

Deed of Variation of Planning Agreement

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

Total Forms Pty Limited
ACN 003 374 794

PS1875 Property Holdings Pty Limited
ACN 169 850 855

Three handwritten signatures in black ink, arranged horizontally. The first signature is a simple vertical line with a hook at the top. The second is a more complex, cursive signature. The third is a bold, stylized signature with a large loop.

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Deed

Date

22 / 7 / 2022

Parties

First party

Name The Council of the City of Ryde (**Council**)
ABN 81 621 292 610
Contact General Manager
Telephone 02 9952 8222

Second party

Name Total Forms Pty Limited (**Developer**)
ACN 003 374 794
Contact Tony Leung
Telephone 02 9188 3498

Third party

Name PS1875 Property Holdings Pty Limited
(**Landowner**)
ACN 003 374 794
Contact Tony Leung
Telephone 02 9188 3498

Background

- A. On 19 November 2020, the parties entered into the Planning Agreement.
- B. The parties have agreed to vary the Planning Agreement in connection with the Development of the Land to:
 - (a) provide for an additional public benefit through dedication of land subject to an existing footpath and road reserve; and
 - (b) a consequential reduction in the value of the monetary contribution to be paid under the Planning Agreement.

Operative part

1 Definitions

- 1.1 In this deed, unless the context indicates a contrary intention:

Business Day means a day on which banks are open for general banking business in Sydney, New South Wales, excluding Saturdays and Sundays; and

Planning Agreement means the planning agreement in relation to 45 and 47 Epping Road, Macquarie Park between Council and the Developer and the Landowner dated 19 November 2020.

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

- 1.2 Except as provided in clause 1.1, 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.

2 Interpretation

In this deed, unless the context indicates a contrary intention:

- (a) **(documents)** a reference to a document is to the document as varied, amended, supplemented, novated or replaced from time to time;
- (b) **(references)** a reference to a party, clause, paragraph, schedule or annexure is to a party, clause, paragraph, schedule or annexure to or of this deed;
- (c) **(headings)** clause headings and the table of contents are inserted for convenience only and do not affect the interpretation of this deed;
- (d) **(Background)** the Background forms part of this deed;
- (e) **(person)** a reference to a person includes a natural person, corporation, statutory corporation, partnership, the Crown and any other organisation or legal entity and their permitted novatees, permitted assignees, personal representatives and successors;
- (f) **(including)** including and includes (and any other similar expressions) are not words of limitation and a list of examples is not limited to those items or to items of a similar kind;
- (g) **(corresponding meanings)** a word that is derived from a defined word has a corresponding meaning;
- (h) **(singular and plural)** the singular includes the plural and the plural includes the singular;
- (i) **(gender)** words importing one gender include all other genders;
- (j) **(legislation)** a reference to legislation or any legislative provision includes:
 - (i) any modification or substitution of that legislative provision; and

- (ii) any subordinate legislation issued under that legislation or legislative provision including under that legislation or legislative provision as modified or substituted;
- (k) **(time and date)** a reference to a time or date is to the time and date in Sydney, Australia;
- (l) **(joint and several)** an agreement, representation, covenant, warranty, right or obligation:
 - (i) in favour of two or more persons is for the benefit of them jointly and severally; and
 - (ii) on the part of two or more persons binds them jointly and severally;
- (m) **(replacement bodies)** a reference to a body that ceases to exist or whose powers or functions are transferred to another body is to the body that replaces it or that substantially succeeds to its powers or functions; and
- (n) **(Australian currency)** a reference to dollars or \$ is to Australian currency.

3 Construction

Neither this deed nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting.

4 Timing of acts or things

- (a) If the time for doing any act or thing required to be done under this deed or a notice period specified in this deed expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.
- (b) If any act or thing done under this deed is done after 5 pm on a day, it is taken to have been done on the following Business Day.

5 Status of this Deed

- 5.1 This deed is an amendment to the Planning Agreement within the meaning of clause 203 of the EP&A Regulation 2021.
- 5.2 This deed is not a Planning Agreement within the meaning of section 7.4(1) of the EP&A Act.

6 Commencement

- 6.1 This deed commences and has force and effect on the date when the parties have executed the same copy of this deed.

- 6.2 The party who executes this deed last is to insert on the front page the date it did so and provide a copy of the fully executed and dated deed to any other person who is a party.

