7.4 and Subdivision 2 of Division 7.1 of Part 7 of the Act.

2 APPLICATION OF THIS DEED

This Deed applies to the Land and to the Development proposed in the Development Application, as may be modified.

3 OPERATION OF THIS DEED

3.1 This Deed shall take effect on and from the date of this Deed.

3.2 Notwithstanding clause 3.1, the obligations relating to the provision of the Development Contributions by the Developer under this Deed take effect on the date of the first Development Consent.

4 DEFINITIONS AND INTERPRETATION

4.1 Definitions

In this Deed unless the context otherwise requires:

“**Act**” means the *Environmental Planning and Assessment Act 1979* (NSW);

“**Agreement**” means this Deed;

“**Bank Guarantee**” means an irrevocable and unconditional undertaking by a trading bank approved by the Council to secure the Development Contributions payable on demand without an expiry or end date and containing terms and conditions acceptable to Council and in accordance with clause 10 of this Deed;

“**Business Day**” means a day that is not a Saturday, Sunday or public holiday, on which banks are open for general services in Sydney, New South Wales;

“**Caveat Form**” means an irrevocable authority to The Council of the City of Ryde to register and maintain a caveat on the Land, in a form acceptable to Council and executed by the owner of the Land, or such other form of owner’s consent to caveat as may be required by Council;

“**Certifying Authority**” means any accredited private certifier including where appropriate, a Principal Certifying Authority (PCA) appointed or to be appointed to certify the Development or any aspect of it;

“**Council**” means the Council of the City of Ryde and herein includes any local government authority with which that the Council of the City of Ryde may merge or any other local government authority responsible for a local government area that the Land is located within;

“**Construction Certificate**” means any construction certificate as referred to in s 6.4 of the Act in respect of the Development;

“**Deed**” means this deed;

“**Development**” means the development the subject of the Development Application described in item 4 of Schedule 1;

“**Development Application**” means the development application referred to in item 3 of

Schedule 1;

“Development Consent” means the development consent granted in respect of the Development Application described in item 3 of Schedule 1 or any part of it and includes any Modification granted with respect to the Development Consent;

“Development Contributions” means the Monetary Contribution and Pedestrian Link Easement to be delivered by the Developer to the Council under this Deed;

“GST” has the same meaning as in the GST Law;

“GST Law” has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* and any other Act or regulation relating to the imposition or administration of the GST;

“Land” means the land described in item 2 of Schedule 1;

“Modification” means a modification of a development consent within the meaning of s 4.55 of the Act;

“Monetary Contribution” means the amount of money referred to in item 5 of Schedule 1, indexed in accordance with CPI from the date of this Deed to the date of payment and adjusted in accordance with clause 5 herein;

“Monetary Contribution Delivery Date” means the date by which the Monetary Contribution is to be paid as specified in item 7 of Schedule 1;

“Occupation Certificate” means any occupation certificate as referred to in s 6.4 of the Act in respect of the Development Consent;

“Party” means a party to this Deed including their successors and assigns;

“Pedestrian Link Easement” means the construction of the pedestrian pathway and ancillary works to the satisfaction of Council and provision of easement in gross to Council on the terms provided in clause 6 herein;

Pedestrian Link Easement Delivery Date” means the date by which the Pedestrian Link Easement is to be delivered as specified in item 8 of Schedule 1;

“Public Purpose” for the purpose of this Deed means the public purpose described in item 6 of Schedule 1;

“Registration Application” means an application for registration of this Deed as a planning agreement on the title of the Land pursuant to Section 7.6 of the Act in a form approved by the Registrar;

“Schedule 1” means the first schedule to this Deed;

“Schedule 2” means the second schedule to this Deed.

4.2 Interpretation

In the interpretation of this Deed, the following provisions apply unless the context otherwise requires:

- (a) Headings are inserted for convenience only and do not affect the interpretation

of this Deed;

- (b) A reference in this Deed to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney, New South Wales;
- (c) If the day on which any act, matter or thing is to be done under this Deed is not a business day, the act, matter or thing must be done on the next business day;
- (d) A reference in this Deed to dollars or \$ means Australian dollars and all amounts payable under this Deed are payable in Australian dollars;
- (e) A reference in this Deed to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision;
- (f) A reference in this Deed to a document (including this Deed) is to that document as varied, novated, ratified or replaced from time to time;
- (g) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed;
- (h) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency;
- (i) Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
- (j) A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders;
- (k) References to the word 'include' or 'including' are to be construed without limitation;
- (l) A reference to this Deed includes the agreement recorded in this Deed;
- (m) A reference to a party to this Deed includes a reference to the servants, agents and contractors of the party, and the party's successors and assigns; and
- (n) Any schedules and attachments form part of this Deed.

