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Doc No:	07/751
File No:	LDA06/710

5 February, 2007

Attention: Michael Whittaker
City of Ryde
Civic Centre
1 Devlin Street,
RYDE NSW 1670

Dear Sir,

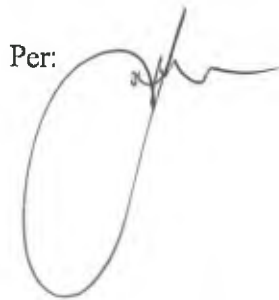
**Re: Voluntary Planning Agreement
11 Bay Drive, Meadowbank
LDA 710/2006**

We refer to our letter dated 12.12.2006 which enclosed Voluntary Planning Agreements in duplicate for execution by Council.

We note that although we have paid the 1st installment pursuant to the Agreement we are yet to receive a copy of the Agreement as executed by Council.

Please forward at your earliest convenience.

Yours faithfully,
JK DEVELOPMENTS PTY LTD

Per: 

\$737,500
18 Jan 07
rec no.
1043353

JK DEVELOPMENTS PTY LIMITED
ABN 15 637 856 301
(A Billbergia Group Company)
Faraday Park, Railway Road
(Locked Bag 1400)Meadowbank NSW 2114
tel (02) 9808 5981 fax (02) 9808 5989
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PLANNING AGREEMENT

PARTIES

1. City of Ryde, 2 Devlin Street, Ryde (**Council**); and
2. Waterpoint Shepherds Bay Pty Limited ACN 064 428 226 , Level 2, 15 Angas Street, Meadowbank (**Owner**).

BACKGROUND

- A. On, 11 September 2006, the Owner made a Development Application to the Council for Development Consent to carry out the Development on the Land.
- B. Simultaneously with making the Development Application, the Owner made an application to the Council for the Instrument Change to enable the Council to issue the Development Consent.
- C. The Owner has agreed to enter into this agreement to make a Development Contribution if the Development Consent is granted to the Development Application in a manner which does not require any other or additional Development Contributions in connection with the development of the Land.
- D. Without limiting recital B, the parties have agreed the Owner has offered to make the Development Contribution contained in this agreement on the following basis:
 - (a) it is to be taken into consideration in determining a contribution or levy to be made under section 94, section 94A and section 94EF of the Act;
 - (b) it is intended to satisfy the Owner's obligations under the Act (and without limitation the Owner's obligations under sections 94, 94A and 94EF of the Act) to make a contribution or pay a levy;
 - (c) it is intended to satisfy the Owner's obligations under sections 94, 94A and 94EF of the Act to make a contribution, which the Owner estimates to be \$116,000.00 (in connection with the development of the Land); and
 - (d) it is intended to satisfy the Owner's obligations under the Act to make a Development Contribution,

in respect of or in connection with the Development on the Land, the development activities on the Car Park Lot and the development and subdivision activities of the Owner in connection with the Land.

OPERATIVE PROVISIONS

1 Definitions

In this agreement, unless the contrary intention appears:

Act means *the Environmental Planning and Assessment Act 1979 (NSW)* (as amended);

Angas Street Land means the land described in Item 6 of Schedule 1;

Car Park Development Contribution means the transfer to the Council of the Car Park Lot with the Owner Works constructed on it;

Car Park Lot means the land identified in Item 5 of Schedule 1;

Car Park means the Car Park Lot and the Owner Works constructed on the Car Park Lot;

Completion means the point of construction of the Owner Works (demonstrated in accordance with clause 9 of this agreement) when the Owner Works are complete except for minor omissions and minor defects which:

- (a) do not derogate from the quality or durability of the Owner Works;
- (b) do not prevent the Owner Works from being reasonably capable of immediate use for their intended purpose;
- (c) do not significantly derogate from the intended or the designed level of safety, security, and amenity; and
- (d) the Council accepts the Owner has reasonable grounds for not rectifying prior to the award of Completion; and
- (e) rectification of which will not prejudice the safe and convenient use of the Owner Works.

Construction Certificate means a construction certificate issued under Part 4A of the Act.

