

Council of the City of Ryde
ABN 81 621 292 610

and

The Trust Company Limited
ACN 004 027 749

and

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

Planning Agreement

39 Delhi Road, North Ryde, NSW

3443-8291-0003v1

Contents

1	Definitions and interpretation	5
1.1	Definitions	5
1.2	Interpretation	10
2	Planning Agreement	11
2.1	Commencement	11
2.2	Planning agreement under the EP&A Act	11
2.3	Application of the Planning Agreement	12
3	Dedication	12
3.1	Dedication	12
4	Monetary Contributions	12
4.1	Application of sections 7.11, 7.12 and Division 7.1, Subdivision 4 of the EP&A Act	12
4.2	Review	12
4.3	Payment contribution	12
5	Road Land	13
5.1	Road Land	13
6	Caveat	13
6.1	Caveatable interest	13
6.2	Caveat prior to Registration	13
7	Registration of this Deed	14
7.1	Land Ownership	14
7.2	Registration on title	14
8	Release and Discharge	14
9	Breaches to be rectified	14
9.1	Notice	14
9.2	Schedule 6 applies	14
10	Security	15
11	Assignment and other dealings	15
12	Review of Deed	15
13	Dispute Resolution	15
14	Custodian and Trustee provisions	15
15	Overdue Payments	15
15.1	Interest on overdue money	15
15.2	Not used	16
15.3	Interest on liability merged in judgment or order	16
16	GST	16
16.1	Interpretation	16

16.2	Consideration GST exclusive	16
16.3	GST not payable on Contributions	16
16.4	Additional amount of GST payable	16
16.5	No merger	17
17	Explanatory Note	17
18	Notices	17
18.1	Form	17
18.2	Change of address	18
18.3	Receipt	18
18.4	Receipt- next Business Day	19
19	Schedules and Annexures to this Deed	19
20	General Provisions	19
21	Obligations under this Planning Agreement	19
21.1	Legal Challenge	19
21.2	Parties to meet	19
21.3	Legal advice	20
21.4	Confidential	20
21.5	Development may continue	20
21.6	Invalid Approval	20
21.7	Indemnity	20
21.8	No merger	20
22	Termination of Deed	20
	Schedule 1 - Section 7.4 of the EP&A Act requirements	22
	Schedule 2 - Description of the Land and the Development	24
	Schedule 3 - Contributions Schedule	25
	Schedule 4 - Contribution Works Procedures	30
	Schedule 5 - Not Used	33
	Schedule 6 - Notification and rectification of breach	34
	Schedule 7 - Dispute Resolution	36
	Schedule 8 - Registration of Deed	40
	Schedule 9 - Release and Discharge Terms	41
	Schedule 10 - Security	42
	Schedule 11 - Assignment and Dealing	45
	Schedule 12 - Custodian and Trustee limitation provisions	47
	Schedule 13 - Pro-forma Novation Deed	49
	Schedule 14 - General Provisions	62
	Schedule 15 - Costs	66
	Annexure B – Staging Plan	67

Date 14/4/2025 | 8:43 AM AEST

Parties

The Trust Company Limited ACN 004 027 749 of Level 25, 133 Castlereagh Street, Sydney New South Wales (**Owner**)

Stockland Trust Management Limited (ACN 001 900 741) as Trustee for Advance Property Fund of Level 25, 133 Castlereagh Street, Sydney New South Wales (**Trustee**)

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

Recitals

- A The Owner is the registered proprietor of the Land.
- B The State Significant Development Application has been lodged with the Consent Authority (known as SSD - 55844212) for Development Consent to carry out the Development on the Land.
- C The Owner has offered to make Contributions in connection with the carrying out of the Development if the Consent Authority grants the Development Consent.
- D The Owner has agreed to provide the Contributions on the terms and conditions set out in this Deed.

The parties agree

1 Definitions and interpretation

1.1 Definitions

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

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

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

Annexure means an annexure to this Deed.

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 and Development Certifiers Act 2018* (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:

- (a) 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:

-
- (i) one of the following trading banks:
 - (1) Australia and New Zealand Banking Group Limited,
 - (2) Commonwealth Bank of Australia,
 - (3) Macquarie Bank Limited,
 - (4) National Australia Bank Limited,
 - (5) St George Bank Limited,
 - (6) Westpac Banking Corporation,
 - (7) Bank of China (Australia) Limited, or
 - (ii) any other financial institution approved by the Council in its absolute discretion; or
 - (b) any other security in favour of Council, such as a bond, as is agreed between the parties in writing.

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

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

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

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

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

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

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

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

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

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

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

Contributions means all of the public benefits (by way of dedication of land, payment of monetary contributions or other means under this Deed) required under this Deed.

Contributions Schedule means Schedule 3.

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

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

CPI means the Sydney Consumer Price Index (All Groups Sydney) 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.

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

Development Application means the development under SSD-55844212.

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

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

EP&A Regulation means the *Environmental Planning and Assessment Regulation 2021* (NSW).

Explanatory Note means the explanatory note relating to this Deed (being that required by section 205 of the EP&A Regulation and Exhibit A to this Deed).

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

GST has the meaning it has in the GST Act.

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

Incentive Contribution means the Contribution described in Schedule 3 and calculated in accordance with the clause 2.1 of Schedule 3.

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

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

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

Law means:

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

Legal Challenge means proceedings in a Court in which a declaration is made 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.

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

LEP means *Ryde Local Environmental Plan 2014*.

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

Monetary Contribution means the amount(s) stated in Schedule 3, subject to indexation adjustment in accordance with this Deed.

Occupation Certificate means a certificate referred to in section 6.4 of the EP&A Act and which may be interim or final as provided for in section 6.4 of the EP&A Act.

