

The Council of the City of Ryde
ABN 81 621 292 610

and

Tesco Projects Pty. Ltd
ACN 168 432 700

Planning Agreement

Environmental Planning and Assessment Act 1979

By Council
[Signature]

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Planning Agreement made at **CITY OF RYDE** on **18 JANUARY 2021** 2018.

Parties **The Council of the City of Ryde (ABN 81 621 292 610) of 1 Devlin Street, Ryde, NSW (Council)**

And

Tesco Projects Pty. Ltd](ACN 168 432 700) of c/o MJZ Accountants, Suite 3, Level 1, 5 Villiers Street, PARRAMATTA, NSW 2150 (Developer)

Background

- A. The Developer intends to acquire the Land so that at the date of this Agreement it is the owner of the Land.
- B. For the purpose of Section 7.4(1) of the Act, the Developer has sought a change to the environmental planning instruments applying to the Land to enable the Developer to carry out the Development.
- C. The Developer has offered to enter into a planning agreement in connection with the amendment to the relevant environmental planning instrument and make Development Contributions in connection with the carrying out of the Development enabled by the Instrument Change in accordance with the terms of this Deed.

Operative provisions

1. Interpretation

1.1 Definitions

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

Act means the *Environmental Planning and Assessment Act, 1979* and Regulations (as amended).

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

Affordable Housing has the same meaning as in the Act.

Affordable Housing Unit means the dwellings in the Building as specified in Table 2 of Schedule 3 Plan.

Affordable Housing Unit Plan means the plan identified in Schedule 12 as may be amended from time to time by agreement between the parties.

AHU Standards means the Council's standards for Affordable Housing Units as set out in Schedule 18 of this Deed.

Application means an application for any Approval.

Apartment Design Guide means the document titled "Apartment Design Guide" published by the Department of Planning and Environment on the day on which State Environmental Planning Policy No 65—Design Quality of Residential Flat Development (Amendment No 3) commenced

Approval means any approvals, consents, certificates, permits, endorsements, licences, conditions 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 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 a registered certifier registered under the *Building and Development Certifiers Act 2018*.

Bank Bill Rate means 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**). However, 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, **Bank Bill Rate** means:

- (a) the rate 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 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
- (b) where 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 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.

The rate calculated or set must be expressed as a percentage rate per annum and be rounded up to the nearest fourth decimal place.

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 Council under paragraph (a) or (b).

Bank Guarantee means an irrevocable and unconditional undertaking without expiry or end date by one of the following trading banks:

- (a) Australia and New Zealand Banking Group Limited;
- (b) Commonwealth Bank of Australia;
- (c) Macquarie Bank;
- (d) National Australia Bank Limited;
- (e) St George Bank Limited;
- (f) Westpac Banking Corporation; or
- (g) Other financial institution approved by Council in its absolute discretion,

to pay an amount or amounts of money to Council on demand and containing terms and conditions reasonably acceptable to Council;

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].
- (c) Be issued on behalf of the Developer;
- (d) Have no expiry or end date;
- (e) Have the beneficiary as Council;
- (f) Be irrevocable;
- (f) State either individually, or in total with other lodged compliant forms of Guarantee, the relevant minimum amount required to be lodged as security; and
- (g) State the purpose of the deposit required in accordance with this Deed.

Builder means any entity contracted under the Construction Contract to carry out the Contribution Works.

Building means a building proposed to be constructed on the Land, but excluding marketing suites or other buildings which are not part of the Development and which are not intended to remain on the Land indefinitely.

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

Cash Deposit has the meaning given to that term in clause 1.8 of Schedule 10.

Cash Deposit Account has the meaning given to that term in clause 1.8 of Schedule 10.

Certificate of Practical Completion has the meaning given to that term in clause 1.19 of Schedule 4.

Claim includes a claim, demand, remedy, suit, injury, damage, loss, Cost, liability, action, proceeding or right of action.

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

Construction Certificate means a certificate referred to in section 6.4(a) of the Act and includes any amending Construction Certificate.

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 and other components of the Development).

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

- (a) preparation of design and construction drawings for the Contribution Works;
- (b) preparation of all Applications for all Approvals for the Development and the Contribution Works and all Costs associated with obtaining all Approvals;

- (c) 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.

Contribution Amount means the amount set out in Column 3 of Table 2 in Schedule 3 in respect of each Item of Contribution Works.

Contribution Land means the land to be dedicated or transferred (as the case may be) by the Developer as described in Table 1 to Schedule 3 of this Deed.

Contribution Works means the works to be undertaken by the Developer as described in Table 2 of Schedule 3.

Contributions means the dedication of land (free of any Encumbrance and Cost), the payment of a monetary contribution and the provision of material public benefits or any combination of them to be used or applied towards a public purpose, all as provided for in the Contributions Schedule of this Deed including the Contribution Land and the Contribution Works but does not include any Security or other benefit provided by a Party to the Council to secure the enforcement of that Party's obligations under this deed for the purposes of s7.4(3)(g) of the Act.

Contributions Schedule means the tables and notes included in Schedule 3.

Costs includes all costs, charges, expenses, outgoing, payment, fee and other expenditure of any nature including..

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

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

Deed means this deed.

Defects Liability Period means in respect of the Contribution Works, the period of 12 months which commences on the date of Practical Completion of the Contribution Works.

Developer's Offer means the Letter from Peter Rigg dated 21 October 2017 as amended by this Deed.

Development means the development of the Land for urban purposes including a mixed use development and generally described in clause 2 of Schedule 2.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act and includes each 'Development Consent' issued for the Development.

Development Program means a program for the completion of the Development or parts of the Development.

Dispute means a dispute or difference between the Parties under or in relation to this Deed.

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.

Explanatory Note means the explanatory note relating to this Deed, as required by clause 25E of the Regulation, being Exhibit A to this Deed.

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).

GST Amount has the meaning given to that term in clause 14.3.

Home Warranty Insurance has the same meaning as in the *Home Building Act 1989*.

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.

Instrument Change means the change to environmental planning instruments proposed in the Planning Proposal.

Internal Floor Area means the floor area when measured from the face of the inner wall of a unit.

Land means the land described in clause 1 of Schedule 2 and includes any lots created by any Subdivision of that land after the date of this Deed.

Land Dedication Plan means the plans set out in Schedule 17 as may be amended from time to time by agreement between the parties.

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

Occupation Certificate means a certificate referred to in section 6.4(c) of the Act.

Party means a Party to this Deed, and includes their successors and assigns.

Permitted Encumbrance means each of:

- (a) easements benefitting statutory authorities, encroachments authorised by Approvals and environmental management requirements;

- (b) any of the following:
- (i) an Encumbrance (other than a mortgage, charge, pledge, lien, security interest, title retention, contractual right of set-off, or any other security agreement or arrangement in favour of any person); and
 - (ii) such other agreement or arrangement,
- Council (acting reasonably) agrees in writing are permitted encumbrances.

Planning Proposal means the planning proposal which seeks to make the following amendments to RLEP:

- (a) Increase the maximum height control for the Land from 15.5 metres to 24 metres;
- (b) Increase the FSR control for the Land from 1.25:1 to 2.7:1.
- (c) Site specific provision exempting AHU's from FSR.

Practical Completion means in relation to each Contribution Works, the point of time at which Council issues a Certificate of Practical Completion in accordance with Schedule 4.

Quantity Surveyor means a registered quantity surveyor appointed by Council and approved by the Developer (acting reasonably).

Real Property Act means the *Real Property Act 1900* (NSW).

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

Regulations means the *Environmental Planning and Assessment Regulation 2000* (NSW) as amended from time to time.

Relevant Subdivision has the meaning given to that term in clause 1.1 of Schedule 5.

Required Face Value means the face value equivalent to \$1,238,347.00.

Revised Bond Amounts has the meaning given to that term in clause 1.3 of Schedule 10.

RLEP means *Ryde Local Environmental Plan 2014*.

Road Work means a road work required to be carried out under this Deed, being Items 2 and 3 of Table 2 to Schedule 3.

Security means a Bank Guarantee or a Bond or other form of security to the satisfaction of the Council.

Strata Plan means the strata plan, strata plan of subdivision or strata plan of consolidation that is registered in accordance with the *Strata Schemes Development Act 2015* to create the title for the Contribution Land.

Subdivision has the meaning given to "subdivision of land" in section 6.2 of the Act and Subdivide has a similar meaning.

Subdivision Certificate has the same meaning as in the Act.

Taxes means taxes, levies, imposts, deductions, charges and duties (including stamp and transaction duties) excluding GST 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 General

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;
- (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 Act.

2. Planning Agreement

2.1 Commencement

This Deed commences and has force and effect on and from the date when the Parties have:

- (a) both executed the same copy of the Deed;
- (b) each executed separate counterparts of this Deed and exchanged the counterparts.

2.2 Planning agreement under the Act

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

2.3 Application of the Planning Agreement

This Deed applies to:

- (a) the Land;
- (b) the Instrument Change; and
- (c) the Development.

3. Development Contributions

3.1 Payment or Delivery of Contributions

The Parties agree that the Developer must (at its Cost and risk):

- (a) Undertake the Contribution Works in accordance with Schedule 3 and Schedule 4, and
- (b) Dedicate and transfer (as the case may be) the Contribution Land to Council in accordance with Schedule 3 and Schedule 5.

3.2 Purpose of the Contributions:

- (a) The Contribution Works and the Contribution Land are to be delivered under this Deed for the purpose of:
 - (i) providing Affordable Housing;
 - (ii) upgrading and improving the urban environment and public domain.

3.3 Determination of Contribution Amount

- (a) For the purposes of this Deed, the Parties acknowledge that the Contribution Amount in relation to a Contribution Work is the value of the Contribution Work in Column 3 of Table 2 of Schedule 3.
- (b) If the Developer's actual cost of carrying out the Contribution Work, including any costs incurred pursuant to this Deed, determined at the date on which the Contribution Work is Handed-Over to the Council, differs from the Contribution Amount, then no party to this Deed shall be entitled to claim reimbursement for the difference.

3.4 Use of Contribution Land

- (a) The Parties acknowledge and agree that following the tenth anniversary of the date of Practical Completion of the Development, Council may in its absolute discretion sell the Contribution Land or any part of it and reinvest the proceeds of that sale into other affordable housing.

3.5 Location of the AHUs

- (a) The developer must lodge an application for development consent, which incorporates a layout plan for the residential component of the development which is generally consistent with the Affordable Housing Unit Plan.
- (b) For the avoidance of doubt, if development consent is granted to a development which does not contain the Affordable Housing Units in the location identified in the

Affordable Housing Unit Plan, the developer must still provide at least three Affordable Housing Units which accord with the following principles:

- (i) the living rooms and private open space of the Affordable Housing Units nominated by the Developer under clause 3.5(a) are to receive a minimum of 2 hours direct sunlight between 9am and 3pm at mid winter (21 June),
- (ii) otherwise comply with the Apartment Design Guide,

and the Developer must, prior to the sale of any of the units in the development, obtain Council's consent to the dedication of the three alternative Affordable Housing Units, such consent not to be unreasonably withheld.

- (c) To the extent of any inconsistency, any Affordable Housing Unit layout and design approved as part of any development consent takes precedence over the Affordable Housing Unit Plan but nothing in any development consent derogates from the Developer's obligation to provide the Affordable Housing Units.

4. Application of s7.11, 7.12 and 7.24 of the Act

This Deed does not exclude the application of sections 7.11, 7.12 and 7.24 of the Act.

5. Caveat

5.1 Caveatable Interest

The Developer acknowledges and agrees that when this Deed is executed by the Developer (whether or not Council has executed this Deed), Council is deemed to have acquired, and the Developer 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 Council has a sufficient interest in the Land in respect of which to lodge with the NSW Land and Property Information a caveat notifying that interest.

5.2 Caveat over Contribution Land

- (a) The Developer acknowledges and agrees that, subject to clause 7, Council may lodge a caveat on the Land to protect its rights under this Deed and the Developer will not object to Council lodging a caveat in the relevant folio of the Register for the Land nor (subject to the provisions of this clause 5) will it seek to remove any caveat lodged by Council.
- (c) If Council lodges a caveat in accordance with this clause, then Council will do all things reasonably required to ensure that the caveat does not prevent or delay either the registration of this Deed or any Dealing which is not inconsistent with this Agreement.
- (d) Council (as the Caveator) will provide any consent the Developer may reasonably require to enable this Deed or any Dealing to be registered.
- (e) The Developer will notify Council 15 Business Days prior to registration of a Strata Plan creating the Contribution Land, so that the Council may withdraw any caveat it has over the whole of the Land and register a caveat in the relevant folios of the Register for the Contribution Land.
- (f) The Developer acknowledges and agrees that it will not object to Council lodging a caveat in the relevant folios of the Register for the Contribution Land, nor will it seek to remove any such caveat lodged by Council

6. Registration of this Deed

6.1 Ownership of the Land

The Developer represents and warrants that it is the legal and beneficial owner of the Land

6.2 Registration on title

The Parties agree that this Deed is to be registered on the Land and the Developer 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 Act and in accordance with Schedule 8.

