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**Council of the City of Ryde**

ABN 81 621 292 610

and

**Greenland (Sydney) Lachlan's Line Macquarie Park Development  
Pty Limited**

ABN 65 608 744 234

# **Planning Agreement**

*Environmental Planning and Assessment Act 1979*

25-27 Epping Road, Macquarie Park, New South Wales

# Planning Agreement

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# Planning Agreement

Date

29 November 2017

Parties

Council of the City of Ryde ABN 81 621 292 610 of Level 1, 3 Richardson Place,  
North Ryde, NSW (Council)

Greenland (Sydney) Lachlan's Line Macquarie Park Development Pty Limited of c/-  
Urbis at Tower 2, Level 23, Darling Park, 201 Sussex Street, Sydney, NSW  
(Developer)

Recitals

- A The Developer is (or is entitled to be) the registered proprietor of the Land.
- B The Developer is the applicant under the Development Application lodged with the Council (known as LDA-2016-0395) for Development Consent to carry out the Development on the Land.
- C The Developer has offered to make Contributions in connection with the carrying out of the Development if the Council grants the Development Consent.
- D The Developer has agreed to provide the Contributions on the terms and conditions set out in this Deed.

The parties agree

## 1 Definitions and interpretation

### 1.1 Definitions

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

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

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

**Appeal Notice** means:

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

**Application** means an application for any Approval.

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

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

**Bank Bill Rate** means:

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

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

- (a) one of the following trading banks:
  - (i) Australia and New Zealand Banking Group Limited,
  - (ii) Commonwealth Bank of Australia,
  - (iii) Macquarie Bank Limited,

- (iv) National Australia Bank Limited,
  - (v) St George Bank Limited,
  - (vi) Westpac Banking Corporation,
  - (vii) Bank of China (Australia) Limited, or
- (b) any other financial institution approved by the Council in its absolute discretion.

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

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

- (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 the Council; and
- (f) be irrevocable;
- (g) state either individually, or in total with other lodged compliant forms of Security, the relevant minimum amount required to be lodged as security for performance under this Deed; and
- (h) state the purpose as being security for performance of obligations under this Planning Agreement.

**Bond Amount** means the face value of each Bond that is required to be provided by the Developer to Council under the terms of this Deed.

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

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

**Certificate of Practical Completion** means the certificate in writing confirming that the Contribution Works or any part of them have been completed to Council's satisfaction and issued under clause 7.1 of Schedule 4.

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

**Condition Precedent** means the events described in clause 3.1.

**Condition Precedent Date** means the date being 12 months after the date of this Deed.

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

**Contributions** mean all of the public benefits described in the Contributions Schedule that must be provided under this Deed.

**Contributions Schedule** means Schedule 3.

**Contribution Value** means in relation to the Contribution Works the amount stated in Schedule 3 and indexed in accordance with part 2 of Schedule 3.

**Contribution Works** means each of the works described in part 2 of Schedule 3 that must be undertaken by the Developer pursuant to this Deed.

**Construction Certificate** means a certificate issued under section 109C(1)(b) of the EP&A Act.

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

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

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

**Construction Terms** means the terms set out in Schedule 4.

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

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

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



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

**Defects Liability Period** means in respect of each item of construction works which together comprise the Contribution Works the period of 12 months from the date on which the Certificate of Practical Completion is issued for the Contribution Works or relevant part of them.

**Detailed Design** means the final specifications and finishes for the Contribution Works prepared in accordance with clause 4.1 of Schedule 4 and will include the design of the Contribution Works, the location for the Contribution Works, installation specifications and estimated costs of construction and/or installation.

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

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

**Development Consent** means each 'Development Consent' as that term is defined in the EP&A Act or an approval under Part 5 of the EP&A Act and includes any Modification granted with respect to a Development Consent.

**Encumbrance**, in relation to any land, means any:

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

or any agreement to create any of them or allow them to exist, in respect of that land.

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

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

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

**GST** has the meaning it has in the GST Act.

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

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

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

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

**Jarvis Circuit** means the public road with that name which bisects the lots that together comprise the Land.

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

**Law** means:

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

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

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

**LG Act** means the *Local Government Act 1993* (NSW).

**Modification** means a 'modification' of a Development Consent within the meaning of section 96 of the EP&A Act.

**Occupation Certificate** means a certificate referred to in section 109C(1)(c) of the EP&A Act and which may be interim or final as provided for in section 109C(2) of the EP&A Act.

**Party** means a party to this Deed, and Parties means all of them.

**Permitted Encumbrance** means each of:

- (a) easements benefitting statutory authorities, encroachments authorised by Approvals and environmental management requirements; and
- (b) any of the following:
  - (i) an Encumbrance (other than a mortgage, charge, pledge, lien, security interest, title retention, contractual right of set-off, or any other security agreement or arrangement in favour of any person); and
  - (ii) such other agreement or arrangement,

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

- (c) any Encumbrance that does not prevent the future use of the relevant land for the public purpose for which it is to be dedicated under this Deed, unless the Encumbrance is a charge arising as a result of unpaid taxes or charge.

**Planning Agreement** means this Deed.

**Quantity Surveyor** means a current member of the Australian Institute of Quantity Surveyors who:

- (a) is a full member of that Institute and has not less than 5 years' experience of valuing works of alike nature to the Contribution Works; and
- (b) at the time of appointment is both experienced and actively engaged in carrying valuations or work of this kind required under this Deed.

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

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

**Required Face Value** means the face value of the Bond to be provided under Schedule 10, which will be equivalent to the value of any outstanding Contribution Works and the cost of acquiring any Contribution Land in accordance with Schedule 5, as agreed between the parties at the time the Bond is provided having regard to the Contribution Value.

**Related Agreement** means the planning agreement recorded in the Register under dealing numbers AM194995 and AM 248850.

**Roads Act** means the *Roads Act 1993* (NSW).

**Roads Authority** has the meaning given to that term in the Roads Act.

**Road Closure Area** means that part of Jarvis Circuit to be closed shown in the Road Closure Plan.

**Road Closure Plan** means the plan or plans contained in Schedule 5.

**Schedule** means a schedule to this Deed.

**Security** means either a Bank Guarantee or a Bond or such other form of security the Council may accept as security for the performance of its obligations under this Deed.

**Security Amount** means each of the amounts stated in Schedule 10.

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

**Superintendent** means the superintendent (if any) appointed from time to time under any Construction Contract.

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

- (a) subject to paragraphs (b) and (c), the date on which:
  - (i) the Legal Challenge is discontinued;
  - (ii) final orders (apart from any orders as to costs) are made in the Legal Challenge; or

- (iii) for any other reason, the Legal Challenge no longer includes an application for a declaration that the Development Consent or Approval for the Development is invalid;

whichever is the earlier;

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

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

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

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

**Taxes** means taxes, levies, imposts, deductions, charges and duties (including stamp and transaction duties), excluding GST (which is dealt with at clause 17), 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 Interpretation

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 EP&A Act.

## **2 Planning Agreement**

### **2.1 Commencement**

This Deed commences on the execution of this Deed by all Parties but is subject to the Condition Precedent.

### **2.2 Planning agreement under the EP&A Act**

This Deed constitutes a planning agreement within the meaning of section 93F of the EP&A Act.

### **2.3 Application of the Planning Agreement**

This Deed applies to:

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

## **3 Condition Precedent and Road Closure**

### **3.1 Condition Precedent**

- (a) The Parties obligations under this Deed are conditional upon the Condition Precedent being satisfied.
- (b) The Parties agree that the Condition Precedent is:
  - (i) the Road Closure Area being classified as *operational* under the LG Act;

- (ii) the closure of the Road Closure Area pursuant to Part 4 of the Roads Act;
- (iii) creation of a folio in the Register for the Road Closure Area as a separate freehold title in fee simple; and
- (iv) issue of a certificate of title for the Road Closure Area.

### 3.2 Road closure

- (a) The Council must promptly and without delay proceed to do all things necessary, including to cause or procure:
  - (i) the Road Closure Area to be classified as *operational* under the LG Act;
  - (ii) the Road Closure Area to be closed pursuant to Part 4 of the Roads Act; and
  - (iii) a separate certificate of title for the Road Closure Area to be issued, if closure of the Road Closure Area under Part 4 of the Roads Act occurs.
- (b) The Parties acknowledge that it is their intention for the Road Closure Area to be a land parcel to which a folio in the Register relates as a separate lot in a deposited plan:
  - (i) owned by the Council in fee simple; and
  - (ii) classified as operational land under the LG Act.
- (c) The Developer must (promptly, without delay and at its Cost) do all things reasonably required by the Council to assist Council with all applications and others tasks that must be done to cause the Road Closure Area to be closed pursuant to Part 4 of the Roads Act.
- (d) The Parties agree to co-operate and keep each other regularly informed about all matters and things relevant to the closure of the Road Closure Area pursuant to Part 4 of the Roads Act.
- (e) The Council must give the Developer a notice advising of the closure of the Road Closure Area pursuant to Part 4 of the Roads Act without delay after the Council becomes aware of the publication in the Government Gazette of a notice advising of the closure.
- (f) The Council does not in any way warrant that the Road Closure Area is or will be suitable or adequate for the Developer's purposes.
- (g) The Developer acknowledges that the Council may be required by a service or utility provider or an Authority or any combination of them to:
  - (i) create easements, restrictions and covenants;
  - (ii) enter into agreements or arrangements;
  - (iii) create or grant rights and privileges;
  - (iv) create roads or rights of way; and

- (v) dedicate land,

over or in respect of the Road Closure Area in order to procure the closure of the Road Closure Area pursuant to Part 4 of the Roads Act.

