
The Council of the City of Ryde

John Holland Macquarie Park Land Custodian Pty
Ltd

Deed of Variation to Planning Agreement

Two handwritten signatures in blue ink are located in the bottom right corner of the page. The first signature is a cursive 'JH' and the second is a cursive 'TK'.

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Date 13TH FEBRUARY 2020

Parties

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

John Holland Macquarie Park Land Custodian Pty Ltd (ACN 618 123 970) of Level
5, 380 St Kilda Road, Melbourne VIC (Developer)

Background

- A The Developer and Council are parties to the Planning Agreement.
- B The Parties have agreed to amend the Planning Agreement in connection with the Building C Modification Application to:
- (a) amend the timing of the completion of the Contribution Works for the southern part of Road 14 (Area 2A) and the upgrade of the first substage of the Waterloo Road intersection works; and
 - (b) include a new Road Work Guarantee to secure the delivery and completion of (a) above.
-

Agreed terms

1 Interpretation

- (a) In this Deed, the following definitions apply:

Building C Modification Application	means the modification application under section 4.55 of the EP&A Act to modify the Development Consent for Building C (LDA2017/0390) to vary the timing of the delivery of the southern part of Road 14 (Area 2A) and the upgrade of Waterloo Road intersection works.
Deed	means this Deed and includes any schedules and annexures to this Deed.
Party	means a party to this Deed.
Planning Agreement	means the planning agreement in relation to 45-61 Waterloo Road, Macquarie Park between Council and the

Developer entered into pursuant to section 7.4 of the EP&A Act on 31 August 2018.

Land means Lot 2 in DP1231416 (formerly Lot 102 in DP1130630) located at 45 – 61 Waterloo Road, Macquarie Park, New South Wales.

- (b) Except as provided in clause 1(a), all capitalised words used in this Deed that are defined in clause 1.1 of the Planning Agreement have the same meaning as in the Planning Agreement.
- (c) Clauses 1.2, clause 14, and paragraphs 1.4, 1.5, 1.6, 1.8, 1.10 and 1.11 of Schedule 12 of the Planning Agreement apply as if they form part of this Deed with any necessary changes.

2 Status of this Deed

- (a) This Deed is an amendment to the Planning Agreement within the meaning of clause 25C(3) of the EP&A Regulation.
- (b) This Deed is not a planning agreement within the meaning of section 7.4(1) of the EP&A Act.

3 Commencement

- (a) This Deed commences and has force and effect on the date when the Parties have:
 - (i) both executed the same copy of this Deed; or
 - (ii) each executed separate counterparts of this Deed and exchanged the counterparts.
- (b) The Party who executes this Deed last is to insert on the front page the date they did so and provide a copy of the fully executed and dated Deed to any other person who is a Party.

4 Warranties

The Parties warrant to each other that they:

- (a) have full capacity to enter into this Deed, and
- (b) are able to fully comply with their obligations under this Deed and the Planning Agreement as modified by this Deed.

5 Amendment to Planning Agreement

On and from the date this Deed takes effect, the Planning Agreement is amended as follows:

- (a) Replace Paragraph B in the Background Section as follows:
- The Developer has obtained the Building C Development Consent and has lodged a Modification application to modify the Building C Development Consent.*
- (b) Replace Paragraph C in the Background Section as follows:
- The Developer has lodged the Concept Masterplan Development Application. The Developer proposes to lodge Development Applications for the future stages of the Development (Buildings A, B, D, E and F) in accordance with the Development Consent for the Concept Masterplan Development Application.*
- (c) Paragraph C in the Background Section is amended to be Paragraph D.
- (d) Clause 1.1, definition of "Building C Development Consent" is amended as follows:
- Building C Development Consent** means Development Consent (LDA2017/0390) for that part of the Development described in Schedule 2 as Building C.
- (e) Clause 1.1, definition of "Concept Masterplan Development Application" is amended as follows:
- Concept Masterplan Development Application** means Development Application (LDA2018/0172) for that part of the Development described in Schedule 2 as the Concept Masterplan Development.
- (f) Clause 1.1, definition of "Contribution Works" is amended as follows:
- Contribution Works** means each of the works to be undertaken by the Developer as described in Table 2 of Schedule 3 and generally shown in the location on the plan attached at Annexure A.
- (g) Schedule 1, first row of the table and item (b) in the column titled "This Planning Agreement" is amended as follows:
- Yes (the Developer has obtained the Building C Development Consent and made the Concept Masterplan Development Application and also proposes to make further development Applications for stages of the Development).*
- (h) Schedule 2, paragraph 1 is amended as follows:
- Means Lot 2 in Deposited Plan 1231416 known as 45 – 61 Waterloo Road, Macquarie Park.*
- (i) Schedule 3, Paragraph 1.1 "Contributions Table", Table 2 – Contribution Works, Items 1 and 2(a) are amended as follows:

Column 1 – Item	Column 2 – Public Purpose	Column 3 – Manner and Extent	Column 4 – Date Contribution Works are to be Practically Complete
1. Stage 1 Road Works	Road Works – Public Roads	<p>The Developer to construct, in accordance with Schedule 4:</p> <p>(a) The main section of Road 14 (Area 2A) and Road 1 (Area 2B Part 1) (Main Section) generally in the locations shown on the plan at Annexure A; and</p> <p>(b) The southern section of Road 14 (Area 2A) (Southern Section) generally in the locations shown on the plan at Annexure A.</p> <p>The Road Works are to include the relocation of services and final road finishes.</p>	<p>(a) For the Main Section, prior to the issue of an Occupation Certificate for Building C; and</p> <p>(b) For the Southern Section, either:</p> <p>(i) 30 June 2021; or</p> <p>(ii) as otherwise agreed in writing between the Parties.</p>
2. Stage 2 Road Works – Upgrade of Waterloo Road Intersection	Road Works – Public Roads	<p>(a) Substage 1: the Developer to construct, in accordance with Schedule 4, the first substage of the upgrading of the Waterloo Road Intersection shown as Intersection 1 on the plan at Annexure A and limited to the left in / left out traffic movements in connection with Building C.</p> <p>The Substage 1 Road Works are to include the relocation of services and final road finishes.</p>	<p>(a) For Substage 1, either:</p> <p>(i) 30 June 2021; or</p> <p>(ii) as otherwise agreed in writing between the Parties.</p>

For the avoidance of doubt, Items 2(b), 3, 4, 5 and 6 remain unamended.

- (j) Schedule 10 is replaced with the revised Schedule 10 attached as Annexure C to this Deed.
- (k) The plan at Annexure A in the Planning Agreement is replaced with the plan attached as Annexure B to this Deed.
- (l) Schedule 3 is amended as follows to update the road references for consistency with the new Annexure A to the Planning Agreement:

Former Annexure A Reference	New Annexure A Reference
Road 1 (Area 2A)	Road 14 (Area 2A)
Road 3 (Area 2B, Part 1)	Road 1 (Area 2B, Part 1)
Road 3 (Area 2B, Part 2)	Road 1 (Area 2B, Part 2)
Road 4	Road 1 (Area 3A)
Road 5	Road 1 (Area 3B)
Road 6	Road 16 (Area #4B)
Road 7	Road 16 (Area 4A)

6 Registration and Release from Title

The parties agree that the provisions of Schedules 8 and 9 of the Planning Agreement apply to this deed as if those provisions were set out in full.

7 Costs

The Developer is to pay to the Council its reasonable costs of negotiating and executing this Deed, and any document related to this Deed within 10 days of a written demand by the Council for such payment.

8 Explanatory Note

- (a) **Annexure A** contains the Explanatory Note relating to this Deed and as required by clause 25E of the EP&A Regulation.
- (b) Pursuant to clause 25E(7) of the EP&A Regulation, the Parties agree that the Explanatory Note is not to be used to assist in construing this Deed.

Execution

Executed as a deed.

Executed for and on behalf of the)
Council of the City of Ryde (ABN 81)
621 292 610) by its authorised delegate)
pursuant to Section 377 of the *Local*)
Government Act 1993 in the presence of)



Witness (signature)

PAUL KARPET

Name (print)



Signature

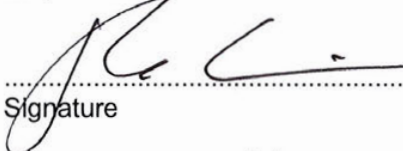
GENERAL MANAGER

Name:

Position

Executed for and on behalf of John)
Holland Macquarie Park Land)
Custodian Pty Ltd (ACN 618 123 970))
~~pursuant to section 127 of the~~)
~~Corporations Act 2001~~)

by its attorney under power of attorney)
registered BK 4763 No 712:)



Signature

Thomas Lai

Name:

Position: witness



Signature

Thomas James Roche

Name:

Position: attorney

Annexure A

Explanatory Note

(clause 8)

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Draft Deed of Variation to 45-61 Waterloo Road, Macquarie Park Planning Agreement

Under clause 25C(3) of the *Environmental Planning and Assessment Regulation 2000*

1 Parties

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

John Holland Macquarie Park Land Custodian Pty Ltd ACN 618 123 970 of Level 5, 380 St Kilda Road, Melbourne VIC (**Developer**)

2 Description of the Land to which the Draft Deed Applies

The draft Deed applies to 45 – 61 Waterloo Road, Macquarie Park which is contained in Lot 2 in Deposited Plan 1231416 (which formerly was a part of Lot 102 in DP1130630) (**Land**).

3 Description of Proposed Modification to Development

The draft Deed relates to the modification application made under section 4.55 of the *Environmental Planning and Assessment Act 1979* (NSW) to modify Development Consent LDA2017/0390 in order to amend the timing for the delivery of the southern part of Road 14 (Area 2A) and the upgrade of the first substage of the Waterloo Road Intersection Works to accommodate the relocation of services.

The Planning Agreement also applies to the development subject of the concept masterplan for the staged commercial development of the Site. A Development Application has been lodged (LDA2018/0172).

4 Summary of Objectives, Nature and Effect of the Draft Deed

(a) Objectives of Draft Deed

The objective of the draft Deed is to amend the Planning Agreement.

(b) Nature of Draft Deed

The draft Deed is a deed of variation of the Planning Agreement under clause 25C(3) of the *Environmental Planning and Assessment Regulation 2000*.

(c) Effect of the Draft Deed

The draft Deed amends the Planning Agreement with respect to:

- (i) amend the timing of the completion of the Contribution Works for the southern part of Road 14 (Area 2A) and the upgrade of the first substage of the Waterloo Road intersection works; and
- (ii) include a new Road Work Guarantee to secure the delivery and completion of (i) above.

5 Assessment of the Merits of the Draft Deed

(a) The Planning Purposes Served by the Draft Deed

The draft Deed:

- (i) promotes and co-ordinates the orderly and economic use and development of the Land to which the Planning Agreement applies; and
- (ii) provides and co-ordinates public facilities in connection with the development on the Land.

(b) How the Draft Deed Promotes the Public Interest

The draft Deed promotes the public interest by promoting the objects of the EP&A Act set out in sections 1.3(a), (c) and (j).

(c) How the Draft Deed Promotes the Guiding Principles for councils in s8A of the *Local Government Act 1993* (previously s8 elements of the Council's charter)

The draft Deed promotes the guiding principles for councils by amending the Planning Agreement to ensure that land is managed and works are delivered which will ensure adequate, equitable and appropriate facilities are provided for the community and enables Council to secure local infrastructure for the community.

(d) The planning purpose or purposes served by the amendment to the Planning Agreement and an assessment of whether the amendment provides for a reasonable means of achieving that purpose

The Planning Agreement as amended by the draft Deed will provide a major public benefit in terms of the provision of public open space, improved public roads and pedestrian pathways to service the Development and the wider public. The proposed amendment to the timing of the completion of the southern part of Road 14 (Area 2A) and the upgrade of the first substage of the Waterloo Road intersection works will not have a significant effect on the public benefit being provided. The Developer proposes an alternative, temporary access road until the road and intersection works are completed. This temporary arrangement is being assessed by Council separately to the modification application. The Planning Agreement as amended by the draft Deed will require security to be provided to Council in the form of bank guarantees to enable Council to enforce the obligations under the Planning Agreement if required.