7. Release and Discharge

- (a) Council agrees to release and discharge this Deed and remove any caveat lodged by Council pursuant to clause 5 subject to and on the terms contained in clause 5 and Schedule 9 to this Deed.
- (b) The indemnities provided for in Schedule 4 (clause 1.26), Schedule 5 (clause 1.3(c), Schedule 6 (clause 2.1(d)) and Schedule 13 (clause 1.14) of this Deed may be the subject of a notice or request to release and discharge following the eighth anniversary of the date of issue of the Certificate of Practical Completion for the last of the Contribution Works described in Table 2 of Schedule 3 to be completed and any such release and discharge request shall not be refused without reasonable justification.
- (c) Despite clause 7(b), no term of any contract for sale referred to in clause 2 of Schedule 10 and which may be entered into between the parties in respect of the Contribution works referred to in Table 1 or Item 1 of Table 2 of Schedule 3 will have any effect to the extent that it varies or otherwise seeks to limit the effect of any indemnity contained in this Deed.

8. Breaches to be rectified

- (a) If Council considers that the Developer has defaulted on the performance of any of its obligations under this Deed, then Council may give written notice to that Party which:
 - (i) identifies the nature of the breach; and
 - (ii) requires that Party to:
 - A. rectify the breach if it reasonably considers it is capable of rectification, or
 - B. pay compensation to the reasonable satisfaction of Council in lieu of rectifying the breach if it reasonably considers the breach is not capable of rectification; and
 - (iii) specifies the period within which the breach is to be rectified or compensation paid, being a period that is reasonable in the circumstances.
- (b) If Council issues a notice under clause 8(a), the provisions of Schedule 6 apply.
- (c) In accordance with sections 6.10 and 6.15(1)(d) of the Act and section 146A of the Regulation, all breaches of this Deed for which Council has provided a notice requiring rectification of that breach to the Developer must be rectified prior to the issue (following the date that such notice is provided to the Developer) of any Construction

Certificate, Subdivision Certificate or Occupation Certificate relating to the Land or the Development.

9. Additional Security

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

10. Assignment and other dealings

The Developer agrees that the provisions of Schedule 11 apply in relation to any proposed assignment or dealing in relation to the Land (or any part of it) or of the Developer's interest in this Deed.

11. 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.

12. 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.

13. Overdue payments

13.1 Interest on overdue money

The Developer agrees to pay interest to 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 Council, calculated on daily balances. The rate to be applied to each daily balance is the Interest Rate.

13.2 Compounding

Interest which is not paid when due for payment may be capitalised by Council at intervals, which 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 13.

13.3 Interest on liability merged in judgment or order

If a liability under this Deed becomes merged in a judgment or order, then the Developer agrees to pay interest to 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 13.

For the avoidance of doubt, if a liability under this Deed becomes merged in a judgment or order then the Developer will only be required to pay either interest payable under the judgment or order or interest calculated under this clause 13 but not both.

14. GST

14.1 Interpretation

- (a) Except where the context suggests otherwise, terms used in this clause 14 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 14.
- (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.

14.2 Consideration GST exclusive

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

14.3 GST not payable on Contributions

The Parties agree, in accordance with Class Ruling CR2013/13 published by the Commissioner, that Contributions required to be made under this Deed are exempt from GST.

14.4 Additional amount of GST payable

If GST is imposed on any supply made under or in accordance with this Deed, the Developer 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.

14.5 No merger

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

15. Explanatory Note

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

16. Notices

16.1 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: The Binary Centre, Building 0, Level 1, 3 Richardson Place,
North Ryde NSW 2113
Fax: 9952 8222
For the attention of: General Manager

Developer

Name: Tesco Projects Pty. Ltd (ACN 168 432 700)
Address: C/o MJZ Accountants

Suite 3, Level 1, 5 Villiers Street
PARRAMATTA NSW 2150
Chief Executive Officer

For the attention of:

16.2 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.

16.3 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.

16.4 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.

17. Schedules and Annexures to this Deed

The Parties agree:

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

18. General provisions

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

19. Surrender of Right of Appeal

- (a) The Developer is not to commence or maintain or to cause or procure the commencement or maintenance of any proceedings in any court or tribunal or similar body appealing against or questioning the validity of this Deed, or an Approval relating to the Development insofar as the subject matter of the proceedings relates to this Deed.

Schedule 1 - Section 7.4 Requirements

The Parties acknowledge and agree that the table set out below provides for certain terms, conditions and procedures for the purpose of the Planning Agreement complying with the Act.

Requirement under the Act	This Planning Agreement
<p>Planning instrument and/or development application - (Section 7.4(1))</p> <p>The Developer has:</p> <p>(a) Sought a change to an environmental planning instrument.</p> <p>(b) Made, or proposes to make, a Development Application.</p> <p>(c) Entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.</p>	<p>(a) Yes</p> <p>(b) Yes</p> <p>(c) No</p>
<p>Description of land to which this Deed applies - (Section 7.4(3)(a))</p>	<p>The Land described in clause 1 of Schedule 2.</p>
<p>Description of change to the environmental planning instrument or the development to which this Deed applies - (Section 7.4(3)(b))</p> <p>Describe:</p> <p>(a) The proposed change to the environmental planning instrument to which this Deed applies; and</p> <p>(b) The development to which this Deed applies.</p>	<p>(a) The Planning Proposal defined in clause 1.1</p> <p>(b) The Development described in clause 2 of Schedule 2</p>
<p>The scope, timing and manner of delivery of contribution required by this planning agreement - (Section 7.4(3)(c))</p>	<p>As set out in Schedule 3 – Contributions Schedule, Schedule 4 – Contribution Works Procedures and Schedule 5 – Contribution Land Procedures.</p>
<p>Applicability of Section 7.11 of the Act - (Section 7.4(3)(d))</p>	<p>The application of section 7.11 of the Act is not excluded in respect of the Development and for the avoidance of doubt, contributions (if any) under section 7.11 will be required to be paid.</p>
<p>Applicability of Section 7.12 of the Act - (Section 7.4(3)(d))</p>	<p>The application of section 7.12 of the Act is not excluded in respect of the Development and for the avoidance of doubt, contributions (if any) under section 7.12 will be required to be paid.</p>

Requirement under the Act	This Planning Agreement
<p>Applicability of Section 7.24 of the Act - (Section 7.4(3)(d))</p>	<p>The application of section 7.24 of the Act is not excluded in respect of the Development and for the avoidance of doubt, contributions (if any) under section 7.24 will be required to be paid.</p>
<p>Consideration of benefits under this Deed if section 7.11 applies - (Section 7.4(3)(e))</p> <p>Are the benefits under this Deed to be taken into consideration if Section 7.11 of the Act is not excluded?</p>	<p>No</p>
<p>Mechanism for Dispute resolution - (Section 7.4(3)(f))</p> <p>This Deed provides a mechanism for the resolution of Disputes under the agreement?</p>	<p>Refer to clause 12 and Schedule 7.</p>
<p>Enforcement of this Deed (Section 7.4(3)(g) and section 7.6)</p> <p>This Deed provides for enforcement by a suitable means in the event of a breach.</p>	<p>Refer to clauses 5, 6, 8 and 9 and Schedule 10.</p>
<p>Registration of this Deed</p> <p>The parties agree that this Deed will be registered in accordance with clause 6.</p>	<p>Refer to clause 6 and Schedule 8.</p>
<p>No obligation to grant consent or exercise functions - (Section 7.4(9))</p> <p>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 Act in relation to a change to an environmental planning instrument.</p>	<p>Refer to clause 1.8 of Schedule 13.</p>

Schedule 2 - Description of the Land and the Development

1. Title

<u>Address</u>	<u>Title Details</u>	<u>Landowner</u>
<u>2 Chatham Road</u>	<u>(LOT 24 DP 8092)</u>	<u>Tesco Projects Pty. Ltd</u>
<u>4 Chatham Road</u>	<u>(LOT 25 DP 8092)</u>	<u>Tesco Projects Pty. Ltd</u>
<u>6 Chatham Road</u>	<u>(LOT 26 DP 8092)</u>	<u>Tesco Projects Pty. Ltd</u>

2. Development

The construction of:

- Approximately 75 apartments (including 3 Affordable Housing Units being approximately 4% of the apartments in accordance with Council's Affordable Housing Policy) on the Land;
- Approximately 522 square metres of ground floor commercial/retail space on the Land;
- 106 basement car parking spaces on the Land;
- A 2-metre street frontage setback along Chatham Road, which will be treated and furnished to be contiguous with the public domain to create a linear urban plaza.

Schedule 3 - Contributions Schedule

Table 1 – Contribution Land

<u>Column 1 - Contribution</u>	<u>Column 2 - Date Contribution Land is to be dedicated</u>
<p>The Contribution Land for Affordable Housing</p> <p>The transfer, free of cost, in strata to Council, in accordance with Schedule 5 and Schedule 18, of that part of the Building, being the Affordable Housing Units, being:</p> <ul style="list-style-type: none"> a) two (2) x two bedroom units, each with an Internal Floor Area of approximately 70-sqm, with a 10sqm integral balcony and a standard sized parking space, located in a secured basement, and b) one (1) x one bedroom unit with an Internal Floor Area of approximately 50sqm with a 8sqm integral balcony, c) each of the above units will have associated storage, which complies with the minimum area set out in the SEPP65 Apartment Design Guide as it exists at the date of this Agreement. 	<p>Within 5 Business Days after the issue of any Occupation Certificate for the Contribution Land, or any occupation of the Development, whichever occurs first.</p>

The Contribution Land will be taken to have been dedicated under this Deed when the transfer of the Contribution Land has occurred in accordance with Schedule 5.

Table 2 - Contribution Works

<u>Column 1 Contribution Item</u>	<u>Column 2 - Contribution</u>	<u>Column 3 – Contribution Amount</u>	<u>Column 4 - Date Contribution Works are to be Practically Completed and delivered</u>
<p>Item 1</p>	<p>Affordable Housing Units</p> <p>The Developer will design, construct and complete the Affordable Housing Units and the following requirements:</p> <ul style="list-style-type: none"> (a) The two bedroom Affordable Housing Units will have a minimum Internal Floor Area of 70sqm internal unit size plus a 10sqm integral balcony. (b) The one bedroom Affordable Housing Unit will have a minimum Internal Floor Area of 50sqm internal unit size plus a 8sqm integral balcony. (c) The Affordable Housing Units will be constructed and fully fitted out and finished in accordance with the Schedule of Materials and Finishes to be provided with the transfer documents under Schedule 10, so as to be fully operational but with the exclusion of any loose furniture and 	<p>\$549,750</p>	<p>The Contribution Works are to be completed prior to the earlier occurrence of:</p> <ul style="list-style-type: none"> (a) the issue of any Occupation Certificate for any part of the Development; and (b) the first occupation of any part of the Development. <p>The Contribution Works are to be delivered to Council at the same time as the Contribution Land is dedicated to Council in accordance with this Deed.</p>

	<p>appliances (excluding stove top and oven).</p> <p>(c) The Affordable Housing Units are to be designed so as to be Adaptable class C.</p> <p>(d) The car spaces for the two bedroom units are to be located within the secure basement and be properly marked and have an area, that is compliant, for a normal sized parking space.</p> <p>(e) each unit is to have associated storage in keeping with the minimum area set out in the current SEPP 65 Apartment Design Guide.</p>		
Item 2	<p>Road Work</p> <p>Road Works in the area shown on ACA drawing number A01a dated 10/20/16 in Schedule 16, including 6 parking bays, upgrading the entire Chatham Road to Council's specifications and requirements spanning the length of the Land.</p>	\$296,863 excl GST	<p>The Contribution Works are to be completed prior to the earlier occurrence of:</p> <p>(a) the issue of any Occupation Certificate for any part of the Development; and</p> <p>(b) the first occupation of any part of the Development.</p> <p>The Contribution Works are to be delivered to Council at the same time as the Contribution Land is dedicated to Council in accordance with this Deed.</p>
Item 3	<p>Public Domain Works</p> <p>Full width granite footpath with granite banding along the entire Chatham Road frontage and including kerbs and gutters, street trees, kerb ramps, vehicle crossovers and driveways, lighting, street furniture and bins, pit lids and signage in accordance with the requirements of <i>Chapter 4: West Ryde</i> of the <i>City of Ryde Public Domain Manual</i> in the area identified in Schedule 16 and as generally shown in Schedule 17 and as approved by Council.</p>	\$391,732 excl GST	<p>The Contribution Works are to be completed prior to the earlier occurrence of:</p> <p>(a) the issue of any Occupation Certificate for any part of the Development; and</p> <p>(b) the first occupation of any part of the Development.</p> <p>The Contribution Works are to be delivered to Council at the same time as the Contribution Land is dedicated to Council in accordance with this Deed.</p>

The Contribution Works will be taken to have been completed when Council issues a Certificate of Practical Completion for those works in accordance with Schedule 4.