- (h) The Developer must not make any objection nor make any requisition or claim, rescind or terminate this Deed by reason of any easements, restrictions on use, covenants or any other matter set out in this clause registered against the title to the Road Closure Area because they were required by any Authority or a service or utility provider or any combination of them whose approval is required to close the Road Closure Area pursuant to Part 4 of the Roads Act.
- (i) However, clauses 3.2(f) and (g) do not apply if, in the opinion of the Developer acting reasonably, any easements, restrictions on use, covenants or any other matter would make the use of the Road Closure Area by the Developer for its purposes (including for the purposes of constructing a vehicle access tunnel between Lots 104 and 105 in DP1224238) not practical or possible.

### **3.3 Termination right**

- (a) Either Party may terminate this Deed by giving to the other a notice at any time after the Condition Precedent Date if the Condition Precedent has not been satisfied before the date on which the termination takes effect as a result of a notice being given under this clause.
- (b) A notice given under this clause 3.3 must specify the date on which termination takes effect that is not less than one month after the date on which the notice is given.

### **3.4 Consequences of termination**

- (a) No Party will be liable to any other Party for any sum for damages, costs or expenses as a result of the lawful termination of this Deed under this clause 3.
- (b) Termination of this Deed under this clause 3 is without prejudice to any right or entitlement a Party may have by reason of any antecedent breach.

## **4 Development Contributions**

### **4.1 Delivery**

- (a) The Parties agree that the Developer must (at its Cost and risk) undertake the Contribution Works in accordance with Schedule 3 and Schedule 4.
- (b) The Parties agree that the provision of the Contribution Works will serve the public purposes set out in Column 2 in the Tables to Schedule 3.

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## **5 Monetary Contribution**

### **5.1 Application of section 94EF of the EP&A Act**

This Deed does not exclude the application of section 94EF of the EP&A Act to the Development.

### **5.2 Application of section 94 of the EP&A Act**

This Deed does not exclude the application of section 94 of the EP&A Act to the Development.

### **5.3 Application of section 94A of the EP&A Act**

This Deed does not exclude the application of section 94A of the EP&A Act to the Development.

## **6 Road Closure Area transfer and use**

### **6.1 Transfer**

- (a) No later than 15 Business Days after the date of the Certificate of Practical Completion the Council must transfer freehold title in the Road Closure Area to the Developer, free of any Encumbrance, except as may be permitted by this Deed.
- (b) The Council's obligations under this clause will be taken to have been fulfilled for the purposes of this Deed when the Council delivers to the Developer the certificate of title for the Road Closure Area and such other title transfer necessary to enable the Developer to be shown on the Register as the freehold owner of the Road Closure Area.

### **6.2 Works in Jarvis Circuit**

- (a) The Parties acknowledge that the Development involves works in Jarvis Circuit.
- (b) Nothing in this Deed relieves or otherwise affects any requirement under a Development Consent or under any Law to obtain and comply with any Approval to carry out works in Jarvis Circuit (including an approval under section 138 of the Roads Act) whether or not the Road Closure Area has been closed pursuant to Part 4 of the Roads Act.

### **6.3 Access for works**

- (a) This clause 6.3 applies if the Developer proposes to conduct works in the Road Closure Area after the Road Closure Area has been closed pursuant to Part 4 of the Roads Act but before freehold title to the Road Closure Area has been transferred to the Developer under this Deed.
- (b) The Council grants to the Developer a nonexclusive licence to access and use the Road Closure Area after it has been closed pursuant to Part 4 of the Roads Act but before freehold title to the Road Closure Area has been transferred to the Developer under this Deed in connection with the conduct of the Development.



- (c) The Developer conducts works in Jarvis Circuit under this clause at its risk.
- (d) The provisions of clause 9 of Schedule 4 apply as if they were repeated here with such amendments as are reasonable necessary having regard to the context.
- (e) The Developer must reinstate Jarvis Circuit to the condition it was in before any works were conducted if the Developer conducts works in Jarvis Circuit and this Deed is terminated for any reason. The Developer must carry out such reinstatement to the Councils reasonable satisfaction no later than 30 Business Days after the termination of this Deed.
- (f) The Developer must not make any Claim against the Council in connection with any works the Developer may conduct in Jarvis Circuit (including the Road Closure Area (whether or not closed pursuant to Part 4 of the Roads Act)).

## **7 Contribution Works**

### **7.1 Contribution Works**

- (a) The Developer must carry out the Contribution Works in accordance with this Deed, including the Construction Terms and any Development Consent granted for the Contribution Works.
- (b) The Contribution Works (or any part of them) required under this Deed will be taken to have been completed for the purposes of this Deed when a Certificate of Practical Completion has been issued for the Contribution Works or relevant part of them.
- (c) The Parties agree and acknowledge that the Contribution Works serve the public purposes specified for each of the in the Contributions Schedule.

## **8 Caveat**

### **8.1 Caveatable interest**

The Developer acknowledges and agrees that when this Deed is executed the Council is deemed to have acquired, and the Developer is deemed to have granted, an equitable estate and interest in that part of the Land on which the Community Facility is to be constructed pursuant to the Related Planning Agreement for the purposes of section 74F(1) of the Real Property Act and consequently the Council has a sufficient interest in that part of the Land in respect of which to lodge a caveat in the relevant folio of the Register notifying that interest.

### **8.2 Caveat prior to registration**

The Developer acknowledges and agrees that:

- (a) Subject to clause 9, the Council may lodge a caveat in the relevant folio of the Register notifying of its interest to protect its rights under this Deed and the Developer will not object to the Council lodging a caveat in the relevant folio of the

Register nor (subject to the provisions of this clause 8) will it seek to remove any caveat lodged by the Council.

- (b) If Council lodges a caveat in accordance with this clause 8, then the 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 in the Land which is not inconsistent with this Deed, provided the Developer is not in breach of any obligations under this Deed.
- (c) The Council (as the caveator) will provide any consent the Developer may reasonably require to enable this Deed or any dealing in the Land to be registered in accordance with this clause 8.2.
- (d) The Council will promptly, following registration of this Deed, do all things reasonably necessary to remove the caveat from the relevant folio of the Register.

## **9 Registration of this Deed**

### **9.1 Land ownership**

The Developer represents and warrants that it is (or is entitled to be) the legal and beneficial owner of the Land, and will be the legal and beneficial owner of all of the Land prior to any obligations to deliver Contribution Works under this Deed arising.

### **9.2 Registration on title**

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 93H of the EP&A Act and Schedule 8.

## **10 Release and Discharge**

The Council agrees to release and discharge this Deed and remove any caveat lodged by the Council pursuant to clause 8 on the release and discharge terms contained in clause 8 and Schedule 9 to this Deed.

## **11 Breaches to be rectified**

### **11.1 Council to give notice**

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

- (a) identifies the nature of the breach; and
- (b) provides at least 20 Business Days (except in the case of an emergency or where there is an issue of public safety where less time may be specified) within which

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the defaulting party must rectify that breach and what action must be taken to rectify that breach.

## **11.2 Schedule 6 applies**

If the Council gives a written notice under clause 11.1 then the provisions of Schedule 6 will apply.

## **12 Security**

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

## **13 Assignment and other dealings**

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

## **14 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.

## **15 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.

## **16 Overdue payments**

### **16.1 Interest on overdue money**

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

### **16.2 Compounding**

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

### **16.3 Interest on liability merged in judgment or order**

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

## **17 GST**

### **17.1 Interpretation**

- (a) Except where the context suggests otherwise, terms used in this clause 17 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.
- (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.