Construction Cost means the costs actually incurred, or directly attributable to, construction activity, including relevant site establishment costs, building material costs (including any fill, soil, landscape materials and plantings), tipping fees, wages, salaries or other costs of labour, shop drawings, costs of project management, and the administrative costs directly incurred in the construction process, but excluding project contingencies, design development

fees, and other costs which are not directly related to the performance of construction.

Dealing, in relation to the Land, means selling, transferring, assigning, mortgaging, charging, encumbering or otherwise dealing with the Land.

Defects Liability Period means the period of 6 months from the date the Owner's Works reach Completion.

Development means the works specified in Item 4 of Schedule 1 to be completed by the Owner in accordance with the Development Consent.

Development Application means development application numbered LDA 710/2006 in respect of part of the Land and includes all documents, studies, reports, models, materials and samples submitted as part of that application.

Development Consent means the consent granted to the Development Application and includes any modification to that consent made under s.96 of the Act.

Development Contribution means a monetary contribution, dedicated land or public benefits or any combination of a Monetary Contribution, Dedicated Land or Public Benefits.

First Guarantee means the Guarantee the subject of clause 13 to secure the monies owing in accordance with clause 6.3(a)(i).

GST Act means *A New Tax System (Goods & Services Tax) Act 1999*.

GST means the Goods & Services Tax payable under the GST Act and related Acts and regulations.

Guarantee means an unconditional bank guarantee, issued by a bank licensed to carry on business in Australia or other financial institution approved by the Council, that:

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

Guarantee Amount means the amount specified in Item 9 of Schedule 1.

Instrument Change means the proposed amendment to the Meadowbank Employment Area Master Plan to enable Council to issue the Development Consent.

Land means the land identified in Item 3 of Schedule 1.

Monetary Contribution means the amount specified in Item 8 of Schedule 1.

Occupation Certificate means an occupation certificate issued under Part 4A of the Act.

Owner Works means the works described in Schedule 2 (as amended in accordance with this agreement).

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

Public Benefit means the public benefit described in Item 7 of Schedule 1 which are to be provided as a result of the Owner Works.

Quantity Surveyor Assessment means an assessment at the cost of Owner by an independent quantity surveyor of the Construction Cost to the reasonable satisfaction of the Council.

Relevant Australian Standards means the relevant Australian Standards for the nature of work as amended, supplemented or replaced from time to time.

Second Guarantee means the Guarantee the subject of clause 13 to secure the monies owing in accordance with clause 6.3(a)(ii).

2 Interpretation

In this agreement, unless the contrary intention appears:

- (a) a word defined in the Act has the same meaning when used in this agreement;
- (b) singular includes the plural and vice versa;
- (c) headings are for convenience only and do not affect interpretation;
- (d) a reference in this agreement to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney;
- (e) if the day on which any act, matter or thing is to be done under this agreement is not a business day, the act, matter or thing must be done on the next business day;

- (f) a reference in this agreement to dollars or \$ means Australian dollars and all amounts payable under this agreement are payable in Australian dollars;
- (g) a reference in this agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision;
- (h) where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
- (i) a word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders; and
- (j) a reference to a drawing number or issue referred to in this agreement and the Development Consent includes any subsequent issue or drawing number approved under a modification to the Development Consent or a further development application.

3 Planning Agreement under the Act

The Parties agree that this agreement is a Planning Agreement governed by Subdivision 2 of Division 6 of Part 4 of the Act.

4 Application of this Agreement

This agreement applies to:

- (a) the Land;
- (b) the Development to part of the Land in the manner described in Item 4 of Schedule 1; and
- (c) the construction of the Owner Works and the transfer of ownership to the Council of the Car Park Lot.

5 Operation of this Agreement

This agreement takes effect on the earlier of:

- (a) execution of this agreement; or
- (b) the date Development Consent is granted for the Development.

and remains in force and effect until a claim upon or return (as the case may be) of the Guarantee held in respect of the Defects Liability Period for the Owner Works.

