

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

and

Pro-invest Australian Hospitality Opportunity (ST) Pty Ltd
atf Pro-invest Australian Hospitality Opportunity Trust 1
ABN 88 163 479 221

Planning Agreement

Environmental Planning and Assessment Act 1979




TS.


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THIS deed is dated this 13th day of November 2014

PARTIES:

THE COUNCIL OF THE CITY OF RYDE (ABN 81 626 292 610) of 1 Devlin Street, Ryde, New South Wales, 2112 (**Council**)

PRO-INVEST AUSTRALIAN HOSPITALITY OPPORTUNITY (ST) PTY LTD **atf PRO-INVEST AUSTRALIAN HOSPITALITY OPPORTUNITY TRUST 1** (ABN 88 163 479 221) of 'SE 3 09', 56 Delhi Road, North Ryde NSW 2000 (**Developer**)

INTRODUCTION:

- A. On 17 December 2013, the Developer made the Development Application to the Council for Development Consent to carry out the Development on the Land.
- B. The Development Application was accompanied by an offer by the Developer to enter into this Agreement to provide the Contributions.
- C. The Development Consent was granted on 25 June 2014.
- D. This Deed constitutes an agreement between the Developer and the Council that the Developer will provide the Contributions in connection with the Development on the terms and conditions of this Deed.

IT IS AGREED:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this **deed**, unless the context clearly indicates otherwise:

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

Address for Service means the address of each party appearing in Schedule 2 or any new address notified by any party to all other parties as its new Address for Service.

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.

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

Authority means any Federal, State or local government or semi-governmental, statutory, judicial or Developer's person, instrumentality or department.

Building means the structure to be constructed on the Land for the Development.

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

- (a) be signed and issued by an Australian Prudential Regulation Authority (**APRA**) regulated authorised deposit taking institution or an insurer authorised by APRA to conduct new or renewal insurance business in Australia;
- (b) have at all times an investment grade security rating from an industry recognised rating agency of at least:
 - (i) BBB + (Standard & Poors and Fitch); or
 - (ii) Baa 1 (Moody's); or
 - (iii) bbb (Bests),
- (c) be issued on behalf of the Developer;
- (d) have no expiry or end date;
- (e) have the beneficiary as the Council;
- (f) be irrevocable;
- (g) state either individually, or in total with other lodged compliant forms of Guarantee, the relevant minimum amount required to be lodged as security; and
- (h) state the purpose of the deposit required in accordance with this deed.

Business Day means any day that is not a Saturday, Sunday, gazetted holiday or bank holiday in Sydney, and concludes at 5 pm on that day.

Completion means the stage in the construction of the Developer's Works when the Developer's Works are complete except for minor omissions and minor defects which are non-essential and:

- (a) which do not prevent the Developer's Works from being reasonably capable of being used for their intended purposes;
- (b) which the Council determines the Developer has reasonable grounds for not promptly rectifying; and
- (c) the rectification of which will not prejudice the convenient use of the Developer's Works.

Construction Certificate has the same meaning as in the Act.

Contributions means the aggregate of the:

- (a) Shared Pathway;
- (b) Public Access Easement; and
- (c) the Monetary Contribution

to be provided by the Developer in accordance with this deed.

Council's Representative means the person specified in Schedule 1 who is duly authorised to give approval under this deed or such other person as notified by the Council.

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

Dealing, in relation to the Land, means, without limitation, selling, transferring, assigning, mortgaging, charging, encumbering or otherwise dealing with the Land.

Defect means any error, omission, shrinkage, blemish in appearance or other fault in the Developer's Works caused by the Developer, its employees, agents or contractors which prevents the Developer's Works from being reasonably capable of being used for its intended purpose but excludes any damage caused to the Developer's Works by a third party.

Defects Liability Period means the period of 12 months from the date on which all of the Developer's Works reach Completion.

Developer's Works means the works that are required to be carried out by the Developer, at its cost and risk, to construct the Shared Pathway in accordance with the terms of this deed.

Development means the development of the Land in accordance with the Development Consent.

Development Application means development application LDA 2013/522 lodged with Council on 17 December 2013.

Development Consent means development consent number LDA2013/522 for the "demolition of existing buildings and construction and use of a 9 storey building as a hotel. The development will contain 192 rooms, 66 car parking spaces, a restaurant associated with the hotel and signage" and includes any Modification.

Explanatory Note means the note exhibited with a copy of this deed when this deed is made available for inspection by the Developer's pursuant to the Act, as required by the Regulation.

Gross Floor Area has the same meaning as in the *Standard Instrument (Local Environmental Plans) Order 2006*.

GST means any form of goods and services tax payable under the GST Legislation.

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

Guarantee means a Bond or one or more unconditional bank guarantees, unlimited in time, issued by a bank licensed to carry on business in Australia that is:

- (a) in favour of the Council;
- (b) for the Guarantee Amount; and
- (c) on such other terms and conditions the Council may approve from time to time.

Guarantee Amount means the amounts specified in Schedule 5 of this deed.

Land means the land described in Schedule 3 of this deed.

Legal Challenge means proceedings in a Court in which a declaration that the Development Consent for the Development or this deed, is invalid is sought, 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.

Macquarie Park Corridor has the same meaning as in Ryde Local Environmental Plan 2014.

Modification means a "modification" of the Development Consent within the meaning of section 96 of the Act but does not include any modification that will result in the Gross Floor Area of the Development being increased beyond that which has been approved under the Development Consent as at the date of this deed.

Monetary Contribution means the monetary contributions identified in Table 2 to Schedule 4 to this deed.

Occupation Certificate has the same meaning as in the Act and includes an interim Occupation Certificate.

Party means a party to this agreement, including their successors and assigns.

Public Access Easement means the public right of way that is to be registered on the title of the Land by the Developer in accordance with the terms of this deed.

Indicative Public Access Easement Plan means the plan identified in Schedule 8 to this deed.

Register means the Torrens title register maintained under the Real Property Act 1900 (NSW).

Registrar-General means the Registrar General who maintains the Register.

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

Services includes systems or apparatus for electricity, gas, drainage, sewerage, telecommunications or refuse disposal.

Service Provider means a corporation responsible for any Services.

Shared Pathway means the shared pedestrian and bicycle pathway and related overland flow path channel that are to be constructed over the Land as identified in the plans in Schedule 6 and in accordance with the other requirements of this deed.

Standards means the policies, procedures, scope of works and standards for carrying out of the Developer's Works identified in Schedule 7 to this deed.

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 the earlier of:

- (a) the date on which the Legal Challenge is discontinued;
- (b) if final orders (apart from any orders as to costs) are made in the Legal Challenge, the date which is 15 Business Days after the date on which the period of time allowed for filing an Appeal Notice has expired, if no valid Appeal Notice has been filed and served by that first-mentioned date; or
- (c) if an Appeal Notice is filed and served in connection with final orders in the Legal Challenge, the date on which:
 - (i) the Appeal is discontinued; or

- (ii) final orders (apart from any orders as to costs) are made in the Appeal;

unless the orders in the Appeal require the Legal Challenge to be remitted to another Court in relation to any matter, in which case paragraphs (a) to (c) re-apply.

Tax means a tax, duty (including stamp duty and any other transaction duty), levy, impost, charge, fee (including a registration fee) together with all interest, penalties, fines and costs concerning them.

Trigger Event means an event listed in the column titled "Trigger Event" in Schedule 5.

Works Amount means the value of the Developer's Works as determined under clause 7.5 (a) of this deed.

1.2 Interpretation

In this deed unless the context clearly indicates otherwise:

- (a) a reference to **this deed** or another document means this deed or that other document and any document which varies, supplements, replaces, assigns or novates this deed or that other document;
- (b) a reference to **legislation** or a **legislative provision** includes any statutory modification, or substitution of that legislation or legislative provision and any subordinate legislation issued under that legislation or legislative provision;
- (c) a reference to a **body** or **authority** which ceases to exist is a reference to either a body or authority that the parties agree to substitute for the named body or authority or, failing agreement, to a body or authority having substantially the same objects as the named body or authority;
- (d) a reference to the **introduction**, a **clause**, **schedule** or **annexure** is a reference to the introduction, a clause, a schedule or an annexure to or of this deed;
- (e) **clause headings**, **the introduction** and the **table of contents** are inserted for convenience only and do not form part of this deed;
- (f) the **schedules** form part of this deed;
- (g) a reference to a **person** includes a natural person, corporation, statutory corporation, partnership, the Crown or any other organisation or legal entity;
- (h) a reference to a **natural person** includes their personal representatives, successors and permitted assigns;

- (i) a reference to a **corporation** includes its successors and permitted assigns;
- (j) a reference to a right or obligation of a party is a reference to a right or obligation of that party under this deed;
- (k) the obligations of a party are joint and several;
- (l) a requirement to do any thing includes a requirement to cause that thing to be done and a requirement not to do any thing includes a requirement to prevent that thing being done;
- (m) **including** and **includes** are not words of limitation;
- (n) a word that is derived from a defined word has a corresponding meaning;
- (o) **monetary amounts** are expressed in Australian dollars;
- (p) the singular includes the plural and vice-versa;
- (q) words importing one gender include all other genders;
- (r) a reference to a thing includes each part of that thing;
- (s) 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; and
- (t) a word defined in the Act has the same meaning in this deed.

2 OPERATION AND APPLICATION OF THIS DEED

2.1 Operation

This Deed takes effect on the date of this Deed after execution by all the parties.

2.2 Planning agreement under the Act

This deed constitutes a planning agreement within the meaning of section 93F of the Act.

2.3 Application

This deed applies to the:

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

3 APPLICATION OF SECTIONS 94, 94A AND 94EF OF THE ACT

3.1 Application of Sections 94, 94A and 94EF of Act

The application of sections 94, 94A and 94EF of the Act are excluded to the extent stated in Schedule 1 of this deed.