5 MONETARY CONTRIBUTION TO BE MADE UNDER THIS DEED

- 5.1 The Developer agrees to make, and the Council agrees to accept, the Monetary Contribution to be applied for the Public Purpose.
- 5.2 Within a reasonable timeframe prior to the Monetary Contribution Delivery Date, the Developer is to request an invoice for the Monetary Contribution from Council in writing and Council will provide same.
- 5.3 The Developer must deliver the Monetary Contribution to the Council by bank cheque on or before the Monetary Contribution Delivery Date and time is essential in this

respect.

5.4 Indexation

On the date of payment the Monetary Contribution will be adjusted to a revised amount derived by applying the following formula:

$$\text{Monetary Contribution at time of payment} = C \times \frac{\text{CPI2}}{\text{CPI1}}$$

where:

C is the original Monetary Contribution (as identified in item 5 of Schedule 1 and any additional amount payable under clause 5.5);

CPI2 is the index number for the Consumer Price Index: All Groups Index for Sydney available from the Australian Bureau of Statistics at the time of payment; and

CPI1 is the number for the Consumer Price Index: All Groups Index for Sydney available from the Australian Bureau of Statistics and applicable for the quarter at the date of grant of Development Consent.

5.5 Increase in Monetary Contribution

- (a) If the Developer amends the application for Development Consent or obtains a Modification of the Development Consent which has the effect of increasing the gross floor area located above the base height specified under *Ryde Local Environment Plan 2014* to be more than 1,699 square meters, the Monetary Contribution will be increased by an amount equivalent to \$270.31 for each additional square meter above 1,699 square meters.
- (b) Any increase in the Monetary Contribution shall be adjusted to a revised amount derived by applying the formula in clause 5.4.
- (c) If clause 5.4 applies then any Monetary Contribution due pursuant to this clause must be paid prior to the release of Construction Certificate for the Development or the Development Consent.

6 PEDESTRIAN LINK EASEMENT

- 6.1 The Developer agrees to make, and the Council agrees to accept, the Pedestrian Link Easement including associated easement works to the satisfaction of Council, to be applied for the Public Purpose.
- 6.2 The Pedestrian Link Easement is to be delivered at the sole cost of the Developer and at no cost to Council.
- 6.3 The Developer must deliver the Pedestrian Link Easement to the Council in accordance with this Deed on or before the Pedestrian Link Easement Delivery Date and time is

essential in this respect.

6.4 Construction of Pedestrian Link Easement

Prior to registration of the Pedestrian Link Easement in accordance with clause 6.5, the Developer will construct the pedestrian pathway including landscaping and street lighting within the "Pedestrian Link" shown at Annexure A, along the western boundary and, generally, a minimum of 6 meters wide (including landscaping) in accordance with the Landscape Plan prepared by Arcadia and the Macquarie Park Public Domain Technical Manual and to the satisfaction of Council.

6.5 Registration of Pedestrian Link Easement

- (a) The Developer must do all things necessary to register against the title to the Land, an easement in gross permitting public pedestrian access generally in the location identified as "Pedestrian Link" at Annexure A hereto.
- (b) The terms of the easement referred to in clause 6.5(a) shall be as set out in Schedule 2 and otherwise to the satisfaction of Council.

6.6 Registration of Positive Covenant and Restriction on Use of Land

The Developer must do all things necessary to register against the title to the Land, a public positive covenant and restriction on use of land under section 88E of the Conveyancing Act 1919 benefiting Council as Prescribed Authority in terms satisfactory to Council which ensure the "Pedestrian Link" shown at Annexure A is used and maintained in accordance the Council's Development Control Plan 2014 and the Macquarie Park Public Domain Technical Manual.

7 APPLICATION OF THE DEVELOPMENT CONTRIBUTION

- 7.1 The Council will apply the Development Contributions towards the Public Purpose as soon as practicable.

8 APPLICATION OF S7.11 AND S7.12 OF THE ACT TO THE DEVELOPMENT

- 8.1 This Deed does not exclude the application of Sections 7.11, 7.12 or 7.24 of the Act to the Development.
- 8.2 The Development Contribution provided by the Developer will not be taken into consideration in determining any development contribution under Section 7.11 or 7.12 of the Act.