### **17.2 Consideration GST exclusive**

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

### **17.3 GST not payable on Contributions**

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

### **17.4 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.

### **17.5 No merger**

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

## 18 Explanatory Note

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

## 19 Notices

### 19.1 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   | Developer   |
|---|---|
| Council of the City of Ryde<br>Level 1, 3 Richardson Place, North Ryde<br>NSW 2113<br>Fax: 9952 8222<br>Attn: General Manager | Greenland (Sydney) Lachlan's Line<br>Macquarie Park Development Pty Limited<br>c/- Urbis at Tower 2, Level 23, Darling Park,<br>201 Sussex Street, Sydney NSW 2000<br>Fax:<br>Attn: The Manager |

### 19.2 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.

### 19.3 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.

### 19.4 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.

## **20 Schedules and Annexures to this Deed**

The Parties agree:

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

## **21 General provisions**

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

## **22 Obligations under this Planning Agreement**

### **22.1 Legal Challenge**

Subject to clauses 22.5 to 22.9, where a Legal Challenge is commenced the parties' obligations under this Deed are immediately suspended and the Developer shall not have any obligation to make any Contributions under this Deed until the expiration of the Suspension Period or where clause 22.5 applies.

### **22.2 Parties to meet**

Subject to clause 22.3, where any Legal Challenge is commenced or where the Court declares or orders any Approval to be invalid or any of them, the Parties agree to:

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

### **22.3 Legal advice**

The Parties will not be required to meet or consult pursuant to clause 22.2 in circumstances where any of the Parties receives legal advice that it should not so meet or consult with the other Party in connection with any such declaration or Appeal.

### **22.4 Confidential**

The Parties agree that any discussions held between the Parties under this clause 22 are confidential and that a common interest between them exists for the purposes of legal professional privilege in connection with those discussions.

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## **22.5 Development may continue**

Notwithstanding clause 22.1, the Developer may elect at its Cost and risk to proceed with the Development, in which circumstances, clause 22.1 will not apply and the Developer must continue to comply with all obligations under this Deed.

## **22.6 Termination**

If this Deed is terminated as the result of any Appeal the parties will meet in accordance with clause 22.2 to discuss any matters that may need to be addressed as a result of the termination.

## **22.7 Invalid Approval**

If any Approval is declared invalid, the parties will meet in accordance with clause 22.2 of this Deed to discuss their respective rights and obligations under this Deed as a consequence of that determination.

## **22.8 Indemnity**

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

## **22.9 Public safety**

The parties agree that if this clause 22 applies and there is a suspension of the parties' obligations under this Deed, any Contribution Works that have been commenced, but not completed, will be left in a state that is safe to the public before those Contribution Works cease notwithstanding the commencement of any Suspension Period.

## **22.10 No merger**

This clause 22 will not merge on completion or termination of this Deed.

# Planning Agreement

## Schedule 1 – Requirements set out in section 93F of the EP&A Act

The Parties acknowledge and agree that the table set out below summarises how the Planning Agreement complies with the requirements set out in section 93F of the EP&A Act.

| Requirement under the EP&A Act  | This Planning Agreement   |
|---|---|
| <b>Planning instrument and/or development application - (Section 93F(1))</b><br>The Developer has:<br><br>(a) sought a change to an environmental planning instrument.<br><br>(b) made, or proposes to make, a Development Application.<br><br>(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies. | (a) No.<br><br>(b) Yes.<br><br>(c) No.  |
| <b>Description of land to which this Deed applies - (Section 93F(3)(a))</b>   | The Land described in certificate of title identifiers 104 and 105 / 1224238 and known as 25 – 27 Epping Road Macquarie Park, NSW.                                      |
| <b>Description of change to the environmental planning instrument or the development to which this Deed applies - (Section 93F(3)(b))</b><br>Describe:<br><br>(a) the proposed change to the environmental planning instrument to which this Deed applies; and<br><br>(b) the development to which this Deed applies.   | (a) Not applicable.<br><br>(b) See Schedule 2.  |
| <b>The scope, timing and manner of delivery of contribution required by this planning agreement - (Section 93F(3)(c))</b>   | This Deed contains provisions relating to scope, delivery and manner of delivery of Contributions (and key provisions appear in Schedule 3 and Schedule 4 of this Deed. |
| <b>Applicability of Section 94 of the EP&amp;A Act - (Section 93F(3)(d))</b>  | The application of section 94 of the EP&A Act is not excluded in respect of the Development.  |



| Requirement under the EP&A Act  | This Planning Agreement   |
|---|---|
| <p><b>Applicability of Section 94A of the EP&amp;A Act - (Section 93F(3)(d))</b></p>  | <p>The application of section 94A of the EP&amp;A Act is not excluded in respect of the Development.</p>  |
| <p><b>Applicability of Section 94EF of the EP&amp;A Act - (Section 93F(3)(d))</b></p>   | <p>The application of section 94EF of the EP&amp;A Act is not excluded in respect of the Development.</p>   |
| <p><b>Consideration of benefits under this Deed if section 94 applies - (Section 93F(3)(e))</b></p> <p>Are the benefits under this Deed to be taken into consideration if Section 94 of the EP&amp;A Act is not excluded?</p>   | <p>Yes in the manner and to the extent set out in clause 5.</p>   |
| <p><b>Mechanism for Dispute resolution - (Section 93F(3)(f))</b></p> <p>This Deed provides a mechanism for the resolution of disputes under the agreement?</p>  | <p>The mechanism for despite resolution is contained in clause 15 and Schedule 7 of this Deed.</p>  |
| <p><b>Enforcement of this Deed (Section 93F(3)(g) and section 93H)</b></p> <p>This Deed provides for enforcement by a suitable means in the event of a breach.</p>  | <p>There are provisions for enforcement by suitable means by or through (without limitation) clauses 7, 8, 9, 10, 11, 12 and 13 and Schedules 4, 5, 6, 8, 10 and 11 of this Deed.</p> |
| <p><b>Registration of this Deed</b></p> <p>The Parties agree that this Deed will be registered</p>  | <p>Yes</p>  |
| <p><b>No obligation to grant consent or exercise functions - (Section 93F(9))</b></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 EP&amp;A Act in relation to a change to an environmental planning instrument.</p> | <p>This is addressed in clause 1.8 of Schedule 13.</p>  |

# Planning Agreement

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## Schedule 2 - Description of the Land and the Development

### 1 Title

The land comprised in certificate of title folio identifiers 104 and 105 / 1224238 and known as 25 – 27 Epping Road Macquarie Park, NSW

### 2 Development

Development means:

- (a) 3 levels of basement car parking and loading to service all activities on the Land for 891 car spaces (including 180 retail car parking spaces);
- (b) a tunnel beneath Jarvis Circuit linking basement levels 01 and 02 across the Land;
- (c) a single level podium across that part of the Land comprised in folio identifier 104 / 1224238;
- (d) 8 residential buildings ranging from 3 to 17 storeys;
- (e) publicly accessible open spaces referred to in the Development Application as Lachlan's Square and Village Square; and
- (f) a 2500sq m community facility over 2 levels,

all in accordance with the Development Consent.

# Planning Agreement

## Schedule 3 - Contributions Schedule

### Contribution Table

#### Part 1 - Contribution Works

| Column 1 – Item           | Column 2 – Public Purpose | Column 3 – Manner and Extent  | Column 4 – Contribution Value               | Column 5 - Date Contribution Works are to be reach Practical Complete   |
|---------------------------|---------------------------|---|---|---|
| Community Facility fitout | Community Facilities      | Fitout of the community facility to be constructed on part of the Land (being Lot 104 DP 1224238) pursuant to the Related Planning Agreement. | \$900,000 (refer to clause 2 of Schedule 4) | The date stated in the Related Planning Agreement for completion of the Community Facility Works (as defined in the Related Planning Agreement and see item 1 in part 2 of the contribution table in schedule 3 of the Related Planning Agreement). |

#### Part 2 – Contribution Value indexation

The Parties acknowledge and agree that the Contribution Value is adjusted in accordance with the following formula:

$$\text{Adjusted CV} = \text{CV} \times \frac{\text{CPI as at the payment date}}{\text{CPI as at the date of this Deed}}$$

where:

**Adjusted CV** is the adjusted amount of the Contribution Value.

**CV** is the Contribution Value stated in the table contained in Schedule 3.

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

# Planning Agreement

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## Schedule 4 - Contribution Works Procedures

### 1 Authority requirements

#### 1.1 Construe

These Construction Terms must be read and construed subject to:

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

#### 1.2 Responsibility for Approvals

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

#### 1.3 Compliance with Approvals

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

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

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

### 2 Costs

#### 2.1 Developer responsible

All Costs (including Construction Costs) of the Contribution Works must be borne by the Developer.

#### 2.2 Construction Costs composition

- (a) The Developer must ensure that the Construction Costs incurred in connection with the conduct of the Contribution Works are not less than the Contribution Value.
- (b) The Parties agree that the following are to be excluded from the Construction Costs for the purposes of this clause:

- (i) GST applicable to any taxable supply made in connection with the Contribution Works;
- (ii) taxes of any other kind applicable to the works and services undertaken in connection with the Contribution Works and payments made for those works and services;
- (iii) any amount in the nature of *developer's margin* that the Developer might claim in arrangements of this kind; and
- (iv) any amount in the nature of a management fee or administration fee that the Developer might claim or incur in connection with the management or administration of the Contribution Works (whether or not resulting from the engagement of a third party to provide management or administration services).