Schedule 4 - Contribution Works Procedures

This Schedule 4 applies to all Contribution Works.

1.1 Approvals and Design responsibility

- (a) These Contribution Works Procedures must be read and construed subject to:
 - (i) any requirements or conditions of any Development Consent; and
 - (ii) the requirements of and conditions imposed by all relevant Authorities and all laws relating to the Development and the construction of the Development.
 - (b) The Developer must at its Cost and risk:
 - (i) prepare all Applications and submit such applications to Council and obtain all Approvals necessary to carry out the Contribution Works; and
 - (ii) comply with all conditions of all such Approvals.
 - (c) The Developer agrees to procure the design of the Contribution Works in accordance with this Deed and the Development Consent.
 - (d) The Developer must ensure that the Contribution Works are carried out:
 - (i) in accordance with this Deed, the Development Consent and all Approvals and the requirements of all Laws, including without limitation, occupational health and safety legislation; and
 - (ii) 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 take precedence.

1.2 Costs of the Contribution Works

The Developer will bear all Construction Costs and any other Costs associated with the Contribution Works.

1.3 Construction phase

- (a) Subject to clause 1.3(b) of this Schedule 4, the Developer must procure the execution and completion of the Contribution Works in accordance with:
 - (i) the Approvals;
 - (ii) any Contribution Works program agreed with Council; and
 - (iii) its other obligations under this Deed.
- (b) The Developer must not commence construction of any of the Contribution Works until it has given Council copies of all Approvals relating to the Contribution Works.

1.4 Review of Contribution Works and Construction Documents

The Developer acknowledges and agrees that:

- (a) Council may but is not obliged to critically analyse, review and comment upon the plans and specifications of the Contribution Works and to this end the Developer must, prior to making any Application for Development Consent, regularly meet with Council and provide it with copies of the plans and specifications of the Contributions Works;
- (b) The Developer at its own Cost, is to comply with any reasonable direction given to it by Council to prepare or modify a design or specification relating to a Contribution Work that the Developer is required to carry out under this Deed;
- (c) Council is not responsible for any errors omissions or non-compliance with any Law or the requirement of any Authority by reason of agreeing to the plans and specifications of the Contribution Works;
- (d) Council is not liable for any liability, loss or Cost incurred by the Developer because of any defect in the design or construction of any part of the Contribution Works; and
- (e) No comment, review or information supplied to the Developer by Council alters or alleviates the Developer from its obligation to construct and complete the Contribution Works in accordance with this Deed and any Approval.

1.5 Developer responsibilities

- (a) The Developer must keep Council informed of the progress of the Contribution Works and provide to Council such information about the Contribution Works as Council reasonably requests.
- (b) The Developer is responsible for the delivery and care of the Contribution Works at all times prior to dedication of the Contribution Land.
- (c) Prior to dedication of the Contribution Land, the Developer is responsible for:
 - (i) providing all things and taking all measures reasonably within its control to protect people and property in relation to the Land where failure to do so may render Council or the Developer liable under the Law;
 - (ii) ensuring that nuisances and unreasonable noise and disturbances are prevented; and
 - (iii) taking any urgent action in relation to the Land necessary to protect people and the consequences of any failure to take such action where failure to do so may render Council or the Developer liable under the Law.

1.6 Damage

- (a) The Developer is to maintain any Contribution Work required to be carried out by the developer under this Deed until the Contribution Work is completed for the purposes of this Deed or such later time as agreed between the Parties.
- (b) If the Developer or the employees or agents of the Developer damage any public utilities and services or property on or adjacent to the Land, the Developer must promptly make good the damage and pay any compensation which the Law requires the Developer to pay.

1.7 Best Industry Practice

The Developer must ensure that the Contribution Works it has procured to be designed and carried out are designed and carried out according to Best Industry Practice.

1.8 Quality of Material and Work

The Developer must procure the Contribution Works to be carried out:

- (a) Using good quality new materials, which must be suitable for the purpose for which they are required under this Deed;
- (b) In a proper and tradesmanlike manner;
- (c) Without the use of asbestos in any form;
- (d) In compliance with relevant qualitative standards determined by Australian Standards Limited, the Building Code of Australia and any relevant manufacturers' standards relating to design and finishes; and
- (e) So that the Contribution Works, when completed, are suitable for the purpose for which they are required as contemplated by the relevant Approvals and this Deed.

1.9 Inspection

- (a) Council may enter the Land to inspect, examine or test any Contribution Work and or to remedy any breach by the Developer of its obligations under this Deed relating to the Work, subject to:
 - (i) the terms of the Construction Contract (to this end the Developer must ensure that no clause of any Construction Contract prevents Council from accessing the Land for the purpose set out in this clause);
 - (ii) giving reasonable notice to the Developer;
 - (iii) complying with all reasonable directions of the Developer.
- (b) Council may, within 5 Business Days of carrying out an inspection, notify the Developer of any effect or non-compliance in the Contribution Works and direct the Developer to carry out work to rectify that defect or non-compliance. Such work may include, but is not limited to:
 - (i) removal of defective or non-complying material from the Contribution Land;
 - (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.
- (c) If the Developer is issued a direction to carry out further work under clause 1.9(b) of this Schedule 4, the Developer must, at the Developer's cost, rectify the defect or non-compliance specified in the notice within the time period specified in the notice.
- (d) If the Developer fails to comply with a direction to carry out work given under clause 1.9(b) of this Schedule 4, Council will be entitled to refuse to accept that the Contribution Works (or the relevant part of the Contribution Works) have been completed in accordance with this Deed.

- (e) For the avoidance of doubt, any acceptance by Council that the Developer has rectified a defect or non-compliance identified in a notice issued under clause 1.9(b) of this Schedule 4 does not constitute:
 - (i) acceptance by Council that the Contribution Works comply with all Approvals and Laws; or
 - (ii) an Approval by Council in respect of the Contribution Works; or
 - (iii) an agreement or acknowledgement by Council that the Contribution Works or the relevant part of the Contribution Works are complete and may be delivered to Council in accordance with this Deed.

1.10 Risk

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

1.11 Insurance

- (a) Prior to the commencement of the Contribution Works, the Developer must procure the insurance policies covering such risks, and on terms and in a form, reasonably acceptable to Council including:
 - (i) physical loss, damage or destruction of each aspect of the Contribution Works (including any associated temporary works) for the value of the Contribution Works;
 - (ii) public risk insurance;
 - (iii) third party liability;
 - (iv) contractors;
 - (v) professional indemnity insurance with respect to design works only;
 - (vi) Workers Compensation insurance, as required by Law; and
 - (vii) if required by Law, Home Warranty Insurance.
- (b) The policies must provide cover for the period from the date of the commencement of construction of the Contribution Works until the end of any relevant Defects Liability Period for each and every aspect of the Contribution Works and as required under the *Home Building Act 1989* in the case of Home Warranty Insurance.
- (c) The Developer must provide evidence of currency of insurance required by clause 1.11(a) of this Schedule 4 upon request by Council throughout the term of this Deed.

1.12 Amount of property insurance

The insurance cover in relation to works insurance must be for an amount not less than the full insurable value of the Development on a full reinstatement and replacement basis (including extra Costs of reinstatement, Costs of demolition and removal of debris, and professional fees).

1.13 Insurance generally

All insurances which the Developer is required by this Deed to effect and maintain:

- (a) Must be with an Insurer;

- (b) Must note the rights and interests of Council; and
- (c) Must not in any respect limit or derogate from the liabilities or obligations of the Developer under this Deed.

1.14 Providing proof of insurance

Whenever reasonably requested in writing by Council, the Developer must give Council certificates of the insurance policies which the Developer is required by this Deed to effect and maintain.

1.15 Premiums

The Developer must punctually pay all premiums in respect of all insurances required under this Agreement.

1.16 Additional Obligations

The Developer must:

- (a) Not do or omit to do anything which if done or not done might vitiate, impair, derogate or prejudice any insurance or might prejudice any claim under any insurance policy;
- (b) If necessary, rectify anything which might prejudice any insurance policy;
- (c) Reinstate an insurance policy if it lapses;
- (d) Immediately notify Council in writing if an insurer gives notice of cancellation in respect of any insurance policy; and
- (e) Give full, true and particular information to the insurer of all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or the payment of all or any benefits under the insurance.

1.17 Application of insurance proceeds

If all or any part of the Contribution Works are damaged or destroyed prior to Practical Completion thereof:

- (a) All insurance proceeds in respect of that damage or destruction must be applied to repair or reinstate the Contribution Works;
- (b) If the insurance proceeds received under the insurances in respect of the damage or destruction are less than the cost of repairing or replacing the Contribution Works (or those insurances are void or unenforceable and there are no proceeds), the Developer must complete the repair and replacement of the Contribution Works using its own funds; and
- (c) If the insurance proceeds received under the insurances in respect of the damage or destruction exceed the Costs of repairing or replacing the Contribution Works, the Developer will be entitled to keep that excess.

1.18 Input tax credits

- (a) Where the Developer has effected any insurance policy referred to in this Deed before the date of this Deed, the Developer:

- (i) warrants that it informed the insurer of the extent of its entitlement to an input tax credit for the last premium it paid at or before the time of first making any subsequent claim under the insurance policy; and
 - (ii) must inform the insurer of the extent of its entitlement to an input tax credit for any future premium it pays immediately after paying that premium.
- (b) Where the Developer effects any insurance policy referred to in this Deed after the date of this Deed, the Developer must inform the insurer of the extent of its entitlement to an input tax credit for any premium it pays immediately after paying that premium.

1.19 Certification

- (a) When the Developer is of the opinion that the Contribution Works have reached Practical Completion, the Developer must send a notice to Council requesting written certification from Council that the Contribution Works are complete to the satisfaction of Council (acting reasonably)(**Certificate of Practical Completion**).
- (b) Within 10 Business Days of a notice issued under clause 1.19(a) of this Schedule 4, Council may inspect the Contribution Works in accordance with clause 1.9 of this Schedule 4 and may issue a notice under clause 1.9(b) of this Schedule 4, in which case the provisions of clause 1.9(c) and (d) will apply.
- (c) The Developer must ensure that it has provided Council with an adequate opportunity to carry out an inspection under clause 1.9 of this Schedule 4 and this clause 1.19 prior to the issue of a Certificate of Practical Completion for any part of the Contribution Works.

1.20 Dispute where no Certificate of Practical Completion

If within 10 Business Days after receipt of the Developer's request for a Certificate of Practical Completion for the Contribution Works, Council does not either issue the Certificate of Practical Completion or give the Developer notice under clause 1.9(b) of this Schedule 4, then either Council or the Developer may regard the circumstances as constituting a Dispute between Council and the Developer.

1.21 Issue of Certificate

If Council is satisfied that:

- (a) All work has been completed in accordance with this Deed;
- (b) The developer has procured the registration of the relevant documentation to create the Relevant Subdivision in accordance with all Approvals;
- (c) An Occupation Certificate in relation to the Contribution Land and the Contribution Works identified in Table 2 item 1 of Schedule 3 has been issued; and
- (d) Any notice issued under clause 1.9(b) and clause 1.19 has been complied with then Council may issue a Certificate of Practical Completion.

1.22 Pre-requisites for Certificate of Practical Completion

Council will not issue a Certificate of Practical Completion unless and until:

- (a) Where relevant, copies of all necessary documents and Approvals issued by the Consent Authority or relevant accredited certifier acknowledging completion of a specific aspect of the Contribution Works have been delivered to Council; and
- (b) Copies of all other certificates, consents and Approvals required of any relevant Authority, whose certificate, consent or approval is required for the erection, use or occupancy of the Contribution Works (other than an Occupation Certificate for the Contribution Land) have been delivered to Council.

1.23 Providing documents to Council

The Developer must deliver to Council copies of the following items (as may be relevant) in relation to the Contribution Works:

- (a) A copy of as built drawings and all warranties and operations manuals given in connection with the Contribution Works; and
- (b) A copy of all certificates issued by any Authority in relation to any part of the Contribution Works which have not previously been delivered to Council, including an Occupation Certificate,

promptly, and in any event within 40 Business Days, after Practical Completion of the Contribution Works.

1.24 Defects Liability Period

- (a) The Developer must ensure that, on transfer of the Contribution Land, Council will have the benefit of any defects liability warranty and Home Warranty Insurance given by a Builder in relation to the Contribution Land and the Contribution Works. At any time during the Defects Liability Period (in respect of a Contribution), Council may inspect the Contribution Works for the purpose of ascertaining what defects and omissions (if any) in the Contribution Works are required to be made good by the Developer.
- (b) Council may give notice (**Rectification Notice**) to the Developer that:
 - (i) states that part of the Contribution Works are defective, giving details;
 - (ii) specifies the works which Council considers are required to rectify the defect;
 - (iii) provides a reasonable estimate of the Costs and Legal Costs to rectify such works, including particulars of how those Costs and Legal Costs were calculated; and
 - (iv) specifies the date on which the defect must be rectified (within a reasonable period of time).
- (c) The Developer must rectify any defects or omissions in the Contribution Works which are identified in a Rectification Notice by:
 - (i) procuring the performance of the work required to rectify the defect within the time period specified by Council or such other time as agreed between the parties;
 - (ii) keeping Council reasonably informed of the action to be taken to rectify the defect; and
 - (iii) carrying out the rectification.
- (d) When the Developer considers that a rectification is complete, the Developer must notify Council that the works subject to the relevant Rectification Notice are complete

and provide documentation, plans or invoices which establish that those works were carried out.