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

Planning Agreement means this Deed.

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

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

Road Land means the public road shown on the Staging Plan required to be dedicated, or transferred, to the Council under this Deed.

Security means the security set out in the Security Schedule, which must be provided by way of Bank Guarantee.

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

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

Schedule means a schedule to this Deed.

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

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

Staging Plan means the plan at Annexure A.

State Significant Development Application means State Significant Development Application lodged with the Authority (known as SSD - 55844212) for Development Consent to carry out the Development on the Land.

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

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

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

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

whichever is the earlier;

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

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

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

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

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

1.2 Interpretation

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

- (a) *person* includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;

- (b) a reference to a Party includes that Party's executors, administrators, successors and permitted assigns, including persons taking by way of novation;
- (c) a reference to a document (including this Deed) is to that document as varied, novated, ratified or replaced from time to time;
- (d) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments, replacements and substitutions;
- (e) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (f) a reference to a Party, clause, schedule, exhibit, attachment or annexure is a reference to a Party, clause, Schedule, exhibit, attachment or annexure to or of this Deed, and a reference to this Deed includes all Schedules, exhibits, attachments and annexures to it;
- (g) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (h) 'includes' in any form is not a word of limitation;
- (i) a reference to '\$' or 'dollar' is to Australian currency;
- (j) a reference to any notice, claim, demand, consent, approval, authorisation, direction, notification, request, communication, or waiver being given or made by a Party is a reference to its being given or made in writing, and the expression notice includes any of the foregoing;
- (k) no rule of construction applies to the disadvantage of a Party because that Party was responsible for the preparation of this Deed; and
- (l) any capitalised term used, but not defined in this Deed, will have the meaning ascribed to it under, and by virtue of, the EP&A Act.

2 Planning Agreement

2.1 Commencement

- (a) This Deed commences on the execution of this Deed by all Parties.
- (b) Notwithstanding clause 2.1(a), the Parties acknowledge that the Owner's obligation to deliver the Contributions to Council is subject to the Development Application being granted by the Consent Authority.

2.2 Planning agreement under the EP&A Act

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

2.3 Application of the Planning Agreement

This Deed applies to:

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

3 Dedication

3.1 Dedication

- (a) The Parties agree that the Owner must (at its Cost and risk) dedicate the Road Land to Council in accordance with Schedule 3.
- (b) The Parties agree that the dedication of the Road Land will serve the public purposes set out in the table contained in Schedule 3.

4 Monetary Contributions

4.1 Application of sections 7.11, 7.12 and Division 7.1, Subdivision 4 of the EP&A Act

- (a) This Deed does not exclude the application of Division 7.1, Subdivision 4 of the EP&A Act to the Development.
- (b) This Deed does not exclude the application of sections 7.11 and 7.12 of the EP&A Act to the Development.

4.2 Review

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

4.3 Payment contribution

- (a) The Owner covenants to pay the Monetary Contribution to the Council.
- (b) The Owner must pay the Monetary Contribution in accordance with Schedule 3.
- (c) Council must provide the Owner with an invoice or similar notice of monetary contributions payable within 10 Business Days of being requested to do so in respect of the Monetary Contribution received in the Council's bank account.
- (d) The Parties acknowledge and agree that the Monetary Contribution will be applied by the Council for the purpose of the embellishment of the Road Land as set out in

Schedule 4, Clause 5.1(c) and the associated works and, beyond these works, for the benefit of the community towards any public purpose as Council thinks fit.

5 Road Land

5.1 Road Land

- (a) The Parties agree that Council may access the Road Land in accordance with Schedule 4 before the dedication of the Road Land.
- (b) The Owner acknowledges that the Council will carry out works on the Road Land after dedication of the Road Land in accordance with Schedule 3.

6 Caveat

6.1 Caveatable interest

The Owner acknowledges and agrees that:

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

6.2 Caveat prior to Registration

The Owner acknowledges and agrees that:

- (a) Subject to clause 7, the Council may lodge a caveat on the Land to protect its rights under this Deed and the Owner will not object to the Council lodging a caveat in the relevant folio of the Register for the Land nor (subject to the provisions of this clause 6.2) will it seek to remove any caveat lodged by the Council.
- (b) If Council lodges a caveat in accordance with this clause 6.2, then the Council will do all things reasonably necessary and without delay to ensure that the caveat does not prevent or delay either the registration of this Deed or any dealing in the Land including providing consent to registration of any plan of Subdivision, lease, mortgage and/or transfer which is not inconsistent with this Deed, provided the Owner is not in breach of any obligations under this Deed.
- (c) The Council (as the caveator) will provide any consent (consent not to be unreasonably withheld or delayed) the Owner may reasonably require to enable this Deed or any dealing in the Land to be registered in accordance with this clause 6.2.
- (d) The Council will promptly, following registration of this Deed, do all things reasonably necessary to remove the caveat from the relevant folio of the Register for the Land.

7 Registration of this Deed

7.1 Land Ownership

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

7.2 Registration on title

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

8 Release and Discharge

Council agrees to release and discharge this Deed and remove any caveat lodged by the Council pursuant to clause 6.2 on the release and discharge terms contained in clause 6 and Schedule 9 to this Deed and / or if the Deed is terminated in accordance with clause 22 of this Deed.

9 Breaches to be rectified

9.1 Notice

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

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

9.2 Schedule 6 applies

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

10 Security

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

11 Assignment and other dealings

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

12 Review of Deed

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

13 Dispute Resolution

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

14 Custodian and Trustee provisions

The Parties acknowledge that:

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

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

15 Overdue Payments

15.1 Interest on overdue money

The Owner agrees to pay interest to the Council on any amount payable by it under this Deed from when it becomes due for payment, and until the amount payable is paid, on

demand or at times determined by the Council, calculated on daily balances. The rate to be applied to each daily balance is the Interest Rate.