9 REGISTRATION OF THIS AGREEMENT

- 9.1 The Parties agree this Deed is to be registered by the Registrar-General as provided for in section 7.6 of the Act.
- 9.2 The Developer warrants that they have done everything necessary to enable this Deed

- to be registered under section 7.6 of the Act.
- 9.3 Without limiting clause 9.2, the Developer warrants that they have obtained the express written consent to the registration of this Deed under section 7.6 of the Act from:
- (a) If this Deed relates to land under the *Real Property Act 1900*, each person who has an estate or interest in the Land registered under that Act; or
 - (b) If this Deed relates to land not under the *Real Property Act 1900*, each person who is seized or in possession of an estate or interest in the Land.
- 9.4 Upon entering into this Deed and in any event prior to the issue of the first Construction Certificate for the Development, the Developer will at their cost arrange and effect registration of this Deed under s7.6 upon the title to the Land and as soon as possible will:
- (a) deliver to the Council the Registration Application in registrable form noting the Council as applicant and executed by the owner of the Land and any other person the subject of the warranty in clause 9.3;
 - (b) produce or cause to be produced the title deed with NSW Land Registry Services and advise Council of the production number or provide a copy of the CoRD Holder Consent as may be applicable;
 - (c) provide the Council with a cheque in favour of NSW Land Registry Services for the registration fees for registration of this Deed, or deliver funds electronically as Council may direct;
 - (d) provide the Council with a cheque in favour of the Council for its reasonable costs, expenses and fees incurred or to be incurred in connection with the preparation of this Deed and any documents, form or instrument created or to be created in accordance with the provisions of this Deed; and
 - (e) and take any other necessary action so as to ensure this Deed is registered on the title to the Land prior to the issue of the first Construction Certificate for the Development.
- 9.5 Upon compliance with clause 9.4 by the Developer the Council will promptly lodge the Registration Application with the Registrar General.
- 9.6 The Parties will co-operate with each other to ensure that this Deed is registered by the Registrar General.
- 9.7 Upon full delivery of the Development Contributions and fulfillment of the Developers obligations under this Deed, the Developer may request in writing the removal of the dealing created by registration of the Deed from the title to the Land. The Council will not withhold its consent to such removal, provided the Developer pays all reasonable costs, expenses and fees of the Council relating to such removal.
- 9.8 Upon registration of this Deed by the Registrar General, this Deed is binding on, and is enforceable against the owner of the Land from time to time as if each owner for the time being had entered into this Deed.

10 BANK GUARANTEE

10.1 Provision of Bank Guarantee

- (a) Upon entering into this Deed and in any event prior to the issue of the first Construction Certificate for the Development, the Developer must deliver to the Council a Bank Guarantee, which must be:
- (i) in a form and from an institution approved by the Council;
 - (ii) irrevocable and unconditional;
 - (iii) with no expiry date;
 - (iv) issued in favour of the Council;
 - (v) in the amount \$459,256.69 being the agreed total value of the Development Contributions at the time of entering into this Deed;
 - (vi) drafted to cover all of the Developer's obligations under this Deed; and
 - (vii) on the terms otherwise satisfactory to the Council.
- (b) The Developer acknowledges that the Council enters into this Deed in consideration of the Developer providing the Bank Guarantee as a security for the performance of all of the Developer's obligations under this Deed, including without limitation the delivery of the Development Contributions to Council in accordance with this Deed.

10.2 Replacement Bank Guarantee

On 30 June each year following the date of this Deed, the Developer must, unless Council agrees otherwise in writing, replace the Bank Guarantee provided to Council in accordance with clause 10.1 with a new Bank Guarantee or provide a further Bank Guarantee so that the total amount secured by Bank Guarantee reflects the adjusted amount pursuant clause 5.4 and/or 5.5 herein.

10.3 Calling on Bank Guarantee

- (a) The Council may call on the Bank Guarantee in the event that the Developer:
- (i) fails to deliver any part of the Development Contributions in accordance with this Deed or any other amount payable under this Deed by its due date; or
 - (ii) breaches any other term or condition of this Deed,
- and fails to remedy the relevant failure or breach within 7 days after the Council's notice.

- (b) If the Council calls on the Bank Guarantee as a result of the Developer's failure to deliver any part of the Development Contributions due under this Deed, then the Council will apply the amount received pursuant to its claim on the Bank Guarantee towards the Developer's obligation to deliver the Development Contributions and will deduct that amount from the total amount payable under this Deed. In those circumstances, the Developer will be required to pay to the Council any outstanding balance of the Development Contributions and other amounts payable under this Deed. For the sake of clarity the calling upon the Bank Guarantee by Council does not absolve the Developer from its obligations to deliver to Council all Development Contributions in accordance with this Deed.