- (e) Council may inspect the rectification works within 20 Business Days of receiving a notice from the Developer under clause 1.24(d) of this Schedule 4 and may:
 - (i) Issue a further Rectification Notice if it is not reasonably satisfied that the rectification is complete; or
 - (ii) Notify the Developer in writing that it is satisfied the Rectification works are complete.
- (f) If the Developer fails to complete or rectify such works within the period required by a Rectification Notice under clause 1.24(b) or clause 1.24(e)(i) then Council may call upon the Security lodged by the Developer in accordance with Schedule 10 and have such works completed or rectified, and the Developer must reimburse Council promptly following any demand by Council for all Costs and Legal Costs incurred by Council in completing or rectifying such works that were not or could not be satisfied by calling on the Security.
- (g) The Developer must meet all costs of and incidental to rectification of defects under this clause 1.24 and indemnifies Council for all monies payable by the Developer to Council pursuant to paragraph 1.24 (f) of this Schedule
- (h) The indemnity in paragraph 1.24 (g) of this Schedule 4 is a continuing obligation, separate and independent from the Developer's other obligations and survives completion, rescission or termination of this Deed. The Developer must pay on demand any amount it must pay under the indemnity in paragraph 1.24(g) of this Schedule 4.

1.25 Development Program

- (a) The Developer must provide an updated Development Program to Council from time to time as the Development progresses, and as a minimum must provide an updated program:
 - (i) As soon as possible upon lodgement of an Application for Development Consent and thereafter upon lodgement of an Application for construction of a Building with the relevant Consent Authority;
 - (ii) Whenever there are delays in the Development which materially impact on the milestones identified in the previous Development Program provided to Council which relate to the issue of a Construction Certificate or Occupation Certificate; and
 - (iii) No less than 6 months before the Developer lodges an Application for an Occupation Certificate for any Building with the relevant Consent Authority.
- (b) Council is not to disclose the Development Program referred to in clause 1.28(a) above to any third party unless required by law or in any other circumstances, without the consent of the Developer.

1.26 Indemnities

The Developer indemnifies Council, its employees, officers, agents, contractors and workmen from and against all Claims in connection with the carrying out of the Contribution Works by the Developer except to the extent such Claim arises either directly or indirectly as a result of the negligence, default, act or omission of Council or its employee, officer, agent or contractor.

Schedule 5 - Contribution Land Procedures

1.1 Approvals

No less than 10 Business Days before the timing identified in Column 2 of Table 1 of Schedule 3, the Developer must at its Cost and risk:

- (a) Prepare all Applications and obtain all Approvals necessary to subdivide the Land by one or more plans of subdivision to separate the Contribution Land from the Land (**Relevant Subdivision**);
- (b) Comply with all conditions of all such Approvals; and
- (c) Procure Land and Property Information NSW to register the relevant documentation and plans to create the Relevant Subdivision and consistent with all such Approvals.

1.2 Developer undertakings regarding Contribution Land

In accordance with the timing identified in Column 2 of Table 1 of Schedule 3, the Developer must (at its Cost and risk):

- (a) Do all acts and execute and deliver all documents (in form and content reasonably satisfactory to Council) to Council (or such other person as Council may reasonably direct) in order to give effect to the dedication or transfer (as the case may be) of the Contribution Land to Council (at no cost to Council).
- (b) Deliver to Council:
 - (i) the certificate or certificates of title for the Contribution Land;
 - (ii) any consents and other documentation in registrable form required for the transfer (and registration) of the Contribution Land; and
 - (iii) any permits in connection with the Contribution Land and any consents and other documentation in a registrable form necessary, or otherwise required by Council, for the transfer (and registration) of those permits.
- (c) Take any other necessary action (including paying all Taxes) to give effect to the transfer of the title of the Contribution Land to Council (or such other person as Council may direct) free of all Encumbrances (other than a Permitted Encumbrance) and affectations (including any charge or liability for rates, taxes and charges) except any caveat lodged over the Contribution Land by Council in accordance with clause 5 of this Deed.
- (d) Without limiting clause 1.2 of this Schedule 5 and in accordance with Schedule 10, complete a Contract for the Sale of Land with Council for the transfer of the Affordable Housing Unit to Council for \$1.00 and on terms acceptable to Council.
- (e) Pay Council's Costs and Legal Costs in connection with the transfer of the Contribution Land.
- (f) Take all practical steps and sign all documents as reasonably required by Council or NSW Land and Property Information to give effect to the transfer of the Contribution Land, including promptly responding to any requisitions issued by NSW Land and Property Information.

1.3 Acquisition

- (a) If the Developer does not transfer or grant to Council the interests in land as required by this Deed (including the dedication and transfer of the Contribution Land to Council (as the case may be), Council is entitled to:
 - (i) enforce the completion of the Contract for Sale in accordance with the terms of that contract; or
 - (ii) register the documents identified in clause 2 of Schedule 10, and do anything otherwise required, to effect the transfer of the Contribution Land, and
 - (iii) call upon the Bond in clause 1 of Schedule 10 to cover the cost of the transfer of the Contribution Land.
- (b) Except as otherwise agreed between the Developer and Council, the Developer must ensure that the Contribution Land is free of all Encumbrances (other than Permitted Encumbrances) and affectations (including any charge or liability for rates, taxes and charges), on the date that the Contribution Land is dedicated or transferred to Council (as the case may be) in accordance with paragraph 1.3(a) of this Schedule 5.
- (c) The Developer indemnifies and keeps indemnified Council against all Claims made against Council as a result of any transfer of the whole or any part of the relevant interest in land under paragraph 1.3 of this Schedule 5.
- (d) The Developer must pay Council, promptly on demand, an amount equivalent to all Costs and Legal Costs incurred by Council (and not recovered by calling on a Bond) on acquiring the whole or any part of the relevant interest in land under this Schedule 5
- (e) As an alternative to proceeding pursuant to clauses 1.3(a) of this Schedule 3, if the Developer does not transfer or grant to Council the interests in the Contribution Land required to be transferred under this Deed at the time at which it is required to be dedicated, the Developer consents to the Council compulsorily acquiring the land for compensation in the amount of \$1 without having to follow the pre-acquisition procedure under the *Land Acquisition (Just Terms Compensation) Act 1991*.
- (f) The Council is to only acquire land pursuant to clause 1.3(e) of this Schedule 5 if it considers it reasonable to do so having regard to the circumstances surrounding the failure by the Developer to dedicate the land required to be dedicated under this Deed.
- (g) Clause 1.3(e) of this Schedule 5 constitutes an agreement for the purposes of s30 of the Just Terms Act.
- (h) If, as a result of the acquisition referred to in clause 1.3(e) of this Schedule 5, the Council is required to pay compensation to any person other than the Developer, the Developer is to reimburse the Council that amount, upon a written request being made by the Council, or the Council can call on any Security.
- (i) The Developer indemnifies and keeps indemnified the Council against all Claims made against the Council as a result of any acquisition by the Council of the Contribution Land concerned except if, and to the extent that, the Claim arises because of the Council's negligence or default.
- (j) The Developer is to promptly do all things necessary, and consent to the Council doing all things necessary, to give effect to this clause 1.3, including without limitation:
 - (i) signing any documents or forms,

- (ii) giving landowner's consent for lodgement of any Development Application,
 - (iii) producing certificates of title to the Registrar-General under the Real Property Act 1900, and
 - (iv) paying the Council's costs arising under this clause 1.3.
- (h) The Developer indemnifies and keeps indemnified Council against all Claims made against Council as a result of any transfer of the whole or any part of the relevant interest in land under this paragraph 1.3 of this Schedule 5.
- (j) The Developer must pay Council, promptly on demand, an amount equivalent to all Costs and Legal Costs incurred by Council (and not recovered by calling on the Security) on acquiring the whole or any part of the relevant interest in land under this Schedule 5.

1.4 Occupation Certificate

- (a) The Developer must ensure that, on the date of transfer of the Contribution Land in accordance with clause 1.2 of this Schedule 5 or acquisition of the Contribution Land in accordance with clause 1.3 of this Schedule 5:
- (i) all works and fit out of the Contribution Land are complete so that the Contribution Land is fit for purpose and able to be occupied and used as an Affordable Housing Unit; and
 - (ii) an Occupation Certificate has been issued for the Contribution Land authorising its occupation and use under the Act.
- (b) If the Contribution Land is transferred to Council without the Developer first obtaining an Occupation Certificate, then Council can obtain the Occupation Certificate itself at the Developer's cost and may call on any Security provided under Schedule 10 of this Deed to recover the cost of doing so.
- (c) If the Council is unable to obtain an Occupation Certificate under paragraph (b) of this clause, because any works to the Contribution Land are incomplete or defective, the Council may give a Rectification Notice under clause 1.24 of Schedule 4 requiring the completion of those works or rectification of those defects, as well as requiring the Developer to obtain an Occupation Certificate for the Contribution Land.

Schedule 6 - Notification and rectification of breach

1. Notice of breach

1.1 Developer's Response to Notice

Promptly upon receipt of a notice under clause 8(a), the Developer must fully comply with the notice and rectify the breach identified in that notice within the time period specified in that notice; or

1.2 Rights of Council after Giving Notice

- (a) If the Developer does not take the action outlined in clause 1.1 of this Schedule 6 then 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 Security without further notice to the Developer under Schedule 10; and
 - (iii) issuing a further notice to the Developer under clause 8(a).
- (b) The rights of Council under this Deed, and any action taken by it as referred to in clause 1.2 of this Schedule 6 or otherwise, are without derogation from the other rights and remedies available to Council under this Deed, at law and in equity in relation to any default of the Developer.

2. Council may rectify breach

2.1 Council may perform Developer's obligations

- (a) Before exercising its rights under clause 2.1 of this Schedule 6, Council will give such written notice as it considers reasonable (except in the case of an emergency or where there is an issue of public safety where less time may be specified) to the Developer of its intention to exercise its rights under clause 2.1 of this Schedule 6.
- (b) Council may (but is not obliged to):
 - (i) perform the Developer's obligations where the Developer fails to rectify the breach identified in the notice referred to in clause 8(a) of this Deed within the time period specified in that notice;
 - (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 Developer should have done under this Deed.
- (c) Without limiting clause 2.1 of this Schedule 6 the Developer agrees that 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 Council, subject to compliance with the reasonable directions of the Developer relating to work, health and safety and compliance with all Laws.
- (d) The Developer indemnifies and will keep Council indemnified from and against all claims, actions, demands, losses, damages, Costs and Legal Costs incurred by Council or for which Council may become liable in the exercise or purported exercise of the rights of 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 Council or where Council has exercised its rights in breach of this Deed.

- (e) Any costs incurred by the Council in remedying a breach in accordance with clause 2.1 may be recovered by the Council by either or a combination of the following means:
 - (i) by calling-up and applying the Security provided by the Developer under this Deed; or
 - (ii) as a debt due in a court of competent jurisdiction.
- (f) For the purpose of clause 2.1 of this Schedule 6, the Council's costs of remedying a breach the subject of a notice given under clause 8 (a) include, but are not limited to:
 - (i) the costs of the Council's servants, agents and contractors reasonably incurred for that purpose;
 - (ii) all fees and charges necessarily or reasonably incurred by the Council in remedying the breach; and
 - (iii) all legal costs and expenses reasonably incurred by the Council, by reason of the breach.
- (g) Nothing in this clause 2.1 of this Schedule 6 prevents the Council from exercising any rights it may have at law or in equity in relation to a breach of this Deed by the Developer, including but not limited to seeking relief in an appropriate court.

Schedule 7 - Dispute Resolution

1.1 Not commence

Subject to the terms of this Deed, 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 1.2 of this Schedule 7 (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,

the parties must mediate the Dispute in accordance with the Mediation Rules of the Law Society of NSW. The parties must request the president of the Law Society of NSW or the president's nominee to select the mediator and determine the mediator's remuneration.

1.5 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, 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:

- (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) consider 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;

- (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 resolve 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 not final and binding on the parties and the parties may refer their Dispute to a Court of competent jurisdiction for determination on the basis of a fresh hearing of all issues and facts. 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

Subject to clause 19 of this Deed, if the Dispute is not resolved within 30 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

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

Schedule 8 - Registration of Deed

- (a) The Developer warrants that it has obtained all consents to the registration of this Deed on the Title to the Land as are necessary and in particular the consent of any Mortgagee or Lessee registered on the Certificate of Title to the Land;
- (b) The Developer must on execution of this Agreement, produce to Council together with this Deed for execution by 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 to Land and Property Information for the purpose of registration of the Deed and a bank cheque for the relevant registration fees. If the Land is unencumbered by a mortgagee the Developer must produce the Certificate of Title to Land and Property Information and give production details to Council;
- (c) The Developer must promptly comply with any requisitions that may be raised with regard to registration of the Deed from Land and Property Information;
- (d) Council will notify the Developer following registration of the Deed by Council and forward the Developer's copy of the Deed to it.