15.2 Not used

15.3 Interest on liability merged in judgment or order

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

16 GST

16.1 Interpretation

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

16.2 Consideration GST exclusive

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

16.3 GST not payable on Contributions

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

16.4 Additional amount of GST payable

- (a) If GST is imposed on any supply made under or in accordance with this Deed, the Owner must pay the GST or pay to Council an additional amount equal to the GST payable on or for the taxable supply (GST Amount), whichever is appropriate in the circumstances.

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

16.5 No merger

This clause 16 will not merge on completion or termination of this Deed.

17 Explanatory Note

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

18 Notices

18.1 Form

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

Council

Name: Council of the City of Ryde

Address: Level 1

3 Richardson Place

North Ryde NSW 2113

Email: cityofryde@ryde.nsw.gov.au

For the attention of: General Manager

Owner

Name: The Trust Company

Address: Level 25,
133 Castlereagh Street
Sydney NSW 2000

E-mail: legal4@stockland.com.au

For the attention of: General Counsel and Company Secretary Trustee

Trustee

Name: Stockland Trust Management Limited as Trustee for
Advance Property Fund.

Address: Level 25
133 Castlereagh Street
Sydney NSW 2000

E-mail: legal4@stockland.com.au

For the attention of: General Counsel and Company Secretary.

18.2 Change of address

If a Party gives another Party 3 Business Days' notice of a change of its address or fax number, any notice, consent, information, application, or request is only given or made by that other Party if it is delivered, posted or faxed to the latest address or fax number.

18.3 Receipt

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

- (a) if it is delivered, when it is left at the relevant address;
- (b) if it is e-mailed to the relevant e-mail addresses;
- (c) if it is sent by post, 7 Business Days after it is posted; and

18.4 Receipt- next Business Day

If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a Business Day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next Business Day.

19 Schedules and Annexures to this Deed

The Parties agree:

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

20 General Provisions

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

21 Obligations under this Planning Agreement

21.1 Legal Challenge

Subject to clauses 21.5 to 21.6, where a Legal Challenge is commenced the parties' obligations under this Deed are immediately suspended and the Owner shall not have any obligation to make any Contributions under this Deed until the expiration of the Suspension Period.

21.2 Parties to meet

Subject to clause 21.3, where any Legal Challenge is commenced or where the Court declares or orders any Approval to be invalid or any of them, the Parties agree to:

- (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.

21.3 Legal advice

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

21.4 Confidential

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

21.5 Development may continue

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

21.6 Invalid Approval

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

21.7 Indemnity

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

21.8 No merger

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

22 Termination of Deed

- (a) Subject to clause 22(c), the Owner will be released from its obligations under this Deed if:
 - (i) it has fulfilled all its obligations in accordance with the Deed; or
 - (ii) it transfers or assigns its obligation in accordance with this Deed; or
 - (iii) the Land is Subdivided and the obligations under the Deed with respect to that part of the Land have been met (but only to the extent of that portion of the Land); or
 - (iv) Development Consent in respect of the State Significant Development Application is surrendered prior to the commencement of the Development or is declared invalid or lapses; or

-
- (v) the Deed is terminated by mutual agreement.
 - (b) If at the time of termination under this clause 22 the Development has not commenced, the Security Amount and any Bank Guarantee provided under this Deed will be released by Council to the Owner and any caveat or registration removed from the title to the Land.
 - (c) If the Deed is terminated under clause 22(a) then:
 - (i) the rights of each Party that arose before the termination or which may arise at any future time for any breach or non-observance of obligations occurring prior to the termination are not affected; and
 - (ii) each Party must take all steps reasonably necessary to minimise any loss the other may suffer as a result of the termination of the Deed.

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

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

Requirement under the EP&A Act	This Planning Agreement
Planning instrument and/or development application - (Section 7.4) The Owner has:	
(a) sought a change to an environmental planning instrument.	(a) No.
(b) made, or proposes to make, a Development Application.	(b) Yes.
(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.	(c) No.
Description of land to which this Deed applies - (Section 7.4)	The Land described in certificate of title folio identifier 21 / 1003588 and known as 39 Delhi Road, North Ryde, NSW.
Description of change to the environmental planning instrument or the development to which this Deed applies - (Section 7.4) Describe:	
(a) the proposed change to the environmental planning instrument to which this Deed applies; and	(a) There are no proposed changes to any environmental planning instrument.
(b) the development to which this Deed applies.	(b) The Development
The scope, timing and manner of delivery of contribution required by this planning agreement - (Section 7.4)	The Contributions required under this Deed are to be delivered in accordance with Schedule 3 or as modified by clause 5 of this Deed.
Applicability of Section 7.11 of the EP&A Act - (Section 7.4)	The application of section 7.11 of the EP&A Act is not excluded in respect of the Development.
Applicability of Section 7.12 of the EP&A Act - (Section 7.4)	The application of section 7.12 of the EP&A Act is not excluded in respect of the Development.
Applicability of Section 7.24 of the EP&A Act - (Section 7.4)	The application of section 7.24 of the EP&A Act is not excluded in respect of the Development.
Consideration of benefits under this Deed if section 7.12 applies - (Section 7.4) Are the benefits under this Deed to be taken into consideration if Section 7.11 of the EP&A Act is not excluded?	The benefits under this Deed (planning agreement) are not to be taken into consideration.