### 2.3 Construction Costs verification

- (a) The Developer must include in the notice given to the Council under clause 7.1 of this Schedule 4 a certificate from a Quantity Surveyor that sets out:
  - (i) an opinion as to appropriateness of the Construction Costs (taking into account the requirements of this clause) incurred in connection with the conduct of the Contribution Works and whether the total sum of the costs that are considered to be appropriately incurred are less than the Contribution Value; and
  - (ii) if the amount referred to in the opinion given under this clause is less than the Contribution Value, an opinion with regard to the amount of the amount of the difference (**Shortfall**).
- (b) If the certificate from the Quantity Surveyor given under this clause indicates a Shortfall, the Developer must pay to the Council the amount of that Shortfall (without further demand or deduction) no later than 10 Business Days after the date of the notice given to the Council under clause 7.1 of this Schedule 4.
- (c) The Developer must obtain the Council's prior consent to the appointment of the Quantity Surveyor who is to provide the certificate required under this clause.

## 3 Works responsibility and contractor engagement

### 3.1 Works responsibility

The Developer will be responsible for the management and conduct of managing the Contribution Works.

### 3.2 Contractor engagement

- (a) The Developer may engage or contract with other persons in connection with the carrying out of the Contribution Works.
- (b) If the Developer engages or contracts with other persons in connection with the carrying out of the Contribution Works, the Developer agrees to ensure the

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Construction Terms are part of any Construction Contract entered into with another person in connection with the carrying out of the Contribution Works

## **4 Design development and approval**

### **4.1 Detailed Design**

- (a) The Developer must provide a copy of the draft Detailed Design to the Council for approval before commencement of the Contribution Works.
- (b) No later than 20 Business Days of receiving the Detailed Design, the Council must give the Developer a notice:
  - (i) setting out suggested amendments to the Detailed Design; or
  - (ii) advising that the Detailed Design is acceptable.
- (c) The Council and the Developer must work in consultation with each other to prepare and agree the Detailed Design and must both act reasonably and with due expedition in their consultations with each other.
- (d) If the Detailed Design is not completed and agreed within 20 Business Days of the Council providing its suggested amendments in accordance with clause 4.1(b) of this Schedule 4, to avoid possible delays to the issue of a Certificate of Practical Completion, the Council will, in its sole discretion, be entitled to decide on any outstanding or undecided matter or item relating to areas that are to be accessible to the public, provided that any decision made by Council under this clause:
  - (i) is consistent with the obligation to provide the Contributions under this Deed;
  - (ii) is consistent with the Development Consent;
  - (iii) does not materially and adversely affect the Development; and
  - (iv) is reasonable.
- (e) Any acceptance by the Council of the Detailed Design under this clause 4.1 of this Schedule 4 is not to be taken as approval of or to any Construction Certificate for the Contribution Works or any part of them.

### **4.2 Good faith**

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

### **4.3 Contribution Works and the Related Planning Agreement**

The Parties acknowledge and agree that:

- (a) as at the date of this Deed the design and scope of the community facility works to be performed under the Related Planning Agreement have not been finalised and approved by the Council;

- (b) finalisation and approval of the community facility works to be performed under the Related Planning Agreement is essential to the approval of the Detailed Design of the Contribution Works to be undertaken under this Deed;
- (c) regard must had to the design and scope of the community facility works to be performed under the Related Planning Agreement in considering the Detailed Design for the Contribution Works under this Deed and the Council's approval of that Detailed Design; AND
- (d) the Contribution Works to be undertaken under this Deed are in addition to the community facility works to be performed under the Related Planning Agreement;

## **5 Conduct of the Contribution Works**

### **5.1 Communication**

The Developer must:

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

### **5.2 Standard of Contribution Works**

- (a) Unless otherwise provided, the Developer must, and must cause the Builder (or any other person involved in the carrying out of the Contribution Works) to, use suitable new materials and proper and tradesman like workmanship when carrying out the Contribution Works.
- (b) The qualitative standard of the design and finishes for the Construction Works must be no less than those described in the following documents:
  - (i) any relevant Standard Requirements; and
  - (ii) any relevant design standards or guidelines and any other requirements or policies applied by the Council from time to time in assessing the adequacy of any works or improvements proposed for the public domain or to be accessible to the public in accordance with this Deed.
- (c) The Developer will obtain any relevant standards (including design standards), specifications, or guidelines and any other requirements or policies referred to in clause 5.2(b)(ii) of this Schedule 4 from the Council if the Council fails to deliver them to the Developer.

### **5.3 Damage**

- (a) The Developer is to ensure to the fullest extent reasonably practicable that, in performing its obligations under this Deed:
  - (i) all necessary measures are taken to protect people and property;

- (ii) unnecessary interference with the passage of people and vehicles is avoided; and
  - (iii) nuisances and unreasonable noise and disturbances are prevented.
- (b) Without limiting clause 5.3(a) of this Schedule 4, the Developer is not to obstruct, interfere with, impair or damage any public road, public footpath, public cycleway or other public thoroughfare, or any pipe, conduit, drain, watercourse or other public utility or service on any land except as authorised in writing by the Council or any relevant Authority.

## 6 Inspection

### 6.1 Inspection schedule

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

### 6.2 Inspection process

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



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

## **7 Completion**

### **7.1 Practical Completion**

- (a) When the Developer considers that the Contribution Works, or any part of them, are complete, the Developer must send a notice to the Council accompanied by complete works as executed plans, any relevant certificates or consents of any public utility authority and a request for written certification from the Council that the Contribution Works or relevant part of them are complete.
- (b) Within 10 Business Days of receipt of the notice under clause 7.1(a) of this Schedule 4, the Council will carry out an inspection of the Contribution Works or relevant part of them and will, acting reasonably, either:
- (i) provide written certification to the Developer that the Contribution Works or relevant part of them have been completed; or

- (ii) notify the Developer of any additional information required or matters which must be addressed by the Developer prior to the certification being issued.
- (c) If the Developer is required to provide additional information or address any matters under clause 7.1(b)(ii) of this Schedule 4, the Developer will provide that information to the Council or address those matters within 10 Business Days of receiving the notice or within a reasonable period of time and make a further request under clause 7.1(a) of this Schedule 4 for written certification that the Works have been completed.
- (d) Practical completion will be achieved in relation to the Contribution Works or any relevant part of them when a Certificate of Practical Completion has been issued for those works.

## 7.2 Delivery of documents

- (a) The Developer must as soon as practicable, and no later than 20 Business Days after the date on which the Certificate of Practical Completion is issued in respect of the Contribution Works or any relevant part of them deliver to the Council, complete and legible copies of:
  - (i) all "as built" full-sized drawings, specifications and relevant operation and service manuals;
  - (ii) all necessary certificates including the certificates of any consultants of the Developer that the Council may reasonably require, and Approvals of any public utility authority (where relevant); and
  - (iii) copies of all Approvals required for use of the land subject to those works.
- (b) The Developer must as soon as practicable, and no later than 20 Business Days after the date on which the Certificate of Practical Completion is issued in respect of the Contribution Works or any relevant part of them, provide the Council with a handover presentation in respect of the Contribution Works.

## 7.3 Assignment of warranties

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

# 8 Defects liability

## 8.1 Obligation to rectify

- (a) During the Defects Liability Period, the Council (acting reasonably) may give to the Developer a notice (**Rectification Notice**) in writing that identifies a defect in the Contribution Works and specifies:

- (i) action required to be undertaken by the Developer to rectify that defect (**Rectification Works**); and
  - (ii) the date on which the defect must be rectified (**Rectification Date**).
- (b) The Developer must comply with the Rectification Notice by:
- (i) procuring the performance of the Rectification Works by the Rectification Date, or such other date as agreed between the Parties;
  - (ii) keeping the Council reasonably informed of the action to be taken to rectify the defect; and
  - (iii) carrying out the Rectification Works.
- (c) The Council must give the Developer and its contractors any access required to carry out the Rectification Works.

## **8.2 Rectification complete**

- (a) When the Developer considers that the Rectification Works are complete, either the Developer must notify the Council and provide documentation, plans or invoices which establish that the Rectification Works were carried out.
- (b) The Council may inspect the Rectification Works within 15 Business Days of receiving a notice from the Developer under clause 8.2(a) of this Schedule 4 and, acting reasonably:
- (i) issue a further Rectification Notice if it is not reasonably satisfied that the Rectification Works are complete; or
  - (ii) notify the Developer in writing that it is satisfied the Rectification Works are complete.