4 CONTRIBUTIONS

4.1 Developer to provide Contributions

The Developer, at its cost and risk, undertakes to provide the Contributions to the Council in accordance with the provisions of this deed. For the purpose of section 93F of the Act, the Contributions include the:

- (a) construction of the Shared Pathway as indicated in Schedule 6 to this deed;
- (b) creation and registration of the Public Access Easement on the title of the Land as indicated in Schedule 9 to this deed; and
- (c) the payment of the Monetary Contributions to Council as identified in Schedule 4 to this deed to be used at the sole discretion of Council for the provision of infrastructure and services within the Macquarie Park Corridor.

4.2 Acknowledgement

The parties acknowledge and agree that, subject to the provisions of section 93F of the Act and this deed the Council will use the Contributions for the purposes described in this deed.

5 ENFORCEMENT

5.1 Developer to provide security

- (a) The Developer must provide the Guarantees to the Council in accordance with Schedule 5.
- (b) The parties agree that the provision of the Guarantees and clause 6 of Schedule 4 constitute the security for the purposes of this deed.

5.2 Rights and remedies of the Council

- (a) The Developer expressly acknowledges and agrees that the Council may make an appropriation from the Guarantee in such amount as the Council (acting reasonably) thinks appropriate if:
 - (i) the Developer does not submit the construction design for the Developer's Works to the Council in accordance with clause 7.2, but only after clause 7.4(b) has been complied with by the Council;

- (ii) the Developer's Works do not reach Completion within 18 months of the date of issue of the Construction Certificate for the Development, or such later date as may be agreed between the parties; or
 - (iii) the Council in exercising its powers under this deed, consequent upon a breach by the Developer of its obligations under this deed, incurs expense or liability.
- (b) The amount appropriated by the Council under paragraph (a) must be applied only towards:
- (i) the costs and expenses incurred by the Council rectifying any default by the Developer under this deed; or
 - (ii) carrying out the Developer's Works.

5.3 Release of Guarantees

- (a) Subject to clause 10.2, if the monies secured by the Guarantees have not been expended and the monies accounted for in accordance with clauses 5.2, then the Council will return each Guarantee to the Developer within 10 Business Days of each corresponding Trigger Event shown in the table in Schedule 5.
- (b) Where a Guarantee is partially released, Council will return the Guarantee to the Developer on receipt of a replacement Guarantee from the Developer for the relevant reduced Guarantee amount.

6 REGISTRATION

6.1 Registration of deed

- (a) Council and the Developer agree to promptly do all things that are necessary for Council to procure the registration of this deed in the relevant folio of the Register for the Land in accordance with section 93H of the Act and in accordance with this clause 6.1.
- (b) The Developer will obtain all consents to the registration of this deed on the title to the Land as required by Land and Property Information.
- (c) The Developer must within 20 Business Days of being notified by the Council that this deed has commenced under clause 2.1, produce to the Council:
 - (i) any letters of consent necessary for the registration of this deed and any other documents that may be required by the Registrar-General;

- (ii) a copy of the production slip number as evidence that the certificate of title has been produced to Land and Property Information for the purpose of the registration of the deed; and
- (iii) a bank cheque for the registration fees payable in relation to the registration of this deed on the title to the Land.
- (d) Council and the Developer must promptly comply with any requisitions that may be raised with regard to registration of the deed from Land and Property Information.
- (e) Subject to clause 6.1(b), 6.1(c) and clause 6.4, the Council will register this deed on the Land.
- (f) The Council will notify the Developer following registration of the deed by the Council and forward a copy of the deed to the Developer.

6.2 Release and discharge of deed by Council

The Council must promptly do all things reasonably required by the Developer to release and discharge this deed with respect to any part of the Land (such that the deed is no longer registered by the Registrar-General under section 93H of the Act in relation to that part of the Land) upon the earlier of:

- (a) termination of the deed under clause 16,
- (b) the occurrence of any of the release and discharge events in clause 18,
- (c) the issuing of the final Occupation Certificate in respect of the Land; or
- (d) the Developer having provided all of the Contributions in accordance with this deed.

6.3 Interest in Land

- (a) The Developer represents and warrants that it is the owner of the Land.
- (b) The Developer represents and warrants that it will use its best endeavours to obtain all consents and approvals to assist, cooperate and to otherwise do all things necessary to comply with its obligations under clause 6.

6.4 Acknowledgement of rights of lessees

The parties acknowledge and agree that:

- (a) nothing in this deed affects the rights or interests of any lessees in relation to the Land; and
- (b) registration of this deed in accordance with clause 6.1 will not affect the rights or interests of any lessees in relation to the Land.

6.5 Caveat

- (a) Without limiting any other provision of this deed, until such time as the registration of this deed is completed, the Developer agrees that Council may, at any time, lodge a caveat over the Land precluding any dealing which is inconsistent with this deed.
- (b) If the Council lodges a caveat in accordance with clause 6.5(a), then the Council must immediately do all things reasonably required to ensure that the caveat does not prevent or delay the registration of:
 - (i) this deed;
 - (ii) any plan of consolidation or subdivision contemplated, required or permitted under this deed or any Development Consent;
 - (iii) any other dealing contemplated, required or permitted under this deed or any Development Consent; and
 - (iv) the transfer of any part of the Land to a related body corporate of the Developer or a trust or fund of which a related body corporate of the Land Owner is trustee, manager or responsible entity.
- (c) Council must promptly do all things reasonably required to remove the caveat from the titles of the Land once this deed has been registered on the titles of the Land.

7 APPROVAL OF DEVELOPER'S WORKS

7.1 Definition of Developer's Works

The parties agree that the works identified in Schedule 6 and Schedule 7 of this deed comprise the Developer's Works for the purposes of this deed. The parties acknowledge and agree that further design detail and refinement are/may be necessary, having regard to the following:

- (a) the extent to which the design of any part of the Developer's Works has been completed to the reasonable satisfaction of Council (in its capacity as a party to this deed and not as consent authority) at the date of execution of this deed;
- (b) conditions reasonably affecting the Developer's Works which were not reasonably capable of identification on or before the date of this deed;
- (c) the extent of any design refinement that may be identified in Schedule 7, or by change of scope required by any party, Authority or Service Provider;
- (d) to take into account the requirements of the Development Consent, any other development consent granted in respect of the Developer's Works or any Modification; and

- (e) to accommodate the Standards in accordance with the reasonable requirements of the Council.

7.2 The Developer to prepare and submit

- (a) The Developer must prepare a detailed description, including design drawings for the Developer's Works.
- (b) The details and drawings referred to in clause 7.2(a) must be prepared in accordance with the Development Consent, Schedule 6 and the Standards and requirements set out in Schedule 7 to this deed, and submitted to Council for approval no later than three months (or such other time as the parties may agree) prior to the date that the Developer makes an application for the relevant Construction Certificate for the Development.
- (c) No Construction Certificate for the Developer's Works can be obtained until Council has confirmed in writing its approval of the material submitted under clause 7.2(b).
- (d) The Council's approval under this clause 7.2 is not to be unreasonably withheld.

7.3 Notice of plans

- (a) The Council must promptly (and in any event within 7 days of submission) give the Developer notice whether or not the design drawings and description of the Developer's Works prepared under clause 7.2(b) are approved or not approved, having regard to their compliance or otherwise with the Development Consent, Schedule 6 and the Standards and requirements set out in Schedule 7, giving reasons in the case of them not being approved.
- (b) If the design or description are not approved having regard to the Development Consent, Schedule 6 and the Standards and the requirements of Schedule 7, then the Council must identify the further information, or modifications, (as the case may be) which are required so that the Developer's Works comply with the Development Consent, Schedule 6 and the Standards and the the requirements set out in Schedule 7 to this deed.
- (c) The Council may also request reasonable amendments notwithstanding the fact that the design and description complies with the Development Consent, Schedule 6 and the Standards and requirements set out in Schedule 7 to this deed, provided that those amendments would not:
 - (i) require a modification of any Development Consent; or
 - (ii) cause the construction costs of the Developer's Works to exceed the Works Amount; or

(iii) cause substantial delay to the Developer's Works;

unless otherwise agreed in writing between the parties.

- (d) The Developer must promptly amend the proposed design to take into account the comments made by the Council in accordance with this clause 7.3.
- (e) Without limiting clause 12, the provisions of clause 12 apply in relation to any dispute arising under this clause 7.3.
- (f) The Council must act reasonably in relation to this clause 7.3.

7.4 The Developer does not prepare plans for the Developer's Works

- (a) If the Developer:
 - (i) does not prepare plans in accordance with the timeframe required by clause 7.2(b); or
 - (ii) does not, within 3 months of the issue of those comments under clause 7.3(b) (or such later period as may be agreed with the Council acting reasonably), amend the plans to take into account the comments made by Council so that the Developer's Works comply with the Development Consent, Schedule 6 and the Standards and the requirements of Schedule 7,

then, subject to clause 7.4(b), the Council may make an appropriation from the Guarantee for the purposes of carrying out works of the kind contemplated by this deed.

- (b) Before exercising the right conferred in clause 7.4(a) the Council must:
 - (i) within 10 Business Days of the non-compliance, give notice to the Developer to rectify the non-compliance with clauses 7.2, 7.3 and 7.4(a)(ii); and
 - (ii) allow the Developer to rectify the non-compliance with clauses 7.2, 7.3 and 7.4(a)(ii) within 20 Business Days of receipt of the notice referred to in clause 7.4(b)(i), or such further time as may be agreed with the Council acting reasonably.
- (c) If the Council makes an appropriation under this clause 7.4, the Land Owner grants the Council a licence for such period as is necessary for the Council to carry out, or procure the carrying out, of the Developer's Works.

7.5 Cost of the Developer's Works

- (a) The Developer must, on or before the submission of plans under clause 7.2, prepare and submit a detailed costs estimate (certified by a Quantity

Surveyor) for the estimated costs (excluding GST) of the Developer's Works, being the relevant Works Amount having regard to the requirements of the Development Consent and Schedules 6 and 7 of this deed.

