

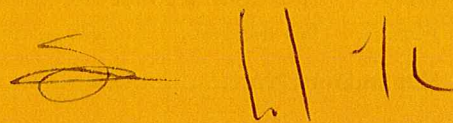
The Council of the City of Ryde
ABN 81 621 292 610

and

Total Forms Pty Limited
ACN 003 374 794

and

PS1875 Property Holdings Pty Limited
ACN 169 850 855



**45-47 Epping Road, Macquarie Park
Planning Agreement**



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Planning Agreement made at *CITY OF RYDE* on *19 Nov.* 2020.

Parties **The Council of the City of Ryde (ABN 81 621 292 610)** of Level 1, Building 0, Binary Centre, 3 Richardson Place, North Ryde, NSW 2113 (**Council**)

Total Forms Pty Limited ACN 003 374 794 of 65 Waterloo Road, Macquarie Park, NSW 2113 (**Developer**)

PS1875 Property Holdings Pty Limited ACN 169 850 855 of 320-334 Sussex Street, Sydney, NSW 2000 (**Landowner**)

Background

- A. As at the date of this agreement, the Developer owns part of the Land and the Landowner owns part of the Land.
- B. The Developer proposes to lodge a Development Application for approval of the Development.
- C. The Developer has offered to make the Monetary Contribution in connection with the Development, in accordance with Incentive Height and Floor Space Provisions. The Monetary Contribution is to be provided in accordance with this Deed.

Deed

Operative provisions

1. 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 second year after the date of this Deed.

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

Appeal Notice means:

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

Application means an application for any Approval.

Approval means any approvals, consents, certificates, permits, endorsements, licences, conditions, permissions or requirements (and any modifications or variations to them) which may be required by Law.

Approved GFA means the gross floor area (as defined in the LEP) of any Building for which Development Consent is granted.

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

Bank Bill Rate means the average bid rate for Bills having a tenor of 90 days as displayed on the "BBSY" page of the Reuters Monitor System on the day the relevant payment is due (**Due Date**). However, if the average bid rate is not displayed by 10:30 am on the Due Date or if it is displayed but there is an obvious error in that rate, **Bank Bill Rate** means:

- (a) the rate 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
- (b) 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.

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

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 (a) or (b).

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

- (a) one of the following trading banks:
 - (i) Australia and New Zealand Banking Group Limited,
 - (ii) Commonwealth Bank of Australia,
 - (iii) Macquarie Bank Limited,
 - (iv) National Australia Bank Limited,
 - (v) St George Bank Limited,
 - (vi) Westpac Banking Corporation, or
- (b) any other financial institution approved by the Council in its absolute discretion.

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

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

Construction Certificate has the same meaning as section 6.4(a) of the EP&A Act.

Costs includes all costs, charges and expenses reasonably incurred in relation to the subject matter, including those incurred in connection with advisers.

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

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

Deed means this Deed.

Development means the development described in clause 2 of Schedule 2

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

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

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

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

Explanatory Note means the explanatory note relating to and publicly notified with this Planning Agreement, as required by clause 25E of the EP&A Regulation.

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 Height and Floor Space Provisions means clause 6.9 of the LEP or any similar provision authorising exceedance of height and floor space restrictions under the LEP.

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.

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

Law means:

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

Legal Costs means legal costs and expenses reasonably incurred.

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

LEP means the *Ryde Local Environmental Plan 2014*.

Macquarie Park Access Network means the Access Network as described in Part 4.5 of the Ryde Development Control Plan

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

Monetary Contribution means the monetary contribution payable in accordance with clause 3,

which has been calculated in the manner set out in Annexure B.

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

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.

Suspension Expiry Date means the date on which the Suspension Period ends.

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

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

whichever is the earlier;

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

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

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

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

Taxes means taxes, levies, imposts, deductions, charges and duties (including stamp and transaction duties), excluding GST (which is dealt with at clause 14), 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 but excluding any liability arising to the extent caused by any act or omission of the Council.

1.2 General

In this Deed:

- (a) headings are for convenience only and do not affect interpretation;
and unless the context indicates a contrary intention:
- (b) **"person"** includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
 - (c) a reference to a Party includes that Party's executors, administrators, successors and permitted assigns, including persons taking by way of novation;
 - (d) a reference to a document (including this Deed) is to that document as varied, novated, ratified or replaced from time to time;
 - (e) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments, replacements and substitutions;
 - (f) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
 - (g) a reference to a Party, clause, schedule, exhibit, attachment or annexure is a reference to a Party, clause, schedule, exhibit, attachment or annexure to or of this Deed, and a reference to this Deed includes all schedules, exhibits, attachments and annexures to it;
 - (h) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
 - (i) **"includes"** in any form is not a word of limitation;
 - (j) a reference to **"\$"** or **"dollar"** is to Australian currency;
 - (k) no rule of construction applies to the disadvantage of a Party because that Party was responsible for the preparation of this Deed; and
 - (l) any capitalised term used, but not defined in this Deed, will have the meaning ascribed to it under, and by virtue of, the EP&A Act.
-

2. Planning Agreement

2.1 Commencement

- (a) Subject to clause 2.1(b), this Deed commences on the execution of this Deed by all Parties.
- (b) Notwithstanding clause 2.1(a), the obligations under clause 3 of this Deed take effect on the date any Development Consent is granted for the Development.