10.4 Return of Bank Guarantee

Subject to clause 10.3, provided that the Developer has complied with its obligations under this Deed, to deliver the Development Contributions and any other amounts payable under this Deed, the Council will return the Bank Guarantee to the Developer.

11 REVIEW OF THE DEED

Any amendment or review of this Deed shall be by agreement in writing and in compliance with section 7.5 of the Act.

12 DISPUTE RESOLUTION

12.1 Notice of dispute

If a Party claims that a dispute has arisen under this Deed ("Claimant"), it must give written notice to the other Party ("Respondent") stating the matters in dispute and designating as its representative a person to negotiate the dispute ("Claim Notice").

No Party may start Court proceedings (except for proceedings seeking interlocutory relief) in respect of a dispute unless it has first complied with this clause.

12.2 Response to notice

Within ten business days of receiving the Claim Notice, the Respondent must notify the Claimant of its representative to negotiate the dispute.

12.3 The nominated representative must:

- (i) Meet to discuss the matter in good faith within five business days after services by the Respondent of notice of its representatives;
- (ii) Use reasonable endeavours to settle or resolve the dispute within 15 business days after they have met.

12.4 Further notice if not settled

If the dispute is not resolved within 15 business days after the nominated representatives have met, either Party may give to the other a written notice calling for determination of the dispute ("Dispute Notice") by mediation under clause 12.5 or by expert determination under clause 12.6.

12.5 Mediation

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

- (i) The Parties must agree to the terms of reference of the mediation within five business days of the receipt of the Dispute Notice (the terms shall include a requirement that the mediation rules and the Institute of Arbitrators and Mediators Australia (NSW Chapter) apply);
- (ii) The mediator will be agreed between the Parties, or failing agreement within five business days of receipt of the Dispute Notice, either Party may request the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter) to appoint a mediator;
- (iii) The mediator appointed pursuant to this Clause 12.5 must:
 - (a) Have reasonable qualifications and practical experience in the area of disputes; and
 - (b) Have no interest or duty which conflicts or may conflict with his function as mediator, he being required to fully disclose any such interest or duty before his appointment;
- (iv) The mediator shall be required to undertake to keep confidential all matters coming to his knowledge by reason of his appointment and performance of his duties;
- (v) The Parties must within five business days of receipt of the Dispute Notice notify each other of their representatives who will be involved in the mediation.
- (vi) The Parties agree to be bound by a mediation settlement and may only initiate judicial proceedings in respect of a dispute which is the subject of a mediation settlement for the purpose of enforcing that mediation settlement.
- (vii) In relation to costs and expenses
 - (a) Each Party will bear their own professional and expert costs incurred in connection with the mediation; and
 - (b) The cost for the mediator will be shared equally by the Parties unless the mediator determines a Party has engaged in vexatious or unconscionable behaviour in which case the mediator may require the full cost of the mediation to be borne by that Party.

12.6 Expert Determination

If the dispute is not resolved under clause 12.3 or 12.5 the dispute may, by agreement between the Parties, both acting reasonably having regard to the nature of the dispute,

be resolved by expert determination, in which event:

- (i) The dispute must be determined by an independent expert in the relevant field:
 - (a) Agreed upon and appointed jointly by the Council and the Developer; or
 - (b) In the event that no agreement is reached or appointment made within 30 business days, appointed on application of a Party by the then current President of the Law Society of New South Wales;
- (ii) The expert must be appointed in writing and terms of the appointment must not be inconsistent with this clause;
- (iii) The determination of the dispute by such expert will be made as an expert and not as an arbitrator and will be in writing and containing reasons for the determination;
- (iv) The expert will determine the rules of the conduct for the process, but must conduct the process in accordance with the rules of natural justice;
- (v) Each Party will bear its own costs in connection with the process and the determination by the expert together with an equal proportion of the expert's fees and costs; and
- (vi) Any determination made by an expert pursuant to this clause is final and binding upon the Parties except where the determination is in respect of, or relates to, termination or purported termination of this Deed by any Party, in which event the expert is deemed to be giving a non-binding appraisal and any Party may commence litigation in relation to the dispute if it has not been resolved within 20 business days of the expert giving his or her decision.

12.7 Litigation

If the dispute is not finally resolved in accordance with this clause 12, either Party is at liberty to litigate the dispute.

12.8 Continue to Perform Obligations

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

13 ENFORCEMENT

13.1 Nothing in this Deed prevents the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Deed (including the breach of this Deed by the Developer) or any matter to which this Deed relates.