- (b) Where Council requires an amendment to the design under clause 7.3 (c), a new detailed cost estimate must be submitted in relation to the amended design by the Developer in order to substantiate clause 7.3(c)(ii). The Council (acting reasonably) may:
 - (i) reject items included within that Quantity Surveyor's estimate which are not directly related to the Developer's Works; or
 - (ii) require substantiation for the costs of items where the amount estimated is considered by Council, acting reasonably, to be excessive in the circumstances.
- (c) Council must respond promptly, and in no more than 20 Business Days, to any detailed costs estimate received from the Developer under this clause 7.5.
- (d) The parties expressly acknowledge and agree that the Works Amount may be refined and adjusted having regard to clause 7.3 (c) and the process of valuation set out in this clause subject to any increase to the Works Amount as a result of any variations under the provisions of this clause 7.5 being agreed by the parties in writing.

7.6 No reduction in scope due to actual construction cost

The Developer acknowledges and agrees that if the actual construction cost of any aspect of the Developer's Works exceeds the Works Amount, then the Developer's Works must be completed at the Developer's cost and the scope of the Developer's Works may not be reduced.

8 FINAL DESIGN OF THE DEVELOPER'S WORKS

8.1 Preparation of the plans and specifications

The Developer must complete construction drawings generally consistent with the design developed and approved by Council under clause 7, and in accordance with the Development Consent.

8.2 Approval or variation by the Council

The Council, acting reasonably, may, by written notice to the Developer, approve, vary or direct the Developer to vary the construction design drawings for the relevant aspect of the Developer's Works so as to:

- (a) correct any inconsistency between the construction design drawings and the plans approved under clause 7; or

- (b) reflect any standards, or specifications for the material selection or methodology, adopted by Council from time to time, provided that any direction given under this clause 8.2(b) does not significantly increase:
 - (i) the cost of that element of the relevant aspect of the Developer's Works; or
 - (ii) the complexity of implementation in a manner which may lead to significant delay in the completion of the balance of the work approved under the Development Consent or any other development consent relating to the Developer's Works,

but the Council may not object to any aspect in the construction design drawings which it did not object to under clause 7.

8.3 Directions by the Council

Within 14 days of receiving a notice from Council under the terms of clause 8.2, the Developer must:

- (a) to the extent practicable and using reasonable endeavours, commence to comply with any direction made in accordance with clause 8.2 in respect of the design and implementation of the Developer's Works; or
- (b) if the determination is considered to be unreasonable, or impracticable, notify a dispute with that determination in accordance with clause 12 of this deed.

9 CONSTRUCTION OF DEVELOPER'S WORKS

9.1 Insurance

The Developer must procure:

- (a) Developer's liability insurance, with an insurer approved by the Council acting reasonably, with the Council noted as an interested party, for an amount not less than \$20,000,000 covering all aspects of the Developer's Works and submit a copy of the certificate of insurance to the Council before the commencement of the construction of the Developer's Works;
- (b) all other reasonably necessary and prudent insurance policies in respect of the Developer's Works including:
 - (i) construction insurance in relation to the Developer's Works;
 - (ii) insurance against death or injury to persons employed or otherwise engaged in relation to the undertaking of the Developer's Works; and
 - (iii) any other insurances required at law; and

- (c) that the insurances in clauses 9.1(a) and 9.1(b) are maintained in respect of each aspect of the Developer's Works until the expiration of the relevant Defects Liability Period.

9.2 Approvals and consents

- (a) The Developer must (at its cost) obtain all relevant approvals and consents for the Developer's Works whether from the Council or any other relevant Authority, including any necessary road opening permit.
- (b) Before commencing the Developer's Works, the Developer must give to the Council copies of all approvals and consents for the Developer's Works (other than any approvals or consent issued by Council).
- (c) The parties must cooperate and provide all necessary licences and land owner approvals required in order to ensure that the Developer's Works may be constructed.
- (d) Where this deed requires approval or satisfaction of one party, that party must act reasonably and promptly in providing that approval or confirming its satisfaction, except where this deed expressly provides that the party may act in its absolute discretion.

9.3 Construction Work

- (a) The Developer must (at its cost):
 - (i) carry out and complete the Developer's Works in accordance with all approvals and consents relating to the Developer's Works (including the Development Consent and the approval by Council of plans and any other information submitted under this deed); and
 - (ii) ensure that all Developer's Works are constructed in a good and workmanlike manner, in accordance with the plans approved under this deed so that they are structurally sound, fit for purpose, and suitable for their stated intended use; and
 - (iii) promptly advise the Council's Representative of any significant delays which it experiences in completing the Developer's Works.

9.4 Changes to scope

At any stage during construction of the Developer's Works the parties may agree in writing to a variation in the scope of the works.

9.5 Inspection of Developer's Works

The Council as a party to this deed and not as an authority may (but is not obliged to):

- (a) inspect the Developer's Works during the course of construction at reasonable times and on reasonable notice; and
- (b) notify the Developer's representative in good faith of any material or significant defect, error or omission relating to the construction or installation of the Developer's Works identified during or as the result of such inspection.

The parties expressly agree that any failure to identify a Defect, error and omission, will not be construed as amounting to an acceptance by the Council of that Defect, error or omission.

9.6 Developer's Works Completion

When, in the opinion of the Developer, the Developer's Works have reached Completion, the Developer must notify the Council in writing, and must include in that notice:

- (a) a statement from the person with direct responsibility carriage and supervision of that work that in their opinion the Developer's Works have reached Completion; and
- (b) copies of any certification, warranties, guarantees, maintenance information or other material reasonably required for the ongoing repair, maintenance, or servicing (as the case may be) of any part of the Developer's Works; and
- (c) at least three (3) sets of the "as built" drawings of the Developer's Works, including one set in electronic format.

9.7 Final inspection by Council

- (a) The Council must inspect the Developer's Works within 7 days of notification under clause 9.6 and must by notice to the Developer either:
 - (i) state that Completion has been achieved; or
 - (ii) state that Completion has not been achieved and (if so, identify the errors or omissions which have been identified and which in the opinion of the Council's Representatives prevent Completion; or
 - (iii) issue a notice of the nature identified in clause 9.9.
- (b) Where Council provides notice in accordance with clause 9.7(a)(ii) the Developer may:
 - (i) correct those errors or omissions and provide a further notice under clause 9.6; or
 - (ii) dispute that notice, in which case the provisions of clause 12 will apply.

- (c) Nothing in this clause 9.7, or in any notice issued under this clause 9.7, will be construed to reduce or waive in any manner the Developer's responsibility to correct minor Defects or minor omissions, whether or not these are identified by Council.

9.8 Date of Completion of Developer's Works

The Developer must ensure that the Developer's Works are capable of reaching Completion on or before the date referred to in Column 2 to Table 1 of Schedule 4.

9.9 Non-completion of Developer's Works

- (a) If the Developer so requests, the Council may permit the Developer not to complete the Developer's Works (or part of them) by issuing a notice in writing to the Developer, expressly stating that completion of the items identified in that notice is not required in fulfilment of this deed.
- (b) If the Council permits the Developer not to complete the Developer's Works (or any part of them), the Council may make an appropriation from the Guarantee in such amount as the Council considers reasonably necessary to complete the Developer's Works (or any part of them).
- (c) If the Developer fails to complete the whole of the Developer's Works in the form and to the standards required under the Development Consent or this deed, then Council must notify the Developer in writing that it intends to step in to carry out the Developer's Works and if the non-compliance is not rectified within 10 Business Days after service of the Council's notice, or such later period as may be reasonable in the circumstances and agreed with the Council, the Council may either:
 - (i) complete the Developer's Works; or where that is not reasonably practicable,
 - (ii) carry out other works that would reasonably achieve the objectives identified in this deed or the Development Consent,and may recover all reasonable costs of and reasonably incidental to that work from the Developer as certified by a Quantity Surveyor. The Council may apply the monies secured from the Guarantee and (to the extent that expenditure exceeds the amount secured) recover any shortfall from the Developer as a debt due and owing.
- (d) If the Council determines to complete the Developer's Works under this clause 9.9, the Developer grants the Council a licence over the Land for such period as is necessary for the Council to carry out, or procure the carrying out, of the Developer's Works.

9.10 Indemnity by the Developer

The Developer indemnifies and releases the Council against all damage, expense, loss or liability of any nature suffered or incurred by the Council arising from any wilful or negligent act or omission or breach by the Developer (or any person engaged by it, including any contractor) in connection with the performance of the Developer's obligations under the terms of this deed, except where the damage, expense, loss or liability suffered or incurred by the Council is caused by, or contributed to, by any wilful or negligent act or omission of the Council (or any person engaged by it, including any contractor) or any breach by the Council of its obligations under this deed or a dispute being determined in favour of the Developer.

10 DEFECTS LIABILITY PERIOD

10.1 Defects in the Developer's Works

If the Council notifies the Developer of a Defect in the Developer's Works within the Defects Liability Period, then the Developer must remedy that Defect to the reasonable satisfaction of the Council, within a reasonable period (having regard to the nature of the Defect).

10.2 Security for Defects Liability Period

Until the expiration of the relevant Defects Liability Period, the Council may retain from the Guarantee an amount equal to 10% of the relevant Works Amount as security for the performance by the Developer of its obligations under this clause 10 and the Developer must make any necessary arrangements to allow that to occur.

10.3 Application of Security

- (a) If the Developer does not rectify any Defect in the Developer's Works duly notified under clause 10.1 within a reasonable period having regard to the nature of the Defect, the Council may:
 - (i) rectify the Defect in the Developer's Works;
 - (ii) make an appropriation from the Guarantee retained in accordance with clause 10.2 for the costs of and arising from the rectification; and
 - (iii) (to the extent that the costs exceed the Guarantee held) recover the reasonable costs (as certified by a Quantity Surveyor) for rectification from the Developer as a debt due and owing.
- (b) If the Council determines to rectify any Defects in the Developer's Works under this clause 10.3, the Developer grants the Council a licence for such period as is necessary for the Council to carry out, or procure the carrying out, of those rectification works.