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. Monetary Contribution

- (a) The Developer is to pay to the Council monetary contributions calculated in accordance with the following formula:

Monetary Contribution = Approved GFA x \$132.50
- (b) The Monetary Contribution must be paid in instalments prior to the issue of each Construction Certificate for any Development on the Land, with the amount of each instalment being calculated in accordance with the formula in clause 3(a), based on the Approved GFA subject to the proposed Construction Certificate.
- (c) Each instalment of the Monetary Contribution must be indexed in accordance with increases in the CPI from the date of this Deed to the date of payment.
- (d) Each instalment of the Monetary Contribution must be paid by the Developer to Council by bank cheque or electronic funds transfer as specified by Council.
- (e) The Monetary Contribution is to be used by Council towards the embellishment of public parks and open spaces in Macquarie Park; and/or the Macquarie Park Access Network at Council's unfettered discretion.

4. Application of s7.11, s7.12 and s7.24 of the EP&A Act

- (a) This Deed does not exclude the application of sections 7.11, 7.12 or 7.24 of the EP&A Act to the Development.
- (b) The Monetary Contribution is not to be taken into account when determining a development contribution under section 7.11 of the EP&A Act.

5. Caveat

5.1 Caveatable Interest

The Developer and the Landowner acknowledge and agree that when this Deed is executed the Council is deemed to have acquired, and the Developer is deemed to have granted, an equitable estate and interest in the Land for the purposes of section 74F(1) of the Real Property Act and consequently the Council has a sufficient interest in the Land to allow it to lodge with NSW Land Registry Services a caveat notifying that interest.

5.2 Caveat Prior to Registration

The Developer and the Landowner acknowledge that:

- (a) The Council may lodge a caveat restricting transfer of the Land to protect its rights under this Deed, and the Developer and Landowner will not object to the Council lodging a caveat in the relevant folio of the Register for the Land, and nor (subject to the provisions of this clause 5) will the Developer or Landowner seek to remove any caveat lodged by the Council.
- (b) The Council (as the Caveator) will provide any consent the Developer or Landowner may reasonably require to enable this Deed or any Dealing that is not inconsistent with this Deed to be registered against the title to the Land.
- (c) The Council will promptly, following registration of this Deed, do all things reasonably necessary to remove the caveat from the title to the Land.

6. Registration of this Deed

6.1 Ownership of the Land

- (a) The Developer represents and warrants that it is the legal owner of Lot 1 in Deposited Plan 833060, forming part of the Land as at the date of this Deed.
- (b) The Landowner represents and warrants that it is the legal owner of Lot 4 in Deposited Plan 27145, forming part of the Land as at the date of this Deed.

6.2 Registration on title

The Developer agrees to promptly do all things that are necessary 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 in accordance with Schedule 5.

7. Release and Discharge

The Council agrees to release and discharge this Deed and remove any caveat lodged by the Council pursuant to clause 5 on the release and discharge terms contained in Schedule 6 to this Deed.

8. Breaches to be rectified

- (a) If the Council considers that the Developer has defaulted on the performance of any of its obligations under this Deed, then the Council may give written notice to the Developer which:
 - (i) identifies the nature of the breach; and
 - (ii) specifies that the breach must be rectified by the Developer within a reasonable period of time which must not be less than 20 Business Days (except in the case of an emergency or where there is an issue of public safety where less time may be specified) and what action must be taken to rectify that breach.
- (b) If the Council gives a written notice under clause 8(a) then the provisions in Schedule 3 will apply.

9. Security

The Developer and Landowner have agreed to provide security to the Council for performance of its obligations under this Deed including:

- (a) provision of a Bank Guarantee on the terms and conditions of Schedule 7; and
- (b) consenting to the lodgement of a caveat and registration of this document on title pursuant to clauses 5 and 6.

10. Assignment and other dealings

The Developer agrees that the provisions of Schedule 8 apply in relation to any proposed assignment or dealing in relation to the Land (or any part of it) or of an interest in this Deed.

11. Review of Deed

The Parties may agree to review this Deed at any time. Any review or modification will be conducted in the circumstances and in the manner determined by the Parties.

12. Dispute resolution

The Parties agree that any disputes under or in relation to this Deed will be resolved in accordance with the procedures set out in Schedule 4.

13. Overdue payments

13.1 Interest on overdue money

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

13.2 Compounding

Interest which is not paid when due for payment may be capitalised by the Council at intervals which the Council determines from time to time or, if no determination is made, then on the first day of each month. Interest is payable on capitalised interest at the rate and in the manner referred to in this clause 13.