Schedule 9 - Release and Discharge Terms

- (a) Once Council is satisfied that the Developer has fully complied with all of its obligations under this Deed, at the Developer's request (and Cost), Council must within a reasonable period of time after receiving a written request for the Developer to do:
- (i) provide a full release and discharge of this Deed with respect to the whole of the Land; and
 - (ii) (should Council not already have done so) sign such documentation as is necessary to remove any caveat lodged by Council in relation to the Land pursuant to clause 5 of this Deed including provision for this Deed to be removed from the Register.
- (b) Despite clause (a) above of this Schedule 9, from time to time, the Developer may request Council to provide a partial release and discharge prior to the completion of all obligations under this Deed, so that this Deed may be removed from the Register relating to any part of the Land in respect of which a Strata Plan has been registered, in which circumstance Council may, at its discretion, authorise the removal of this Deed from the Register if:
- (i) the Deed will be registered against the Contribution Land and the Common Property created by the Strata Plan;
 - (ii) any caveat over the Contribution Land will be registered at the same time as the Strata Plan;
 - (iii) the Security under clause 1 of Schedule 10 has been provided to Council;
 - (iv) the documents required under clause 2 of Schedule 10 have been provided to Council; and
 - (v) the Developer is not otherwise in default of any of their obligations under this Deed (as determined by Council (acting reasonably), at the time of the Developer's request, unless Council waives the default.

Schedule 10 – Security and Enforcement

1. Security

1.1 Developer to provide

- (a) Prior to the issue of the first Construction Certificate for any part of the Development, the Developer must provide Security in the form determined by Council in its discretion to Council for the Contribution Works for the Required Face Value increased in accordance with CPI from the date of this Deed to the date the Security is provided.
- (b) The Security referred to in clause 1.1(a) of this Schedule 10, secures:
- (i) the Costs of the works required to achieve Practical Completion of the Contribution Works;
 - (ii) the Costs of transferring the Contribution Land to Council;
 - (iii) the Costs of obtaining any Occupation Certificate for the Contribution Land;
 - (iv) the Costs of remedying any breach of this Deed notwithstanding any other remedy Council may have under this Deed, under any Act or otherwise at law or in equity; and
 - (v) as reduced in accordance with clause 1.2 of this Schedule 10, the rectification of any defects and omissions (if any) of the Contribution Works during the Defects Liability Period.
- in accordance with this Deed.
- (c) Subject to this clause, Council may apply the proceeds of the Security in satisfaction of any obligation of the Developer under this Deed to:
- (i) finish the Contribution Works in accordance with clause 3.1;
 - (ii) transfer the Contribution Land in accordance with clause 3.1;
 - (iii) obtain an Occupation Certificate for the Contribution Land in accordance with Schedule 5; or
 - (iv) rectify any defects in the Contributions Works in accordance with Schedule 4.
- (d) For the avoidance of doubt, the Developer acknowledges and agrees that if the actual Construction Cost of the Contribution Works exceeds the Required Face Value as adjusted in accordance with clause 1.3 of this Schedule 10, then the Contribution Works must be completed at the Developer's cost and the scope of the Contribution Works may not be reduced.

1.2 Reduction of the Security value for the Contribution Works

- (a) Subject to clause 1.2(b) of this Schedule 10, the Developer may by written notice to Council, upon issue of a Certificate of Practical Completion of any part of the Contribution Works, request a reduction of the Security Amount for the Contribution Works having regard to the works completed at the time of the request. Council will act reasonably in the consideration of whether a partial release or exchange (as the case may be) leaves appropriate or adequate security for the balance of the Security Works.

- (b) If the Developer provides an assessment of the Contribution Works and the Construction Cost from a Quantity Surveyor with its request under clause 1.2(a) of this Schedule 10, then Council must release to the Developer a reasonable portion of the Bond having regard to the Construction Cost of the relevant completed Contribution Works.
- (c) The Developer acknowledges and agrees that, to secure the Developer's obligations under clause 1.24 of Schedule 4 during the Defects Liability Period for each of the Contribution Works, the value of the Security must not be reduced to an amount which is less than 10 per cent of the Required Face Value as adjusted in accordance with clauses 1.1 and 1.3 of this Schedule 10.
- (d) Following Practical Completion of all the Bond Works, the Bond Amount will be reduced to an amount which is equal to 10 per cent of the Required Face Value indexed and adjusted in accordance with clauses 1.1 and 1.3 of this Schedule 10.

1.3 Adjustment of the Security

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

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

where:

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

BA is the Bond 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 the Revised Bond Amount where B is greater than A or where the Revised Bond Amount is less than 10 per cent of the Required Face Value.

- (b) Council must give the Developer written notice of the Revised Bond Amounts to apply from the relevant Adjustment Date.
- (c) The Developer must give Council replacement or further Bonds so that Council holds Bonds for an amount equal to the Revised Bond Amounts no later than 15 Business Days after receipt of a notice given under clause 1.3(b) of this Schedule 10.

1.4 Face value of Security

If a Security is required to be provided by the Developer to Council under this Deed, then the Developer must procure and give to Council a Security with a face value of an amount equivalent to the amount and at the time specified in this Deed.

1.5 Failure to Provide Security

- (a) Despite any other provision in this Deed, the Council, in its absolute discretion, may refuse to allow the Developer to enter, occupy or use any land owned or controlled by the Council or refuse to provide the Developer with any plant, equipment, facilities or assistance relating to the carrying out the Development if the Developer has not provided the Security to the Council in accordance with this Deed.

- (b) The Developer may at any time provide the Council with a replacement Security.
- (c) If, despite the requirements of this Deed, any Bond provided by the Developer is expressed as expiring on a certain date, the Developer must provide Council with a replacement Security 30 Business Days prior to the expiry of any Bond. Council is entitled to refuse to accept Security which has an expiry date.

1.6 Claims under Security

Except as otherwise provided under this Deed, Council may, without giving prior written notice to the Developer, make claims under a Security provided by it and Council may call upon the Security (in full or in part) in the event that:

- (a) The Developer breaches its obligation to carry out and complete any of the Contribution Works in accordance with this Deed; and
- (b) A notice has been issued by Council requiring the Developer to remedy the breach in accordance with the requirements of clause 8(a) of this Deed, and the breach remains unremedied following the expiry of the rectification period specified in that notice,

and may retain and use such monies in its discretion to compensate Council for the Developer's breach of those obligations.

2. Transfer documents

- (a) Prior to the issue of a construction certificate for the Development or any part of the Development, the parties will exchange a contract for the sale of the Contribution Land that is in the same terms as any contract for sale for other units in the Development (subject to review by Council's legal representative) and includes the following terms:
 - (i) the purchase price of \$1.00;
 - (ii) a requirement that completion of the contract for the sale of the Contribution Land will occur within 15 Business Days of the Occupation Certificate being granted; and
 - (iii) a schedule of materials and finishes, fittings and fixtures for the Contribution Land (approved by Council), as required to enable the Contribution Land to be occupied and used as an Affordable Housing Unit on and from the date of transfer.
- (b) Prior to the issue of a Construction Certificate for any part of the Development, the Developer will deliver to Council:
 - (i) an irrevocable direction to the Registrar- General, duly executed by the Developer, requiring the Registrar-General to deliver the certificate of title for the Contribution Land directly to Council upon it being issued after the registration of any Strata Plan for the Development;
 - (ii) a form of transfer under the Real Property Act for the purpose of transfer of the Contribution Land when it is created with the Developer named as transferor and Council named as transferee, properly executed by the Developer but with the description of the land omitted, which omission Council is entitled to rectify by inserting the proper title reference to the Contribution Land that will be appropriate at the time of lodgement of the transfer; and
 - (iii) any other documents (for example, a discharge of mortgage or withdrawal of caveat) in registrable form as is necessary to ensure that Council is able to register the transfer of the Contribution Land, or an irrevocable undertaking from the relevant person issuing the document that the documents together with any certificates of title held by

the person will be produced for registration on request for the purposes of transferring the Contribution Land to Council under this Deed.

- (c) The documents referred to in clause 2(b) of this Schedule 10 are to be held by Council as security for the performance by the Developer of the obligations imposed on it under this Deed.
- (d) If the transfer of the Contribution Land is not effected in accordance with this Deed, Council may, at the Developer's cost, lodge for registration any or all of the documents referred to in clause 2(b) of this Schedule 10 and call on any undertaking given in accordance with clause 2(b)(iii) of this Schedule 10 so that Council can become the registered proprietor of the Contribution Land.
- (e) Until the Developer has performed its obligations under this Deed, it shall not lodge or suffer or cause to be lodged for registration any document that would, if registered, cause any document held by Council under clause 2(b) of this Schedule 10 incapable of being registered or obsolete.

3. Bank Guarantee

- (a) Prior to the grant of any Development Consent for the Development, the Developer must provide to Council a Bank Guarantee or Bank Guarantees in the amount of \$125,000.00, indexed in accordance with CPI from the date of this Deed to the date of the first Bank Guarantee.
- (b) Council may call on a Bank Guarantee provided under this clause if the Developer is in material or substantial breach of any of its obligations under this agreement and has failed to rectify the breach after having been given reasonable notice (which must not be less than 10 Business Days) in writing to do so.
- (c) Within 20 Business Days of each anniversary of a Bank Guarantee provided under clause 3(a) of this Schedule 10, the Developer must provide Council with one or more replacement Bank Guarantees (**replacement Bank Guarantee**) in an amount calculated in accordance with the following:

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

Where:

A is the amount of the replacement Bank Guarantee,

B is the amount of the Bank Guarantee to be replaced,

C is the CPI for the quarter ending immediately before the date of the Bank Guarantee to be replaced,

D is the CPI for the quarter ending immediately before the date of the replacement Bank Guarantee,

provided A is greater than B.

- (d) On receipt of a replacement Bank Guarantee provided under clause 3(c) of this Schedule 10, Council must release and return to the Developer, as directed, the Bank Guarantee that has been replaced.
- (e) At any time following the provision of a Bank Guarantee under this clause, the Developer may provide Council with one or more replacement Bank Guarantees

totalling the amount of all Bank Guarantees required to be provided under this clause for the time being. On receipt of such replacement Bank Guarantees, Council must release and return to the Developer, as directed, the Bank Guarantees which it holds that have been replaced.

- (f) Council may apply the proceeds of a Bank Guarantee provided under this clause in satisfaction of:
 - (i) any obligation of the Developer under this Deed; and
 - (ii) any associated liability, loss, cost, charge or expense directly or indirectly incurred by Council because of the failure of the Developer to meet its obligations under this Deed.
- (g) Council must return a Bank Guarantee provided under this clause when Council receives the Security required under clause 1 of this Schedule 10.
- (h) Nothing in this clause prevents or restricts Council from taking any enforcement action in relation to:
 - (i) any obligation of the Developer under this Deed; or
 - (ii) any associated liability, loss, cost, charge or expense directly or indirectly incurred by Council because of the failure by the Developer to comply with this agreement, that is not or cannot be satisfied by calling on a Bank Guarantee.

4. Restriction on issue of Certificates

- (a) For the purposes of section 6.8(1) of the Act and clause 146A of the Regulation the Developer must provide:
 - (i) the Security under clause 1 of Schedule 10; and
 - (ii) the transfer documents under clause 2 of Schedule 10 to Council and exchange the contract for sale of the Contribution Landprior to the issue of any Construction Certificate for the Development or any part of the Development.
- (b) For the purposes of section 6.10 of the Act, the Developer must complete the Contribution Works prior to the issue of an Occupation Certificate for the Development.

Schedule 11 - Assignment and Dealing

1.1 Developer's proposed assignment of rights

- (a) Unless the matters specified in clause 1.1(b) of this Schedule 11 are satisfied and subject to clause 1.1(c) of this Schedule 11, the Developer is not to assign or novate to any person the Developer's rights or obligations under this Deed.
- (b) The Developer must not assign or novate to any person its rights or obligations under this Deed and the Developer must not transfer the whole or any part of the Land or its interest in the Land unless the prior written consent of Council is obtained. Council must not unreasonably withhold its consent in circumstances where the following matters have been satisfied:
 - (i) the Developer satisfies Council that the rights of Council will not be diminished or fettered in any way;
 - (ii) the Developer has, at no cost to Council, first procured the execution by the person to whom the Developer's rights or obligations under this Deed are to be assigned or novated (**incoming party**), of a deed poll in favour of Council in the form of Schedule 15, completed in a manner satisfactory to Council. Such deed includes covenants that the incoming party:
 - A. will perform the obligations of the Developer under this Deed;
 - B. is financially capable of complying with the Developer's obligations under this Deed; and
 - C. is bound by the terms and conditions of this Deed (relevant to the Developer as if the incoming party had executed this Deed;
 - (iii) the Developer is not in breach of this Deed with respect to the relevant part of the Land in case of an assignment or novation of the Developer's interest in part of the Land only, unless the breach is waived by Council;
 - (iv) the Developer and the Transferee pay Council's reasonable costs in relation to the novation deed and assignment; and
 - (v) the Developer has secured from the Transferee the replacement of the Securities specified in clauses 1 and 2 of Schedule 10 as may be required by Council.