## **8.3 Rectifications costs**

- (a) The Developer must meet all costs of and incidental to rectification of defects under this clause 8 of this Schedule 4.
- (b) If the Developer fails to comply with a Rectification Notice, then the Council may do such things or take such action as is necessary to carry out the Rectification Works, including accessing and occupying any part of the Land without further notice to the Developer, and may:
- (i) call upon any Bond provided to the Council under this clause to meet its costs of carrying out Rectification Works; and
  - (ii) recover as a debt due to the Council by the Developer in a court of competent jurisdiction, any difference between the amount of the security deposit and the costs incurred by the Council in carrying out Rectification Works.

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## **9 Risk and insurance**

### **9.1 Risk**

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

### **9.2 Indemnities**

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

### **9.3 Insurance**

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

## **10 Intellectual Property Rights**

The Council acknowledges that the Developer or its contractors hold all rights to copyright and any intellectual property which may exist in the Contribution Works. To the extent the Developer have or receive intellectual property rights for the Contribution Works, the Developer shall assign those intellectual property rights to Council or permit use thereof.

# Planning Agreement

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## Schedule 5 – Road Closure Plan

| <b>DEPOSITED PLAN ADMINISTRATION SHEET</b>  |  | Sheet 1 of 2 Sheet(s) |
|---|--|-----------------------|
| <p style="text-align: right;">Office Use Only</p> <p>Registered : _____</p> <p>Title System : _____</p> <p>Purpose : _____</p>  | <p style="text-align: left;">Office Use Only</p>   |                       |
| <p><b>PLAN OF PROPOSED PARTIAL ROAD CLOSURE IN STRATUM</b></p>  | <p>LGA : RYDE</p> <p>Locality : MACQUARIE PARK</p> <p>Parish : HUNTERS HILL</p> <p>County : CUMBERLAND</p>   |                       |
| <p style="text-align: center;"><b>Crown Lands NSW / Western Lands Office Approval</b></p> <p>I, _____ (Authorised Officer) in approving this plan certify that all necessary approvals in regard to the allocation of the land shown herein have been given.</p> <p>Signature: _____</p> <p>Date: _____</p> <p>File Number: _____</p> <p>Office: _____</p>  | <p style="text-align: center;"><b>Survey Certificate</b></p> <p>I, CAMERON PHILLIP MILES of RPS Australia East Pty Ltd, 255 PITT S, _____ a surveyor registered under the <i>Surveying and Spatial Information Act 2002</i>, certify that:</p> <p>*(a) The land shown in the plan was surveyed in accordance with the <i>Surveying and Spatial Information Regulation 2012</i>, is accurate and the survey was completed on 10.02.2017.</p> <p><del>*(b) The part of the land shown in the plan (*being/*excluding ^ _____ Lot x to x inclusive and easements _____) was surveyed in accordance with the <i>Surveying and Spatial Information Regulation 2012</i>, is accurate and the survey was completed on 10.02.2017. The part not surveyed was compiled in accordance with that Regulation.</del></p> <p>*(c) The land shown in this plan was compiled in accordance with the <i>Surveying and Spatial Information Regulation 2012</i>.</p> <p>Signature: _____ Dated: DD-MM-YYYY</p> <p>Surveyor ID: 8374</p> <p>Datum Line: 'X'-'Y'</p> <p>Type: *Urban /*Rural</p> <p>The terrain is *Level-Undulating / <del>Steep-Mountainous.</del></p> <p>*Strike through if inapplicable.</p> <p>^ Specify the land actually surveyed or specify any land shown in the plan that is not the subject of the survey.</p> |                       |
| <p style="text-align: center;"><b>Subdivision Certificate</b></p> <p>I, _____ *Authorised Person/*General Manager/*Accredited Certifier, certify that the provisions of the s.109J of the <i>Environmental Planning and Assessment Act 1979</i> have been satisfied in relation to the proposed subdivision, new road or reserve set out herein.</p> <p>Signature: _____</p> <p>Accreditation number: _____</p> <p>Consent Authority : _____</p> <p>Date of endorsement: _____</p> <p>Subdivision Certificate number: _____</p> <p>File number: _____</p> <p>*Strike through if inapplicable.</p> | <p>Plans used in the preparation of survey/compilation:</p> <p style="text-align: center;">DPXXXXXX</p> <div style="border: 1px solid black; padding: 5px; text-align: center; margin: 10px auto; width: fit-content;"> <p><b>CONCEPT PLAN</b><br/>Issue date: 21.02.2017</p> </div> <p style="text-align: center;">If space is insufficient continue on PLAN FORM 6A</p>  |                       |
| <p>Statements of intention to dedicate public roads, public reserves and drainage reserves, acquire/resume land.</p> <p>It is intended to dedicate XXXXXXXXXXXXX</p>  | <p>Signatures, Seals and Section 88B Statements should appear on PLAN FORM 6A</p>  |                       |
| <p>Signatures, Seals and Section 88B Statements should appear on PLAN FORM 6A</p>   | <p>Surveyor's Reference : PR132364SCBD_RDC<br/>(PR132364SCBD_DP_RDC 170210 REV A.dwg)</p>  |                       |

**DEPOSITED PLAN ADMINISTRATION SHEET**

Sheet 2 of 2 Sheet(s)

Office Use Only

Office Use Only

Registered:

**PLAN OF PROPOSED PARTIAL ROAD  
CLOSURE IN STRATUM**

- This sheet is for the provision of the following information as required:
- A schedule of lots and addresses - See 60(c) *SSI Regulation 2012*
  - Statements of intention to create and release affecting interests in accordance with section 88B *Conveyancing Act 1919*
  - Signatures and seals - see 195D *Conveyancing Act 1919*
  - Any information which cannot fit in the appropriate panel of sheet 1 of the administration sheets.

Subdivision Certificate number: .....

Date of Endorsement: .....

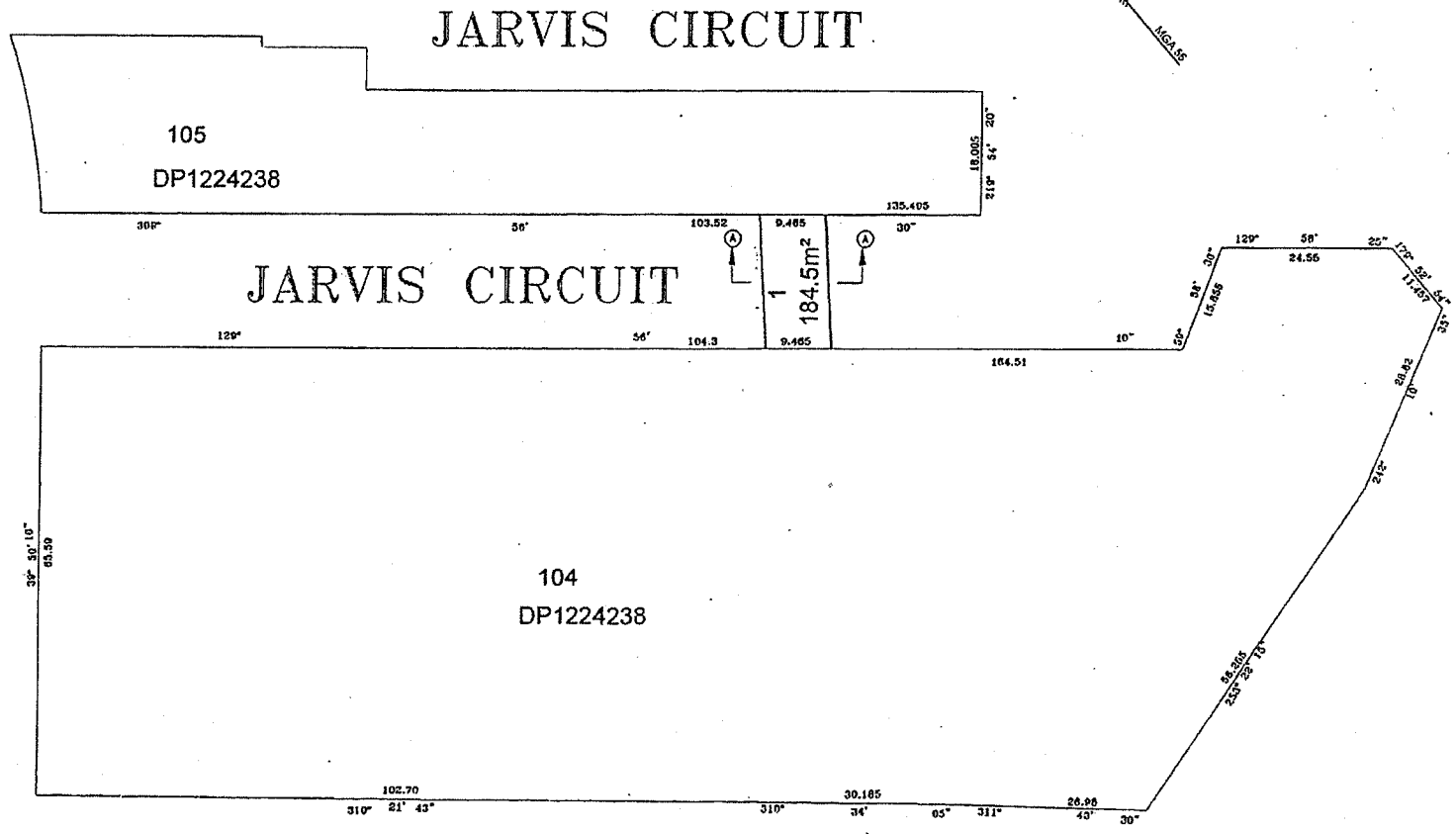
Pursuant to Section 88B of the *Conveyancing Act 1919* it is intended to create:

1. XXXXXXXXXXXX

|   |
|---|
| <p><b>CONCEPT PLAN</b><br/>Issue date: 21.02.2017</p> |
|---|

If space is insufficient use additional annexure sheet

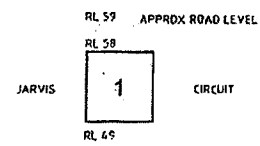
Surveyor's Reference: PR132364SCBD\_RDC  
(PR132364SCBD\_DP\_RDC 170210 REV A.dwg)



**NOTE :-**  
 LOT 1 IS A PROPOSED ROAD CLOSURE IN STRATUM.  
 THE LOWER LIMIT OF LOT 1 IS RL 48 (AHD)  
 THE UPPER LIMIT TO LOT 1 IS RL 58 (AHD)

ALL MEASUREMENTS AND DISTANCES ARE SUBJECT TO CONFIRMATION BY FINAL BOUNDARY SURVEY.

**SECTION A - A**



|  |  |  |            |  |
|--|--|--|------------|--|
| Surveyor : CAMERON PHILLIP MILES<br>Date of Survey : 10.02.2017<br>Surveyor's Ref : PR132364SCBD_RDC<br><small>(PR132364SCBD_SP_RDC 170210 REV 00)</small> | PLAN OF PROPOSED PARTIAL ROAD CLOSURE IN STRATUM | LGA : RYDE<br>Locality : MACQUARIE PARK<br>Subdivision No : ...<br>Lengths are in metres. Reduction Ratio 1 : xx | Registered | CONCEPT PLAN<br>Issue date: 21.02.2017 |
|--|--|--|------------|--|



# Planning Agreement

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## Schedule 6 - Notification and rectification of breach

### 1 Notice of breach

#### 1.1 Response to notice of breach

- (a) Promptly upon receipt of a notice under clause 11, the defaulting party must either:
  - (i) rectify the breach identified in that notice within the time period specified in that notice; or
  - (ii) notify the Council in writing that it does not agree that the breach identified in that notice has occurred, and refer the matter for dispute resolution in accordance with clause 15 and Schedule 7.
- (b) In the absence of a manifest error on the face of the notice, nothing in clause 1.1(a)(ii) of this Schedule 6 will constrain or limit the Council's rights of recourse under this Deed.

#### 1.2 Rights of the Council after giving notice of breach

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

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

- (i) taking any action under clause 2.1 of this Schedule 6;
- (ii) calling on the Bond under Schedule 10;
- (iii) issuing a notice to the defaulting party which:
  - (A) identifies the nature of the breach; and
  - (B) specifies that the breach must be rectified by the Developer within a reasonable period of time which must not be less than 20 Business Days (except in the case of an emergency or where there is an issue of public safety where less time may be specified) of the Council's notice,

and the provisions of clauses 1.1 and 1.2 of this Schedule 6 will apply in respect of that notice (with the necessary changes having been made) and if the defaulting party does not take either of the actions outlined in clause 1.1(a) of this Schedule 6 then the Council may have recourse against the Developer in relation to the breach.

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

## **2 Council may rectify breach**

### **2.1 Council may perform obligations**

- (a) This clause 2 of this Schedule 6 applies only if the Council has first given a notice of under clause 1 of this Schedule 6.
- (b) Before exercising its rights under the remainder of this clause 2.1 of this Schedule 6, the Council will give not less than 20 Business Days' (except in the case of an emergency or where there is an issue of public safety where less time may be specified) written notice to the defaulting party of its intention to exercise those rights.
- (c) The Council may (but is not obliged to):
- (i) perform the defaulting party's obligations where the defaulting party fails to:
    - (A) rectify the breach identified in the notice referred to in clause 11 within the time period specified in that notice; or
    - (B) notify the Council in writing that it does not agree that the breach identified in the notice referred to in clause 11 has occurred and refer the matter for dispute resolution in accordance with clause 15 and Schedule 7;
  - (ii) rectify any breach of this Deed;
  - (iii) carry out other works that are necessary to be carried out; and
  - (iv) otherwise do anything which the defaulting party should have done under this Deed.
- (d) Without limiting clause 2.1 of this Schedule 6 the defaulting party agrees that the Council, its employees, agents and contractors, may enter onto the Land and do whatever is necessary to remedy the breach, in the absolute discretion of the Council, subject to compliance with the reasonable directions of the defaulting party relating to work, health and safety and compliance with all Laws.
- (e) The defaulting party indemnifies and will keep the Council indemnified from and against all Claims, Costs and Legal Costs incurred by the Council or for which the Council may become liable in the exercise or purported exercise of the rights of the Council under this clause 2.1 of this Schedule 6, except in the event that such Claim is caused by or contributed to by the negligence of the Council or where the Council has exercised its rights in breach of this Deed, and may call on any Bond provided to it under Schedule 10 to satisfy any such Claim.

# Planning Agreement

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## Schedule 7 - Dispute Resolution

### 1 Dispute Resolution

#### 1.1 Not commence

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

#### 1.2 Written notice of dispute

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

#### 1.3 Attempt to resolve

On receipt of notice under clause 1.2 of this Schedule 7, the parties must endeavour in good faith to resolve the dispute expeditiously using informal dispute resolution techniques such as mediation, expert evaluation or other techniques agreed by them.

#### 1.4 Mediation

If the Parties do not agree within 10 Business Days of receipt of notice under clause 1.3 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 of this Schedule 7.
- (b) Where the Parties are not able to agree on an appropriate expert, the expert is to be appointed by the President of the appropriate institute or association.
- (c) If the Parties cannot agree on which institute or association is appropriate in the circumstances (within the same 10 Business Days), either Party may refer the selection of the institute or association to the President of the Bar Association of New South Wales to select the most appropriate institute or association.
- (d) The institutes or associations from which the expert may be appointed are:

- (i) if an architect: the Royal Australian Institute of Architects, New South Wales Chapter;
  - (ii) if an engineer: Engineers Australia;
  - (iii) if a valuer: the Australian Property Institute Incorporated ABN 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) of this Schedule 7 considers the appointment of a lead expert appropriate,
- then the Parties must appoint a lead expert.
- (f) The lead expert must be a solicitor who has practised for not less than 15 years and who has not less than 5 years' experience in alternative dispute resolution. The lead expert must be agreed by the Parties and failing agreement will be appointed by the President of the Law Society of New South Wales.
- (g) If a lead expert is appointed the functions of that person are:
- (i) to determine the type of expert required to determine the dispute;
  - (ii) in the absence of agreement between the Parties as to the identity of the expert, to request the appropriate institute or association referred to in clause 1.5(b) (**Institutes and associations**) to appoint an expert;
  - (iii) to determine the questions to be put to the expert and, if there is more than one expert, to co-ordinate and determine the timing of each expert determination;

- (iv) if the dispute requires determination by an expert solicitor, to perform that function;
  - (v) if the expert determinations obtained are ambiguous, contradictory or in conflict, to determine the ambiguity, contradiction or conflict;
  - (vi) on receipt of the expert determinations to deliver to the Parties a final determination of the dispute;
  - (vii) to determine any question of procedure concerning the dispute resolution process.
- (h) The expert is to be engaged on his standard terms of engagement subject to any amendments required to ensure consistency with this clause.
- (i) Both Parties may, within 20 Business Days of the date of appointment of the expert, make written submissions to the expert on the matter the subject of the dispute. If a Party makes a written submission to the expert, it must give a copy of the submission to the other Party at the same time as it gives the submission to the expert. Submissions must include all particulars upon which a Party seeks to rely in support of its position in relation to the dispute. The expert will determine the procedure for determining the dispute.
- (j) When any dispute or difference referred to in this clause has been referred for determination, the Parties will each use their best endeavours to make available to the expert all facts and circumstances which the expert may require to settle or determine the dispute or difference and must ensure that their respective employees, agents and consultants are available to appear at any hearing or enquiry called for by the expert. The Parties record their agreement that the hearing be concluded within 20 Business Days, and the expert's decision given within 20 Business Days, of the date of appointment of the expert, and shall use their best endeavours to see that these time frames are met.
- (k) The expert's decision is final and binding on the Parties. The cost of the expert's decision is to be borne by the Parties in the shares as the expert determines and in the absence of a determination equally between the Parties.
- (l) The expert will also determine the amount of the costs and expenses of the reference of such dispute to him. In default of such decision, those costs and expenses will be borne by the Parties in equal shares.