13.3 Interest on liability merged in judgment or order

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

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

14. GST

14.1 Interpretation

- (a) Except where the context suggests otherwise, terms used in this clause 14.1 have the meanings given to those terms by the GST Act.
- (b) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 14.1.
- (c) A reference to something done (including a supply made) by a Party includes a reference to something done by any entity through which that Party acts.

14.2 Consideration GST exclusive

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

14.3 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, including the Monetary Contribution, are exempt from GST.

14.4 Additional amount of GST payable

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

14.5 No merger

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

15. Explanatory Note

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

16. Notices

16.1 Form

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

Council

Name: Council of the City of Ryde
Address: Level 1, Building 0, Binary Centre, 3 Richardson Place, North Ryde
NSW 2113
Email: cityofryde@ryde.nsw.gov.au
For the attention of: General Manager

Developer

Name: Total Forms Pty Limited
Address: 65 Waterloo Road, Macquarie Park, NSW 2113
Email: Tony@aplusdg.com.au
For the attention of: Tony Leung

Landowner

Name: PS1875 Property Holdings Pty Limited
Address: 320-334 Sussex Street, Sydney, NSW 2000
Email: Tony@aplusdg.com.au
For the attention of: Tony Leung

16.2 Change of address

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

16.3 Receipt

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

- (a) if it is delivered, when it is left at the relevant address;
- (b) if it is sent by post, 2 Business Days after it is posted; and

- (c) if it is sent by facsimile or email, as soon as the sender receives confirmation of an error free transmission to the correct facsimile number or email address.

16.4 Receipt - next Business Day

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

17. Schedules and Annexures to this Deed

The Parties agree:

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

18. General provisions

The Parties agree that the miscellaneous and general provisions set out in Schedule 9 to this Deed apply.

19. Obligations under this Planning Agreement

- (a) Subject to clauses 19(e) to (h), where a Legal Challenge is commenced the Parties' obligations under this Deed are immediately suspended and the Developer shall not have any obligation to make any Monetary Contribution under this Deed until the expiration of the Suspension Period or where clause 19(e) applies.
- (b) Subject to clause 19(c), where any Legal Challenge is commenced or where the Court declares or orders any Approval to be invalid, the Parties agree to:
 - (i) 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:
 - (A) the suspension of the Parties rights and obligations under this Agreement; and
 - (B) their intentions in relation to that declaration or order, including, without limitation, any intention to Appeal that declaration; and
 - (ii) 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.
- (c) The Parties will not be required to meet or consult pursuant to clause 19(b) 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.
- (d) The Parties agree that any discussions held between the Parties under this clause 19 are confidential and that a common interest between them exists for the purposes of legal professional privilege in connection with those discussions.
- (e) Notwithstanding clause 19(a), the Developer may elect at its Cost and risk to proceed with the Development, in which circumstances, clauses 19(a) and 19(b) will not apply and the Developer must continue to comply with all obligations under this Deed.

- (f) If this Deed is terminated as the result of any Appeal the parties will meet in accordance with clause 19(b) to discuss any matters that may need to be addressed as a result of the commencement of any part of the Development.
- (g) If any Approval is declared invalid, the parties will meet in accordance with clause 19(b) of this Deed to discuss their respective rights and obligations under this Deed as a consequence of that determination.
- (h) If the Developer elects to proceed with the Development notwithstanding the commencement of any Legal Challenge, then the Developer is liable for and indemnifies Council against all liability, loss, Costs and expenses (including Legal Costs) arising from or incurred in connection with the Developer proceeding with the Development despite the Legal Challenge.
- (i) This clause 19 will not merge on completion or termination of this Deed.

20. Termination

- (a) Either Council or the Developer may terminate this Deed by notice in writing to the other party prior to commencement of the Development, if the Development Consent lapses or is surrendered by the Developer prior to commencement of the Development.
- (b) If this Deed is terminated under clause 20(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;
 - (ii) each party must take all steps reasonably necessary to minimise any loss the other may suffer as a result of the termination of this Deed;
 - (iii) the Council will return the Bank Guarantee to the Developer after first deducting any amounts owing to the Council or costs incurred by the Council in accordance with this Deed; and
 - (iv) the Council will, at the Developer's cost, do all things reasonably required to remove this Deed or any caveat from the certificate of title to the Land, including by signing a request for removal of this Deed, or a withdrawal of caveat, as applicable.
- (c) This clause does not limit the circumstances in which the parties may agree to terminate this Deed.