1.2 Right of Developer to sell Land

- (a) The Developer must not sell or transfer the whole or any part of the Land or any of their interest in the Land (and must procure that the whole or any part of the Land is not sold or transferred) prior to this Deed being removed from title to that Land (or any part of it) unless before any such sale, transfer or disposal of any such part of the Land or such part of their interest in the Land to another person (**Transferee**) the Developer complies with the requirements specified in clause 1.1(b) of this Schedule 11 and obtains Council's prior written consent. Council must not unreasonably withhold its consent in circumstances where the requirements specified in clause 1.1(b) of this Schedule 11 are satisfied.
- (b) This clause 1.2 does not apply to the transfer of a single lot in a strata plan where this Deed has been removed from the Register pursuant to clause (b) of Schedule 9.

1.3 Council's Costs

The Developer must pay to Council (or reimburse Council on demand) all the Costs and Legal Costs incurred by 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

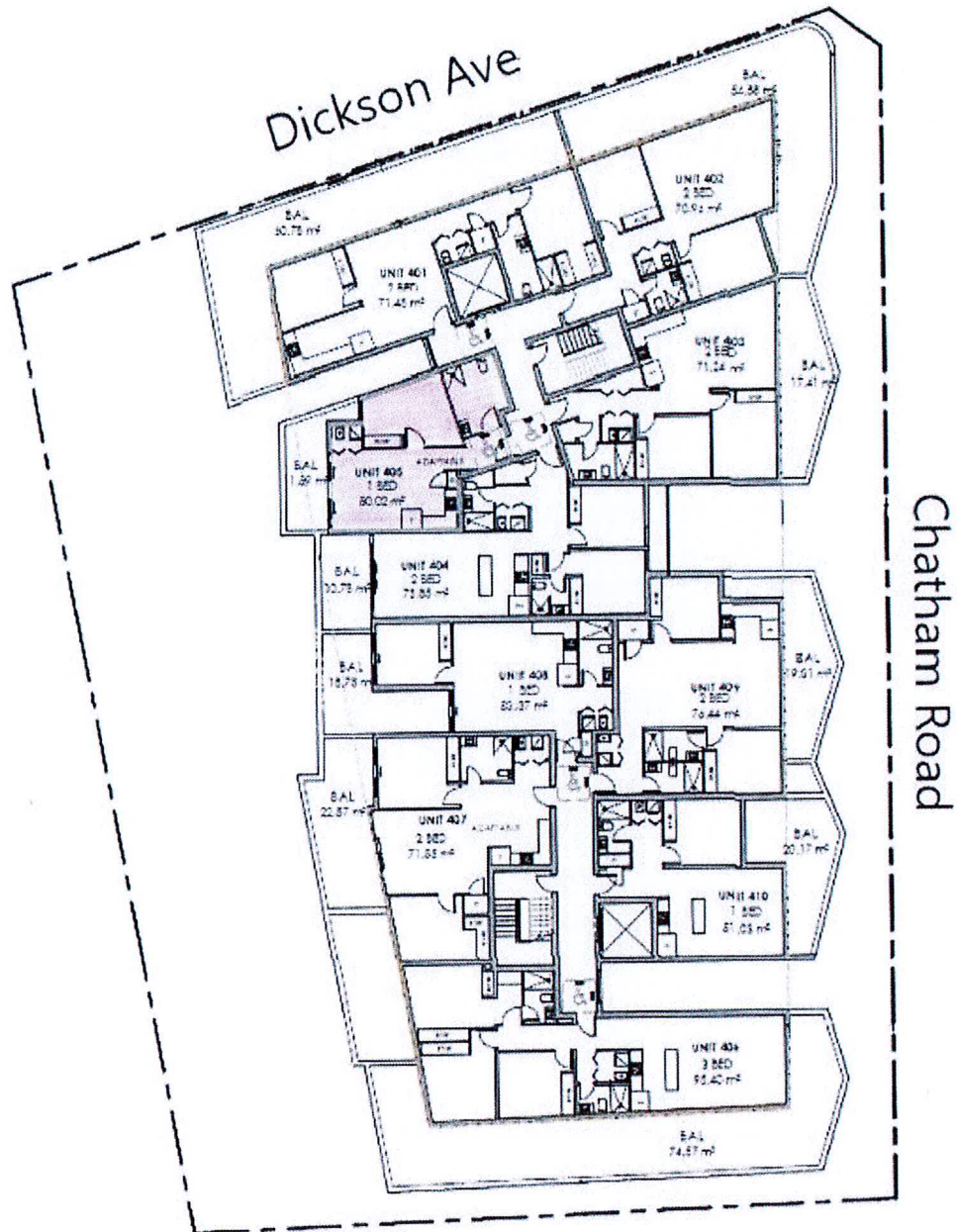
Council may assign its rights under this Deed to any successor in title.

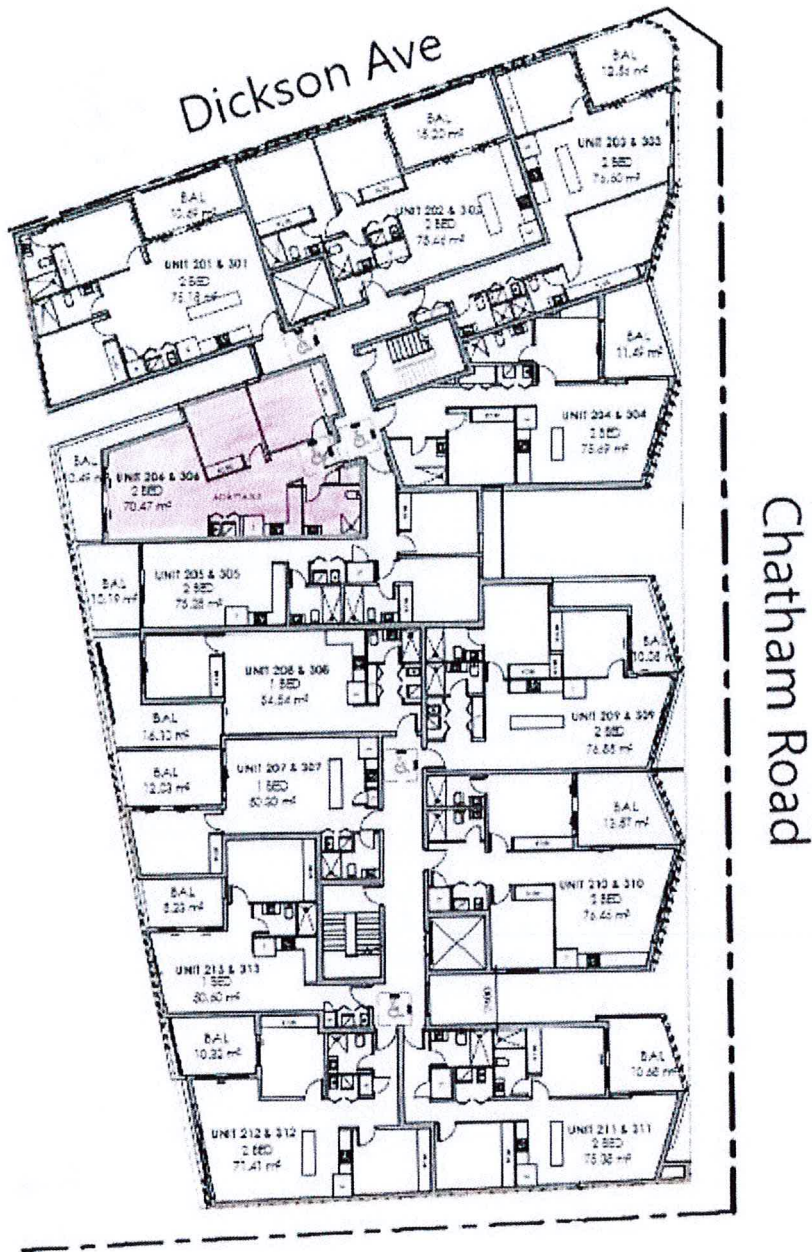
1.5 Council to act promptly

Council must act promptly in dealing with any application made by the Developer in respect of any proposed assignment or dealing proposed under clauses 1.1 or 1.2 of this Schedule 11.

Schedule 12 – Affordable Housing Unit Plan

Coloured Areas show apartments to be dedicated.





Schedule 13 – General Provisions

1.1 Approvals and Consent

- (a) 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.
- (b) A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

1.2 Costs

- (a) Unless otherwise specified in this Deed, all Costs and Legal Costs relating to this Deed are to be borne by the Developer in the amount specified in Schedule 14 and is payable on demand.
- (b) In addition to clause 1.2(a) of this Schedule 13, the Developer agrees to pay or reimburse Council on demand for:
 - (i) Costs and Legal Costs of Council in connection with:
 - A. exercising, enforcing or preserving, or attempting to exercise, enforce or preserve, rights under this Deed, including in connection with the Developer 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 Illegality

If this Deed or any part of it becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties are to co-operate and do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Deed is entered into.

1.4 Entire agreement

To the extent permitted by law 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. 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.

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 give effect to, 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 Council from exercising any function under the 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 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 Act in relation to a change, or a proposed change, in an environmental planning instrument.

1.9 Representations and warranties

- (a) Each Party each individually represents and warrants that:
 - (i) **(power)** it has power to enter into this Deed and comply with its obligations under the Deed;
 - (ii) **(no contravention or exceeding power)** 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) **(authorisations)** it has in full force and effect the authorisations necessary for it to enter into this Deed to which it is a party, to comply with its obligations and exercise its rights under this Deed and to allow this Deed to be enforced;
 - (iv) **(validity of obligations)** its obligations under this Deed are valid and binding and are enforceable against it in accordance with the terms of the Deed;
 - (v) **(no immunity)** does not have immunity from the jurisdiction of a court or from legal process; and
 - (vi) **(benefit)** it benefits by entering into this Deed to which it is a Party.

- (b) Each Party acknowledge that each other Party has entered into this Deed to which it is a party 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 and signed and dated by the party giving the waiver.
- (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 Developer agrees that the obligation to provide the Contributions is at the risk of the Developer. The Developer releases Council from any Claim, liability or loss it may have against Council arising from, and Costs and Legal Costs incurred in connection with, the performance of the Developer's obligations under this Deed.
- (b) The Developer indemnifies Council against all Claims, liabilities or loss that may be made, suffered, recovered or made against Council arising from and against, and any Costs and Legal Costs incurred in connection with Council enforcing the Developer's performance of the Developer's obligations under this and/or Council exercising Council's rights under or by virtue of this Deed.
- (c) The indemnity in clause 1.14(b) of this Schedule 13 is a continuing obligation, independent of the Developer'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 clause 1.14

- (c) A Party must pay on demand any amount it must pay under an indemnity in this clause 1.14.

1.15 Report by Developer

- (a) The Developer is to provide to Council by not later than each anniversary of the date on which this Deed is entered into a report detailing the performance of its obligations under this Deed.
- (b) The report referred is to be in such a form and to address such matters as required by the Council from time to time.

1.16 Review of Deed

- (a) The Parties agree to review this Deed every 2 years, and otherwise if either party is of the opinion that any change of circumstance has occurred, or is imminent, that materially affects the operation of this Deed.
- (b) For the purposes of clause 1.16(a), the relevant changes include (but are not limited to) any change to a law that restricts or prohibits or enables the Council or any other planning authority to restrict or prohibit any aspect of the Development.
- (c) For the purposes of addressing any matter arising from a review of this Deed referred to in clause 1.16(a), the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Deed.
- (d) If this Deed becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties agree to do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Deed is entered into.
- (e) A failure by a Party to agree to take action requested by the other Party as a consequence of a review referred to in clause 1.16(a) (but not 1.16(d)) is not a Dispute for the purposes of this Deed and is not a breach of this Deed

Schedule 14 - Costs

The Developer is to pay all Council's reasonable legal costs associated with the preparation and execution of this Deed.

Novation Deed

[Planning Authority]
Council

[Developer]
Transferor

[Insert Transferee's name]
Transferee

Novation Deed made at _____ on _____

Parties *[insert]*
 (Council)
 [insert]
 (Transferor)

[Insert Transferee's name] of *[insert]* (Transferee)

Recitals

- A Council and the Transferor are parties to the Original Agreement.
- B The Transferor is defined as the Developer under the terms of the Original Agreement.
- C The Original Agreement relates to the whole of the Land.
- D The Transferor wishes to assign its rights and obligations under the Original Agreement to the Transferee.
- E The parties to this Deed have agreed to the novation of the Transferor's obligations under the Original Agreement to the Transferee.