6 Development Contribution to be made under this Agreement

6.1 Development Contribution

The parties acknowledge the Development Contribution contemplated by this agreement is either (at the Council's election as provided by clause 6.2):

- (a) the Car Park Development Contribution, providing the Public Benefit described in Item 7 of Schedule 1; or
- (b) the Monetary Contribution.

6.2 Application of the Development Contribution

- (a) The Council's election of the Development Contribution must be made in the manner contemplated by this clause.
- (b) By written notice to the Owner no earlier than the date of issue of the Development Consent and no later than 7 days after the date of issue of the Development Consent, the Council may elect whether it requires the Development Contribution by way of the Car Park Development Contribution or the Monetary Contribution.
- (b) If the Council makes no election within the 7 day period as contemplated by clause 6.2(b), at the election of the Owner the Development Contribution shall be either the Monetary Contribution or the Car Park Development Contribution. The Owner must advise the Council of its election within 21 days after issue of the Development Consent.

6.3 Application of the Development Contribution

- (a) If the Development Contribution is the Monetary Contribution as determined by clause 6.2, then it must be made in 2 instalments as follows:
 - (i) as to \$737,500.00 within 7 days of issue of a Construction Certificate for the Development (or if there are several Construction Certificates for the Development, then the Construction Certificate which issues which relates to or includes the additional floor to each of buildings 5B and 5C in Stage 4); and

- (ii) as to \$737,500 within 7 days of issue of an Occupation Certificate for the Development (or if there are several Construction Certificates for the Development, then the Construction Certificate which issues which relates to or includes the additional floor to each of buildings 5B and 5C in Stage 4)

- (b) If the Development Contribution is the Car Park Development Contribution as determined by clause 6.2, then the Owner agrees that once it has received all necessary approvals to do so, it will carry out the Owner Works, subdivide the Angas Street Land and thereafter transfer the Car Park to the Council (which the parties agree will have, at the time of the transfer an approximate value of \$1,475,000.00).

6.4 Application of clauses

If the Development Contribution is the Monetary Contribution as determined by clause 6.2, then clauses 6.4, 7, 8, 9, 10, 11 and 12 cease to have any effect.

6.4 Directions by the Council

The Owner must comply with all reasonable directions from the Council in respect of the transfer of the Car Park.

7 Approval of Owner Works

7.1 Finalising the General Scope of Works

The works as described in Schedule 2 comprise the Owner Works for the purposes of this agreement. The parties acknowledge and agree that further design detail and refinement may be reasonably necessary and desirable before construction, having regard to the following:

- (a) the extent to which the design has been completed at the date of execution of this agreement;
- (b) the conditions reasonably affecting the Owner Works and which were not reasonably capable of identification on or before the date of this agreement (including, without limitation, latent conditions on the site where the Owner Works are to be constructed);
- (c) to take into account a modification to either the Development Consent (or any other development consent relating to the Owner's Works) made and approved under s.96 of the Act;

- (d) to give effect to any relevant conditions imposed upon the Development Consent for the Owner Works; and
- (e) to accommodate the policies, procedures and standards in accordance with the reasonable requirements of the Council.

The Owner will use all reasonable endeavours to promptly advise the Council (as a party to this agreement) in writing of any proposal to amend the Owner Works, identifying why the amendment, or alteration, is sought. The Owner must establish that any design alteration or amendment achieves the relevant standards and is generally consistent with the relevant Public Benefit identified in Item 7 of Schedule 1.

7.2 No Alteration for Design Refinement

For the avoidance of doubt, the parties expressly agree that any refinement to the Owner Works of the nature set out in clause 7.1 does not amount to a variation of this agreement.

8 Insurance of Owner Works

8.1 Insurance

The Owner must:

- (a) maintain public liability insurance, with an insurer approved by the Council, (with the Council nominated as an interested party), for an amount not less than the amount stated in Item 10 of Schedule 1 covering all aspects and staging of the Owner Works and submit a copy of the certificate of insurance to the Council prior to the commencement of the construction of the Owner Works and when otherwise required by the Council;
- (b) maintain all other necessary insurance policies in respect of the Owner Works including, but not limited to, insurance of the Owner Works and insurance against death or injury to persons employed in relation to the undertaking of the Owner Works; and
- (c) maintain the insurances in clauses 8.1 (a) and 8.1 (b) until the transfer of the Car Park to the Council.