Requirement under the EP&A Act	This Planning Agreement
<p>Mechanism for Dispute resolution - (Section 7.4)</p> <p>This Deed provides a mechanism for the resolution of disputes under the agreement?</p>	<p>There is a mechanism for resolution of disputes set out in clause 13 and Schedule 7.</p>
<p>Enforcement of this Deed (Section 7.4) and section 7.6)</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 5, 6, 6.2(a), 7, 8, 9, 10 and 11 together with Schedule 4, Schedule 6, Schedule 10 and Schedule 11.</p>
<p>Registration of this Deed</p> <p>The Parties agree that this Deed will be registered</p>	<p>Yes.</p>
<p>No obligation to grant consent or exercise functions - (Section 7.4)</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&A Act in relation to a change to an environmental planning instrument.</p>	<p>This is addressed in clause 1.8 of Schedule 14.</p>

Schedule 2 - Description of the Land and the Development

1 Title

The Land described in certificate of title folio identifier 21 / 1003588 and known as 39 Delhi Road, North Ryde, NSW.

2 Development

Development means the development of the Land by way of construction of a build-to-rent development for the purpose of shop top housing permitted in accordance with section 72 of the *State Environmental Planning Policy (Housing) 2021* comprising a shared podium with 3 new buildings ranging between 9 to 20 storeys together with basement carparking and associated facilities. The development is proposed to comprise the following:

- (a) 1,631 sqm of non-residential floor area at ground level for retail uses;
- (b) 38,750 sqm of build-to-rent housing including a total of 510 dwellings;
- (c) 1,703 sqm of communal residential amenity facilities;
- (d) Landscaping works including some publicly accessible open space; and
- (e) Vehicular access provided via Rivett Road for retail, services, loading and waste removal, and Rennie Street for residential use,

described in the Development Application.

Schedule 3 - Contributions Schedule

1 Contributions

1.1 Contributions Table

Part 1- Road Land

Road Land

Item	Public Purpose	Nature and Extent	Timing	Manner of delivery
Road Land	Public road	Dedication, or a freehold ownership transfer, to the Council (at no Cost) of the Road Land to the Council.	The dedication, or freehold ownership transfer, to the Council of the Road Land must occur within 3 months of the date of the Occupation Certificate for Building A, B or C (whichever comes last) (or the first Occupation Certificate if there is more than 1 of them in respect of Building A, B or C (whichever comes last)).	The dedication, or freehold ownership transfer, of the Road Land to the Council must occur in accordance with clause 3 in this Schedule 3.

Part 2 - Monetary Contribution

Instalment	Public Purpose	Payment	Instalment amount	Date for payment
Incentive Contribution	Macquarie Park Access Network and Open Space in Macquarie Park and	Payment to be made in accordance with clause 2.2 of this Schedule 3.	The amount calculated under clause 2.2 of this Schedule 3	The Incentive Contribution is payable by way of instalments to be calculated based on the proportion of GFA proposed

Instalment	Public Purpose	Payment	Instalment amount	Date for payment
	neighbouring areas			<p>under each relevant Construction Certificate, which is indicatively proposed to be:</p> <ul style="list-style-type: none">■ an amount equal to 43% of the calculated Incentive Contribution on, or before, the date of the Construction Certificate for Building A (or the first Construction Certificate if there is more than 1 of them in respect of Building A); and■ an amount equal to remaining 57% (including any variance) of the Incentive Contribution on, or before, the date of the first of any Construction Certificate for Buildings B and C (or the first Construction Certificate if there is more than 1 of them in respect of Buildings B and C).

2 Monetary Contribution

2.1 Incentive Contribution

The Parties agree that the Incentive Contribution is calculated in accordance with the following formula:

Incentive Contribution = Incentive GFA x Incentive Rate

where:

Incentive GFA is the GFA above the base GFA for the Development authorised under the Development Consent (and which is estimated to be 27,084m²)

The Parties agree that the Incentive Rate is \$322.71 per sqm (being a fixed rate charged on a square metre basis under the Council's Schedule of Fees & Charges as at the date of entry into this Deed). The Parties agree that the Owner requires certainty as to the Incentive Rate as at the date of entry into this Deed in order to support the feasibility and financing of the Development.

2.2 Payment

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

2.3 CPI Adjustment

The Parties acknowledge and agree that each instalment of a Monetary Contribution must be adjusted in accordance with the following formula:

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

where:

- A the Monetary Contribution instalment payable as at the relevant payment date;
- B the Monetary Contribution instalment payable as at the date of this Deed
- C is the CPI for the quarter ending immediately before the date of this Deed; and
- D is the CPI for the quarter ending immediately before the date on which the Monetary Contribution was actually paid.

2.4 Variance in Monetary Contribution

- (a) The Parties agree that an audit of the GFA for the Development (and the Monetary Contributions) will be undertaken at about the time the last instalment of a Monetary Contribution is payable.

- (b) The Parties must adjust the amount of any Monetary Contribution as result of negotiations (conducted in good faith) in conjunction with the audit.

2.5 Total GFA

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

3 Road Land

3.1 Interpretation

For the purposes of this clause 3 of Schedule 3, the defined terms in clause 1.1 of this Deed and the Interpretation principles in clause 1.2 of this Deed will apply and, unless context indicates a contrary intention:

Encumbrance 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 to allow them to exist;

Permitted Encumbrance means each of:

- (a) easements benefiting statutory authorities authorised by Approvals or as required by utility service providers;
- (e) environmental management requirements imposed under an Approval; and
- (f) 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) the Council agrees in writing is a Permitted Encumbrance.

3.2 Subdivision

The Owner must do all things necessary to cause a plan of Subdivision (or dedication plan) to be registered that dedicates the Road Land as a public road.