Schedule 1 – Section 7.4 Requirements

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

Requirement under the EP&A Act	This Planning Agreement
<p>Planning instrument and/or development application – (Section 7.4(1))</p> <p>The Developer has:</p> <p>(a) sought a change to an environmental planning instrument.</p> <p>(b) made, or proposes to make, a Development Application.</p> <p>(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.</p>	<p>(a) No</p> <p>(b) Yes (the Developer proposes to lodge a Development Application for the Development)</p> <p>(c) Not applicable</p>
<p>Description of land to which this Deed applies – (Section 7.4(3)(a))</p>	<p>The Land described in clause 1 of Schedule 2.</p>
<p>Description of change to the environmental planning instrument or the development to which this Deed applies – (Section 7.4(3)(b))</p> <p>Describe:</p> <p>(a) the proposed change to the environmental planning instrument to which this Deed applies; and</p> <p>(b) the development to which this Deed applies.</p>	<p>(a) Not applicable</p> <p>(b) The Development described in clause 2 of Schedule 2</p>
<p>The scope, timing and manner of delivery of contribution required by this planning agreement – (Section 7.4(3)(c))</p>	<p>As set out in clause 3.</p>
<p>Applicability of Section 7.11 of the EP&A Act – (Section 7.4(3)(d))</p>	<p>Section 7.11 of the EP&A Act is not excluded from applying to the Development. See clause 4.</p>
<p>Applicability of Section 7.12 of the EP&A Act – (Section 7.4(3)(d))</p>	<p>Section 7.12 of the EP&A Act is not excluded from applying to the Development. See clause 4.</p>
<p>Applicability of Section 7.24 of the EP&A Act – (Section 7.4(3)(d))</p>	<p>Section 7.24 of the EP&A Act is not excluded from applying to the Development. See clause 4.</p>

Requirement under the EP&A Act	This Planning Agreement
<p>Consideration of benefits under this Deed if section 7.11 applies – (Section 7.4(3)(e))</p> <p>Are the benefits under this Deed to be taken into consideration if Section 7.11 of the EP&A Act is not excluded?</p>	<p>No. The benefits are not to be taken into account. See clause 4.</p>
<p>Mechanism for Dispute resolution – (Section 7.4(3)(f))</p> <p>Does this Deed provide a mechanism for the resolution of disputes under the agreement?</p>	<p>Refer to clause 12 and Schedule 4.</p>
<p>Enforcement of this Deed (Section 7.4(3)(g) and section 7.6)</p> <p>This Deed provides for enforcement by a suitable means in the event of a breach.</p>	<p>Refer to clauses 8 and 9, Schedule 3 and Schedule 7.</p>
<p>Registration of this Deed</p> <p>The Parties agree that this Deed will be registered</p>	<p>See clause 6 and Schedule 5.</p>
<p>No obligation to grant consent or exercise functions – (Section 7.4(9))</p> <p>The Parties acknowledge that this Deed does not impose an obligation on a planning authority to grant a Development Consent, or to exercise any function under the EP&A Act in relation to a change to an environmental planning instrument.</p>	<p>Refer to clause 1.8 of Schedule 9.</p>

Schedule 2 - Description of the Land and the Development

1. Land

Lot 1 DP 833060 known as 45 Epping Road, Macquarie Park and Lot 4 DP 27145 known as 47 Epping Road, Macquarie Park.

2. Development

Any future development on the Land proposed in accordance with the Incentive Height and Floor Space Provisions, including the construction of a Building or Buildings that exceed the height and floor space ratio restrictions in the LEP.

As at the date of this agreement the Developer anticipates that the Land will be developed in stages in accordance with the staging plan at Annexure A.

Schedule 3 - Notification and rectification of breach

1.1 Developer's Response to Notice

- (a) Promptly upon receipt of a notice under clause 8, the Developer must either:
 - (i) rectify the breach identified in that notice within the time period specified in that notice; or
 - (ii) notify the Council in writing that it does not agree that the breach identified in that notice has occurred, and refer the matter for dispute resolution in accordance with clause 12 and Schedule 4.
- (b) In the absence of a manifest error on the face of the notice, nothing in clause 1.1(a) of this Schedule will constrain or limit the Council's rights of recourse under this Deed.

1.2 Rights of the Council after Giving Notice

- (a) If:
 - (i) the Developer does not take either of the actions outlined in clause 1.1 (a) of this Schedule; or
 - (ii) any dispute notified by the Developer 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 calling on a Bank Guarantee under Schedule 7.
- (b) The rights of the Council under this Deed, and any action taken by it as referred to in this clause 1.2(a) of this Schedule 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 Developer.

Schedule 4 – 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.

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 Parties specifying the nature of the dispute.