11 EXPENDITURE BY THE COUNCIL

11.1 Expenditure by the Council

If the Council carries out the Developer's Works under clause 9.9, then the Council:

- (a) is not required to expend more money than is secured by the Guarantee. The Council may in its discretion elect not to carry out items of the Developer's Works to ensure that the Developer's Works can be achieved for an amount equal to, or less than, the amount secured by the Guarantee at that time; or
- (b) acting reasonably, may expend more money than is secured by the Guarantee in order to deliver the Developer's Works in accordance with this Deed and the Development Consent.

11.2 Debt due and owing to the Council

If Council expends more money than is secured by the Guarantee in either carrying out or in rectifying the Developer's Works (whether that expenditure is incurred under clause 11.1 or 10.3), then the amount in excess of the Guarantee will be deemed to be a debt immediately due and owing to the Council by the Developer.

12 DISPUTE RESOLUTION

12.1 Not commence

A party must not commence any court proceedings relating to a dispute unless it complies with this clause 12.

12.2 Written notice of dispute

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

12.3 Attempt to resolve

On receipt of notice under clause 12.2, 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.

12.4 Mediation

If the parties do not agree within 10 Business Days of receipt of notice under clause 12.2 (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.

12.5 Expert evaluation of disputes relating to cost of Developer's Works

Notwithstanding clause 12.3, if a dispute arises under clause 7 in relation to the cost of the Developer's Works to be approved by Council, the parties agree that this dispute is to be resolved by expert evaluation carried out by a quantity surveyor either jointly agreed by the parties or, failing agreement, appointed by the President for the time being of the Australian Institute of Quantity Surveyors, New South Wales Division.

12.6 Expert evaluation generally

- (a) If the parties agree under clause 12.3 that expert evaluation is the appropriate dispute resolution technique, or if clause 12.5 applies, expert evaluation must be carried out in accordance with this clause 12.6.
- (b) Where the dispute is not one to which clause 12.5 applies and the parties are not able to agree on an appropriate expert, the expert is to be appointed by the President of the appropriate institute or association.
- (c) If the parties cannot agree on which institute or association is appropriate in the circumstances (within the same 10 Business Days), either party may refer the selection of the institute or association to the President of the Bar Association of New South Wales to select the most appropriate institute or association.
- (d) The institutes or associations from which the expert may be appointed are:
 - (i) if an architect: the Royal Australian Institute of Architects, New South Wales Chapter;
 - (ii) if an engineer: Engineers Australia,
 - (iii) if a valuer: the Australian Property Institute Incorporated (ARBN 007 505 866), New South Wales Division;
 - (iv) if an expert in decontamination: Engineers Australia - Environmental College
 - (v) if an expert in insurance: the Australian and New Zealand Institute of Insurance and Finance, New South Wales Branch;

- (vi) if a real estate agent: the Real Estate Institute of New South Wales;
 - (vii) if a quantity surveyor: the Australian Institute of Quantity Surveyors, New South Wales Chapter;
 - (viii) if a barrister: the New South Wales Bar Association;
 - (ix) if an accountant: the Institute of Chartered Accountants, New South Wales Division;
 - (x) if a solicitor or mediator: the Law Society of New South Wales
- (e) If:
- (i) more than two types of experts are required to determine the dispute; or
 - (ii) the parties agree to appoint a lead expert; or
 - (iii) the President of the Bar Association exercising his or her functions in accordance with clause 12.6(c) consider 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 12.6(b) ("Institutes and associations") to appoint an expert;
 - (iii) to determine the questions to be put to the expert and, if there is more than one expert, to co-ordinate and determine the timing of each expert determination;
 - (iv) if the dispute requires determination by an expert solicitor, to perform that function;
 - (v) if the expert determinations obtained are ambiguous, contradictory or in conflict, to determine the ambiguity, contradiction or conflict;

- (vi) on receipt of the expert determinations to deliver to the parties a final determination of the dispute;
 - (vii) to determine any question of procedure concerning the dispute resolution process.
- (h) The expert is to be engaged on his standard terms of engagement subject to any amendments required to ensure consistency with this clause.
- (i) Both parties may, within 20 Business Days of the date of appointment of the expert, make written submissions to the expert on the matter the subject of the dispute. If a party makes a written submission to the expert, it must give a copy of the submission to the other party at the same time as it gives the submission to the expert. Submissions must include all particulars upon which a party seeks to rely in support of its position in relation to the dispute. The expert will determine the procedure for determining the dispute.
- (j) When any dispute or difference referred to in this clause has been referred for determination, the parties will each use their best endeavours to make available to the expert all facts and circumstances which the expert may require to settle or determine the dispute or difference and must ensure that their respective employees, agents and consultants are available to appear at any hearing or enquiry called for by the expert. The parties record their agreement that the hearing be concluded within 20 Business Days, and the expert's decision given within 20 Business, of the date of appointment of the expert, and shall use their best endeavours to see that these time frames are met.
- (k) The expert's decision is not final and binding on the parties and the parties may refer their dispute to a Court of competent jurisdiction for determination on the basis of a fresh hearing of all issues and facts. 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.

12.7 Court proceedings

If the dispute is not resolved within 30 Business Days after notice is given under clause 12.2 then any party which has complied with the provisions of this clause 12 may in writing terminate any dispute resolution process undertaken under this clause and may then commence court proceedings in relation to the dispute.

12.8 Not use information

The parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement under this clause 12 is to attempt to settle the dispute. No party may use any information or documents obtained through any dispute resolution process undertaken under this clause 12 for any purpose other than in an attempt to settle the dispute.

12.9 No prejudice

This clause 12 does 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.

13 GST

13.1 Definitions

Words used in this clause that are defined in the GST Legislation have the meaning given in that legislation.

13.2 Intention of the parties

The parties intend that:

- (a) Divisions 81 and 82 of the GST Legislation apply to the supplies made under and in respect of this deed; and
- (b) no additional amounts will be payable on account of GST and no tax invoices will be exchanged between the parties.

13.3 Reimbursement

Any payment or reimbursement required to be made under this deed that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which any entity is entitled for the acquisition to which the cost, expense or amount relates.

13.4 Consideration GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this deed are GST exclusive. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purposes of this clause 13.

13.5 Additional Amounts for GST

To the extent an amount of GST is payable on a supply made by a party under or in connection with this deed (the **GST Amount**), the Recipient will pay to the Supplier

the GST Amount. However, where a GST Amount is payable by the Council as Recipient of the supply, the Developer will ensure that:

- (a) it makes payment of the GST Amount on behalf of the Council, including any gross up that may be required; and
- (b) it provides a Tax Invoice to the Council.

13.6 Non monetary consideration

Clause 13.5 applies to non-monetary consideration.

13.7 No merger

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

14 ASSIGNMENT AND NOVATION

14.1 Consent

This deed is personal to each party and no party may assign the rights or benefits of this deed to any person except:

- (a) to a related body corporate, after obtaining the consent of the other party, which the other party must not withhold if it is reasonably satisfied that the related body corporate has sufficient assets, resources and expertise to perform all of the assigning party's obligations under this deed;
- (b) to any other person, with the prior consent of the other party, provided that such consent must not be unreasonably withheld.

14.2 Developer's right to assign or novate

- (a) Prior to seeking the consent of the Council to a proposed assignment or novation of its rights or obligations under this deed or the Land, to a third party (**Incoming Party**) the Developer must:
 - (i) if the Developer requires a return of any Guarantee, procure that the Incoming Party provides replacement Guarantees to the Council upon receipt of which the Council must return the Guarantees provided by the Developer to the Council to the extent they have not already been appropriated in accordance with this deed;
 - (ii) procure the execution of an agreement by the Incoming Party with the other parties on terms satisfactory to the other parties who must act reasonably and without delay, under which the Incoming Party agrees to comply with the terms and conditions of this deed as though the Incoming Party was a party to this deed.

- (b) The Developer will pay the Council's reasonable legal costs and expenses incurred under this clause 14.2.

15 CAPACITY

15.1 General warranties

Each party warrants to each other party that:

- (a) this deed creates legal, valid and binding obligations, enforceable against the relevant party in accordance with its terms; and
- (b) unless otherwise stated, it has not entered into this deed in the capacity of trustee of any trust.

15.2 Power of attorney

If an attorney executes this deed on behalf of any party, the attorney declares that it has no notice of the revocation of that power of attorney.

16 TERMINATION OF DEED

Either party may terminate this deed if:

- (a) the deed commences but the Development Consent issued for the Development is declared void or invalid and the process under clause 19 has been followed;
- (b) the deed commences, but the Development Consent issued for the Development lapses; or
- (c) the Development Consent issued for the Development is surrendered.

17 CONSEQUENCES OF TERMINATION AFTER COMMENCEMENT

Prior to any termination of this deed under clauses 16(a) or 16(c), the parties will meet promptly to discuss the proposed termination of this deed and any ancillary matters that may arise as a result of this deed.

18 RELEASE AND DISCHARGE

The Developer is released and discharged from its obligations under this deed if:

- (a) the Developer has fulfilled all of its obligations under this deed; or
- (b) the deed is terminated in accordance with clause 16.

19 LEGAL CHALLENGE

- (a) Subject to clause 19(e), where a Legal Challenge is commenced the parties' obligations under this deed are immediately suspended and the

Developer shall not have any obligation to make any Contributions under this deed until the Suspension Expiry Date.