3.3 Dedication

- (a) The Owner must dedicate, or cause freehold ownership to be transferred, to the Council, at no cost to the Council, the Road Land:
 - (i) freed and discharged from all Encumbrances, taxes, rates or charges except Permitted Encumbrances; and
 - (ii) at the time of registration of the plan of Subdivision or the dedication plan that dedicates the Road Land as a public road.
- (b) The Owner's obligations under clause 3.3 of this Schedule 3 will be taken to have been satisfied when:
 - (i) in the case of dedication, the Road Land is dedicated to the Council as a public road by way of registration of a deposited plan of Subdivision; or
 - (ii) in the case of transfer, when the Owner provides evidence to the Council that a transfer of the Road Land has been effected in favour of the Council by means of electronic lodgement.

Schedule 4 - Contribution Works Procedures

1 Definitions and interpretation

1.1 Definitions and interpretation

For the purposes of this Schedule 4, the defined terms in clause 1.1 of this Deed and the Interpretation principles in clause 1.2 of this Deed will apply and, unless context indicates a contrary intention,:

Dilapidation Report means the report recording the condition of the Road Land prior to the date on which the Road Land is dedicated under Schedule 3.

2 No improvements

2.1 No improvements

The Owner must not construct or install on, or in, or permit the construction or installation upon, or in, the Road Land any improvements or permanently affixed plant, equipment, fittings or other fixtures.

3 Dilapidation Report

3.1 Dilapidation Report

- (a) The Owner must (at its own cost) commission a suitably qualified consultant to prepare the Dilapidation Report on the state and condition of the Road Land prior to:
 - (i) the issue of any Construction Certificate on the Land (**First Dilapidation Report**); and
 - (ii) prior to the final handover of the Road Land to Council (**Second Dilapidation Report**).
- (b) The Owner must notify Council of the time and date of the inspection undertaken for the preparation of the Dilapidation Report. Council or its representative may attend any inspection for the preparation of the Dilapidation Report.
- (c) The Owner must give the First Dilapidation Report to Council immediately upon receipt from the suitably qualified consultant and the Second Dilapidation Report before the dedication of the Road Land.
- (d) The Parties agree that the Dilapidation Report constitutes the agreed benchmark between them as to the state and condition of the Road Land as at the date of the report. Council agrees to accept the Road Land in the condition noted in the Dilapidation Report.

4 Access

4.1 Access

The Parties agree that Council and its employees, consultants, agents and contractors may enter upon the Road Land for the purpose of carrying out investigations, planning and enquiries (including carrying out any geotechnical works) in relation to the future use of the Road Land with the Owner prior consent. The Owner will not unreasonably withhold if the following conditions are satisfied:

- (a) Council must give the Owner not less than 10 Business Days' notice of proposed access.
- (b) Council and its employees, consultants, agents and contractors must follow any reasonable directions of the Owner when entering upon, or temporarily remaining on, the Road Land.
- (c) Council must comply with all Laws concerning access to, and use of, the Road Land.
- (d) Council and its employees, consultants, agents and contractors enter upon the Road Land at their own risk.
- (e) In exercising its rights under this clause 4.1 of Schedule 4, Council must rectify any damage that it or its employees, consultants, agents and contractors do to the Road Land and
- (f) Council and its employees, consultants, agents and contractors must use reasonable endeavours to minimise any inconvenience to the Owner or its employees, consultants, agents and contractors in relation to use of the Road.

5 Works

5.1 Works

The Parties agree that:

- (a) after dedication of the Road Land, Council will design, and construct, the embellishments of the *New Link Road* identified in Council's Development Control Plan on the Road Land; and
- (b) Stockland will be consulted as part of the initial concept and detailed design of the embellishments of the Road Land having regard to Council's standard consultation processes; and
- (c) the embellishments of the Road Land are intended to provide public benefit, enhance pedestrian connectivity and improve the public domain through increased activation and outdoor amenity space and the Council will design and construct the embellishments of the New Link Road with the aim of achieving these outcomes.

5.2 Community consultation

- (a) Council will conduct community consultation to inform the design and construction of the public thoroughfare to be constructed on the Road Land.
- (b) The Owner may participate in the community consultation.

Schedule 5 - Not Used

Schedule 6 - Notification and rectification of breach

1 Notice of breach

1.1 Response to Notice

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

1.2 Rights of the Council after Giving Notice

- (a) This clause 1.2 of this Schedule 6 applies where Council is the Notifying Party.
- (b) If:
 - (i) the defaulting party does not take either of the actions outlined in clause 1.1(a) of this Schedule 6; or
 - (ii) any dispute notified by the defaulting party is resolved in favour of the Council,then the Council may take any or all of the actions available to it under this Deed including:
 - (iii) taking any action under clause 1.2 of this Schedule 6;
 - (iv) on providing notice to the Owner, calling on the Securities in accordance with Schedule 10;
 - (v) issuing a notice to the defaulting party which:
 - (A) identifies the nature of the breach; and
 - (B) specifies that the breach must be rectified by the Owner within a reasonable period of time which must not be less than 20 Business Days (except in the case of an emergency or where there is an issue of public safety where less time may be specified) of the Council's notice,

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

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

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

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

1.4 Mediation

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

1.5 Expert evaluation generally

- (a) If the Parties agree under clause 1.4 of this Schedule 7 that expert evaluation is the appropriate dispute resolution technique or clause 7 of Schedule 4 requires expert evaluation, expert evaluation must be carried out in accordance with this clause 1.6.
- (b) Where the Parties are not able to agree on an appropriate expert, the expert is to be appointed by the President of the appropriate institute or association.
- (c) If the Parties cannot agree on which institute or association is appropriate in the circumstances (within the same 10 Business Days), either Party may refer the

selection of the institute or association to the President of the Bar Association of New South Wales to select the most appropriate institute or association.