(e) **Whether the draft Deed Conforms with Council's Capital Works Program**

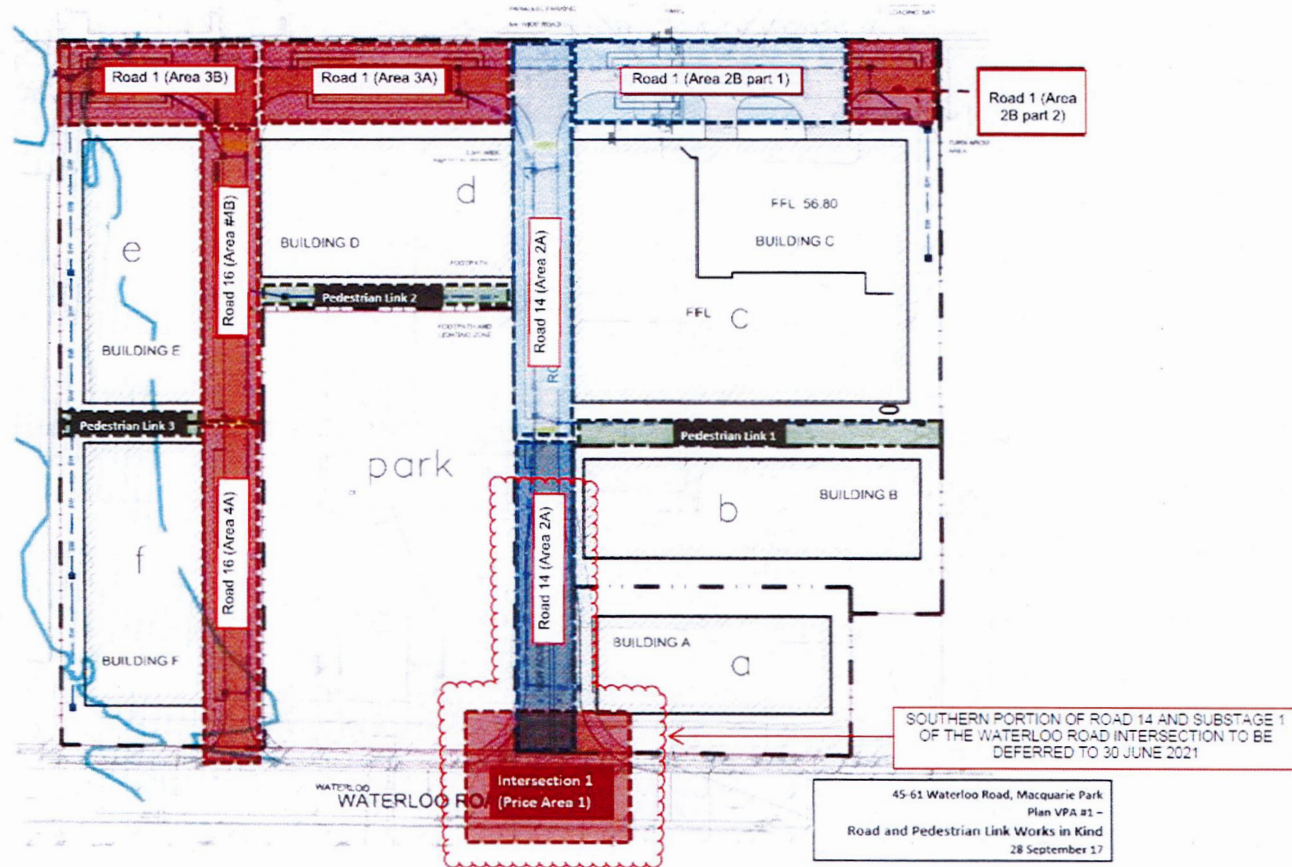
The Planning Agreement and the draft Deed are not consistent with the Council's capital works program. The Planning Agreement provides capital infrastructure and public benefits beyond what Council is providing in its capital works program, due to the direct demand resulting from the development to which the Planning Agreement relates. As such the Planning Agreement provides that developers will be responsible for the provision of the capital infrastructure and public benefits required.

(f) **Whether the amendment to the draft Deed specifies that certain requirements must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued**

The Planning Agreement as amended by this draft Deed contains requirements that must be complied with prior to the issue of Occupation Certificates for the various Buildings that form part of the development.