- (b) Subject to clause 19(c), where any Legal Challenge is commenced and/or where the Court declares or orders the Development Consent for the Development or this deed 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 relevant declaration or order to discuss in good faith:
 - (A) the suspension of the parties rights and obligations under this deed; 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 paragraph clause 19(a), the Developer may elect at its cost and risk to proceed with the Development and continue to comply with its obligations under this deed unless and until such time as the Development Consent for the Development or this deed is declared invalid.
- (f) The parties agree that if this clause 19 applies and there is a suspension of the parties' obligations under this deed, where necessary, any works that have been commenced, but not completed, will be left in a state that is safe to the Developer before works cease notwithstanding the commencement of the Suspension Period.
- (g) If the Developer elects to proceed with the Development notwithstanding clause 19(a), then the Developer warrants that it will not require Council to comply with its obligations under this deed until after the Suspension Expiry Date.

20 GENERAL PROVISIONS

20.1 Entire deed

This deed constitutes the entire agreement between the parties regarding the matters set out in them and supersedes any prior representations, understandings or arrangements made between all the parties, whether orally or in writing.

20.2 Variation

This deed must not be varied except by a later written document executed by all parties.

20.3 Waiver

A right created by this deed cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right does not constitute a waiver of that right, nor will a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.

20.4 Further assurances

Each party must promptly execute all documents and do every thing necessary or desirable to give full effect to the arrangements contained in this deed.

20.5 Time for doing acts

- (a) If:
- (i) the time for doing any act or thing required to be done; or
 - (ii) 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 required to be done is done after 5 pm on the specified day, it is taken to have been done on the following Business Day.

20.6 Governing law and jurisdiction

- (a) The laws applicable in New South Wales govern this deed.
- (b) 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.

20.7 Severance

If any clause or part of any clause is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the

clause (or where possible, the offending part) is to be severed from this deed without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.

20.8 Preservation of existing rights

The expiration or termination of this deed does not affect any right that has accrued to a party before the expiration or termination date.

20.9 No merger

Any right or obligation of any party that is expressed to operate or have effect on or after the completion, expiration or termination of this deed for any reason, will not merge on the occurrence of that event but will remain in full force and effect.

20.10 Relationship of parties

Unless otherwise stated:

- (a) nothing in this deed creates a joint venture, partnership, or the relationship of principal and agent, or employee and employer between the parties; and
- (b) no party has the authority to bind any other party by any representation, declaration or admission, or to make any contract or commitment on behalf of any other party or to pledge any other party's credit.

20.11 Good faith

Each party must act in good faith towards all other parties and use its best endeavours to comply with the spirit and intention of this deed.

20.12 No fetter

Nothing in this deed shall be construed as requiring the Council to do anything that would cause the Council to breach any of the Council's obligations at law and without limitation, nothing in this deed shall be construed as limiting or fettering in any way the discretion of the Council in exercising any of the Council's statutory functions, powers, authorities or duties.

20.13 Explanatory note

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

20.14 Expenses and Taxes

The Developer must pay all Taxes assessed on or in respect of this deed and any instrument or transaction required or contemplated by or necessary to give effect to this deed including any stamp duty.

20.15 Notices

- (a) Any notice, demand, consent, approval, request or other communication (**Notice**) to be given under this deed must be in writing and must be given to the recipient at its Address for Service by being:
 - (i) hand delivered; or
 - (ii) sent by facsimile transmission; or
 - (iii) sent by prepaid ordinary mail within Australia.

- (b) A Notice is given if:
 - (i) hand delivered, on the date of delivery but if delivery occurs after 5pm New South Wales time or a day that is not a Business Day, is taken to be given on the next Business Day;
 - (ii) sent by facsimile transmission during any Business Day, on the date that the sending party's facsimile machine records that the facsimile has been successfully transmitted but if the transmittal is recorded by the sending party's facsimile machine as after 5pm New South Wales time or a day that is not a Business Day, is taken to be given on the next Business Day; or
 - (iii) sent by prepaid ordinary mail within Australia, on the date that is 2 Business Days after the date of posting.

SCHEDULE 1

Table 1 – Requirements under section 93F of the Act (clause 2)

The parties acknowledge and agree that the table set out below provides for certain terms, conditions and procedures for the purpose of the deed complying with the Act.

REQUIREMENT UNDER THE ACT	THIS DEED
<p>Planning instrument and/or development application – (section 93F(2))</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</p> <p>(c) No</p>
<p>Description of land to which this deed applies – (section 93F(3)(a))</p>	See Schedule 3
<p>Description of change to the environmental planning instrument to which this deed applies and/or the development to which this deed applies – (section 93F(3)(b))</p>	The Development as defined in clause 1.1
<p>The scope, timing and manner of delivery of contribution required by this deed – (section 93F(3)(c))</p>	See Schedule 4
<p>Applicability of sections 94 and 94A of the Act – (section 93F(3)(d))</p>	The application of section 94 and 94A of the Act are excluded to the extent of the Development.
<p>Applicability of section 94EF of the Act – (section 93F(3)(d))</p>	The application of section 94EF of the Act is not excluded in respect of the Development.
<p>Consideration of benefits under this deed if section 94 applies – (section 93F(5))</p>	No
<p>Mechanism for Dispute Resolution – (section 93F(3)(f))</p>	See clause 12

REQUIREMENT UNDER THE ACT	THIS DEED
Enforcement of this deed – (section 93F(3)(g))	See clause 5
No obligation to grant consent or exercise functions – (section 93F(10))	See clause 20.12

Table 2 – Other matters

REQUIREMENT UNDER THE ACT OR REGULATION	THIS DEED
Registration of the Planning Agreement – (section 93H of the Act)	Yes (see clause 6)
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a construction certificate is issued – (clause 25E(2)(g) of the Regulation)	Yes
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before an occupation certificate is issued – (clause 25E(2)(g) of the Regulation)	Yes
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a subdivision certificate is issued – (clause 25E(2)(g) of the Regulation)	No

SCHEDULE 2

Address for Service (clause 1.1)

Council

Contact: General Manager

Address: 1 Devlin Street, RYDE NSW 2000

Facsimile No: (02) 9952 8070

DEVELOPER

Contact: Tim Sherlock

Address: SE 3 09', 56 Delhi Road, North Ryde NSW 2000


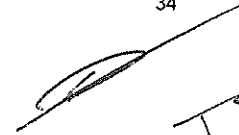
Facsimile No: (02) 9247 1875

SCHEDULE 3

Land (clause 1.1)

1 Lot proposed for development

Lot	Deposited Plan	Folio Identifier	Land Owner
31	567569	31/567569	Pro-Invest Australian Hospitality Opportunity (ST) Pty Ltd (ABN 88 163 479 221)


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SCHEDULE 4

Contributions (clause 4)

The Developer undertakes to provide the Contributions in accordance with this Schedule and in the manner set out in the tables below:

1. Table 1: Contributions

<u>Column 1</u> Contribution	<u>Column 2</u> Timing
Shared Pathway	Completion - Prior to the issue of any Occupation Certificate for the Development or in any event prior to the occupation of the Development.
Public Access Easement	Registration on the Title of the Land of the Public Access Easement – prior to the issue of any Occupation Certificate for the Development or in any event, prior to the occupation of the Development.

2. Table 2: Monetary Contributions

Item	Purpose	Amount	Timing
1	Monetary Contribution for FSR uplift	\$335,950	Within 14 days from the date of this Agreement.
2	Monetary Contribution in lieu of Section 94 contributions	\$365,396	Prior to the issue of any Construction Certificate for the Development
3	Total	\$701,346	

3. Provision of Contributions

The Developer must, at its costs and risk:

- (a) carry out the Developer's Works in accordance with the Development Consent, clauses 7, 8, and 9 of this deed and the requirements of Schedule 6 and Schedule 7 of this deed; and
- (b) achieve Completion of the Developer's Works and create the Public Access Easement in accordance with the timeframes specified in Column 2 of Table 1 of this Schedule.

4. Creation and registration of Public Access Easement

- (A) The Developer must:
- (a) create and register on the title of the Land the Public Access Easement in accordance with the Public Access Easement Plan; and
 - (b) subject to clause 5 of this Schedule 4, comply with any reasonable directions by Council or Council's Representative in respect of the terms and the registration of the Public Access Easement.
- (B) The Developer must, at its cost, promptly comply, or procure compliance with, any requisitions raised by the Registrar-General in relation to any matter pertaining to the registration of the Public Access Easement.

5. The Public Access Easement is to include terms that require the owner of the Land (Land Owner) to ensure that:

- (a) Public access over the Shared Pathway is maintained at all times;
- (b) the Shared Pathway is kept clean and free from rubbish at the cost of the Land Owner;
- (c) the Shared Pathway and associated lighting is maintained at all times at the cost of the Land Owner; and
- (d) adequate public liability insurance is maintained over the Shared Pathway throughout the operation of the Public Access Easement at the cost of the Land Owner.




6. Compulsory acquisition

- (a) If the Developer does not procure the registration of the Public Access Easement in accordance with clauses 4 and 5 of this Schedule, the Developer consents to the Council compulsorily acquiring the Public Access Easement in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW) for the amount of \$1.
- (b) The Developer and the Council agree that:
 - a. clause 6(a) of this Schedule is an agreement between the Land Owner and the Council for the purpose of section 30 of the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW); and
 - b. in clause 6(a) of this Schedule, the Developer and the Council have agreed on all relevant matters concerning the compulsory acquisition and the compensation to be paid for the acquisition.
- (b) The Developer indemnifies and agrees to keep indemnified the Council against all claims made against the Council if the Council must pay compensation under Part 3 of the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW) to any person.