- (d) The institutes or associations from which the expert may be appointed are:
- (i) if an architect: the Royal Australian Institute of Architects, New South Wales Chapter;
 - (ii) if an engineer: Engineers Australia,
 - (iii) if a valuer: the Australian Property Institute Incorporated ABN 49 007 505 866, New South Wales Division;
 - (iv) if an expert in decontamination: Engineers Australia - Environmental College
 - (v) if an expert in insurance: the Australian and New Zealand Institute of Insurance and Finance, New South Wales Branch;
 - (vi) if a real estate agent: the Real Estate Institute of New South Wales;
 - (vii) if a quantity surveyor: the Australian Institute of Quantity Surveyors, New South Wales Chapter;
 - (viii) if a barrister: the New South Wales Bar Association;
 - (ix) if an accountant: the Institute of Chartered Accountants, New South Wales Division;
 - (x) if a solicitor or mediator: the Law Society of New South Wales
- (e) If:
- (i) more than two types of experts are required to determine the dispute; or
 - (ii) the Parties agree to appoint a lead expert; or
 - (iii) the President of the Bar Association exercising his or her functions in accordance with clause 1.6(c) considers the appointment of a lead expert appropriate
- then the Parties must appoint a lead expert.
- (f) The lead expert must be a solicitor who has practised for not less than 15 years and who has not less than 5 years' experience in alternative dispute resolution. The lead expert must be agreed by the Parties and failing agreement will be appointed by the President of the Law Society of New South Wales.
- (g) If a lead expert is appointed the functions of that person are:
- (i) to determine the type of expert required to determine the dispute;
 - (ii) in the absence of agreement between the Parties as to the identity of the expert, to request the appropriate institute or association referred to in clause 1.6(b) ('Institutes and associations') to appoint an expert;

-
- (iii) to determine the questions to be put to the expert and, if there is more than one expert, to co-ordinate and determine the timing of each expert determination;
 - (iv) if the dispute requires determination by an expert solicitor, to perform that function;
 - (v) if the expert determinations obtained are ambiguous, contradictory or in conflict, to determine the ambiguity, contradiction or conflict;
 - (vi) on receipt of the expert determinations to deliver to the Parties a final determination of the dispute;
 - (vii) to determine any question of procedure concerning the dispute resolution process.
- (h) The expert is to be engaged on his standard terms of engagement subject to any amendments required to ensure consistency with this clause.
 - (i) Both Parties may, within 20 Business Days of the date of appointment of the expert, make written submissions to the expert on the matter the subject of the dispute. If a Party makes a written submission to the expert, it must give a copy of the submission to the other Party at the same time as it gives the submission to the expert. Submissions must include all particulars upon which a Party seeks to rely in support of its position in relation to the dispute. The expert will determine the procedure for determining the dispute.
 - (j) When any dispute or difference referred to in this clause has been referred for determination, the Parties will each use their best endeavours to make available to the expert all facts and circumstances which the expert may require to settle or determine the dispute or difference and must ensure that their respective employees, agents and consultants are available to appear at any hearing or enquiry called for by the expert. The Parties record their agreement that the hearing be concluded within 20 Business Days, and the expert's decision given within 20 Business, of the date of appointment of the expert, and shall use their best endeavours to see that these time frames are met.
 - (k) The expert's decision is final and binding on the Parties. The cost of the expert's decision is to be borne by the Parties in the shares as the expert determines and in the absence of a determination equally between the Parties.
 - (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 1.3 of this Schedule 7, then any Party which has complied with the provisions of this Schedule 7, may in writing terminate any dispute resolution process undertaken under this clause and may then commence court proceedings in relation to the dispute.

1.7 Not use information

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

1.8 No prejudice

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

1.9 Costs

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

Schedule 8 - Registration of Deed

2 Registration of Deed

2.1 Application

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

2.2 Registration

- (a) As soon as practicable after the Parties signed this Deed, the Owner must do everything reasonably necessary to effect registration of this Deed on the title of the Land.
- (b) The Owner must do everything else necessary to enable this Deed to be lodged and registered at the LRS (including executing or procuring such additional documents necessary to achieve registration of this Deed including any consents required from a mortgagee of any part of the Land).
- (c) The Council must do everything reasonably necessary to effect registration of this Deed at the LRS.
- (d) The Trustee must (at its Cost), do all things necessary to procure registration of this Deed by LRS including:
 - (i) assisting the parties in responding to any requisitions raised by the LRS (including providing reasonable assistance in responding to any requisitions raised by LRS within 3 Business Days of being notified by the Owner's representative or the Council's representative); and
 - (ii) promptly paying all reasonable Costs incurred by the Council and Owner in relation to lodgement and registration of this Deed upon receipt of a validly addressed tax invoice.
- (e) The Parties must not object or do anything which hinders the registration of this Deed

2.3 Definitions

In this Schedule 8:

LRS means Land Registry Services NSW and includes its successors.

Schedule 9 - Release and Discharge Terms

1 Release and discharge terms

1.1 Full release

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

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

1.2 Partial release

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

- (a) all obligations under clauses 3, 4 and 5 of this Deed have been met with respect to that portion;
- (b) the Owner has provided the Council with a Security in accordance with Schedule 10; and
- (c) the Owner is not otherwise in default of any of its obligations under this Deed for that portion (as determined by the Council (acting reasonably), at the time of the Owner's request, unless the Council waives the default.

1.3 Outstanding obligations

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

Schedule 10- Security

1 Securities

1.1 Owner to provide

- (a) Clauses 1.1 to 1.8 of this Schedule apply in relation to the Contributions.
- (b) The Owner must provide the Security to the Council (in the relevant Security Amount) on or before the times set out in the Security Schedule.
- (c) Council and the Owner agree that the Security referred to in paragraph (b) of this clause, secures the performance by the Owner of its obligations under this Deed generally.
- (d) The Owner authorises Council to compulsory acquire the Road Land for \$1.00 if the Owner fails to deliver to Council by dedication or otherwise the Road Land in the time frame required under this Deed.