9 Approvals and Construction

9.1 Approvals and Consents

- (a) The Owner must (at its cost) obtain all relevant approvals and consents for the Owner Works whether from the Council or any other relevant government agency.
- (b) Before commencing the Owner Works, the Owner must give to the Council copies of all approvals and consents for the Owner Works.

9.2 Construction work

The Owner must (at its own cost and risk):

- (a) carry out the Owner Works in accordance with:
 - (i) all approvals and consents relating to the Owner Works; and
 - (ii) this agreement;
- (b) ensure all Owner Works are constructed in a good and workmanlike manner so that they have the structural integrity and quality of finishing which is reasonably fit for purpose and suitable for their intended use; and
- (c) promptly advise the Council's Representative of any significant delays which it experiences in completing the Owner Works; and
- (d) comply with any directions from the Council in respect of the construction of the Owner Works.

9.3 Owner Works Completion

When, in the opinion of the Owner, the Owner Works are nearing Completion, the Owner must promptly notify the Council's Representative of that opinion and must attach to that notice copies of the following:

- (a) any certification relating to the relevant Owner Works, including records of inspection;
- (b) any warranties, guarantees, maintenance information, or any other record held by or on behalf of the Owner and provided a manufacturer or supplier (as the case may be) as to the quality, durability and/or maintenance requirements of the relevant stage of the Owner Works;

- (c) a set of the drawings (including any shop drawings) issued for construction, together with any "as built" drawings held by the Owner at the date of issue of the notice;
- (d) copies of a certificate of practical completion issued under any relevant building contract in respect of the relevant stage of construction or (if no such certificate has or will be issued) a statement signed by either the Owner's Representative under the building contract or the Principal Certifying Authority that the relevant stage of the Owner's Work have been constructed as specified in with the Development Consent for the Owner Works, this agreement, and the building contract.

9.4 Inspection by Council

Council may (but is not obliged to) inspect the Owner Works within 10 days of receipt of the notice issued in accordance with the preceding sub-clause. The Council must promptly (and in any event within 7 days of inspection) notify the Owner in writing that:

- (a) the relevant Owner's Works have been completed in a manner generally satisfactory to Council; or
- (b) (subject to finalisation of aspects identified in that notice) the relevant Owner's Works are being completed in a manner which is generally satisfactory to Council,
- (c) the Owner's Works are materially defective, or deficient, in a manner which requires rectification.

If a notice is issued under paragraph (c), then the Council must identify the nature of the defect or deficiency and the manner in which this may be addressed. The Owner must consider in good faith any methodology put forward by the Council.

9.5 Completion of Owner Works

The Owner must ensure that the Owner Works reach Completion (having regard to the terms of any notice issued by the Council under clause 9.4) as soon as practicable after the issue of all approvals and consents in connection with the carrying out of the Owner Works. Upon Completion, the Owner must deliver to Council:

- (a) any additional or amended documents of the nature identified in clause 9.3(a) to (c) (inclusive), including a full set of the "as built" drawings;
- (b) a statement signed by the Owner's representative under the building contract that the relevant stage of the Owner's Work has achieved practical completion; and

- (c) any list or other record relating to defects, errors or omissions relating to the Owner's Works; and
- (d) a statement signed by the Owner as to the time and manner in which the Owner intends to rectify the defects, errors or omissions referred to in (d) above.

9.6 Non-completion of Owner Works

- (a) If:
 - (i) The the Owner does not rectify any defects identified on or before Completion within a reasonable period; or
 - (ii) After Completion and before the expiration of the Defects Liability Period, the Council (acting reasonably) identifies any other defects, errors or omissions in the Owner's Works and the Owner does not rectify these defects, errors or omissions (as the case may be) within a reasonable period after receipt of notice in writing

then Council may claim upon the Guarantee in accordance with this agreement.