7 Amendment to Planning Agreement

On and from the date of this deed, the Planning Agreement is amended as follows:

- (a) The following definitions are inserted in clause 1.1:

Dedication Land means land required to be dedicated to Council under this agreement as shown in the plan at Annexure C;

Encumbrance means any:

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

or any agreement to create any of them or to allow them to exist;

Permitted Encumbrance means each of:

- (a) easements benefiting statutory authorities authorised by Approvals;
 - (b) environmental management requirements imposed under an Approval;
 - (c) an Encumbrance (other than a mortgage, charge, pledge, lien, security interest, title retention, contractual right of set-off, or any other security agreement or arrangement in favour of any person) the Council agrees in writing is a Permitted Encumbrance;
- (b) The formula at clause 3(a) of the Planning Agreement is replaced with the following:

For Stages 1 and 2: Monetary Contribution = Approved GFA x \$132.50

For Stage 3: Monetary Contribution = (Approved GFA x \$132.50) - \$100,000

- (c) The following is inserted after clause 3:

3A. Land Dedication

- (a) *Prior to the issue of the first Construction Certificate for Stage 3 of the Development as identified as stage 3 on the plan at Annexure A, the Developer must dedicate to Council or a nominated authority, at no cost to the Council, the Dedication Land freed and discharged from all Encumbrances, taxes, rates or charges except Permitted Encumbrances.*
- (b) *Prior to the dedication of the Dedication Land in accordance with this clause 3A, the Developer must:*
- (i) *allow members of the public to go, pass and repass over the Dedication Land at all times, on foot at all times, with or without companion animals (as defined in the Companion Animals Act 1998) or other small pet animals, and to the extent that the Dedication Land includes any part of the road carriageway, with vehicles;*
 - (ii) *not construct any structures or erect on any fences or hoarding on the Dedication Land;*
 - (iii) *not prevent access to any services located on the Dedication Land;*
 - (iv) *keep the Dedication Land in good repair and condition;*
 - (v) *keep the Dedication Land clean and free from rubbish; and*
 - (vi) *maintain public liability insurance in the amount of \$20,000,000 per claim covering the use of the Dedication Land by the public.*
- (c) *Until the Dedication Land is dedicated to Council in accordance with this agreement, the Developer indemnifies the Council against any claim, loss, liability, damage, proceeding, order, judgment or expense (**Claim**) in connection with the use of the Dedication Land, except to the extent that such Claim is caused by Council's negligence or default.*
- (d) *Prior to making an application for a subdivision certificate for the plan of subdivision that dedicates the Dedication Land, the Developer must:*
- (i) *provide a draft plan of subdivision to Council, together with (if not shown on the plan of subdivision) a survey plan showing the location of the existing footpath and any part of the existing road carriageway within the land to be dedicated; and*

- (ii) *demonstrate that any part of the existing footpath and road carriageway which encroaches on land owned by the Developer at the date of this agreement is located wholly within the land to be dedicated.*
 - (e) *The obligation to dedicate the Dedication Land will be taken to have been satisfied when the land is dedicated as a public road by operation of the registration of a plan of subdivision in accordance with section 9 of the Roads Act 1993.*
 - (f) *The parties agree that the Dedication Land will used for the purposes of a public pedestrian pathway and road reserve.*
- (d) The amount of \$2,148,620.00 in clause 1.1 of Schedule 7 of the Planning Agreement is deleted and replaced with the amount of \$2,048,620.00.
- (e) The following is inserted at the end of Schedule 7 of the Planning Agreement:

3 Compulsory Acquisition

- (a) *If the Developer does not dedicate to Council the Dedication Land as required by this Deed, the Council may compulsorily acquire the Dedication Land, in which case the Developer consents to the Council compulsorily acquiring that land for compensation in the amount of \$1.00 without having to follow the pre-acquisition procedures in the Land Acquisition (Just Terms Compensation) Act 1991 and recovering any costs, including legal costs, incurred by the Council on acquisition of the land from the Developer.*
- (b) *The obligation to dedicate the Dedication Land as required by this Deed only applies if a Construction Certificate for the development proposed under Development Application LDA2021/0146 is obtained. If no Construction Certificate is obtained, the Developer is under no obligation to dedicate the Dedication Land.*
- (c) *If Council compulsorily acquires the Dedication Land, clause 11.3(a) constitutes an agreement for the purposes of section 30 of the Land Acquisition (Just Terms Compensation) Act 1991.*
- (d) *Except as otherwise agreed between the Developer and Council, the Developer must ensure the Dedication Land is freed and discharged from all Encumbrances (other than Permitted Encumbrances) and affectations (including any charge or liability for rates, taxes, strata levies and charges), on the date of acquisition.*
- (e) *The Developer indemnifies and keeps indemnified the Council against all Claims made against the Council as a result of any acquisition by the Council of the Dedication Land under this clause 3.*