1.2 Adjustment of Security Amounts

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

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

where:

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

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

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

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

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

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

1.3 Expiry of Security

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

1.4 Failure to replace expired Security

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

1.5 No limitation of obligations

The provision of the Security does not:

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

1.6 Cash Deposit

- (a) If the Council makes demand under any Security pursuant to clause 1.4 of this Schedule 10, the Council must hold the full amount so paid to the Council as a cash deposit (**Cash Deposit**) in a separate account opened with any body corporate that is an ADI (authorised deposit-taking institution) for the purposes of the *Banking Act*, 1959 (Cth) in the name of the Council and with beneficial ownership vesting at all times in the Council (**Cash Deposit Account**). The Cash Deposit will operate to secure the same obligations under this Deed that the relevant Security secured.
- (b) As beneficial owner of the Cash Deposit, the Council may, at any time and without notice to the Owner, withdraw money (including accrued interest) from the Cash Deposit Account and retain that money absolutely to satisfy or reimburse the Council for any liability, loss, cost, charge or expense incurred by the Council because of failure by the Owner to comply with those of the Owner's obligations under this Deed that the relevant Security secured.
- (c) All Costs, charges, duties and Taxes payable in connection with the Cash Deposit Account or interest accruing on moneys credited to the Cash Deposit Account may be satisfied by the Council withdrawing money from the Cash Deposit Account and applying the money for that purpose.
- (d) If no moneys are, or may become, payable to the Council under this Deed in connection with the obligations under this Deed secured by the relevant Security and the Owner has satisfied all of its obligations under this Deed which were secured by the relevant Security, the Council must (as soon as possible) and no later than 20 Business Days, pay the balance of the Cash Deposit Account, less all Costs, charges, duties and Taxes payable in connection with such payment, to the Owner.

- (e) For the avoidance of doubt, the Owner has no right to require the Council to release the Cash Deposit until the Council is reasonably satisfied that no moneys are, or may become, payable to the Council under this Deed in relation to obligations secured by the Security.

1.7 Release of Cash Deposit

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

1.8 Claims under Securities

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

1.9 Security Schedule

The Parties agree that the table below is the Security Schedule setting out:

- (a) the Security;
- (b) the Security Amount;
- (c) when a Security must be provided to Council; and
- (d) when a Security must be returned by Council.

Security	Security Amount	Date for delivery	Date for return
Enforcement Security	\$500,000	The date of this Deed	The later of the date on which: <ul style="list-style-type: none">■ this Deed is terminated; or■ the Owner has satisfied all of its obligations under this Deed.

Schedule 11 - Assignment and Dealing

1 Assignment and Dealing

1.1 Dealing by the Owner

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

1.2 Dealing with the Land by the Owner

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

1.3 Council's Costs

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

1.4 Council's assignment of rights

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

1.5 Council to act promptly

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

Schedule 12 - Custodian and Trustee limitation provisions

1 Capacity and liability

1.1 Interpretation

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

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

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

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

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

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

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

1.2 Custodian's capacity

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

1.3 Trustee's capacity

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

1.4 Custodian's limitation of liability

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

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

1.5 Trustee's limitation of liability

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

Schedule 13 - Pro-forma Novation Deed

Novation Deed

Council of the City of Ryde

The Trust Company Limited ACN 004 027 749

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

[# transferee name #]

3468-8284-6259v1

Level 9 60 Castlereagh Street Sydney 2000 Australia
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Novation Deed

Contents

1	Definitions and interpretation	52
1.1	Definitions	52
1.2	References to certain general terms	52
1.3	Headings	53
2	Novation	53
2.1	Original Agreement	53
2.2	Performance by Transferee	54
2.3	Release of Guarantees	54
2.4	Liability before Effective Date	54
2.5	Trustee Provisions	54
2.6	Indemnities	54
3	Affirmation of the Original Agreement	54
4	GST	55
4.1	Definitions and Interpretation	55
4.2	Passing-on provision	55
4.3	GST Invoice	55
4.4	Variation	55
5	Representations and warranties	56
6	Stamp duty and costs	56
7	Further acts	56
8	Governing law	57
9	Counterparts	57
	Schedule 1 – Trustee limitation provision	58
	Signing page	60

Novation Deed

Date

Parties

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

The Trust Company Limited ACN 004 027 749 of Level 25, 133 Castlereagh Street, Sydney New South Wales (**Owner**)

Stockland Trust Management Limited (ACN 001 900 741) as Trustee for Advance Property Fund of Level 25, 133 Castlereagh Street, Sydney New South Wales (**Trustee**)

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

Recitals

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

This deed provides

1 Definitions and interpretation

1.1 Definitions

Unless the context otherwise requires:

Effective Date means [# insert date #].

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

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

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

1.2 References to certain general terms

In this deed unless the contrary intention appears:

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

1.3 Headings

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

2 Novation

2.1 Original Agreement

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

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

2.2 Performance by Transferee

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

2.3 Release of Guarantees

The parties expressly acknowledge and agree that:

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

2.4 Liability before Effective Date

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

2.5 Trustee Provisions

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

2.6 Indemnities

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

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

3 Affirmation of the Original Agreement

The Original Agreement will be read and construed subject to this deed, and in all other respects the provisions of the Original Agreement are ratified and confirmed, and, subject

to the variation and novation contained in this deed, the Original Agreement will continue in full force and effect.