This deed provides

1. Definitions and interpretation

1.1 Definitions

Effective Date means *[insert]*.

Original Agreement means the voluntary planning agreement dated *[insert]* and made between Council the Developer.

Required Obligations means the Developer's obligations under the terms of the Original Agreement.

Transferor means *[insert]*.

1.2 References to certain general terms

In this deed unless the contrary intention appears:

- (a) All other capitalised words, other than those specifically defined in this Deed and used in this Deed have the meanings given to those words in the Planning Agreement.
- (b) A reference to this deed or another instrument includes any variation or replacement of them;
- (c) A reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (d) The singular includes the plural and vice versa;

- (e) The word person includes a firm, body corporate, an unincorporated association or an authority;
- (f) A reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and assigns;
- (g) An agreement, representation or warranty on the part of or in favour of two or more persons binds or is for the benefit of them jointly and severally;
- (h) A reference to anything (including, without limitation, any amount) is a reference to the whole or any part of it and a reference to a group of persons is a reference to anyone or more of them;
- (i) "Include" in any form when introducing a list of items does not limit the meaning of the words to which the list relates to those items or to items of a similar nature; and
- (j) Capitalised terms which are used in this deed but are not otherwise defined have the meaning given to them in the Original Agreement.

1.3 Headings

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

2. Novation

2.1 Original Agreement

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

- (a) The Transferee is substituted for the Transferor as a party to the Original Agreement, and agrees to perform the Required Obligations;
- (b) The Transferee accepts the novation and will be bound by the Original Agreement, and comply with the provisions of the Original Agreement, as if the Transferee was a party to the Original Agreement instead of the Transferor insofar as the Original Agreement relates to the Required Obligations; and
- (c) The Transferor is released and discharged from all obligations and liabilities, and from all claims (whether for Costs, Legal Costs, damages, fees or otherwise), arising under the Original Agreement insofar as the Original Agreement relates to the Required Obligations.

2.2 Performance by Transferee

The Transferee must perform all of the Transferor's obligations under the Original Agreement as if named as the Transferor, whether or not the relevant obligations relate to works performed prior to the date of this Deed, including, but not limited to:

- (a) The delivery of all public benefits to Council (including the Contribution Lands and Contribution Works); and
- (b) The provision of all Securities to Council.

2.3 Release of Security

The parties expressly acknowledge and agree that:

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

2.4 Liability before Effective Date

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

3. Affirmation of the Original Agreement

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

4. GST

Where a supply made under this deed gives rise to a liability for GST, the Transferee 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. Terms used in this clause have the meanings in the *A New Tax System (Goods and Services Tax) Act 1999*.

5. Stamp duty and costs

- (a) The Transferor and the Transferee are jointly and severally liable for Council's Legal Costs of and incidental to the negotiation, preparation and execution of this deed, and must reimburse Council for such Legal Costs promptly on demand.
 - (b) The Transferee will pay all stamp duty arising directly or indirectly from this deed.
-

6. Further acts

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

7. Governing law

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

8. Counterparts

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

Executed as a deed.

[insert Appropriate execution clauses for Council, Developer]

Signed, sealed and delivered by [insert
Transferee] in accordance with section 127 of the
Corporations Act by or in the presence of:

Signature of Secretary/other Director

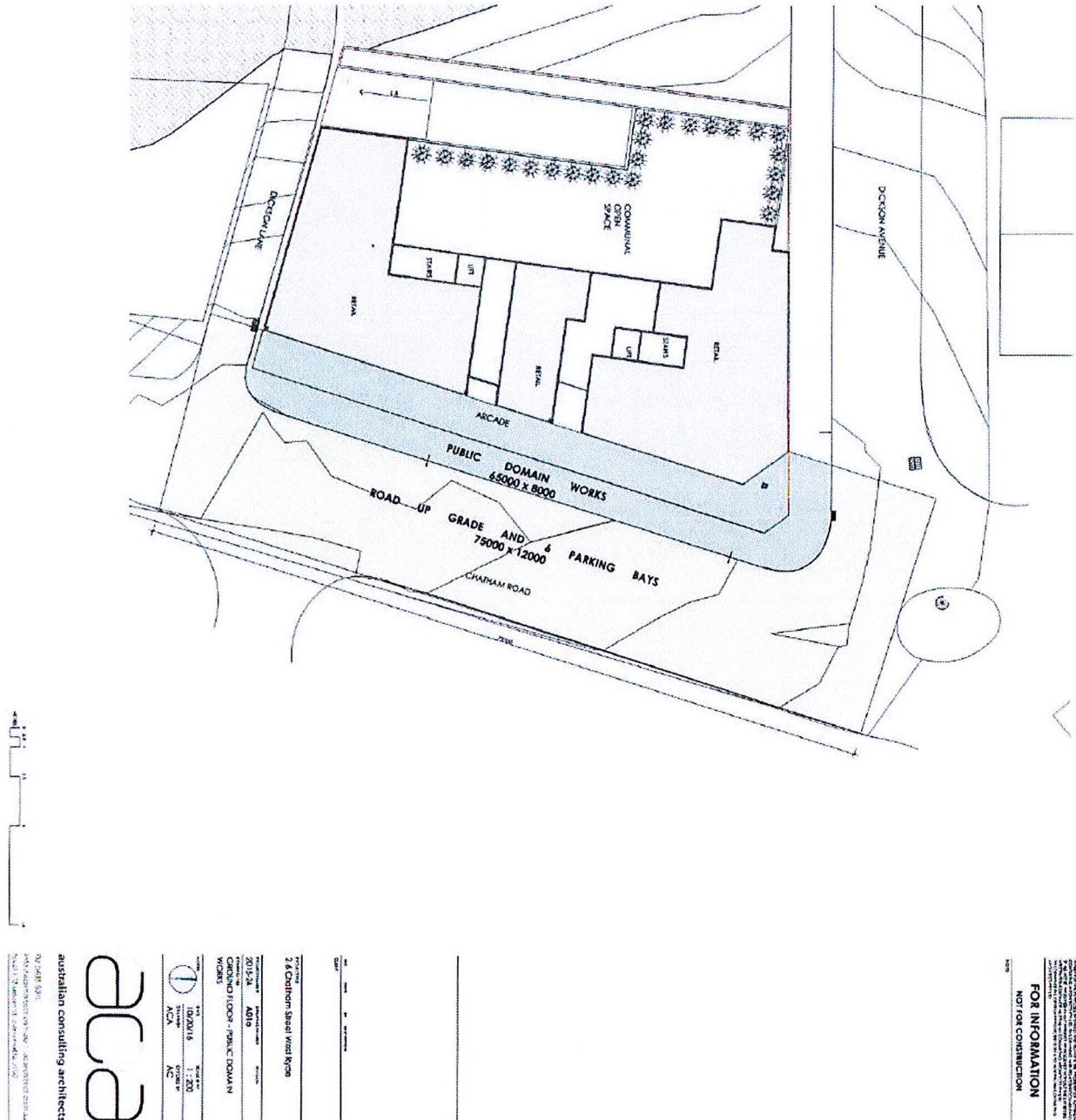
Signature of Director

Name of Secretary/other Director in full

Name of Director in full

Schedule 16 – Road Works and Public Domain Works

Detailed plans are to be submitted with the application for development consent and construction plans are to be approved by Council prior to the issue of a construction certificate.



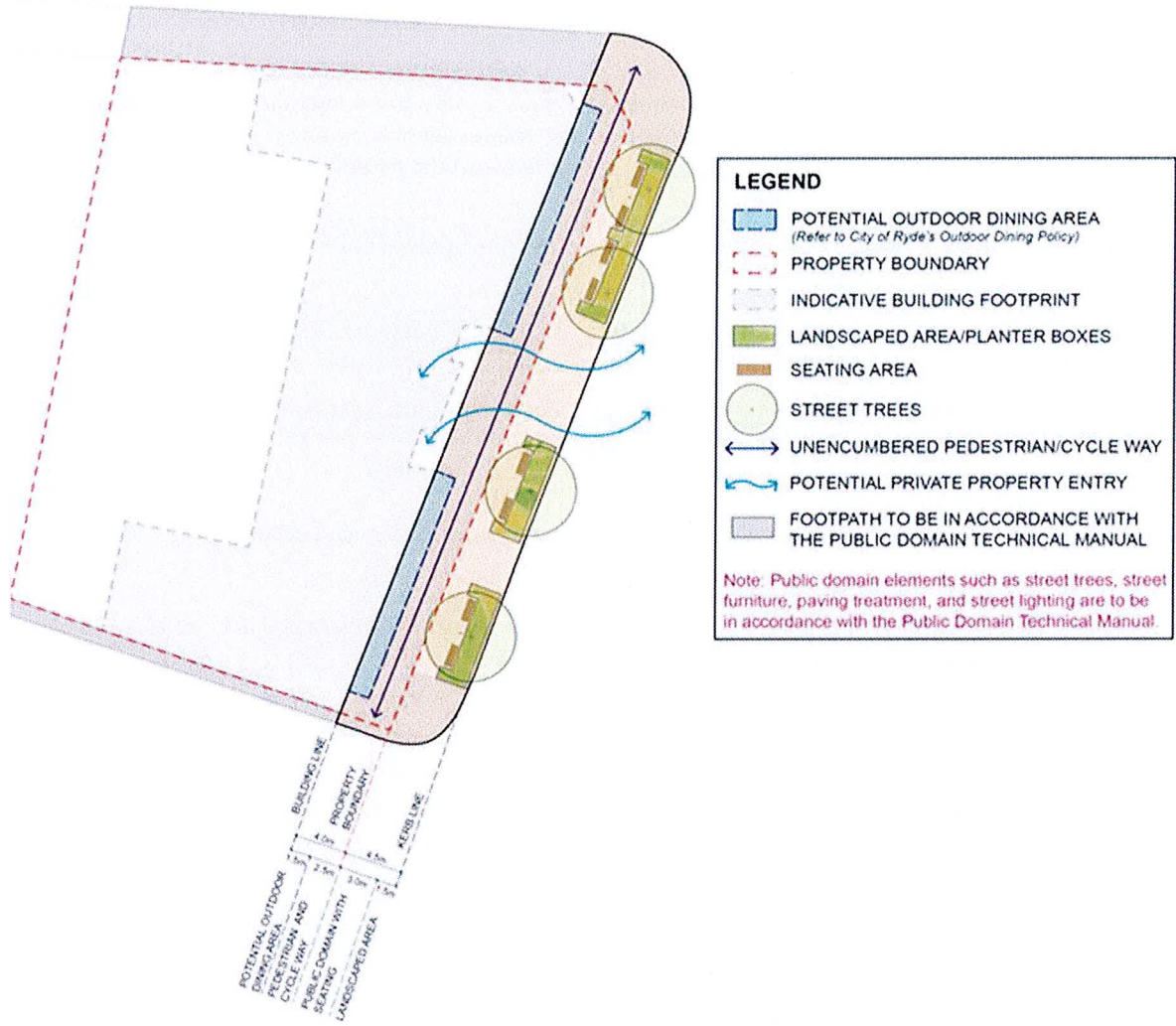
FOR INFORMATION
NOT FOR CONSTRUCTION

aca
australian consulting architects

100/20/1/6
ACN 121 200 121

2 & Collins Street West Melbourne
VIC 3003
PH: 03 9247 1212
WWW.ACA.AU

Schedule 17 – Indicative Urban Plaza Diagram for Public Domain Works



LEGEND

- POTENTIAL OUTDOOR DINING AREA
(Refer to City of Ryde's Outdoor Dining Policy)
- PROPERTY BOUNDARY
- INDICATIVE BUILDING FOOTPRINT
- LANDSCAPED AREA/PLANTER BOXES
- SEATING AREA
- STREET TREES
- UNENCUMBERED PEDESTRIAN/CYCLE WAY
- POTENTIAL PRIVATE PROPERTY ENTRY
- FOOTPATH TO BE IN ACCORDANCE WITH THE PUBLIC DOMAIN TECHNICAL MANUAL

Note: Public domain elements such as street trees, street furniture, paving treatment, and street lighting are to be in accordance with the Public Domain Technical Manual.