13.2 Until such time as the Monetary Contribution has been paid in full in accordance with this Deed, a Construction Certificate must not be issued and the Developer must:

- (a) notify the Council in writing of the name and contact details of any Certifying Authority to which it has applied for a Construction Certificate at the same time that

such application is made;

- (b) at the time it lodges any application for a Construction Certificate notify the Certifying Authority in writing of the existence and terms of this Deed;
- (c) procure and provide to Council a written acknowledgement from the Certifying Authority addressed to Council confirming that the Certifying Authority will not issue a Construction Certificate until Council provides written confirmation that the Monetary Contribution has been paid in full; and
- (d) not rely on any Construction Certificate in respect to the Development.

13.3 Until such time as the Pedestrian Link Easement has been delivered in full in accordance with this Deed, an Occupation Certificate must not be issued and the Developer must:

- (a) notify the Council in writing of the name and contact details of any Certifying Authority to which it has applied for an Occupation Certificate at the same time that such application is made;
- (b) at the time it lodges any application for an Occupation Certificate notify the Certifying Authority in writing of the existence and terms of this Deed;
- (c) procure and provide to Council a written acknowledgement from the Certifying Authority addressed to Council confirming that the Certifying Authority will not issue an Occupation Certificate until Council provides written confirmation that the Pedestrian Link Easement has been delivered in full; and
- (d) not rely on any Occupation Certificate in respect to the Development.

13.4 The Developer acknowledges and agrees that:

- (a) the Land is charged with the payment and cost of the delivery of the Development Contributions until the Development Contributions are delivered in full to Council;
- (b) Council has a caveatable interest in the Land from the later of the date of the Development Consent and this Deed until the Development Contributions are delivered in full and any other monies due under this Deed are paid in full to Council;
- (c) Council has the right to lodge and maintain a caveat against the title to the Land to notify of and protect its interest created by this Deed (including the charge in (a), until the Development Contributions and any other monies due to Council under this Deed are paid in full to Council;
- (d) Upon entering into this Deed, the Developer shall provide Council with the Caveat Form; and
- (e) Upon registration of the Planning Agreement in accordance with clause 9 herein, the Developer may request in writing the removal of the caveat from the title to the Land. The Council will not withhold its consent to such removal, provided the Developer pays all reasonable costs, expenses and fees of the Council relating to such removal.

14 NOTICES

- 14.1 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 sent in one of the following ways:
- (a) delivered or posted to that Party at its address set out in item 9 of Schedule 1;
or
 - (b) emailed to that Party at its email address set out in item 9 of Schedule 1.
- 14.2 If a Party gives the other Party 3 business days' notice of a change of its address or email address, any notice, consent, information, application or request is only given or made by that other Party if it is delivered or posted to the latest address or email address.
- 14.3 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.
 - (c) If it is sent by email, as soon as the sender receives confirmation of an error free transmission to the correct email address.
- 14.4 If any notice, consent, information, application or request is delivered, or an error free confirmation in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

15 APPROVALS AND CONSENT

Except as otherwise set out in this Deed, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Deed in that Party's absolute discretion and subject to any conditions determined by the Party. A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

16 ASSIGNMENT AND DEALINGS

- 16.1 If the Developer proposes to sell, transfer, assign, novate, charge, encumber or otherwise deal with the Land or attempts or purports to do so, the Developer must seek the consent of Council and, if applicable, the Developer must:
- (a) at no cost to Council, procure the execution by the incoming party of a Deed in favour of Council on the same terms as this Deed as if the incoming party were a Party to this Deed; and
 - (b) satisfy Council that the Developer is not in breach of its obligations under this Deed.

- 16.2 Provided the developer has complied with the terms of clause 16.1, Council will provide its consent.
- 16.3 For the sake of clarity, nothing in this clause will prevent the Developer from increasing their loan amount with their existing mortgagee on title as at the date of this Deed.

17 COSTS

Council's costs of and incidental to the preparation and execution of this Deed and any related documents and registration of same shall be borne by the Developer. The Developer shall be responsible to pay its own costs and any stamp duty arising from this Deed or its preparation.

18 ENTIRE AGREEMENT

This Deed contains everything to which the Parties have agreed in relation to the matters it deals with. No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Deed was executed, except as permitted by law.

19 FURTHER ACTS

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

20 GOVERNING LAW AND JURISDICTION

This Deed is governed by the law of New South Wales. The Parties submit to the nonexclusive 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.