4 GST

4.1 Definitions and Interpretation

In this clause 4:

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

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

4.2 Passing-on provision

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

4.3 GST Invoice

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

4.4 Variation

- (a) Where there is a variation to the consideration provided in relation to a taxable supply for which a GST Amount was paid under clause 4.2:
 - (i) the Supplier will recalculate the amount of the GST Amount properly payable and will provide a corresponding refund or credit to, or will be entitled to receive the amount of the variation of the GST Amount from, the Recipient. The amount paid, refunded or credited is taken to form part of the GST Amount should a subsequent adjustment event occur; and

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

5 Representations and warranties

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

6 Stamp duty and costs

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

7 Further acts

- (a) Each party will take all steps, execute all deeds and do everything reasonably required by any other party to give effect to any of the actions contemplated by this deed.

-
- (b) This deed binds each party which signs it even if other parties do not, or if the execution by other parties is defective, void or voidable.

8 Governing law

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

9 Counterparts

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

Novation Deed

Schedule 1 – Trustee limitation provision

1 Capacity and liability

1.1 Interpretation

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

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

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

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

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

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

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

1.2 Custodian’s capacity

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

1.3 Trustee’s capacity

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

1.4 Custodian’s limitation of liability

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

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

1.5 Trustee's limitation of liability

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

EXECUTED as a deed.

Novation Deed

Signing page

Signature by Council

Signed sealed and delivered for and on behalf of the **Council of the City of Ryde ABN 81 621 292 610** by a duly authorised officer (who by their signature testifies that they are duly authorised to sign this instrument) in the presence of:

Signature of witness

Signature of the Authorised Officer

Name of witness
(please print)

Name and position of the Authorised Officer
(please print)

Signature by the Owner

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

Signature of Witness

Signature of Attorney

Name of Witness
(please print)

Name of Attorney *(please print)*

Signature by the Trustee

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

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

Signature of witness

Signature of Attorney

Name of witness *(please print)*

Name of Attorney *(please print)*

Signature by the Transferee

[# insert execution block #]

Schedule 14 - General Provisions

1 General Provisions

1.1 Approvals and Consent

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

1.2 Costs

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

1.3 Effect of terms and conditions in Schedules and Annexures

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

1.4 Entire agreement

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

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

1.5 Further acts

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

1.6 Governing Law and jurisdiction

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

1.7 Enforcement

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

1.8 No fetter

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

- (a) nothing in this Deed is to be construed as limiting or fettering in any way the exercise of any statutory discretion or duty; and
- (b) nothing in this Deed imposes any obligation on an Authority (including the Consent 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 14.

1.10 Severability

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

1.11 Modification

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

1.12 Waiver

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

1.13 Confidentiality

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

1.14 Release and indemnity

- (a) The Owner agrees that the obligation to provide the Contributions is at the risk of the Owner.

-
- (b) The Owner releases the Council and the Consent Authority from any Claim, liability or loss arising from, and Costs and Legal Costs reasonably and properly incurred in connection with, the Owner's obligation to provide the Contributions.
 - (c) The Owner indemnifies the Council and the Consent Authority against all liabilities or loss arising from, and any Costs and Legal Costs reasonably and properly incurred in connection with the Council enforcing the Owner's obligation to provide the Contributions in accordance with this Deed or the Council exercising the Council's rights under or by virtue of this Deed or both.
 - (d) The indemnity in paragraph 1.14(b) of this Schedule 14 is a continuing obligation, independent of the Owner's other obligations under this Deed and continues after this Deed ends.
 - (e) 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.
 - (f) A Party must pay on demand any amount it must pay under an indemnity in this clause 1.14 of this Schedule 14.

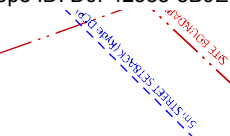
Schedule 15 - Costs

1 Costs

1.1 Limit for Legal Costs

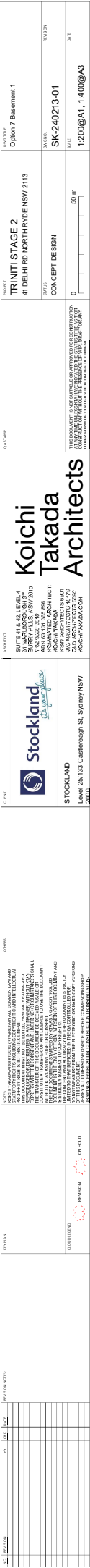
There is no limit.

Annexure B – Staging Plan

[illegible]

[illegible]

[illegible]



Signing page

SIGNED as a Deed

Signature by Council

Signed sealed and delivered for and on behalf of the **Council of the City of Ryde** by a duly authorised officer (who by their signature testifies that they are duly authorised to sign this instrument) pursuant to section 378 of the *Local Government Act 1993* in the presence of:

Carmelina Loughland

Signature of Witness

Carmelina Loughland

Name of Witness
(please print)

14/4/2025 | 9:28 AM AEST

Wayne Rylands

Signature of Authorised Officer

wayne rylands Chief Executive officer

Name of and position of Authorised Officer

14/4/2025 | 8:43 AM AEST

Signature by the Owner

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

Signed by:

Senay Sevgi

8C17F47D629244A...

Signature of Witness

Senay Sevgi

Name of Witness
(please print)

Signed by:

Anita Soetanto

C32047835FD84CD

Signature of Attorney
Anita Soetanto

Assistant Manager

Name of and Attorney *(please print)*

Signature by the Trustee

Signed sealed and delivered for and on behalf of the **Stockland Trust Management Limited ACN 001 900 741** by its Attorney pursuant to Power of Attorney Book 4814 No. 13 and the Attorney declares that the Attorney has not received any notice of the revocation of such Power of Attorney, in the presence of:

Signed by:

9B744F78C0FB466...

Signature of witness

Amanda Bakija

Name of witness (please print)

Signed by:

48B5F157B6D44B4...

Signature of Attorney

Andrew Whitson CEO Development,
CEO Office

Name of Attorney (please print)