Schedule 18 – AHU Standards

Each Affordable Housing Unit (AHU), car space and storage space to be transferred to the Council will be to the following standards:

- The quality and standards of construction and finish of an AHU, car space and storage space to be transferred to the Council is to be the same as any other similar unit, car space and storage space in the Building which is not an AHU or for the purposes of an AHU.
- All fixtures, fittings and inclusions in an AHU, car space and storage space to be transferred to the Council are to be consistent with and of the same quality and standards as other similar units, car spaces and storage spaces within the Building unless otherwise required to comply with Australian Standard 4299, or as otherwise agreed between the parties in a detailed Schedule of Finishes,
- The AHU, car space and storage space will comply with appropriate Australian Standards and the Building Code of Australia
- The AHU will be equipped with the following minimum fittings, if not already included in an agreed Schedule of Finishes or as otherwise agreed between the parties in writing:
 - floor coverings to all rooms (tiled kitchens, bathrooms, laundries and hallways; and carpet in living, lounge and bedroom/s),
 - light fittings fit for purpose in each room,
 - telephone and television aerial points in the lounge and main bedroom,
 - cable television fittings if provided in the Building,
 - allocation of car and storage spaces consistent with Apartment Design Guide guidelines under SEPP 65,
 - all opening windows to have fly screens; and blinds consistent with other units, if other units do not have fly screens or blinds then fly screens and blinds are to be installed for the AHU to a type and standard approved by the Council,
 - sliding doors to have blinds and security fly screen door provisions consistent with other units, if other units do not have fly screen doors then fly screen doors are to be installed for the AHU to a type and standard approved by the Council
 - provision of air conditioning to living area and bedroom/s,
 - security and/or intercom system,
 - and oven and cooktop
- Where specified provision of an adaptable AHU including car spaces will comply with Australian Standard 4299 (AS4299).

EXPLANATORY NOTE

Cl. 25E of Environmental Planning and Assessment Regulation 2000

Planning Agreement – Lots 24, 25 and 26 in DP 8092 known as 2-6 Chatham Road, West Ryde (Land)

Introduction

The purpose of this Explanatory Note is to provide a summary to support the notification of a draft Planning Agreement (**Planning Agreement**), under Section 7.4 of the *Environmental Planning and Assessment Act 1979 (Act)*, prepared in connection with a planning proposal to amend Ryde Local Environmental Plan 2014 ('**RLEP**').

The Planning Proposal seeks to amend RLEP seeks to make the following amendments to RLEP insofar as it applies to the Land:

- (a) Increase the maximum height control from 15.5 metres to 24 metres;
- (b) Increase the FSR control from 1.25:1 to 2.7:1

The Planning Agreement specifies the public benefits to be provided by the Developer in connection with the amendment to the Planning Proposal.

The Developer proposes to lodge an application for development consent for a mixed use development with associated parking.

Contributions under sections 7.11, 7.12 and 7.24 of the Act are not excluded under the Planning Agreement and are therefore payable by the Developer if development consent is granted for the Development.

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

For the purposes of this Explanatory Note, capitalised terms which are used in this Explanatory Note but which are not otherwise defined have the meaning given to those terms in the Planning Agreement.

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

1. Parties to the Planning Agreement

The parties to the Planning Agreement are Tesco Projects Pty Ltd (ACN 168 432 700) (**Developer**) and the Council of the City of Ryde (**Council**). The Developer intends to acquire the Land so that upon execution of the planning agreement it is the owner of the Land.

2. Description of the Land

The Planning Agreement applies to Lots 24, 25 and 26 in DP 8092 known as 2-6 Chatham Road, West Ryde (**Land**).

3. Description of the Proposed Change to the Environmental Planning Instrument and Development

The Planning Agreement relates to a planning proposal considered by Council at its meeting of 6 December 2016 and recommended for a gateway determination.

The planning proposal seeks to make the following amendments to RLEP:

- (a) Increase the maximum height control which applies to the Land from 15.5 metres to 24 metres;
- (b) Increase the FSR control which applies to the Land from 1.25:1 to 2.7:1.

4. Summary of Objectives, Nature and Effect of the Planning Agreement

The objective of the Planning Agreement is to ensure the transfer to Council of three fitted out strata units to be used for affordable housing ready for occupation, the carrying out of road works on Chatham Road and public domain works to meet the needs of the local community.

In order to secure the obligations of the Developer under the Planning Agreement, the terms of the Planning Agreement require the provision of security in the form of Bonds or Bank Guarantees, the registration of the Planning Agreement on the title of the Land and allow the Council to register the transfer of the three strata units.

The public benefits to be provided under the Planning Agreement are summarised as follows:

a. Contribution Land

The Developer (at its cost) agrees to dedicate / transfer (as the case may be) to Council the following Land:

- (i) three units within the Development as strata title lots to be used for affordable housing for a period of 10 years.

b. Contribution Works

The Developer agrees to deliver (at its cost) the following works:

- (i) the construction and fit out of the three affordable housing units;
- (ii) the construction roadworks on Chatham Road including 6 parking bays, spanning the Land; and

- (iii) the carrying out of public domain works namely construction of granite footpath with granite banding along the entire Chatham Road frontage of the Land and including kerbs and gutters, street trees, kerb ramps, vehicle crossovers and driveways, lighting, street furniture and bins, pit lids and signage.

5. Assessment of the merits of the Planning Agreement

(a) How the Planning Agreement promotes the public interest and one or more of the objects of the Act

The Planning Agreement promotes the objects of the Act, in particular objects (iv) and (viii) which relate to “*the provision and maintenance of affordable housing*”. In this regard, these objects are satisfied as the planning agreement will ensure the delivery of the Affordable Housing Unit and Normal-Sized Parking Space.

(b) How the Planning Agreement promotes elements of the Council’s charter

The Planning Agreement promotes a number of elements of the Council's charter under section 8 of the *Local Government Act 1993* (NSW).

Section 8 of the *Local Government Act 1993* refers to the objects of the principles for Councils as set out in section 8A, 8B and 8C of that act.

The Agreement promotes the following principles:

- The management of lands and other assets so that current and future local community needs can be met in an affordable way,
- Working with others to secure appropriate services for local community needs.
- Promoting Council's long-term strategic planning on behalf of the local community.

The Council's strategic planning for Ryde envisions an attractive, vibrant and sustainable urban place which provides quality residential and commercial developments complimented with enhanced pedestrian, bike and road access through Ryde.

The Planning Agreement requires the Developer to construct and transfer to Council three units to be used for affordable housing.

In summary, the Planning Agreement promotes the Council’s charter by ensuring the delivery of the public benefits under the Planning Agreement which in turn satisfy the following:

- (i) the engagement by Council in long-term strategic planning on behalf of the local community;
- (ii) the provision of adequate, equitable and appropriate services and facilities for the community; and

(iii) the appropriate response as to the provision and planning for the needs of the community.

(c) The impact of the Planning Agreement on the public or any section of the public.

The scope of the Planning Agreement will benefit the local and wider community as it will serve the needs of the public by providing affordable housing opportunities and improving the public domain.

It is envisaged that the Contributions to be delivered under the Planning Agreement will have a positive impact on the local community by virtue of providing much needed affordable housing units and improvements to local roads and the public domain.

(d) Whether the Planning Agreement conforms with Council's capital works program

The Contribution to be delivered under the Planning Agreement are not consistent with the capital works program. They are agreed between Council and the developer to ameliorate against the impacts of the development beyond the scope of the capital works program, which includes Council's S7.11 program.

(f) The planning purpose or purposes of the Planning Agreement

The Planning Agreement will provide a major public benefit in terms of the provision of three affordable housing units. As it would be difficult to obtain these public benefits through other statutory means, the Planning Agreement is the most suitable instrument by which the Contributions can be delivered.

(g) Compliance of certain requirements prior to issue of construction, occupation or subdivision certificates.

The Planning Agreement requires the completion of the construction and fit out of the affordable housing units, and the completion of the public domain and road works prior to the issue of an Occupation Certificate for the development on the land.

The dedication of the three strata units is to be provided after the issue of an Occupation Certificate for that part of the Development. Security for the Contribution Works and Contribution Land (including appropriate security and the provision of transfer documents) are to be provided prior to the issue of a Construction Certificate for the Development.

Annexure to Explanatory Note - Contributions Schedule (Schedule 3 of the Planning Agreement)

Schedule 3 - Contributions Schedule

Table 1 – Contribution Land

<u>Column 1 - Contribution</u>	<u>Column 2 - Date Contribution Land is to be dedicated</u>
<p>The Contribution Land for Affordable Housing</p> <p>The transfer, free of cost, in strata to Council, in accordance with Schedule 5 and Schedule 18, of that part of the Building, being the Affordable Housing Units, being:</p> <ul style="list-style-type: none"> a) two (2) x two bedroom units, each with an Internal Floor Area of approximately 70-sqm, with a 10sqm integral balcony and a standard sized parking space, located in a secured basement, and b) one (1) x one bedroom unit with an Internal Floor Area of approximately 50sqm with a 8sqm integral balcony, c) each of the above units will have associated storage, which complies with the minimum area set out in the SEPP65 Apartment Design Guide as it exists at the date of this Agreement. 	<p>Within 5 Business Days after the issue of any Occupation Certificate for the Contribution Land, or any occupation of the Development, whichever occurs first.</p>

The Contribution Land will be taken to have been dedicated under this Deed when the transfer of the Contribution Land has occurred in accordance with Schedule 5.

Table 2 - Contribution Works

<u>Column 1 - Contribution Item</u>	<u>Column 2 - Contribution</u>	<u>Column 3 - Estimated Contribution Amount</u>	<u>Column 4 - Date Contribution Works are to be Practically Completed and delivered</u>
Item 1	<p>Affordable Housing Units</p> <p>The Developer will design, construct and complete the Affordable Housing Units and the following requirements:</p> <ul style="list-style-type: none"> (a) The two bedroom Affordable Housing Units will have a minimum Internal Floor Area of 70sqm internal unit size plus a 10sqm integral balcony. (b) The one bedroom Affordable Housing Unit will have a minimum Internal Floor Area of 50sqm internal unit size plus a 8sqm integral balcony. (c) The Affordable Housing Units will be constructed and fully fitted out and finished in accordance with the Schedule of Materials and Finishes to be provided with the transfer documents under Schedule 10, so as to be fully operational but with the exclusion of any loose furniture and 	\$549,750	<p>The Contribution Works are to be completed prior to the earlier occurrence of:</p> <ul style="list-style-type: none"> (a) the issue of any Occupation Certificate for any part of the Development, and (b) the first occupation of any part of the Development. <p>The Contribution Works are to be delivered to Council at the same time as the Contribution Land is dedicated to Council in accordance with this Deed.</p>

	<p>appliances (excluding stove top and oven).</p> <p>(c) The Affordable Housing Units are to be designed so as to be Adaptable class C.</p> <p>(d) The car spaces for the two bedroom units are to be located within the secure basement and be properly marked and have an area, that is compliant, for a normal sized parking space.</p> <p>(e) each unit is to have associated storage in keeping with the minimum area set out in the current SEPP 65 Apartment Design Guide.</p>		
Item 2	<p>Road Work</p> <p>Road Works in the area shown on ACA drawing number A01a dated 10/20/16 in Schedule 16, including 6 parking bays, upgrading the entire Chatham Road to Council's specifications and requirements spanning the length of the Land.</p>	<p>\$296,863 excl GST</p>	<p>The Contribution Works are to be completed prior to the earlier occurrence of:</p> <p>(a) the issue of any Occupation Certificate for any part of the Development; and</p> <p>(b) the first occupation of any part of the Development.</p> <p>The Contribution Works are to be delivered to Council at the same time as the Contribution Land is dedicated to Council in accordance with this Deed.</p>
Item 3	<p>Public Domain Works</p> <p>Full width granite footpath with granite banding along the entire Chatham Road frontage and including kerbs and gutters, street trees, kerb ramps, vehicle crossovers and driveways, lighting, street furniture and bins, pit lids and signage in accordance with the requirements of <i>Chapter 4: West Ryde of the City of Ryde Public Domain Manual</i> in the area identified in Schedule 16 and as generally shown in Schedule 17 and as approved by Council.</p>	<p>\$391,732 excl GST</p>	<p>The Contribution Works are to be completed prior to the earlier occurrence of:</p> <p>(a) the issue of any Occupation Certificate for any part of the Development; and</p> <p>(b) the first occupation of any part of the Development.</p> <p>The Contribution Works are to be delivered to Council at the same time as the Contribution Land is dedicated to Council in accordance with this Deed.</p>

The Contribution Works will be taken to have been completed when Council issues a Certificate of Practical Completion for those works in accordance with Schedule 4.

Executed as a Deed.

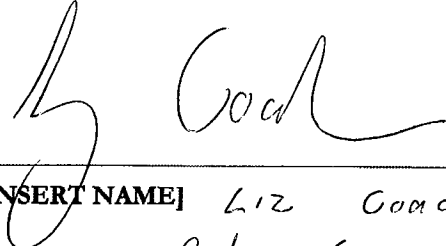
EXECUTED by THE COUNCIL OF)
THE CITY OF RYDE by [INSERT],)
General Manager under delegated authority)
pursuant to Section 377 of the Local)
Government Act 1993 in the presence of:)



Witness (signature):

CARMELINA LOUGHLAND

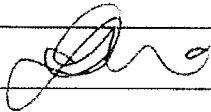
Name (printed):



[INSERT NAME] Liz Goad
Acting General
Manager.

EXECUTED by TESCO PROJECTS PTY)
LTD (ACN 168 432 700) in accordance with)
section 127 of Corporations Law:)
)
)

Signature:



Name:

Joseph Abboud

Position:

Director

Signature:



Name:

TONY MERHI

Position:

DIRECTOR