21 JOINT AND INDIVIDUAL LIABILITY AND BENEFITS

Except as otherwise set out in this Deed, any agreement, covenant, representation or warranty under this Deed by 2 or more persons binds them jointly and each of them individually, and any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

22 NON FETTER

The Developer acknowledges and agrees that:

- (a) in addition to its obligations under this Deed the Council is also responsible for the conduct and administration of local government in the Ryde Local Government Area;
- (b) this Deed in no way affects Council's statutory obligations, functions or powers, including without limitation, its obligations, functions or powers in respect of the Development Application, Development Consent and any other approvals required in respect of the works to be carried out under the Development Consent;
- (c) nothing which the Council does or fails to do under this Deed will limit or otherwise affect the Developer's obligations under the Development Consent; and
- (d) nothing which the Council does, fails to do or purports to do in performing the Council's statutory functions or powers will constitute or amount to a breach of this Deed.

23 REPRESENTATIONS AND WARRANTIES

The Parties represent and warrant that they have power to enter into this Deed and comply with their obligations under the Deed and that entry into this Deed will not result in the breach of any law.

24 SEVERABILITY

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. 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.

25 MODIFICATION

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

26 WAIVER

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 breach of obligation

by, another Party. A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

27 GOODS & SERVICES TAX

- 27.1 The Parties agree and acknowledge, all amounts payable by one party to the other party in relation to a supply under this Deed have been calculated exclusive of GST which may be imposed on the supply.
- 27.2 If any supply made under this Deed is, or becomes, subject to GST, the party to whom the supply is made ("**Recipient**") must pay to the party making the supply ("**Supplier**"), as consideration, in addition to any consideration payable or to be provided elsewhere in this Deed, subject to issuing a Valid Tax Invoice, an additional amount on account of GST, such amount to be calculated by multiplying the consideration by the applicable rate of GST.
- 27.3 Any amount in respect of GST payable under clause 27.2 must be paid to the Supplier immediately on receipt of the Valid Tax Invoice.
- 27.4 If any party is required to reimburse or indemnify the other party for a cost or expense ("**Cost**") incurred by the other party, the amount of that Cost for the purpose of this Deed is the amount of the Cost incurred, less the amount of any credit for, or refund of, GST, which the party incurring the Cost is entitled to claim in respect of the Cost.

28 EXECUTION IN TRIPLICATE

The Parties shall execute this Deed in triplicate so as to provide one original signed by both parties and a further copy for registration of the Deed under s7.6 of the Act. This Deed will be dated on the day of execution by all Parties.

SCHEDULE 1

<u>Item Number</u>	<u>Particulars</u>	<u>Description</u>
1	Developer	Kamirice Pty Limited (ACN 073 395 016)
2	Land	1 Eden Park Drive, Macquarie Park (Lot 10 in DP 1043041)
3	Development Application	LDA2020/0044
4	Development (description)	Construction of an 8 storey commercial building consisting of 11,256 sqm of commercial floor space, 2 levels of basement parking, storage and servicing, associated landscaping and public domain works, and pedestrian link on western side of the site
5	Monetary Contribution	\$176,546.69
6	Public Purpose	Recreational Open space and Macquarie Park Access Network
7	Monetary Contribution Delivery Date	Prior to the issue of the first Construction Certificate for the Development
8	Pedestrian Link Easement Delivery Date	Prior to the issue of any Occupation Certificate for the Development
9	Developer Address	Level 26, 500 Collins Street MELBOURNE VIC 30000
	Developer Email	Richard.Poore@kadorgroup.com.au
	Council Address	Attention: General Manager Level 1, Building 0, Binary Centre 3 Richardson Place NORTH RYDE NSW 2113
	Council Email	cityofryde@ryde.nsw.gov.au

SCHEDULE 2
Pedestrian Link Easement

1.1 Terms of Easement for Pedestrian Link

- (a) The Council, Authorised Users and the public have the right to the surface only of the Easement Site to:
 - (i) go, pass and repass over the site of the Easement;
 - (A) on foot;
 - (B) with wheelchairs or other accessible aids; and
 - (C) without animals (except for guide dogs or hearing dogs for the visually or hearing impaired);
 - (ii) for the purposes of pedestrian access on those parts of the Easement Site;
 - (iii) at all times.
- (b) The Grantor must keep the Easement Site in a clean condition to Council's satisfaction, acting reasonably.
- (c) The Grantor must maintain the Easement Site, including all structures, lighting and landscaping within the Easement Site.
- (d) The Grantor must maintain and pay for the electricity supply to all lighting within the Easement Site and ensure that such lighting is kept in good working order and is operating in non-daylight hours.
- (e) The Grantor must insure in any occurrence based policy against public liability covering the public use of the Easement Site for a sum determined by the Grantor which must not be less than \$20 million, and must provide evidence of currency of insurance to Council at all times.
- (f) The Grantor must erect and maintain safety signage and CCTV cameras in the Easement Site.
- (g) The Grantor, acting reasonably (and having regard to the nature of the use of, or activity carried on the Lot Burdened) may remove (in a lawful manner) any person from the Easement Site, if the person:
 - (i) is not adequately clothed;
 - (ii) is drunk or under the influence of drugs;
 - (iii) loiters or causes excessive noise;
 - (iv) behaves in a manner reasonably likely to cause harm, offence, embarrassment or inconvenience to persons on the Lot Burdened; and/or
 - (v) is engaging in criminal behavior.
- (h) The Grantor must ensure that any rules made by an owners corporation or the