1.3 Attempt to resolve

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

1.4 Mediation

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

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

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

1.5 Expert evaluation generally

- (a) If the Parties agree under clause 1.3 of this Schedule that expert evaluation is the appropriate dispute resolution technique, expert evaluation must be carried out in accordance with this clause.
- (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 Limited ACN 608 309 128, 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; and
 - (x) if a solicitor or mediator: the Law Society of New South Wales.
- (e) If:
- (i) more than two types of experts are required to determine the dispute; or
 - (ii) the Parties agree to appoint a lead expert; or
 - (iii) the President of the Bar Association exercising his or her functions in accordance with clause 1.5(c) of this Schedule considers the appointment of a lead expert appropriate
- then the Parties must appoint a lead expert.
- (f) The lead expert must be a solicitor who has practised for not less than 15 years and who has not less than 5 years' experience in alternative dispute resolution. The lead expert must be agreed by the Parties and failing agreement will be appointed by the President of the Law Society of New South Wales.
- (g) If a lead expert is appointed the functions of that person are:
- (i) to determine the type of expert required to determine the dispute;
 - (ii) in the absence of agreement between the Parties as to the identity of the expert, to request the appropriate institute or association referred to in clause 1.5(b) of this Schedule ("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; and
 - (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 but only if the value of the dispute (monetary or otherwise) is below \$500,000. In the event that the dispute is more than \$500,000, then any Party may commence court proceedings in relation to the dispute. The cost of the expert's decision is to be borne by the Parties in the shares as the expert determines and in the absence of a determination equally between the Parties.
- (l) The expert will also determine the amount of the costs and expenses of the reference of such dispute to him. In default of such decision, those costs and expenses will be borne by the Parties in equal shares.

1.6 Court proceedings

If the dispute is not resolved within 60 Business Days after notice is given under clause 1.2 of this Schedule, then any Party which has complied with the provisions of this Schedule, 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, 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 for any purpose other than in an attempt to settle the dispute.

1.8 No prejudice

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

1.9 Costs

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

Schedule 5 - Registration of Deed

- (a) The Developer and Landowner consent to the registration of this Deed and agree to arrange the production of certificates of title for the Land for the purposes of registration of this Deed on request.
- (b) The Developer will obtain all consents to the registration of this Deed on the title to the Land as are necessary and in particular the consent of any mortgagee or lessee who has a registered interest in the Land.
- (c) The Developer must lodge this Deed with NSW Land Registry Services for registration within 20 Business Days of execution of this Deed.
- (d) The Developer must promptly comply with any requisitions that may be raised with regard to registration of the Deed from NSW Land Registry Services.
- (e) The Developer will notify the Council following registration of the Deed by the Council and forward a copy of the relevant Dealing to the Council.
- (f) The Developer must pay the Council's reasonable Costs associated with registering this Deed upon receipt of a notice from the Council as to the amount of those Costs.

Schedule 6 - Release and Discharge Terms

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

- (a) provide a full release and discharge of this Deed with respect to the whole of the Land and documentation required to remove the notation of this Deed on title to the Land in registrable form; and
- (b) should the Council not already have done so, sign such documentation as is necessary to remove any caveat lodged by the Council in relation to the Land pursuant to clause 5 of this Deed.

Schedule 7 – Security

1. Bank Guarantee

1.1 Bank Guarantee

On the grant of any Development Consent, the Developer must provide to Council a Bank Guarantee in the amount of \$2,148,620.00 (indexed in accordance with increases in the CPI from the date of this Deed to the date the Bank Guarantee is provided) as security against the obligation to pay the Monetary Contribution.

1.2 Adjustment of Bank Guarantee Amounts

- (a) On each Adjustment Date the Bank Guarantee required under clause 1.1 of this Schedule is to be adjusted to cover a revised amount (**Revised Bank Guarantee Amount**) as determined in accordance with the following formula:

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

where:

RBA is the Revised Bank Guarantee Amount applicable from the relevant Adjustment Date;

BA is the amount of the Bank Guarantee that is current on the relevant Adjustment Date;

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

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

No increase or other change will be made to the amount of the Bank Guarantee where B is greater than A.

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

1.3 Expiry of Bank Guarantees

Council may reject any Bank Guarantee provided by the Developer that is expressed as expiring on a certain date, in which case the Developer will be taken not to have satisfied its obligation to provide the Bank Guarantee under this Deed.

1.4 Claims under Bank Guarantees

The Developer agrees that the Council may, after giving at least 10 Business Days prior written notice to the Developer, make claims (in full or in part) under the Bank Guarantee provided under clause 1.1 of this Schedule in the event that:

- (a) the Developer breaches its obligation to pay the Monetary Contribution in accordance with this Deed; and

- (b) a notice has been issued by Council requiring the Developer to remedy the breach in accordance with the requirements of clause 8 and Schedule 3; and
- (c) the breach remains unremedied following the expiry of the rectification period specified in that notice.

1.5 No limitation of obligations

The provision of the Bank Guarantee does not:

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

1.6 Release of the Bank Guarantee

Notwithstanding any other provision of this Deed, the Bank Guarantee provided under clause 1.1 of this Schedule will be released by Council within 20 Business Days after the Developer has complied with its obligation to pay the Monetary Contribution under this Deed.