- (b) If the parties agree the Owner is not required to carry out or complete the Owner Works (or any part of them), then the Council may (after giving the Owner not less than 7 days prior written notice of its intention to do so) make a demand under the Guarantee to compensate the Council to an amount equal to the value of the uncompleted Owner Works to a maximum value of \$1,475,000.00.
- (c) The Owner will make no objection to any demand under the Guarantee by the Council as contemplated by this clause 9.6 .

9.7 Release and Indemnity by the Owner

The Owner indemnifies and releases the Council against all damage, expense, loss or liability of any nature suffered or incurred by the Council arising from any failure by the Owner (or any person engaged by it, including a Contractor) in connection with carrying out the Owner's Works.

10 Defects Liability Period

10.1 Defects in the Owner Works

If the Council notifies the Owner of a defect in the Owner Works within the Defects Liability Period, the Owner must remedy that defect to the satisfaction of the Council's Representative, within a reasonable period.

10.2 No Limitation

Clause 10.1 does not limit any other right, power or privilege of the Council whether arising under this agreement, any other document or otherwise at law.

10.3 Security for Defects Liability Period

Until the expiration of the Defects Liability Period, the Council may retain from the Guarantee an amount equal to 10% of the construction costs as security for the performance by the Owner of its obligations under this clause 10. If the Owner does not rectify any defect in the Owner Works, the Council may rectify the defect in the Owner Works. The Council may make an appropriation from the Guarantee to reimburse itself for all costs and expenses the Council has incurred in rectifying the defect.

11 Security for Performance in connection with Car Park Development Contribution

11.1 Provision of Guarantee

- (a) This clause 11 and clause 12 only apply if the Development Contribution contemplated by this agreement is the Car Park Development Contribution
- (b) The Owner must provide a Guarantee for the Guarantee Amount for the Owner Works on or before the issue of a Construction Certificate for the Owner Works.

11.2 Accumulation and Release of the Guarantee

- (a) Upon completion of construction and transfer of the Car Park, the Owner may (by notice in writing) request that the Guarantee Amount be adjusted to reflect a credit or return to the Owner of the amount held in respect of the completed Owner Works, (less any amount either claimed by Council under this agreement or retained by Council for the relevant Defects Liability Period).

- (b) The Council may by written notice to the Owner request that the Owner provide a quantity surveyor's assessment of the Owner Works and the Construction Cost prior to considering any request made by the Owner under paragraph (a).
- (c) The Council will promptly by written notice to the Owner consent to a partial release of the Guarantee upon receiving a request pursuant to paragraph (a) and receiving a Quantity Surveyor Assessment (if requested) pursuant to paragraph (b).

11.3 Rights and Remedies of the Council

- (a) The Owner expressly acknowledges and agrees that the Council may make an appropriation from the Guarantee in such amount as the Council thinks fit if:
 - (i) Any stage of the Owner Works do not achieve Completion prior to occupation of the relevant stage of Development (as identified in Item F of Schedule 2)
 - (ii) Any defects, or omissions, in respect of the relevant stage of the Owner's Works are not promptly rectified by the Owner at its cost (and in any event within the Defects Liability period)
 - (iii) The Owner alters the construction methodology, materials, quality, or finishes the Owners' Works in a manner which adversely affects the quality and/or durability of the Owner's Works without the written consent of the Council under this agreement;
 - (iv) the Council in exercising its powers under this agreement incurs expense or liability.
- (b) The amount appropriated by the Council under paragraph (a) must be applied towards:
 - (i) the costs and expenses incurred by the Council rectifying any default by the Owner under this agreement;
 - (ii) carrying out the Owner Works; or
 - (iii) carrying out any other works to achieve the Public Benefits as the Council considers appropriate.

11.4 Right to Claim Not Affected

The Owner acknowledges and agrees that:

- (a) the Council may claim, and the bank will be entitled, to make payment under the Guarantee without reference to the Owner and notwithstanding any objection, claim or direction by the Owner to the contrary; and
- (b) the rights of the Council under this agreement are without derogation from the other rights and remedies available to the Council under this agreement, at law and in equity in relation to any default of the Owner.