like relating to the Easement Site have been approved by Council, acting reasonably.

- (i) The Grantor agrees to indemnify the Council from and against any loss suffered or incurred by the Council arising from or as a consequence of the exercise of rights in this instrument by the Council, Authorised Users or the public, unless the loss is caused by the negligence of the Council, including but not limited to:

- (i) damage to any property of the Council, Authorised User or member of the public located on the Easement Site or the Lot Burdened; and
- (ii) injury to any person on the Easement Site or the Lot Burdened.

- (j) In this instrument:

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

Council means The Council of the City of Ryde.

Easement means this Easement.

Easement Site means in relation to this easement:

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

Grantee means the Council.

Grantor means the owner of the Lot Burdened.

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

Plan means a plan to which this Instrument relates.

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

The Council of the City of Ryde.

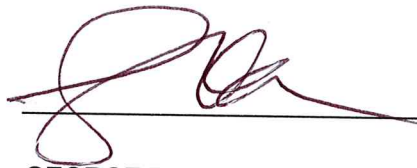
EXECUTED as a DEED by:

COUNCIL OF THE CITY OF RYDE (ABN 22 636 550 790) by the General Manager under delegated authority pursuant to Section 377 of the Local Government Act 1993, in the presence of:



WITNESS

Full Name: **DAVID MATTHEWS**



GEORGE DEDES

General Manager

EXECUTED as a DEED by:

KAMIRICE PTY LIMITED (ACN 073 305 016) in accordance with section 127 of the Corporations Act 2001