2. Restriction on issue of Certificates

For the purposes of sections 6.8 of the EP&A Act and clause 146A of the EP&A Regulation, prior to the issue of each Construction Certificate for the Development, an instalment of the Monetary Contribution must be paid to Council in accordance with clause 3 of this Deed.

Schedule 8 - Assignment and Dealing

1.1 Proposed assignment of rights

- (a) Unless the matters specified in clause 1.1(b) of this Schedule are satisfied, the Developer and the Landowner are not to assign or novate to any person their rights or uncompleted obligations under this Deed.
- (b) The Developer or the Landowner (**Transferor**) must not assign or novate to any person (**incoming party**) its rights or uncompleted obligations under this Deed unless the prior written consent of Council is obtained. The Council must not withhold its consent in circumstances where the following matters have been satisfied:
 - (i) the Transferor has, at no cost to the Council, first procured the execution by the incoming party, of a deed in favour of the Council in the form similar to Schedule 10, completed in a manner satisfactory to the Council. Such deed includes covenants that the incoming party:
 - A. will perform the relevant obligations of the Transferor under this Deed (to the extent those obligations have not already been performed); and
 - B. is bound by the terms and conditions of this Deed as if the incoming party had executed the Deed;
 - (ii) the Transferor is not in breach of this Deed with respect to the relevant part of the Land, unless the breach is waived by the Council;
 - (iii) the incoming party provides to the satisfaction of Council (acting reasonably) any Bank Guarantee required under Schedule 7 to secure the outstanding obligations under this Deed; and
 - (iv) the Transferor and Transferee pay Council's reasonable costs in relation to the novation deed and assignment.

1.2 Right of Developer or Landowner to sell Land

The Developer or Landowner (**Transferor**) must not sell or transfer the whole or any part of the Land or any of its 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 the interest in the Land to another person (**incoming party**), the Transferor obtains Council's prior written consent. The Council must not withhold its consent in circumstances where the requirements specified in clause 1.1(b) of this Schedule are satisfied.

1.3 Council's Costs

The Transferor and Transferee must pay to the Council (or reimburse the Council on demand for) all reasonable 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.

1.4 Council's assignment of rights

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

1.5 Council to act promptly

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

Schedule 9 – 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, Council's reasonable Costs and Legal Costs relating to this Deed are to be borne by the Developer and are payable on demand.
- (b) Without limiting clause 1.2(a) of this Schedule, the Developer agrees to pay or reimburse the Council on demand for:
 - (i) Costs and Legal Costs reasonably incurred in connection with:
 - A. the drafting, negotiating, execution and registration of this Deed, including the cost of any legal advice obtained in connection with the drafting, negotiation, execution or registration of this Deed
 - B. exercising, enforcing or preserving, or attempting to exercise, enforce or preserve, rights under this Deed, including in connection with the Developer default; and
 - C. 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

Except as otherwise set out in this Deed, each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to effect, perfect or complete this Deed and all transactions incidental to it.

1.6 Governing Law and jurisdiction

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

1.7 Enforcement

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

1.8 No fetter

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

- (a) nothing in this Deed is to be construed as limiting or fettering in any way the exercise of any statutory discretion or duty; and
- (b) nothing in this Deed imposes any obligation on the Council or any other 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) **(power)** it has power to enter into this Deed and comply with its obligations under the Deed;
 - (ii) **(no contravention or exceeding power)** this Deed does not contravene its constituent documents (if any) or any law or obligation by which it is bound or to which any of its assets are subject, or cause a limitation on its powers or the powers of its officers to be exceeded;
 - (iii) **(authorisations)** it has in full force and effect the authorisations necessary for it to enter into this Deed, to comply with its obligations and exercise its rights under this Deed and to allow this Deed to be enforced;
 - (iv) **(validity of obligations)** its obligations under this Deed are valid and binding and are enforceable against it in accordance with the terms of the Deed;

- (v) **(no immunity)** in the case of the Developer and the Council only, it does not have immunity from the jurisdiction of a court or from legal process; and
 - (vi) **(benefit)** it benefits by entering into this Deed to which it is a Party.
- (b) Each Party acknowledges that each other Party has entered into this Deed in reliance on the representations and warranties in this this clause.

1.10 Severability

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

1.11 Modification

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

1.12 Waiver

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

1.13 Confidentiality

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

1.14 Release and indemnity

- (a) The Developer indemnifies the Council against all liabilities or loss arising from, and any Costs and Legal Costs reasonably incurred in connection with the Council reasonably enforcing the Developer's obligation to provide the Monetary Contribution in accordance with this Deed and/or the Council reasonably exercising the Council's rights under or by virtue of this Deed, provided that the Council takes any reasonable action to mitigate the costs incurred and the indemnity excludes any Costs or Legal Costs arising and to the extent due to the negligence or default of Council.
- (c) The indemnity in clause 1.14(a) of this Schedule is a continuing obligation, independent of the Developer's other obligations under this Deed and continues after this Deed ends.