Annexure B

Updated Plan



Annexure C

Amended Schedule 10

Schedule 10 – Security

1. Bank Guarantees

1.1 Bank Guarantees

On execution of this Deed:

(a) the Developer must provide a Bank Guarantee in the amount of the Monetary Contribution (**Monetary Contribution Guarantee**), as security against the obligation under this Deed to pay the Monetary Contribution; and

(b) the Developer must provide a Bank Guarantee in the amount of the greater of:

(i) 50% of the value of the Agreed Contribution Works Value; or

(ii) \$5,000,000

(Contribution Works Guarantee),

as security against the obligation under this Deed to pay any Additional Monetary Contribution, carry out and deliver the Contribution Works, including rectification of defects and the costs of transferring the Contribution Land to Council; and

(c) the Developer must provide an additional Bank Guarantee in the amount of \$4,800,000 (**Road Work Guarantee**), as security against the obligation under this Deed to deliver the following Contribution Works:

(i) the Southern Section described in Item 1 in Schedule 3, Paragraph 1.1 “Contributions Schedule”, Table 2 – Contribution Works; and

(ii) Item 2 in n Schedule 3, Paragraph 1.1 “Contributions Schedule”, Table 2 – Contribution Works.

1.2 Adjustment of Bank Guarantee Amounts

(a) On each Adjustment Date the Monetary Contribution Guarantee 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 Amounts 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 Amounts no later than 15 Business Days after receipt of a notice given under clause 1.2(b) of this Schedule.
- (d) Prior to the issue of the first Construction Certificate for each stage of the Development, the Developer must provide to Council an estimate of the costs of construction of the Contribution Works in that stage certified by a qualified quantity surveyor. If Council, acting reasonably, considers that the Contribution Works Guarantee will not be sufficient to cover the costs of those works, Council may require an adjustment of the Contribution Works Guarantee and the Developer must provide any additional security as required by Council prior to the issue of a Construction Certificate.

1.3 Expiry of Bank Guarantees

- (a) If, despite the requirements of this Deed, any Bank Guarantee provided by the Developer is expressed as expiring on a certain date, the Developer must provide the Council with a replacement Bank Guarantee 20 Business Days prior to the expiry of the Bank Guarantee.
- (b) If the Developer fails to provide the Council with a replacement Bank Guarantee in accordance with clause 1.3(a) of this Schedule the Council may call on the full amount of such Bank Guarantee after giving 10 Business Days prior written notice to the Developer.

1.4 Cash deposit

- (a) If the Council makes demand under any Bank Guarantee pursuant to clause 1.3 of this Schedule, 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* 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 Bank Guarantee secured.

- (b) As beneficial owner of the Cash Deposit, the Council may, at any time and without notice to the Developer, 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 Developer to comply with those of the Developer's obligations under this Deed that the relevant Bank Guarantee 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 Bank Guarantee and the Developer has satisfied all of its obligations under this Deed which were secured by the relevant Bank Guarantee, the Council must pay the balance of the Cash Deposit Account, less all Costs, charges, duties and Taxes payable in connection with such payment, to the Developer.
- (e) For the avoidance of doubt, the Developer 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 relevant Bank Guarantee.

1.5 Release of Cash Deposit

The Council must release the Cash Deposit to the Developer if the Developer provides the Council with a replacement Bank Guarantee complying with the requirements of clause 1.3(a) of this Schedule.

1.6 Claims under Bank Guarantees

- (a) The Developer agrees that the Council may, after giving at least 10 Business Days prior written notice to the Developer, make claims (in full or in part):
 - (i) under the Monetary Contribution Guarantee provided by the Developer, in the event that the Developer breaches its

obligation to pay the Monetary Contribution in accordance with this Deed; or

- (ii) under the Contribution Works Guarantee provided by the Developer in the event that:
 - (A) the Developer breaches its obligations to pay any Additional Monetary Contribution in accordance with this Deed; or
 - (B) the Developer breaches its obligation to carry out and complete any of the Contribution Works in accordance with this Deed; or
 - (C) the Developer breaches its obligation to transfer the Contribution Land in accordance with this Deed; or
 - (D) the Developer breaches its obligation to rectify defects in or maintain any Contribution Works in accordance with Schedule 4, or
- (iii) under the Road Work Guarantee provided by the Developer in the event that:
 - (A) the Developer breaches its obligation to carry out and complete Items 1 (the Southern Section) and 2 of the Contribution Works in accordance with this Deed; or
 - (B) the Developer breaches its obligation to rectify defects in or maintain Items 1 (the Southern Section) and 2 of the Contribution Works in accordance with Schedule 4; and

a notice has been issued by Council requiring the Developer to remedy the breach in accordance with the requirements of Schedule 6, and the breach remains unremedied following the expiry of the rectification period specified in that notice.