## **1.6 Court proceedings**

If the dispute is not resolved within 60 Business Days after notice is given under clause 1.2 of this Schedule 7, then any Party which has complied with the provisions of this Schedule 7, may in writing terminate any dispute resolution process undertaken under this clause and may then commence court proceedings in relation to the dispute.

## **1.7 Not use information**

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

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**1.8 No prejudice**

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

**1.9 Costs**

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

# Planning Agreement

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## Schedule 8 – Deed Registration

### 1 Deed registration

#### 1.1 Consents

The Developer warrants that they have obtained all consents to the registration of this Deed on the relevant folio of the Register for the Land as are necessary and in particular the consent of any mortgagee or lessee.

#### 1.2 Mortgage

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

#### 1.3 Council to lodge

Subject to clause 1.2 of this Schedule 8, the Council will lodge this Deed with Land and Property Information for registration on the relevant folio of the Register for the Land as soon as reasonably practicable, but in any event no later than 20 Business Days after receiving the documents referred to in clause 1.2 of this Schedule 8.

#### 1.4 Registration requisitions

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

#### 1.5 Registration notification

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

#### 1.6 Costs

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

# Planning Agreement

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## Schedule 9 - Release and Discharge Terms

### 1 Release and discharge terms

#### 1.1 Full release

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

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

#### 1.2 Partial release

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

- (a) all obligations under clause 4.1 of this Deed have been met;
- (b) the Developer has provided the Council with Security in accordance with Schedule 10 for the purpose of completing the outstanding obligations referred to in clause 8.4 of Schedule 4; and
- (c) the Developer is not otherwise in default of any of its obligations under this Deed (as determined by the Council acting reasonably), at the time of the Developer's request, unless the Council waives the default.

#### 1.3 Outstanding obligations

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



# Planning Agreement

## Schedule 10 – Security

### 1 Security

#### 1.1 Developer to provide

- (a) Clauses 1.1 to 1.7 of this Schedule apply in relation to the Contribution Works.
- (b) The Developer must provide a Security to the Council for the Security Amount specified in the table for the purposes state din the table below.

| Purpose   | Security Amount  |
|---|--|
| As security for the conduct of the Contribution Works in accordance with this Deed. | An amount equal to the Contribution Value.                                   |
| As security for the rectification of Defects under clause 8 of Schedule 4.          | An amount equal to 10% of the Construction Costs for the Contribution Works. |

#### 1.2 Adjustment of Security Amount

- (a) On each Adjustment Date each Security Amount is adjusted in accordance with the following formula:

$$RSA = \frac{SA \times A}{B}$$

where:

**RSA** is the revised Security Amount applicable from the relevant Adjustment Date;

**SA** is the Security Amount that is current on the relevant Adjustment Date;

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

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

- (b) The Council must give the Developer written notice of the revised Security Amount to apply from the relevant Adjustment Date.
- (c) The Developer must give the Council replacement or further Security so that the Council holds Security for an amount equal to the revised Security Amount no later than 15 Business Days after receipt of a notice given under paragraph 1.2(b) of this clause.

### **1.3 Security delivery**

- (a) If a Security is required to be provided by the Developer to the Council under this Deed, then the Developer must procure and give to the Council a Security for the relevant Security Amount at the time specified in this Deed.
- (b) The Parties agree that the:
  - (i) Security for the conduct of the Contribution Works in accordance with this Deed must be delivered on or before the date of this Deed; and
  - (ii) Security for the rectification of Defects under clause 8 of Schedule 4 must be delivered to Council prior to the issue of a Certificate of Practical Completion for the Contribution Works.

### **1.4 Expiry of Security**

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

### **1.5 Failure to replace expired Security**

If the Developer fails to provide the Council with a replacement Security in accordance with clause 1.4 of this Schedule 10, the Council may call on the full amount of such Security after giving 10 Business Days prior written notice to the Developer.

### **1.6 No limitation of obligations**

The provision of the Security does not:

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

### **1.7 Security under Bond**

- (a) The Developer agrees that the Council may, after giving at least 10 Business Days prior written notice to the Developer, make claims (in full or in part) under a Security provided by it:
  - (i) in the event that the Developer breaches its obligation to rectify defects in or maintain any Contribution Works in accordance with Schedule 4, and
  - (ii) a notice has been issued by Council requiring the Developer to remedy the breach in accordance with the requirements of Schedule 6, and the breach remains unremedied following the expiry of the rectification period specified in that notice.
- (b) The Council may retain and use any money it has obtained by making a claim under this clause in its discretion to compensate the Council for the Developer's breach of those obligations.

- (c) Within 20 Business Days after:
  - (i) issuing a Certificate of Practical Completion, and
  - (ii) receiving the Security referred to in clause 8.4(a) of Schedule 4 for the Defects Liability Period,

the Council must (if it has not called on it) return the Security (or any remaining balance of it) for the conduct of the Contribution Works unless at that time there is a subsisting default by the Developer under this Deed in which case the Council may retain the relevant Security until the relevant default is rectified.

### 1.8 Security for defects liability

- (a) The Developer advises and the Council acknowledges its awareness that the Security may be supplied by the Builder and form a part of the security held by the Developer from the Builder under the terms of the Construction Contract, provided that:
  - (i) any Security provided by the Builder benefits the Council and satisfies the requirements of this Deed; and
  - (ii) the Developer procures an agreement from the Builder that the Council will be entitled to call on any Security provided by the Builder, in accordance with the terms of this Deed and the terms of any Construction Contract.
- (b) Within 10 Business Days after the Defects Liability Period has expired Council must (if it has not called on it) return the Security referred to in this clause **Error! Reference source not found.** for the Contribution Works (or any remaining balance of it) to the Developer.
- (c) Notwithstanding clause 1.8(c) of Schedule 4, if during the Defects Liability Period, the Council issues a Rectification Notice and the Rectification Notice is not complied with, then the Council need not deliver the Security provided to it until that defect has been rectified.
- (d) The Council must deliver the balance of any Security for the Defects Liability Period to the Developer within 14 days after the Defects Liability Period has ended unless there are any un-remedied defects or the Developer is otherwise in default under this Deed.

### 1.9 Claims under Securities

- (a) The Developer agrees that the Council may after giving not less than 10 Business Days prior notice make claims (in full or in part) under a Security provided under this Deed if:
  - (i) in the case of the Contribution Work, the Developer is in breach of any obligation relevant to the carrying out and completion of the Contribution Works to which the Security relates in accordance with this Deed; or
  - (ii) in the case of Defects, the Developer has failed to rectify Defects in accordance with clause 8 of Schedule 4;

and:

- 
- (iii) a notice has been given by Council requiring the Developer to remedy the breach in accordance with the requirements of Schedule 6;
  - (iv) the breach remains un-remedied following the expiry of the rectification period specified in that notice; and
  - (v) the claim relates to the non-performance of obligations secured by that Security.
- (b) The Council may retain and use any money it has obtained by making a claim under this clause in its discretion to compensate the Council for the Owner's breach of those obligations.

# Planning Agreement

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## Schedule 11 - Assignment and Dealing

### 1 Assignment and Dealing

#### 1.1 Assignment of rights

- (a) Unless the matters specified in clause 1.1(b) of this Schedule 11 are satisfied, the Developer is not to assign or novate to any person their rights or uncompleted obligations under this Deed.
- (b) The Developer must not assign or novate to any person its rights or uncompleted obligations under this Deed unless the prior written consent of Council is obtained. The Council must not unreasonably withhold its consent in circumstances where the following matters have been satisfied:
  - (i) the Developer has, at no cost to the Council, first procured the execution by the person to whom the Developer's rights or uncompleted obligations under this Deed are to be assigned or novated (**incoming party**), of a deed in favour of the Council in the form similar to Schedule 12, completed in a manner satisfactory to the Council. Such deed includes covenants that the incoming party:
    - (A) will perform the relevant obligations of the Developer under this Deed; and
    - (B) is bound by the terms and conditions of this Deed (relevant to the Developer) as if the incoming party had executed the Deed;
  - (ii) the Developer is not in breach of this Deed or the Council has waived a subsisting breach;
  - (iii) the Developer provides to the satisfaction of Council (acting reasonably) a Bond and any other documents required under Schedule 10 to secure the outstanding obligations under this Deed;
  - (iv) the Developer provides to the satisfaction of Council (acting reasonably) copies of insurances or any other documents required under this Deed for the carrying out of any outstanding Contribution Works.