11.5 Release of Security

If upon the expiration of the Defects Liability Period:

- (a) the whole of the monies secured by the Guarantee have not been expended, or the monies accounted for in accordance with clause 11.2; and
- (b) the Council's Representative (acting reasonably) is satisfied that there are no actual or contingent liabilities of the Council arising as a result of the performance of any Owner Works,

then the Council will promptly return the Guarantee, or the remainder of the monies secured under that Guarantee (as the case may be), to the Owner or as the Owner directs.

12 Expenditure by the Council

12.1 Expenditure by the Council

If the Council carries out the Owner Works, 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 Owner Works to ensure that the Owner Works can be achieved for an amount equal to, or less than, the amount secured by the Guarantee at that time; and
- (b) may expend more money than is secured by the Guarantee but will use all reasonable endeavours to ensure that the Public Benefit Works are undertaken after consultation with the Owner, with the intention of ensuring that the Public Benefit Works may be completed without unreasonable or unnecessary expenditure.

13 Security for Performance of payment of Monetary Contribution

13.1 Provision of Guarantee

- (a) This clause 13 only applies if the Development Contribution contemplated by this agreement is the Monetary Contribution.
- (b) The Owner must provide two Guarantees each equal to one half of the Guarantee Amount in the manner provided by this clause.
- (c) The First Guarantee for \$737,500.00 and the Second Guarantee for \$737,500.00 must be paid:
 - (i) if the Council serves a written notice in accordance with clause 6.2(b) that it requires the Monetary Contribution, within 7 days of that notice; and
 - (ii) if the Council does not serve a written notice under clause 6.2(b) and the Owner makes an election to make the Monetary Contribution, within 21 days after the issue of the Development Consent.

13.2 Rights and Remedies of the Council

- (a) If the monies secured by the First Guarantee are not paid within the time required by clause 6.3(a)(i), the Owner expressly acknowledges and agrees that the Council may make an appropriation from the First Guarantee in an amount equal to the shortfall of monies required to be paid under clause 6.3(a)(i) and not paid in accordance with that clause.
- (b) If the monies secured by the Second Guarantee are not paid within the time required by clause 6.3(a)(ii), the Owner expressly acknowledges and agrees that the Council may make an appropriation from the Second Guarantee in an amount equal to the shortfall of monies required to be paid under clause 6.3(a)(ii) and not paid in accordance with that clause.

13.3 Release of Security

- (a) The Council must return the First Guarantee to the Owner simultaneously with the payment of the monies secured by that Guarantee.
- (b) The Council must return the Second Guarantee to the Owner simultaneously with the payment of the monies secured by that Guarantee.

14 Application of s94 and s94A of the Act

In respect of the Development Contribution the subject of this agreement (which the parties agree will have, at the time of the transfer, an approximate value of \$1,475,000.00), the Council and the Owner acknowledge and agree the Owner has offered to make the Development Contribution on the following basis:

- (a) it is to be taken into consideration in determining a contribution or levy to be made under section 94, section 94A and section 94EF of the Act;
- (b) it satisfies the Owner's obligations under the Act (and without limitation the Owner's obligations under sections 94, 94A and 94EF of the Act) to make a contribution or pay a levy; and
- (c) it satisfies the Owner's obligations under sections 94, 94A and 94EF of the Act to make a contribution which the Owner estimates to be &116,000.00 (in connection with development of the Land); and
- (d) it satisfies the Owner's obligations under the Act to make a Development Contribution,

in respect of or in connection with the Development on the Land, the development activities of the Owner in connection with the Car Park Lot and the development and subdivision activities of the Owner on the Land.

15 Registration of this Agreement

The Council and the Owner expressly agree that this agreement creates and vests in Council an interest in so much of the Land as comprises the Encumbered Land and the Dedicated Land. Owner must promptly:

- (a) obtain such consents to the registration of this agreement as are necessary to the registration of this agreement pursuant to section 93H of the Act;
- (b) lodge the agreement for registration with the Land & Property Information Office and take all steps to procure registration of the agreement pursuant to section 93H of the Act;
- (c) produce to the Council within 35 days of execution of this agreement details of lodgement of the agreement with the Land & Property Information Office; and

- (d) following registration of the agreement, notify the Council of registration by enclosing a title search of the Land confirming the registration.