SCHEDULE 5

Guarantees (clause 5.1)

Guarantee	Guarantee Amount	Date to be provided by the Developer	Trigger Event
Developer's Works	An amount equivalent to the Works Amount.	Prior to the issue of any Construction Certificate for the Development.	<p>To be released to the Developer on Completion of the Developer's Works.</p> <p>To the extent that the Defects Liability Period for any component of the Developer's Works has not yet expired by this date, the Developer must provide a replacement Guarantee(s) for an amount equal to 10% of the relevant Works Amount.</p> <p>Any Guarantee held by Council during the Defects Liability Period for the relevant component of the Developer's Works must be released to the Developer at the expiration of the relevant Defects Liability Period.</p>

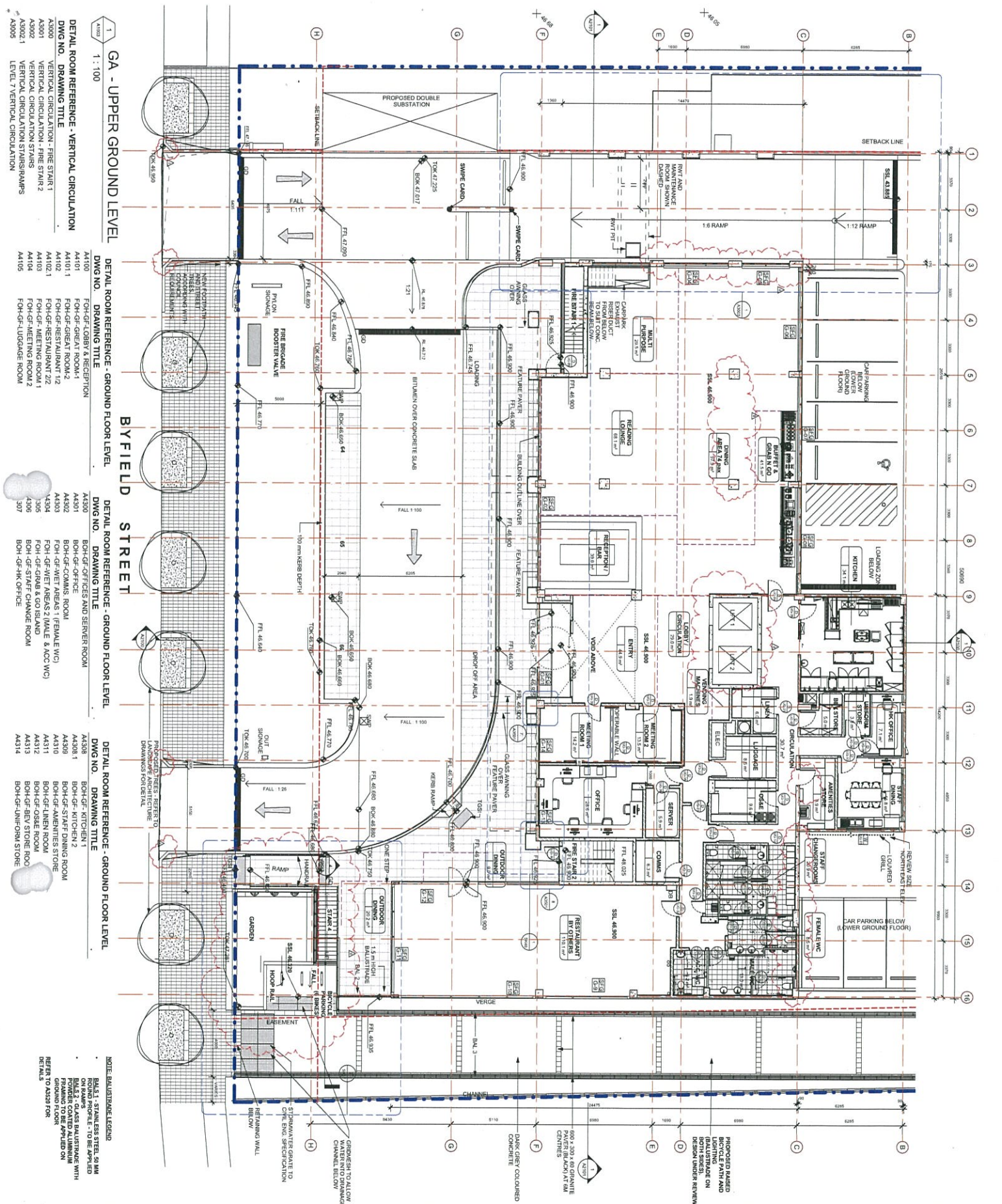




SCHEDULE 6
Developer's Works

8

8





GA - UPPER GROUND LEVEL
 DWG NO. 1:100

DETAIL ROOM REFERENCE - VERTICAL CIRCULATION
 DWG NO. DRAWING TITLE

- A1001 FOH-QF-LOBBY & RECEPTION
- A1002 FOH-QF-GREAT ROOM-1
- A1003 FOH-QF-GREAT ROOM-2
- A1004 FOH-QF-RESTAURANT 2/1
- A1005 FOH-QF-RESTAURANT 2/2
- A1006 FOH-QF-MEETING ROOM 1
- A1007 FOH-QF-MEETING ROOM 2
- A1008 FOH-QF-LUAGAGE ROOM

DETAIL ROOM REFERENCE - GROUND FLOOR LEVEL
 DWG NO. DRAWING TITLE

- A4300 BOH-QF-OFFICES AND SERVER ROOM
- A4301 BOH-QF-OFFICE
- A4302 BOH-QF-COMMS ROOM
- A4303 BOH-QF-MEETINGS 1 (FEMALE WC)
- A4304 BOH-QF-MEETINGS 2 (MALE & ACC WC)
- A4305 BOH-QF-STAFF CHANGE ROOM
- A4306 BOH-QF-HK OFFICE

DETAIL ROOM REFERENCE - GROUND FLOOR LEVEL
 DWG NO. DRAWING TITLE

- A4307 BOH-QF-KITCHEN 1
- A4308 BOH-QF-KITCHEN 2
- A4309 BOH-QF-START DINING ROOM
- A4310 BOH-QF-ANIENTIES STORE
- A4311 BOH-QF-LINEN ROOM
- A4312 BOH-QF-DESK ROOM
- A4313 BOH-QF-DESK ROOM
- A4314 BOH-QF-JUNIOR STORE

NOTE: BALUSTRADE LEGEND

- 1. BALUSTRADE: STAINLESS STEEL, 30 MM ON RAILS
- 2. BALUSTRADE: STAINLESS STEEL, 30 MM ON RAILS
- 3. BALUSTRADE: STAINLESS STEEL, 30 MM ON RAILS
- 4. BALUSTRADE: STAINLESS STEEL, 30 MM ON RAILS
- 5. BALUSTRADE: STAINLESS STEEL, 30 MM ON RAILS
- 6. BALUSTRADE: STAINLESS STEEL, 30 MM ON RAILS
- 7. BALUSTRADE: STAINLESS STEEL, 30 MM ON RAILS
- 8. BALUSTRADE: STAINLESS STEEL, 30 MM ON RAILS
- 9. BALUSTRADE: STAINLESS STEEL, 30 MM ON RAILS
- 10. BALUSTRADE: STAINLESS STEEL, 30 MM ON RAILS

COORDINATION
 ISSUE

DATE: 05/09/14
 SCALE: 1:100

UPPER GROUND FLOOR PLAN

TACTICAL
 TO INVEST GROUP

REID CAMPBELL
 Architects and Interiors, Project Management

10 BYFIELD STREET,
 MACQUARIE PARK,
 2113 NSW

HOLIDAY INN EXPRESS

REFER TO LANDSCAPE ARCHITECTS DRAWINGS FOR LANDSCAPE DETAILS

LEGEND

- BUILDING OUTLINE OVER
- SET BACK CONTROL
- PROPOSED RAMP
- BI-CYCLE PATH AND LIGHTING ON BOTH SIDES
- DESIGN UNDER REVIEW
- MECHANICAL SERVICES
- ELECTRICAL SERVICES
- COMMUNICATIONS SERVICES
- HYDRAULIC SERVICES
- STRUCTURAL SERVICES
- FLOOR LEVEL INDICATORS
- GRATED DRAIN TO ENGINEERS
- FLOOR LEVELS
- LEVEL
- LG 4000
- LG 4500
- LG 5000
- LG 5500
- LG 6000
- LG 6500
- LG 7000
- LG 7500
- LG 8000

NOTE:

- WH1 - W REPRESENTS LEVELS 1-7
- WH2 - W REPRESENTS LEVELS 1-7
- WH3 - W REPRESENTS LEVELS 1-7
- WH4 - W REPRESENTS LEVELS 1-7
- WH5 - W REPRESENTS LEVELS 1-7
- WH6 - W REPRESENTS LEVELS 1-7
- WH7 - W REPRESENTS LEVELS 1-7
- WH8 - W REPRESENTS LEVELS 1-7
- WH9 - W REPRESENTS LEVELS 1-7
- WH10 - W REPRESENTS LEVELS 1-7

FOR ALL OVER AND FLOW LEVELS & FINAL FINISHES, PLEASE REFER TO THE ARCHITECTS DRAWINGS FOR LANDSCAPE DETAILS.

LEGEND

- PROPOSED RAMP
- BI-CYCLE PATH AND LIGHTING ON BOTH SIDES
- DESIGN UNDER REVIEW
- MECHANICAL SERVICES
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LEGEND

- PROPOSED RAMP
- BI-CYCLE PATH AND LIGHTING ON BOTH SIDES
- DESIGN UNDER REVIEW
- MECHANICAL SERVICES
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- WH8 - W REPRESENTS LEVELS 1-7
- WH9 - W REPRESENTS LEVELS 1-7
- WH10 - W REPRESENTS LEVELS 1-7

FOR ALL OVER AND FLOW LEVELS & FINAL FINISHES, PLEASE REFER TO THE ARCHITECTS DRAWINGS FOR LANDSCAPE DETAILS.