- (d) It is not necessary for a Party to incur expense or to make any payment before enforcing a right of indemnity conferred by this clause.
- (e) A Party must pay on demand any amount it must pay under an indemnity in this clause.

Novation Deed

[Planning Authority]
Council

[Developer / Landowner]
Transferor

[Insert Transferee's name]
Transferee

Novation Deed made at _____ on _____

Parties [insert]
(Council)

[insert]
(Transferor)

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

Recitals

- A The Council and the Transferor are parties to the Original Agreement.
- B The Transferor is defined as the Developer / Landowner under the terms of the Original Agreement.
- C The Original Agreement relates to the whole of the Land.
- D **[Drafting note. Use this paragraph if all or part of the obligations are to be assigned (but no land is to be transferred)]** The Transferor wishes to assign **[Drafting note. Insert 'all' or 'part of' as relevant]** its rights and obligations under the Original Agreement to the Transferee
- [or]**
- [Drafting Note. Use this paragraph if the whole of the Land is to be transferred]** The Transferor wishes to transfer the whole of the Land to the Transferee
- [or]**
- [Drafting Note. Use this paragraph if part of the Land is to be transferred]** The Transferor wishes to transfer part of the Land to the Transferee.
- E **[Drafting Note. Use this paragraph if the whole of the Land is to be transferred]** The parties to this Deed have agreed to the novation of all of the Transferor's obligations under the Original Agreement to the Transferee.
- [or]**
- [Drafting Note. Use this paragraph if part of the Land is to be transferred]** The parties to this Deed have agreed to the novation of the part of the Transferor'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

Effective Date means [insert].

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

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

[Drafting note. Use this paragraph if all of the obligations are to be assigned or all of the Land is to be transferred] **Required Obligations** means all of the obligations imposed on the Developer under the terms of the Original Agreement that have not yet been discharged as at the Effective Date.

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

[Drafting Note. Use this definition if part of the Land is to be transferred] **Required Obligations** means the obligations imposed on the Developer under the terms of the Original Agreement that are relevant to the Transfer Land and that have not yet been discharged as at the Effective Date.

Transfer Land means [Insert details of land to be transferred to Transferee]

Transferor means [insert].

1.2 References to certain general terms

In this deed unless the contrary intention appears:

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

1.3 Headings

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

2. Novation

2.1 Original Agreement

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

- (a) the Transferee is substituted for the Transferor 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 Transferor insofar as the Original Agreement relates to the Required Obligations; and
- (c) the Transferor is released and discharged from all obligations and liabilities, and from all claims (whether for Costs, Legal Costs, damages, fees or otherwise), arising under the Original Agreement insofar as the Original Agreement relates to the Required Obligations.

2.2 Performance by Transferee

On and from the Effective Date, the Transferee must perform all of the Required Obligations under the Original Agreement as if named as the Transferor, including, but not limited to:

- (a) the payment of any Monetary Contribution; and
- (b) the provision of all relevant Guarantees to Council.

2.3 Release of Guarantees

The parties expressly acknowledge and agree that:

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

2.4 Liability before Effective Date

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

3. Affirmation of the Original Agreement

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

4. GST

Where a supply made under this deed gives rise to a liability for GST, the Transferee must pay the GST or pay to the Council an additional amount equal to the GST payable on or for the taxable supply, whichever is appropriate in the circumstances. Terms used in this clause have the meanings in the *A New Tax System (Goods and Services Tax) Act 1999*.

5. Stamp duty and costs

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

6. Further acts

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

7. Governing law

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

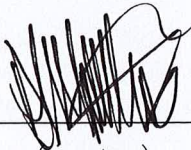
8. Counterparts

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

[insert Appropriate execution clauses for the parties to the Novation Deed]

Executed as a Deed

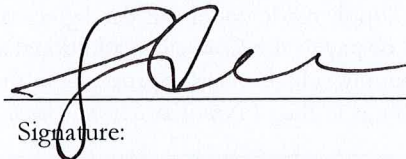
EXECUTED for and on behalf of **Council**)
of the City of Ryde by its authorised)
delegate pursuant to Section 377 of the Local)
Government Act 1993 in the presence of:)
)



Witness (signature):

DAVID MATTHEWS

Name (printed):



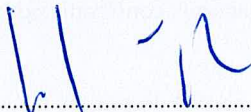
Signature:

GEORGE DEEDS

Name:

Position: **GENERAL MANAGER**

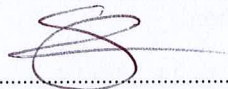
Executed by Total Forms Pty Limited)
ACN 003 374 794 in accordance with)
section 127 of the *Corporations Act 2001*)
(Cth) by:)
)