(f) *The Developer must pay the Council, promptly on demand, an amount equivalent to all costs, including legal costs, incurred by the Council acquiring the Dedication Land.*

- (f) Annexure A of the Planning Agreement, being the Proposed Staging Plan, is deleted and replaced with Annexure A to this deed.
- (f) Annexure B of the Planning Agreement, being the calculation of the Monetary Contribution, is deleted and replaced with Annexure B to this deed.
- (g) The plan at Annexure C to this deed, being the plan showing the land to be dedicated under the new clause 3A of the Planning Agreement, is inserted as Annexure C to the Planning Agreement.
- (h) Clause (b) of Schedule 5 of the Planning Agreement is replaced with the following:

The Developer will obtain all consents to the registration of this Deed on the title to the Land as are necessary to allow the Registrar-General to register the Deed.

- (i) Clause (c) of Schedule 5 of the Planning Agreement is replaced with the following:

The Developer must lodge this Deed with NSW Land Registry Services for registration within 28 days after the development consent for LDA2021/0146 (approved by the Land and Environment Court on 2 February 2022 pursuant to section 4.16(1) of the EP&A Act) becomes operative.

8 Registration and Release from Title

Subject to any relevant amendments set out in clause 7, the parties agree that the provisions of clause 5 and clause 6 and Schedules 5 and 6 of the Planning Agreement concerning registration of the Planning Agreement on title apply to this deed as if those provisions were set out in full.

9 Explanatory Note

- (a) Annexure C contains the Explanatory Note relating to this deed and as required by clause 205 of the EP&A Regulation 2021.
- (b) Pursuant to clause 205(5) of the EP&A Regulation 2021, the parties agree that the Explanatory Note is not to be used to assist in construing this deed.

10 Notices

Clause 16 of the Planning Agreement applies as if it forms part of this deed with any necessary changes.

11 Costs and expenses

Each party will bear its own costs and expenses of drafting, negotiating and executing this deed.

12 Relationship between parties

- (a) Nothing in this deed:
 - (i) constitutes a partnership between the parties; or
 - (ii) except as expressly provided, makes a party an agent of another party for any purpose.
- (b) A party cannot in any way or for any purpose:
 - (i) bind another party; or
 - (ii) contract in the name of another party.

13 Invalidity

- (a) A word or provision must be read down if:
 - (i) this deed is void, voidable, or unenforceable if it is not read down;
 - (ii) this deed will not be void, voidable or unenforceable if it is read down; and
 - (iii) the provision is capable of being read down.
- (b) A word or provision must be severed if:
 - (i) despite the operation of clause 13(a), the provision is void, voidable or unenforceable if it is not severed; and
 - (ii) this deed will be void, voidable or unenforceable if it is not severed.
- (c) The remainder of this deed has full effect even if clause 13(b)(i) or clause 13(b)(ii) applies.

14 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.

15 Governing law and jurisdiction

15.1 The laws applicable in New South Wales govern this deed.

15.2 The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.

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 378 of the Local Government Act 1993 in the presence of:



Signature of Witness

JIM PSERRAS

Print name of Witness



Signature of Authorised Representative

PAUL KAPETAR
GENERAL COUNSEL

Name and Position

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

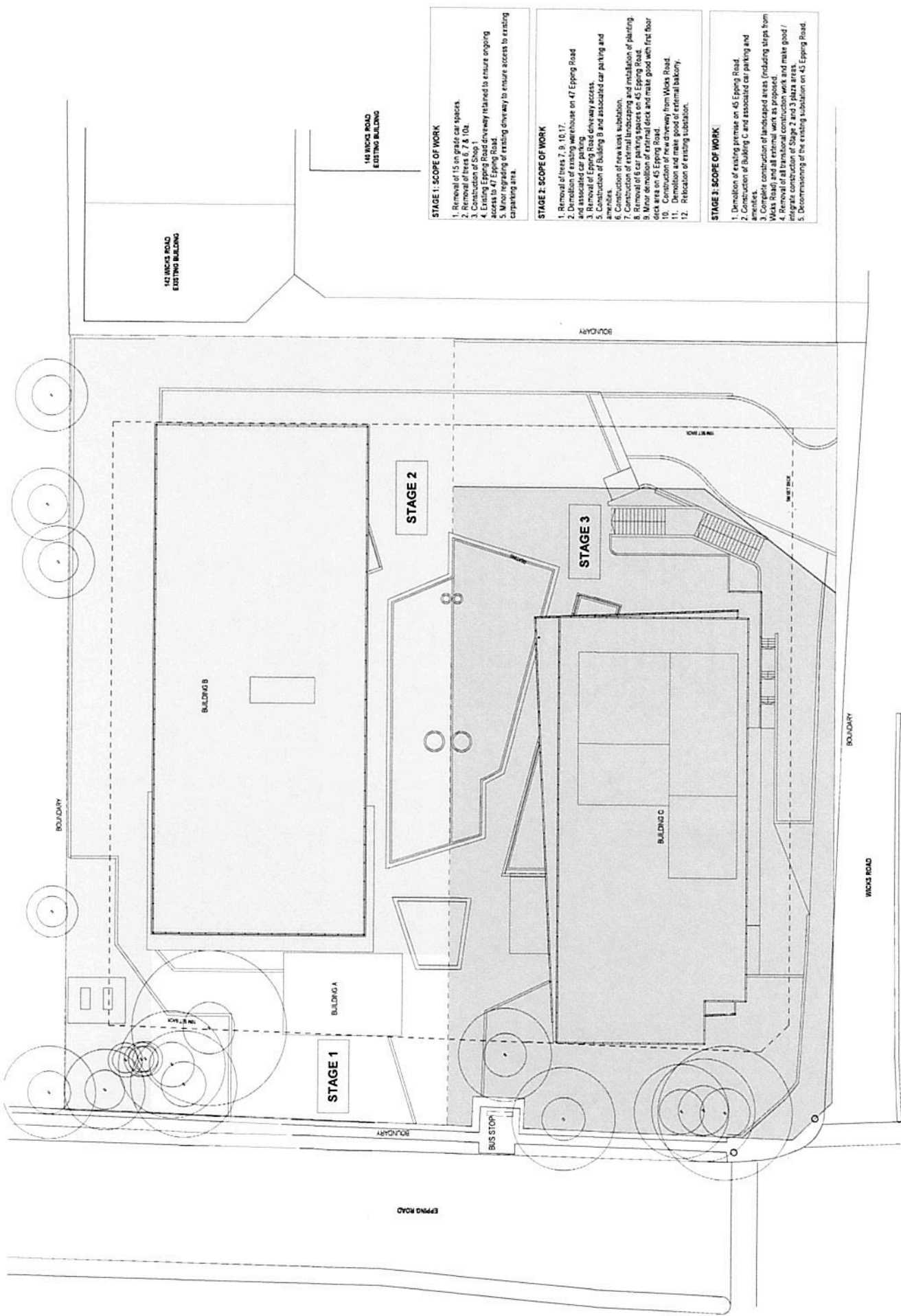


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Signature of Director/Secretary

SHANE TEOH
.....

Print name of Director/Secretary

Annexure A Staging Plan



STAGE 1: SCOPE OF WORK

1. Removal of 15 on grade car spaces.
2. Removal of trees 6, 7 & 10a.
3. Construction of Shop 1.
4. Existing Epping Road driveway retained to ensure ongoing access to existing carparking area.
5. Minor regrading of existing driveway to ensure access to existing carparking area.

STAGE 2: SCOPE OF WORK

1. Removal of trees 7, 9, 10, 17.
2. Removal of existing warehouse on 47 Epping Road and associated carparking area.
3. Removal of Epping Road driveway access.
4. Construction of Building B and associated car parking and amenities.
5. Construction of new kiosk substation.
6. Construction of external landscaping and installation of planting.
7. Removal of 8 car parking spaces on 45 Epping Road.
8. Minor regrading of existing driveway and make good with first floor deck area on 45 Epping Road.
9. Construction of new driveway from Wicks Road.
10. Demolition and make good of external bakery.
11. Relocation of existing substation.