NO.	DESCRIPTION	UNIT	QTY	DATE	CLIENT
1	95% DESIGN	UM	27.8%		

REID CAMPBELL ARCHITECT

1300 BAYVIEW AVENUE SUITE 200
SCARBOROUGH, ONTARIO M1B 2Y9
TEL: 416-291-1111

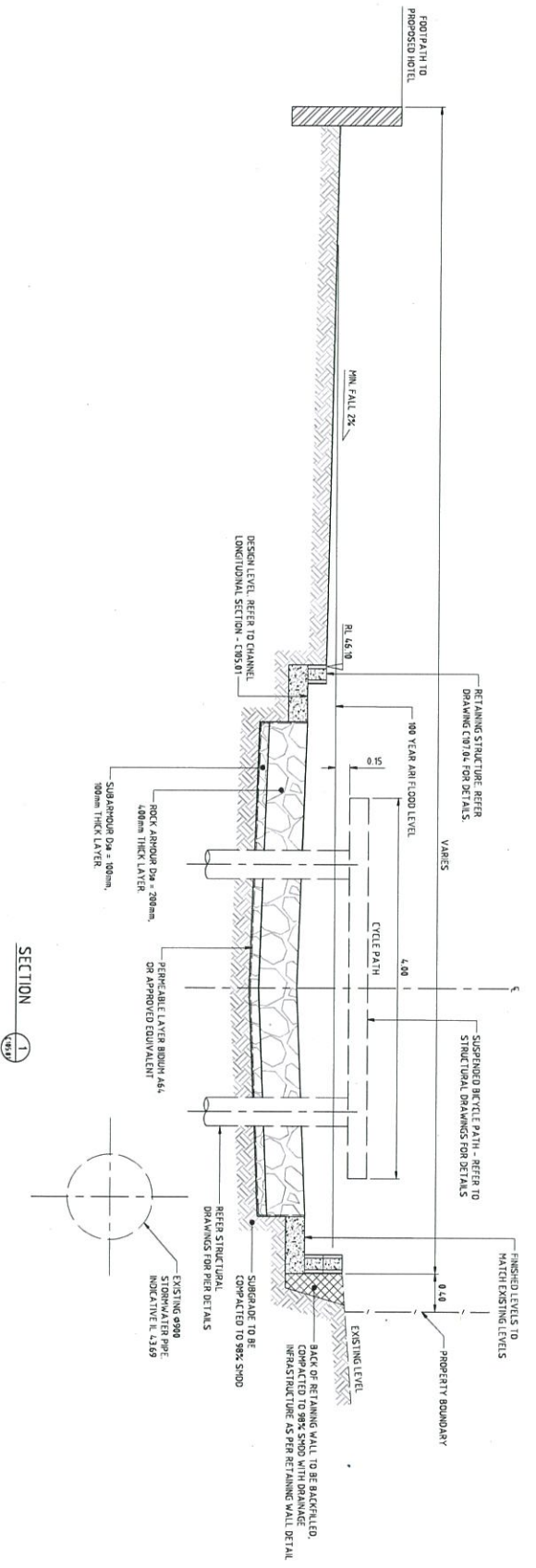
NORTHROP Sydney

Level 11, 345 College Street, Suite 1000
Tel: 416-593-4188 Fax: 416-593-4189
Email: info@northrop.com

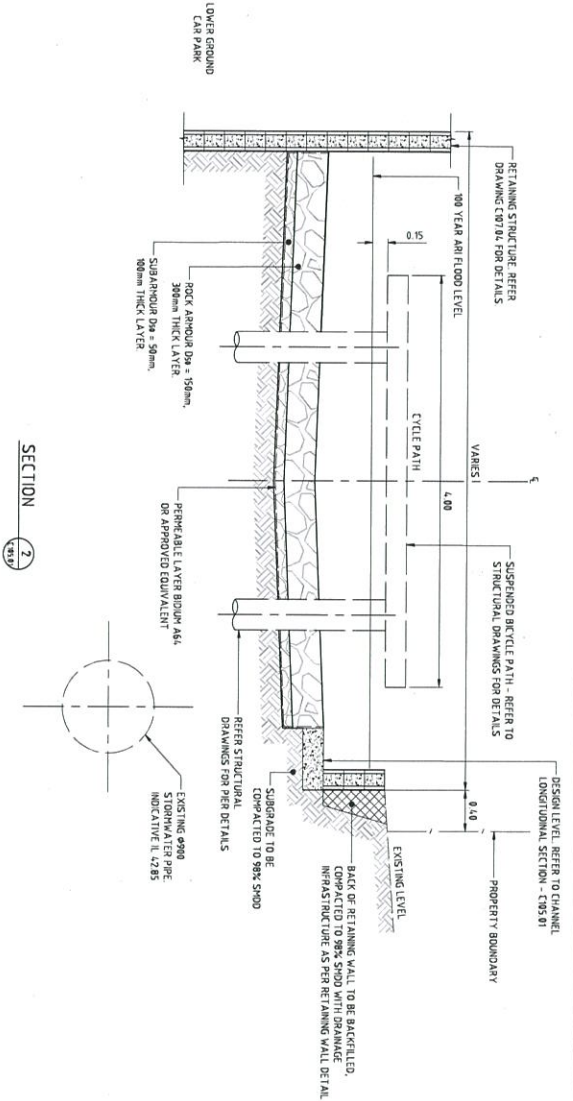
PROJECT	10 BYFIELD ST MACQUARIE PARK
DRAWING TITLE	CIVIL DESIGN OVERLAND FLOW CHANNEL TYPICAL SECTIONS
DRAWING NUMBER	130746
DRAWING SHEET NO. OF TOTAL SHEETS	C106.01 / 1

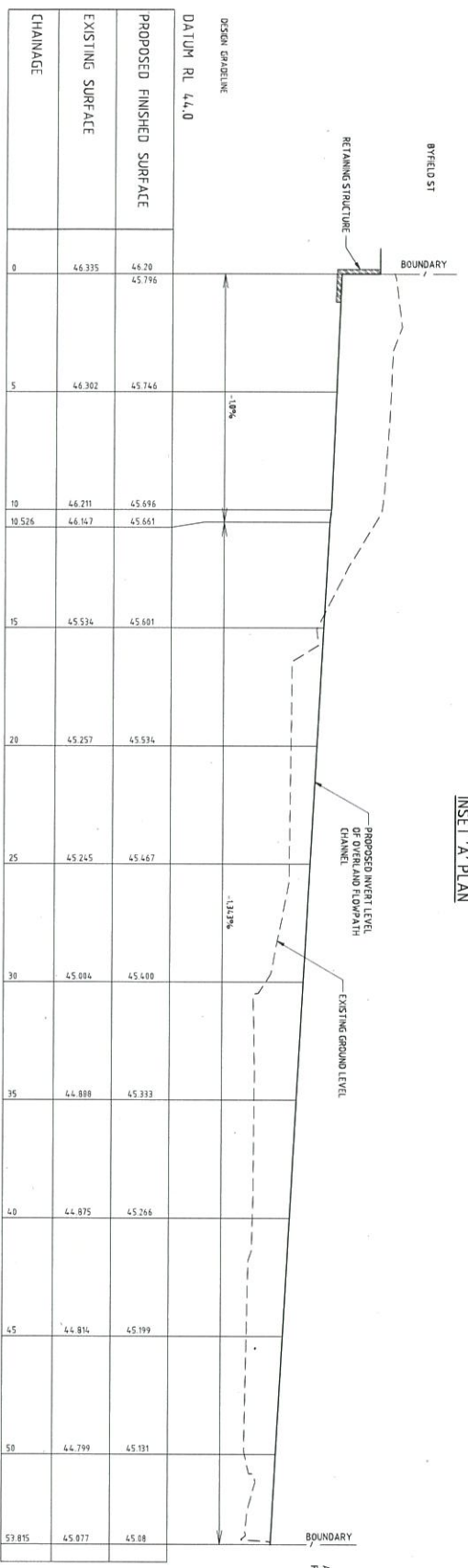
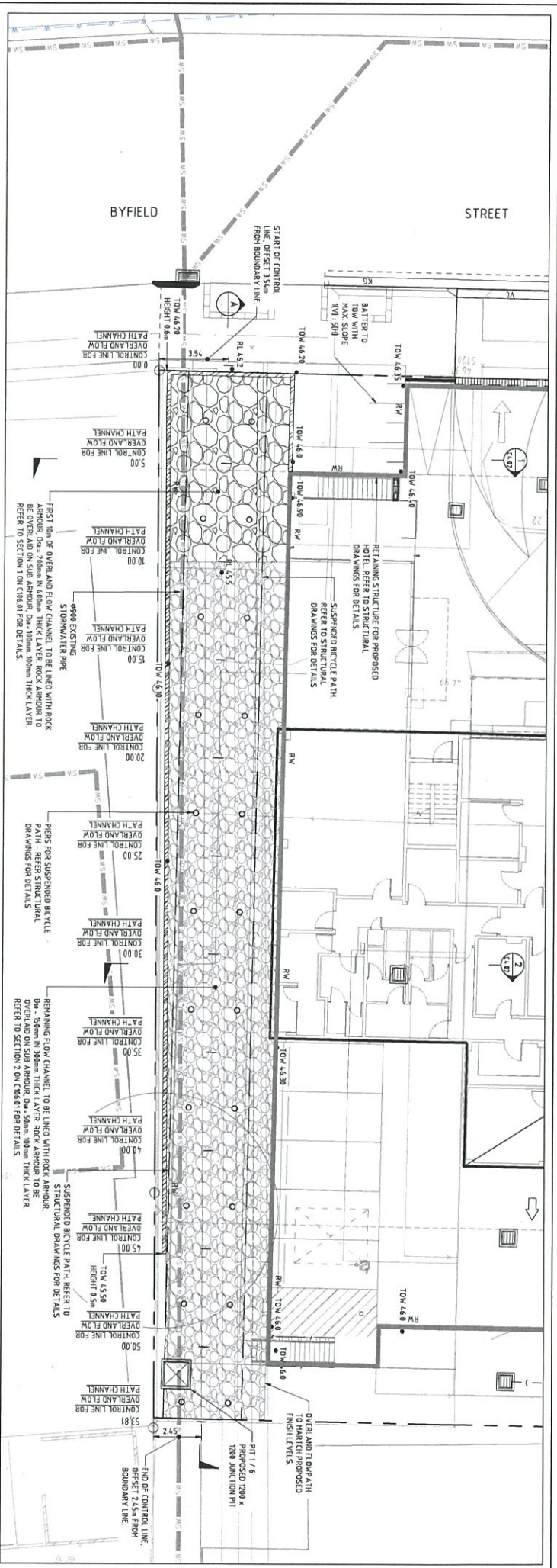
NOT FOR CONSTRUCTION