- (b) The Council may retain and use any money it has obtained by making a claim under this clause in its discretion to compensate the Council for the Developer's breach of those obligations.

1.7 No limitation of obligations

The provision of the Bank Guarantees do not:

- (a) relieve the Developer from any of its obligations under any other provision of this Deed; or
- (b) limit the right of the Council to recover from the Developer in full all money payable to the Council under this Deed, including without limitation,

interest on any such amounts or damages or other losses incurred by the Council.

1.8 Release of Monetary Contribution Guarantee

The Monetary Contribution Guarantee will be released by Council to the Developer within 10 Business Days after the Monetary Contribution has been paid.

1.9 Replacement Contribution Works Guarantee

- (a) The Parties agree that the Contribution Works Guarantee will be a rolling Bank Guarantee and will apply to the Contribution Works in each stage of the Development.
- (b) If the Council claims under the Contribution Works Guarantee, in accordance with clause 1.6 of this Schedule, the Developer must provide a replacement Bank Guarantee in the same amount to the Council within 10 Business Days of receiving notice from the Council that the claim has been made.

1.10 Reduction and Release of the Contribution Works Guarantee

- (a) The Developer may by written notice to the Council, upon Practical Completion of the final Contribution Works, request a reduction of the Contribution Works Guarantee.
- (b) If Council (acting reasonably) is satisfied that the relevant Contribution Works have achieved Practical Completion, then the Council must release to the Developer 90% of the Contribution Works Guarantee.
- (c) The Developer acknowledges and agrees that, to secure the Developer's obligations during the Defects Liability Period for each of the Contribution Works, 10% of the Contribution Works Guarantee will be retained by Council on Practical Completion of the final Contribution Works.
- (d) For the purposes of achieving the retention of 10% of the Contribution Works Guarantee in accordance with clause 1.10(c) of this Schedule, the Developer must, if necessary, provide a replacement Bank Guarantee to the Council, after which the Council will release the Contribution Works Guarantee.
- (e) The Contribution Works Guarantee (as adjusted in accordance with this clause) will be released by Council to the Developer at the end of any Defects Liability Period, subject to any rectification works being required during that period being completed.

1.11 Reduction and Release of the Road Works Guarantee

- (a) The Developer may by written notice to the Council, upon Practical Completion of Items 1 (Southern Section) and 2 of the Contribution Works, request a reduction of the Road Works Guarantee.
- (b) If Council (acting reasonably) is satisfied that the relevant Contribution Works have achieved Practical Completion, then the Council must release to the Developer 90% of the Road Works Guarantee.
- (c) The Developer acknowledges and agrees that, to secure the Developer's obligations during the Defects Liability Period for each of Items 1 (Southern Section) and 2 of the Contribution Works, 10% of the Road Works Guarantee will be retained by Council on Practical Completion of Items 1 (Southern Section) and 2 of the Contribution Works.
- (d) For the purposes of achieving the retention of 10% of the Road Works Guarantee in accordance with clause 1.11(c) of this Schedule, the Developer must, if necessary, provide a replacement Bank Guarantee to the Council, after which the Council will release the Road Works Guarantee.
- (e) The Road Works Guarantee (as adjusted in accordance with this clause) will be released by Council to the Developer at the end of any Defects Liability Period, subject to any rectification works being required during that period being completed.

2. Restriction on issue of Certificates

- (a) For the purposes of section 6.10 of the EP&A Act and any associated regulations (or if the Former Building and Subdivision Provisions apply, 109J(1)(c1) of the EP&A Act) and subject to clause 3.5, an Occupation Certificate must not be issued for any Building unless the obligations to deliver Contribution Works and dedicate or transfer (as relevant) Contribution Land that, in accordance with Schedule 3, must be satisfied prior to the issue of an Occupation Certificate for that Building have been completed to the satisfaction of Council.
- (b) For the purposes of sections 6.8 and 6.10 of the EP&A Act and any associated regulations (or if the Former Building and Subdivision Provisions apply, section 109F and section 109J(1)(c1) of the EP&A Act, and clause 146A of the EP&A Regulation), prior to the issue of any Construction Certificate or Occupation Certificate for the Development, the Developer must satisfy the certifier that any Bank Guarantees required under clause 1 of this Schedule have been provided to the Council and have been adjusted as required.