16 Dispute Resolution

16.1 Process Open to Both

If a dispute arises between the parties in relation to this agreement, then either party may seek to resolve the dispute in accordance with this clause 16.

16.2 Notice of Dispute

The party wishing to commence dispute resolution processes must notify the other in writing of:

- (a) the nature, or subject matter, of the dispute, including a summary of any efforts made to resolve other than by way of this clause 16;
- (b) the intent to invoke this clause 16;
- (c) (if practicable) the outcomes which the notifying party wishes to achieve;
- (d) any material impact which the dispute has upon the completion of the Owner's Works, (and in particular the Mandatory Elements) or the Development.

The contents of a notice issued under this clause 16.2 is deemed to be confidential. The party issuing the notice may (but is not obliged to) assert legal professional privilege in respect of the contents.

16.3 Chief Executive Officers of Parties to Meet

The Chief Executive Officers of the parties must promptly (and in any event within 14 days of written notice) meet in good faith to attempt to resolve the notified dispute. The parties may, without limitation:

- (a) resolve that dispute during the course of that meeting;
- (b) agree that further material or consideration is needed to effectively resolve the dispute, (in which event the parties will in good faith agree a timetable for resolution);
- (c) agree that the parties are unlikely to resolve the dispute and in good faith agree a form of alternative dispute resolution (including expert determination, arbitration, or mediation) which is appropriate for resolution of the relevant dispute.

For the purposes of this clause 16.3, a principal of the Council may be the General Manager or such officer of the Council as is nominated by the General Manager for the purposes of the dispute.

16.4 Neither Party May Constrain

If:

- (a) at least one meeting has been held in accordance with clause 16.3; and
- (b) the parties have been unable to reach an outcome identified in 16.2(a) to (c); and
- (c) either of the parties (acting in good faith) forms the view that dispute is reasonably unlikely to be resolved on 16.3,

then the party may, by 7 days' notice in writing to the other, terminate the dispute resolution process in respect of that dispute. The termination of the process set out in this clause 16 does not of itself amount to a breach of this agreement.

17 Notices

17.1 Any notice, consent, information, application or request that must or may be given or made to a Party under this agreement is only given or made if it is in writing and sent in one of the following ways:

- (a) Delivered or posted to that Party at its address set out in Item 11 of Schedule 1.
- (b) Faxed to that Party at its fax number set out in Item 11 of Schedule 1.

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

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

- (a) If it is delivered, when it is left at the relevant address.
- (b) If it is sent by post, 2 business days after it is posted.
- (c) If it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.

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

18 Approvals and consent

Except as otherwise set out in this agreement, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this agreement in that Party's absolute discretion and subject to any conditions determined by the Party. A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

19 Assignment and Dealings

19.1 Dealings with Land

- (a) Subject to clause 18.1(b), the Owner must not have any Dealings with the Land unless the Owner first informs the proposed assignee, purchaser or other party (the "**Incoming Party**") of this agreement and provides the Incoming Party with a copy of this agreement and transfers the relevant portion of the obligations of this agreement to that party.
- (b) If the Incoming Party is acquiring an interest part only of the Land as a purchaser of one or more lots in a strata scheme, (whether or not the plan has, at the date of exchange, been registered at Land and Property Information NSW), then the Owner may create that interest without requiring that party to enter into a agreement with the Council and the interest so created will not be in breach of this agreement.

19.2 Substitution of Security

As soon as is practicable after the Owner has any Dealings with the Land and the Incoming Party executes a agreement in similar form to this agreement and provides a Guarantee in terms acceptable to the Council in accordance with this agreement, the Council will, if so directed by the Owner, release the Guarantee held at that time.

19.3 Claim if No Substitution

If the Owner omits to comply with its obligations under clause 19.1, then the Council may make an appropriation from the Guarantee in such amount as the Council thinks fit.

20 Costs

20.1 Legal and Administrative Costs

The Owner is to pay the costs incurred in the preparation of this agreement.

20.2 Stamp Duty

The Owner must pay any stamp duty:

- (a) on or relating to this agreement; and
- (b) relating to the transfer of the Car Park Lot to the Council.