STAGE 3: SCOPE OF WORK

1. Demolition of existing premise on 46 Epping Road.
2. Construction of Building C and associated car parking and amenities.
3. Complete construction of landscaped areas (including strips from Wicks Road) and all external work as proposed.
4. Removal of all transitional construction work and make good / integrate construction of Stage 2 and 3 plaza areas.
5. Decommissioning of the existing substation on 45 Epping Road.

Annexure B Replacement Annexure B to Planning Agreement

Annexure B – Calculation of Monetary Contribution

$$\begin{aligned} \text{Total amount of Contribution} &= 8,108 \text{ sqm (incentive GFA)} \times \$265.00 / \text{sqm} \\ &= \$2,148,620.00 \end{aligned}$$

$$\text{Proposed GFA} = 16,216 \text{ sqm}$$

$$\begin{aligned} \text{Monetary contribution per sqm} \\ \text{of Approved GFA} &= \text{Value of Monetary Contribution} / \text{Proposed GFA} \\ &= \mathbf{\$2,148,620 / 16,216} \\ &= \mathbf{\$132.50 \text{ per sqm}} \end{aligned}$$

$$\begin{aligned} \text{Value of contribution land} &= 196 \text{ sqm} \times \$510.00 / \text{sqm} \\ &= \$100,000.00 \text{ (rounded up to the nearest thousand)} \end{aligned}$$

The actual value of payments made at each Stage may change, depending on the Approved GFA for each stage. The rate per sqm of approved GFA, being \$132.50, will be applied. That contribution will be satisfied at Stage 3 by monetary contributions *and* the dedication of land together. Accordingly, **the total value of the contribution land will be subtracted from any calculation of the monetary contributions for Stage 3.**

Annexure C New Annexure C to Planning Agreement

Annexure D Explanatory Note

Explanatory Note

Environmental Planning and Assessment Regulation 2021

(Clause 205)

Draft Deed of Variation to 45 and 47 Epping Road, Macquarie Park Planning Agreement

This is an Explanatory Note under clause 205 of the *Environmental Planning and Assessment Regulation 2021* relating to a proposed variation of the planning agreement entered into on 19 November 2020 between the parties set out below (**Planning Agreement**).

1 Parties

The parties to the Planning Agreement and the draft Deed of Variation are:

- (a) The Council of the City of Ryde (**Council**)
- (b) Total Forms Pty Limited (**Developer**)
- (c) PS1875 Property Holdings Pty Limited (**Landowner**)

2 Description of the Land to which the Draft Deed Applies

The Planning Agreement and the draft Deed applies to 45 and 47 Epping Road, Macquarie Park which is contained in Lot 1 DP 833060 and Lot 4 DP 27145 (**Land**).

3 Description of Development to which the Draft Deed Applies

The Planning Agreement and the draft Deed apply to any future development of 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 provisions in the LEP.

Since the Planning Agreement, the Developer has lodged LDA 2021/146 for the construction of two multi-storey commercial / retail buildings and a café on the Land.

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 205 of the *Environmental Planning and Assessment Regulation 2021*.

(c) **Effect of the Draft Deed**

The draft Deed amends the Planning Agreement to:

- (i) provide for an additional public benefit through dedication of land subject to an existing footpath; and
- (ii) a consequential reduction in the value of the monetary contribution to be paid under the Planning Agreement to ensure that the total value of the contributions delivered under the Planning Agreement remains the same.

5 Assessment of the Merits of the Draft Deed and Impacts on the Public

- (a) The proposed amendment to the Planning Agreement will require the dedication of land to Council on which part of the footpath and road kerb along Wicks Road has been constructed. Approximately 196 square metres of private land is to be dedicated to Council.
- (b) The dedication of the land is necessary to ensure public infrastructure under Council ownership and is therefore considered to have material public benefit.
- (c) The value of the land to be dedicated has been agreed between the parties. The parties have further agreed that it is appropriate to reduce the monetary contributions otherwise payable under the Planning Agreement by the value of the land to be dedicated.
- (d) The proposed variation to the Planning Agreement will not therefore change the total value of contributions to be delivered under the Planning Agreement and will not have any negative impact on the public. The proposed dedication of the land will mean that there will be no disruption to the existing public pathway along Wicks Road.

Handwritten initials and signatures in blue ink. The initials appear to be 'H-T' and 'S'.