Signature of Director

JACK TEOH

Print name of Director

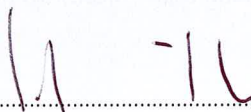


Signature of Director/Secretary

SHANE TEOH

Print name of Director/Secretary

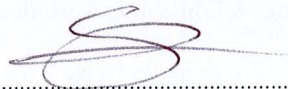
Executed by PS1875 Property Holdings)
Pty Limited ACN 169 850 855 in)
accordance with section 127 of the)
Corporations Act 2001 (Cth) by:)
)



Signature of Director

JACK TEOH

Print name of Director

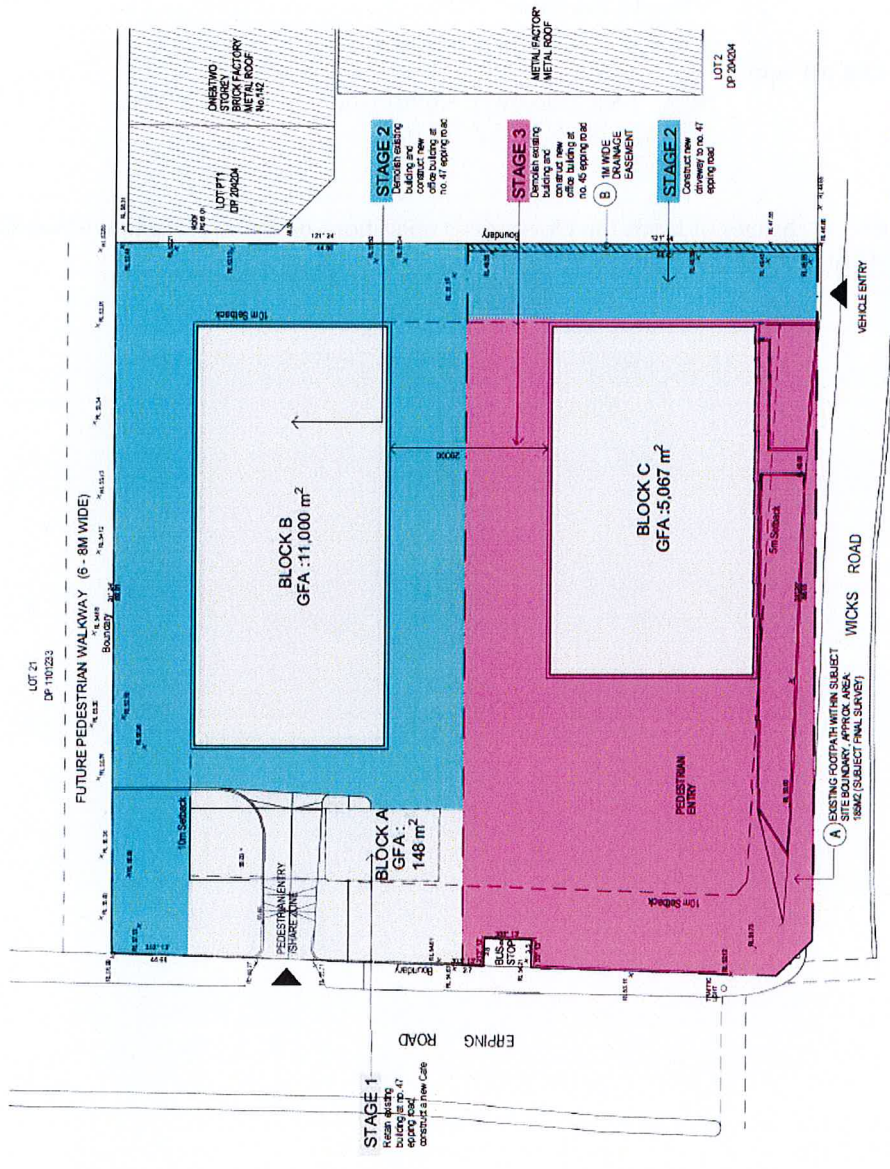


Signature of Director/Secretary

SHANE TEOH

Print name of Director/Secretary

Annexure A – Proposed Staging



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 PH: 02 9446 8116
 LEVEL 2, 86 CHANDOS STREET,
 ST LEONARDS, NSW 2060
 NATIONAL PROTECTION: LGNO NSW 7135

g+

Rev	Description	Date	Project Name	Project No.
A	DA Submission	19.06.19	45-47 Epping Road, Macquarie Park	A8127
B	Amended Staging plan	09.03.20		

STAGING PLAN

SCALE: 1:500 @ A3

Drawing No: A 1102

Scale: 1:500 @ A3

Annexure B – Calculation of Monetary Contribution

Total amount of Contribution = 8,108 sqm (incentive GFA) x \$265.00/sqm
= **\$2,148,620.00**

Proposed GFA = 16,216 sqm

Monetary Contribution per sqm
of Approved GFA = Total amount of Contribution / Proposed GFA
= \$2,148,620.00 / 16216
= \$132.50

Nothing in this Annexure changes or limits the Developer's obligations under this Deed to deliver the Contributions at its Cost and risk (see clause 3.3).