Signature

JANINE MAREE MILTON

NAME

Director/Secretary



Signature

MARK ADRIAN ROSS

NAME

Director

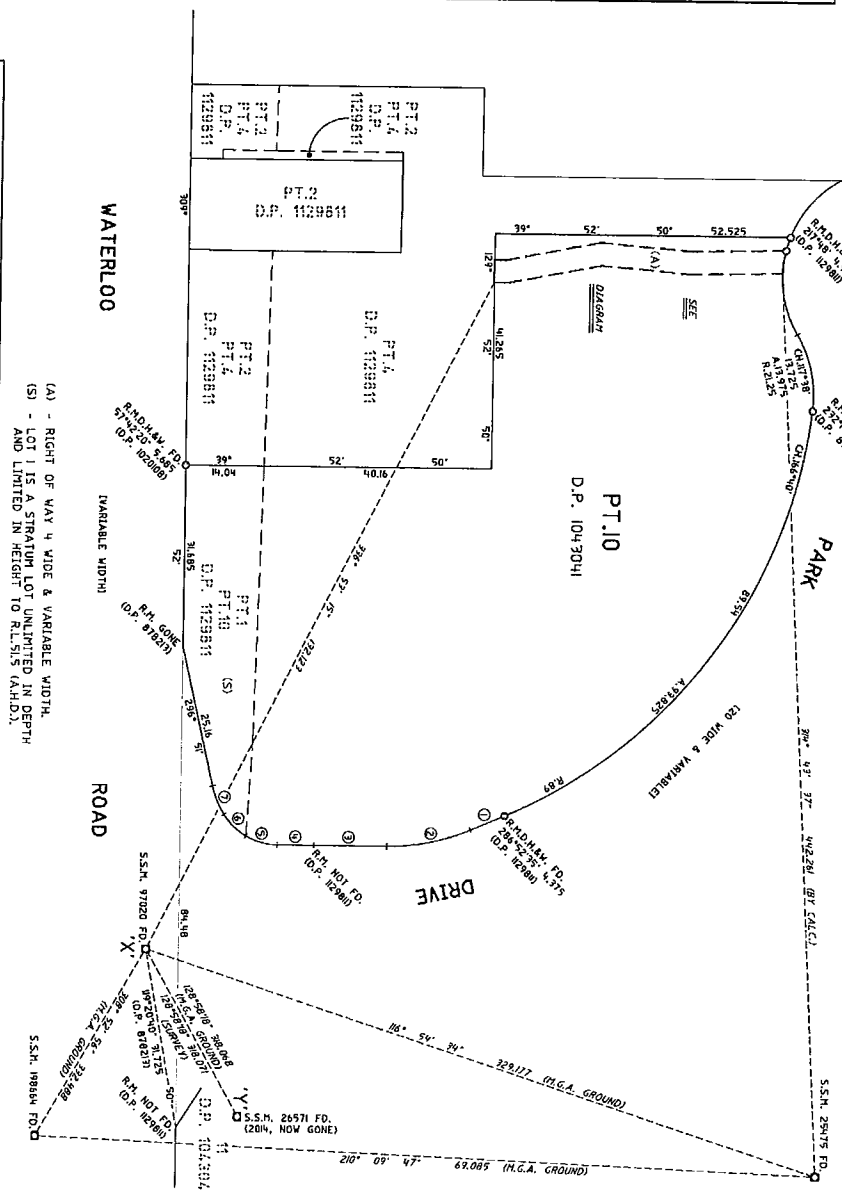
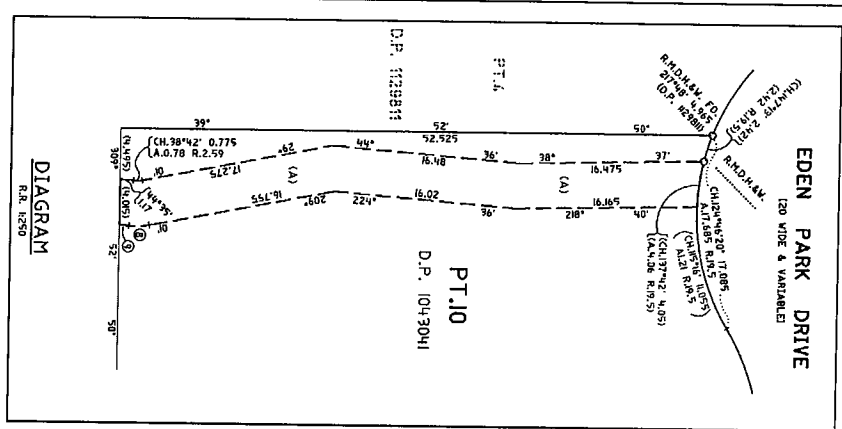
ANNEXURE A Plan of "Pedestrian Link"

PLAN FORM 2 (02)

WARNING: CREATION OF POLYLINE WILL LEAD TO ERROR ON

CO-ORDINATE SCHEDULE			
MARK	N.G.A. CO-ORDINATES	CLASS	METHOD
S.S.M. 26575	EASTING 727 222.462 NORTHING 6 259 177.081	B	FROM S.C.L.M.S. FOUND
S.S.M. 26576	EASTING 727 176.962 NORTHING 6 259 178.018	B	FROM S.C.L.M.S. FOUND
S.S.M. 19844	EASTING 729 167.731 NORTHING 6 259 171.553	D	N/A FROM S.C.L.M.S. FOUND
DATE OF S.C.L.M.S. COORDINATES 09/11/2020		H.G.A. ZONE/56	DATUM GDA2020
COMBINED SCALE FACTOR 0.999958			

SCHEDULE OF SHORT AND CURVED LINES				
No.	BEARING	DISTANCE	ARC	RADIUS
1	189°52'	6.5	15.005	37.605
2	208°22'	15.005	15.005	37.605
3	208°53'	12.85	5.285	11.28
4	234°42'	5.285	5.147	15.50
5	265°00'25"	5.285	5.51	6.59
6	284°42'	1.505	1.91	6.59
7	284°42'	1.505	1.91	6.59
8	284°42'	1.505	1.91	6.59
9	224°35'	0.77		



Surveyor: MATTHEW ANCO, SOLO
 Date of Survey: 08 NOVEMBER 2020
 Survey No.: 35280P1

PLAN OF RIGHT OF WAY OVER PART LOT 10 D.P. 1043041

(A) - RIGHT OF WAY 4 WIDE & VARIABLE WIDTH.
 (S) - LOT 1 IS A STRAITENED LOT (UNLIMITED IN DEPTH
 AND LIMITED IN HEIGHT TO R.L.S.15 (A.H.D.)).

Locality	Lot No.	Registered
MACQUARIE PARK	1043041	

DRAFT