#### 1.2 Sale of 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) 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 obtains the Council's prior written consent. The Council must not unreasonably withhold its consent in circumstances where the requirements specified in clause 1.1(b) of this Schedule 11 are satisfied.
- (b) This clause 1.2 of this Schedule 11 does not apply to the transfer of any part of the Land, in respect of which the Council has provided a release and discharge of this Deed in accordance with Schedule 9.

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### **1.3 Council's Costs**

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

### **1.4 Council's assignment of rights**

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

### **1.5 Council to act promptly**

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

### **1.6 Effect of registration of VPA**

The provisions of this Schedule 11 do not apply in relation to any sale or transfer of the Land if this Deed is registered on the title to the Land at the time of the sale or transfer.

# Planning Agreement

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## Schedule 12 - Pro-forma Novation Deed

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# Novation Deed

Council of the City of Ryde

[# insert name #]



# Novation Deed

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# Novation Deed

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Date

Parties

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

[# insert name #] of [# insert address #] (Original Land Owner)

[# insert name #] of [# insert address #] (Transferee)

Recitals

A Council and the Original Land Owner are parties to the Original Agreement.

B The Original Agreement relates to the whole of the Land.

***[Drafting note: Use this paragraph if all or part of the obligations are to be assigned (but no land is to be transferred)]***

C The [# insert relevant party #] wishes to assign [Drafting note. Insert 'all' or 'part of' as relevant] its rights and obligations under the Original Agreement to the Transferee

***[Drafting Note. Use this paragraph if the whole of the Land is to be transferred]***

D The Original Land Owner wishes to transfer the whole of the Land to the Transferee

***[Drafting Note. Use this paragraph if part of the Land is to be transferred]***

E The Original Land Owner wishes to transfer part of the Land to the Transferee.

F The parties to this Deed have agreed to the terms and conditions of this Deed govern the novation to which this Deed relates.

This deed provides

## 1 Definitions and interpretation

### 1.1 Definitions

**Effective Date** means [insert].

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

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

***[Drafting note. Use this paragraph if all of the obligations are to be assigned or all of the Land is to be transferred]***

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**Required Obligations** means all of the obligations imposed on the Original Developer and the original Land Owner under the terms of the Original Agreement.

**[Drafting note. Use this definition if part of the obligations are to be assigned (but no land is to be transferred)]**

**Required Obligations** means [insert details of specific obligations to be assigned].

## 1.2 References to certain general terms

In this deed unless the contrary intention appears:

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

## 1.3 Headings

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

# 2 Novation

## 2.1 Original Agreement

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

- (a) the Transferee is substituted for the Original Land Owner or both (as the context requires) as a party to the Original Agreement insofar as the Original Agreement

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relates to the Required Obligations, and agrees to perform the Required Obligations;

- (b) the Transferee will be bound by the Original Agreement, and will be entitled to the benefit of the Original Agreement, as if the Transferee was a party to the Original Agreement instead of the Original Land Owner insofar as the Original Agreement relates to the Required Obligations; and
- (c) the Original Land Owner or both (as the context requires) 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 Required Obligations under the Original Agreement as if named as the Original Land Owner, 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 relevant public benefits to Council; and
- (b) the provision of all relevant Guarantees to Council.

## **2.3 Release of Guarantees [# Drafting note. to be revised to align with final security position under the Original Agreement #]**

The parties expressly acknowledge and agree that:

- (a) Council will release any Guarantee provided to Council by the Original Land Owner under the provisions of the Original Agreement to the Original Land Owner (or as the Original Land Owner otherwise directs in writing) promptly and in any event within 14 days of the provision of replacement Guarantee 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 Original Land Owner before the date of this Deed.

## **2.4 Liability before Effective Date**

Notwithstanding clause 2.1, the Original Land Owner is not released, relieved or discharged from liability under the Original Agreement before the Effective Date, or any breach of any provision of the Original Agreement by the Original Land Owner or both (as the context requires) 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.

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#### **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 the Council or the Transferor 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 Original Land Owner and the Transferee are jointly and severally liable for the Council's Legal Costs of and incidental to the negotiation, preparation and execution of this deed, and must reimburse the 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.**

# Novation Deed

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Signing page

*[insert Appropriate execution clauses for the Council and Developer]*

# Planning Agreement

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## Schedule 13 - General Provisions

### 1 General Provisions

#### 1.1 Approvals and Consent

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

#### 1.2 Costs

- (a) Unless otherwise specified in this Deed, all Costs and Legal Costs relating to this Deed are to be borne by the Developer in the amount specified in Schedule 14 and are payable on demand.
- (b) Without limiting clause 1.2(a) of this Schedule 13, the Developer agrees to pay or reimburse the Council on demand for:
  - (i) Costs and Legal Costs of the Council in connection with:
    - (A) exercising, enforcing or preserving, or attempting to exercise, enforce or preserve, rights under this Deed, including in connection with the 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 Effect of terms and conditions in Schedules and Annexures

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

#### 1.4 Entire agreement

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

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

#### 1.5 Further acts

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

## **1.6 Governing Law and jurisdiction**

This Deed is governed by the law of New South Wales. The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The Parties will not object to the exercise of jurisdiction by those courts on any basis.

## **1.7 Enforcement**

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

## **1.8 No fetter**

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

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

## **1.9 Representations and warranties**

- (a) Each Party individually represents and warrants that:
  - (i) it has power to enter into this Deed and comply with its obligations under the Deed;
  - (ii) this Deed does not contravene its constituent documents (if any) or any law or obligation by which it is bound or to which any of its assets are subject, or cause a limitation on its powers or the powers of its officers to be exceeded;
  - (iii) it has in full force and effect the authorisations necessary for it to enter into this Deed, to comply with its obligations and exercise its rights under this Deed and to allow this Deed to be enforced;
  - (iv) its obligations under this Deed are valid and binding and are enforceable against it in accordance with the terms of the Deed;



- (v) it does not have immunity from the jurisdiction of a court or from legal process; and
  - (vi) it benefits by entering into this Deed to which it is a Party.
- (b) Each Party acknowledges that each other Party has entered into this Deed in reliance on the representations and warranties in this clause 1.9 of this Schedule 13.

#### **1.10 Severability**

- (a) If a clause or part of a clause of this Deed can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way.
- (b) If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Deed, but the rest of this Deed is not affected.

#### **1.11 Modification**

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

#### **1.12 Waiver**

- (a) The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Deed, does not amount to a waiver of any obligation of, or a breach of obligation by, another Party.
- (b) A waiver by a Party is only effective if it is in writing.
- (c) A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

#### **1.13 Confidentiality**

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

#### **1.14 Release and indemnity**

- (a) The Developer agrees that the obligation to provide the Contributions is at the risk of the Developer. The Developer releases the Council from any Claim, liability or loss arising from, and Costs and Legal Costs incurred in connection with, the Developer's obligation to provide the Contributions except to the extent such Claim arises either directly or indirectly as a result of the Council or its employees, officers, agents, contractors or workmen's negligence, default, act or omission..
- (b) The Developer indemnifies the Council against all liabilities or loss arising from, and any Costs and Legal Costs incurred in connection with the Council enforcing the Developer's obligation to provide the Contributions in accordance with this

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Deed or the Council exercising the Council's rights under or by virtue of this Deed or both.

- (c) The indemnity in paragraph 1.14(b) of this Schedule 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 paragraph 1.14.
- (e) A Party must pay on demand any amount it must pay under an indemnity in this clause 1.14 of this Schedule 13.

# Planning Agreement

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## Schedule 14 - Costs

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

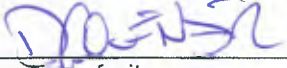
# Planning Agreement


## Signing page

Executed as a deed


### Signature by Council

Signed for and on behalf of the **Council of the City of Ryde** by a duly authorised officer or delegate pursuant to section 377 of the Local Government Act (who by their signature testifies that they are duly authorised to sign this instrument) in the presence of

  
\_\_\_\_\_  
Signature of witness

  
\_\_\_\_\_  
Name of witness

  
\_\_\_\_\_  
Signature of the Authorised Officer

  
\_\_\_\_\_  
Name of and position of the Authorised Officer  
*ACTING GENERAL MANAGER*

### Signature by the Developer


Executed by **Greenland (Sydney) Lachlan's Line Macquarie Park Development Pty Limited** in accordance with section 127 of the *Corporations Act 2001*

  
\_\_\_\_\_  
Signature of Director / Secretary

  
\_\_\_\_\_  
Signature of Director / Secretary

Name of Director / Secretary

  
\_\_\_\_\_  
Signature of Director

  
\_\_\_\_\_  
Name of Director