TYPICAL SECTION OF OVERLAND FLOWPATH CHANNEL
C106.00 - C106.00



TYPICAL SECTION OF OVERLAND FLOWPATH CHANNEL
C106.00 - C105.815





LONGITUDINAL SECTION A-A
HORIZONTAL SCALE 1:500
VERTICAL SCALE 1:25

NOT FOR CONSTRUCTION

REVISION	DESCRIPTION	ISSUED	DATE	CLIENT	ARCHITECT	ENGINEER	PROJECT	DRAWING TITLE	DWG NUMBER
2	100% DESIGN	21/11	23/11/23	Forinvest	REIDCAMPBELL	NORTHROP Sydney	10 BYFIELD ST, MACQUARIE PARK	CIVIL DESIGN	130746
1	50% DESIGN	21/11	23/11/23					OVERLAND FLOW CHANNEL PLAN AND LONG SECTION	C105.01
									2

SCHEDULE 7

Standards

A. General

The standards referred to in this Schedule 7 are included for information purposes only, and as a guide to the relevant standards for the general nature of the work of the kind identified as Developer's Works in this agreement.

The Council makes no representation or warranty whatsoever as to the currency of the standards identified, or their application to the final design of any particular element. If any standard is replaced or supplemented, then a reference will be deemed to include any other standards as may replace or supplement that standard.

In submitting the detailed description and design drawings under clause 7 of this deed, the Developer will be required to comply with the Development Consent and any relevant mandatory Australian Standards applicable at the date of submission, as well as any relevant Council Standards or other requirements that are applicable as at the date of submission.

The scope specifies the works proposed under this deed offered by the Developer in relation to the Development on the Land.

The proposed works is the **Shared Pathway** as shown in the drawings in Schedule 6.



The part of the Land on which the Shared Pathway is to be constructed is situated adjacent to the north-east boundary of the Land, and therefore the Developer's Works are inextricably linked in accordance with Ryde Council's future planning principles.

Under the Development Consent, the Developer also proposes to construct a drainage channel sufficient to cater for the Council's overland flow requirements per its current modelling of the 100 year ARI flood event, with the suspended Shared Pathway over the top of the channel, to be designed and constructed based on a drainage design by an appropriately qualified Engineer, with the pathway generally consistent with NSW RMS standards.

B. Conflict

In the event that any Australian Standard prescribes or describes a different level of material, finish, work or workmanship, than those contained in any Council Standard set out in this Schedule 7, then the higher of the two standards will apply.

In the event that one or more Council Standards conflict with another Council Standard, then the Council must nominate the correct and applicable Council Standard. The Council's decision as to the applicable standard in the event of conflict is final.


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C. Australian Standards

All relevant Australian Standards as applicable at the date of the submission to Council of the construction drawings for the Developer's Works.

D. Council Standards (All Works)

All relevant Council Standards as applicable at the date of the submission to Council of the construction drawings for the Developer's Works.

E. Scope of Works

The detail design and specification of the Shared Pathway is to be completed in accordance with clauses 7 and 8 of this deed. However the proponent has currently costed and specified the works in accordance with the design documents included within the Development Application for the development.

The scope of works under this deed includes but is not limited to the following:

- (a) Removal of all trees including stumps away from affected land as noted on design documents;
- (b) Demolish and remove existing kerb and pavement;
- (c) Bulk excavation the extent of the through-site pathway. Excavated material to remain on site;
- (d) Piers (including concrete and reinforcement). Spoil removed as VENM material.;
- (e) Pile caps on bored piles including concrete and reinforcement. Pile caps approximately 1200mm (W) x 650mm (L) x 450mm (D). Pile caps to each bored pile;
- (f) Columns to support the suspended slab;
- (g) Form, reo, pour suspended through-site path slab including band beams and edge beams, kerbs. Slab approximately 200mm thick. Broom finish to slab;
- (h) Retaining and earth stabilised walls to flow path area (where required);
- (i) Waterproof membrane, protection, granular backfill and subsoil drainage to rear of retaining walls;
- (j) Galvanised balustrade to retaining wall in accordance with BCA (approximately 105m);
- (k) Allowance for 1,800mm high chain wire fence to flow path area;
- (l) Lights to one side of the through-site pathway for security purposes (assume 7 in total), fixings included;
- (m) Stormwater junction pit 1200mm (W) x 1200mm (L) x 2.6m (D);

- (n) Allowance for Amor downstream of channel;
- (o) Trim, and grade swale and basin area;
- (p) Rock armour to overland flow area; and
- (q) Remediation and repair to downstream adjacent property to level changes and over-excavation to allow construction of retaining walls.

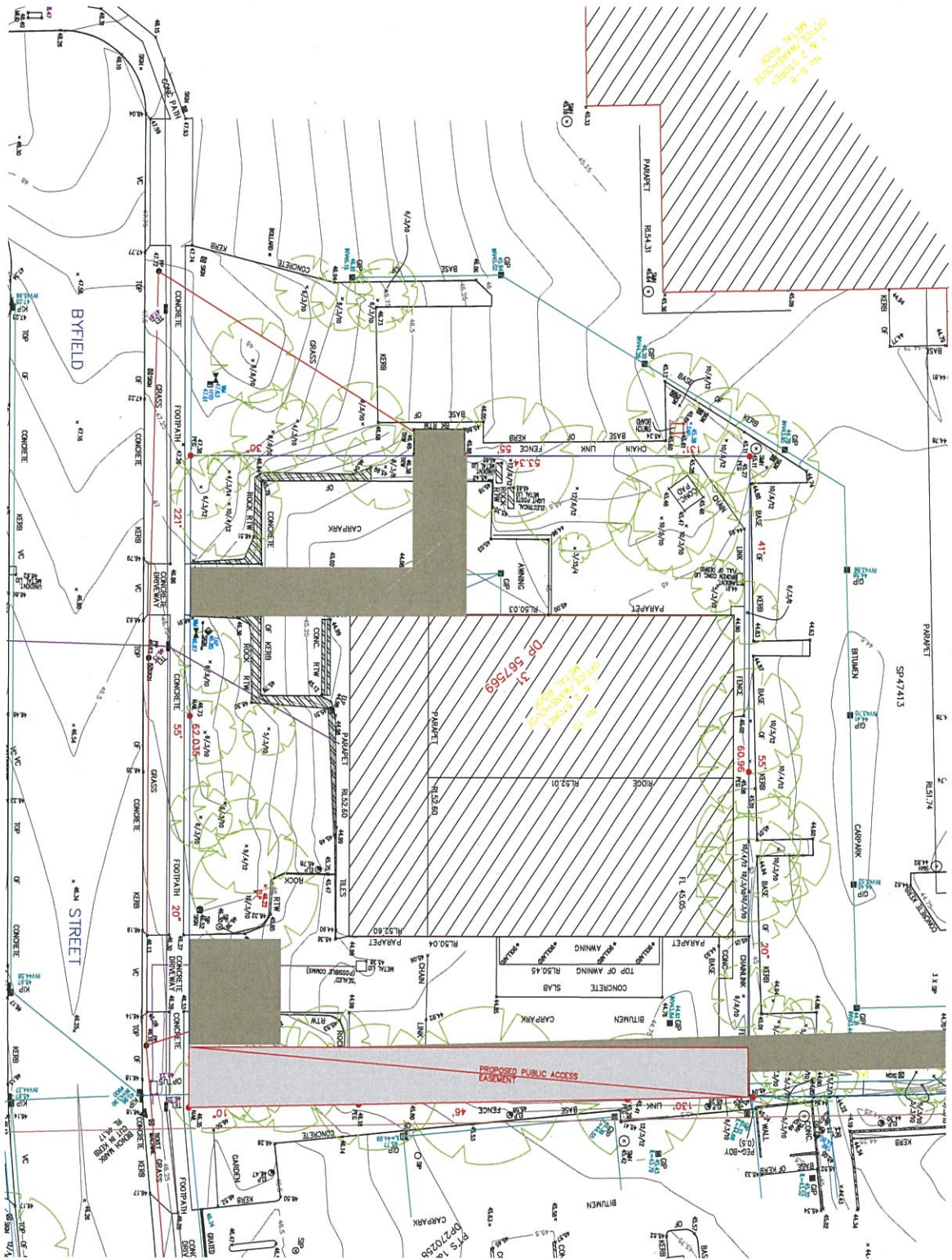
SCHEDULE 8

Indicative Public Access Easement Plan



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EXECUTED as a deed

Signed sealed and delivered for and on)
behalf of THE COUNCIL OF THE CITY OF)
RYDE (ABN 81 621 292 610) by Dominic)
Bryan Johnson, Acting General Manager,
under delegated authority pursuant to
Section 377 of the Local Government Act
1993 in the presence of:

.....
Signature of Witness

.....
Signature of Dominic Bryan Johnson

.....
Name of Witness in full

D. ACCOUNT JOHN HARRIS

.....
Position

A/g GENERAL MANAGER

Signed sealed and delivered by)
Pro-invest Australian Hospitality)
Opportunity (ST) Pty Ltd (ACN 163 479)
221) in accordance with section 127 of the)
Corporations Act 2001:

.....
Signature of Director

.....
Signature of Director/Secretary

.....
Name of Director

RONALD STEPHEN BARRETT

.....
Name of Director/Secretary

Tim Sherlock