21 Governing law and jurisdiction

This agreement is governed by the law of New South Wales and the parties submit to the jurisdiction of the courts of that state.

22 No fetter

Nothing in this agreement shall be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

23 Representations and warranties

The Parties represent and warrant that they have power to enter into this agreement and comply with their obligations under the agreement and that entry into this agreement will not result in the breach of any law.

24 Severability

If a clause or part of a clause of this agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as

removed from this agreement, but the rest of this agreement is not affected.

25 Modification

No modification of this agreement will be of any force or effect unless:

- (a) it is in writing and signed by the Parties to this agreement; and
- (b) it is notified in accordance with the Act .

26 Waiver

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

27 GST

The parties acknowledge that payment of the contributions under this agreement are not consideration for the purposes of the GST Act because they are exempt under the *A New Tax System (Goods & Services Tax) (Exempt Taxes, Fees and Charges) Determination 2005 No. 2*. (paragraph 19.43 *Developer Contributions*) pursuant to Section 81-5(2) of the GST Act.

EXECUTED as an agreement.

City of Ryde by its duly appointed)
attorney Michael Whittaker)
Power of Attorney registered number)
. 520 book 4449 in the presence)
of:)

Witness:

Executed on behalf of Waterpoint)
Shepherds Bay Pty Limited ACN 064)
428 226 by authority of its Board of)
Directors in the presence of:)

W Kinsella

Signature: WILLIAM KINSELLA

Name: DIRECTOR

Position:

Michael Whittaker

Attorney



John Kinsella

Signature: JOHN KINSELLA

Name: DIRECTOR

Position:

**SCHEDULE 1
REFERENCE SCHEDULE**

Item	Name	Description
1	Owner's name	Waterpoint Shepherds Bay Pty Limited ACN 064 428 226 Level 2 15 Angus Street Meadowbank NSW 2114
2	Owner's Representative	
3	Land	Lot 5 in DP 1092972
4	Development	(1) The construction of one additional floor to each of buildings 5B and 5C in stage 4 comprising, 16 residential apartments (1098sqm of floor space); (2) Reconfiguration of basement car parking to accommodate 19 residential spaces within stage 4 spaces and 3 additional spaces within Stage 3 as part of the Stage 4/5 visitor parking area; (3) Extension of covered way to new Faraday Lane on Level 7, providing increased weather protection to the retail level; and (4) Relocation of the approved plant facilities.
5	Car Park Lot	That part of the Angus Street Land comprising a stratum lot in a plan of subdivision of the Angus Street Land containing the Owner Works.
6.	Angas Street Land	The land know as 17-19 Angas Street, Meadowbank (being the land in auto consol 8026-23 (being lot 1 in DP 455502 and lot 51 in DP 4773)) and the land known as 15 Angas Street, Meadowbank being the land in lot 1 DP 943634.
7	Public Benefit	The benefit of access to and use of a car park as a result of the transfer of the Car Park to the Council in the manner provided by this agreement. The Car Park will help satisfy the planning needs of the emerging residents, visitors and users in the area arising from redevelopment within the Meadowbank Employment Area and help provide access to a suite of public facilities including a community centre,

		public parklands, public transport, commercial and child care facilities.
8	Monetary Contribution	\$1,475,000.00
9	Guarantee Amount	\$1,475,000.00
10	Public Liability Insurance	\$20 million
11	Notices Council Attention Address Fax Number Owner Attention Address Fax Number	City of Ryde Waterpoint Shepherds Bay Pty Limited Level 2, 15 Angus Street, Meadowbank 9808 5989

**SCHEDULE 2
OWNER WORKS**

PUBLIC CAR PARK

The provision of a secured car park:

1. as indicated on the attached concept plan;
2. comprising one floor of approximately 2,600 square metres within the basement of a mixed use development;
3. with a shared entry way (shared with the residential strata scheme) by way of an easement;
4. designed and constructed to relevant Australian Standards (including the standard required by the NRMA); and
5. to be constructed on land described in this agreement as the Angas Street Land.