
Toga Macquarie Developments Pty Limited

Ryde City Council

Planning Agreement

Section 93F of the Environmental Planning
and Assessment Act, 1979 (NSW)

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PARTIES

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

Toga Macquarie Developments Pty Limited, ABN 65149 533 353, Level 5, 45 Jones Street, Ultimo NSW (**Developer**)

BACKGROUND

- A. The Land is owned by the Baptist Union of NSW.
 - B. The Developer has the right to develop the Land and proposes to seek development consent for the Development on the Land.
 - C. On, 20 January 2011 the Concept Plan Approval was granted by the Minister for Planning.
 - D. Development Consent under Part 3A of the Act was granted for Building A on the 20 January 2011 and Development Consent under Part 4 of the Act was granted on 15 March 2012 for Building B and Development Consent for Buildings C and D were granted on 9 August 2012 by the Joint Regional Planning Panel.
 - E. The Developer has made a Development Application under Part 4 of the Act to the Council for Development Consent to carry out the final stages of the development on the Land, being Building E, in accordance with the Concept Plan.
 - F. The Developer has entered into this Planning Agreement to make the Development Contribution towards the Public Facilities if Development Consent for the Development is granted.
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OPERATIVE PROVISIONS

1 Planning agreement under the Act

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

2 Application of this Agreement

This Planning Agreement applies to the:

- (a) Land; and

- (b) the Development.

3 Operation of this Agreement

This Agreement operates only if:

- (a) the Development Consent is granted for the Development; and
- (b) the Agreement is entered into as required by Clause 25C(1) of the Regulation.

4 Definitions and interpretation

4.1 Definitions

In this Agreement the following definitions apply:

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

Bank Guarantee means an undertaking by an Australian bank to pay the face value of that undertaking on demand.

Business Day means a day which is not a Saturday, Sunday or bank or public holiday in Sydney.

Building E means Building E referred to in the Concept Plan Approval, being the last building to be approved and constructed under that Concept Plan Approval.

Concept Plan Approval means the Concept Plan Approval MP09_0195 granted by the Deputy Director General on 20 January 2011 for mixed use residential/retail development with basement car parking and private/public infrastructure provision, as amended from time to time.

Construction Certificate has the same meaning as in section 109C of the Act.

CPI means the All Groups Consumer Price Index (Sydney) as published by the Australian Bureau of Statistics.

Development means the development of Building E on the Land for residential uses and associated works and which is subject of the Development Application.

Development Application means Development Application LDA 2012/0314 lodged by the Developer for the Development

Development Consent has the same meaning as in the Act.

Development Contribution means a monetary contribution to be made in accordance with **schedule 1**.

Land means that part of the land located at 120-128 Herring Road, Macquarie Park, New South Wales upon which Building E is to be constructed and which is currently contained in Lot 2 DP1163230 (and proposed to be contained in Lot 22 in the stage 2 subdivision plan) As at the date of this Agreement, the Land is owned by the Baptist Union of NSW, ABN 24 941 624 663.

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

Planning Agreement means this agreement comprising any schedules and annexures.

Public Facilities means a public amenity, a public service, a public facility, public land, public infrastructure, a public road, a public work, or any other act matter or thing that meets a Public Purpose.

Public Purpose means any purpose that benefits the public or a section of the public, specified in section 93F(2) of the Act.

Regulation means the *Environmental Planning and Assessment Regulation 2000*.

Residential or Strata Lots means those lots created on registration of a plan of subdivision or strata subdivision of the Land for residential use.

Security means any of:

- (a) a Bank Guarantee;
- (b) an insurance bond; or
- (c) such other security as is agreed in writing between the Parties, in favour of the Council.

Security Amount means for the Development Contribution, an amount equal to the monetary contribution of \$310,310 (plus GST).

Transfer Dealings means selling or transferring the Land.

4.2 Interpretation

In the interpretation of this Planning Agreement, the following provisions apply unless the context otherwise requires:

- (a) Headings are inserted for convenience only and do not affect the interpretation of this Planning Agreement.
- (b) 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.
- (c) A reference in this Planning Agreement to dollars or \$ means Australian dollars and all amounts payable under this Planning Agreement are payable in Australian dollars.

- (d) A reference in this Planning 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.
- (e) A reference in this Planning Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- (f) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Planning Agreement.
- (g) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- (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.
- (j) References to the word 'include' or 'including' are to be construed without limitation.
- (k) A reference to this Planning Agreement includes the agreement recorded in this Planning Agreement.
- (l) A reference to a party to this Planning Agreement includes a reference to the servants, agents and contractors of the party, and the party's successors and assigns.
- (m) Any schedules and attachments form part of this Planning Agreement.

5 Development Contribution to be made under this Planning Agreement

- (a) The Developer is to make the Development Contribution in respect of the Development in accordance with **schedule 1**.
- (b) The Development Contribution is to be indexed quarterly in accordance with CPI:
 - (i) from the date of the grant of Development Consent for the Development; and
 - (ii) until such time as the Development Contribution is paid to the Planning Authority in accordance with this Planning Agreement.
- (c) Subject to **clause 7**, the Development Contributions made in accordance with this Planning Agreement are made in full and final satisfaction of the requirement for the Developer to make contributions to the Council for

the Development and as required in respect of condition 3 of schedule 3 of the Concept Plan Approval for the provision of a new childcare centre.

6 Delivery of Development Contribution

- (a) The Developer must provide the Council with at least 60 days' written notice of the date upon which it anticipates that the Construction Certificate for the Development will be issued.
- (b) The Council must issue the Developer with a tax invoice (if the supply by the Council is a taxable supply within the meaning of the GST Law) or otherwise an invoice within 10 days from the date of receipt of the written notice under **clause 6(a)** and specify the details of the bank account into which the Development Contribution is to be deposited.
- (c) The Developer must pay the amount required within 30 Business Days of the date the tax invoice or invoice, as applicable, as issued under **clause 6(b)**.
- (d) The Development Contribution is made for the purposes of this Planning Agreement when cleared funds are deposited by means of electronic funds transferred by the Developer into a bank account nominated by the Council under this clause.

7 Application of s94 and s94A of the Act to the development

- (a) This Planning Agreement does not exclude the application of sections 94 and 94A of the Act to the Development on the Land; and
- (b) This Planning Agreement does not exclude the application of section 94EF of the Act to the Development on the Land.

8 Registration of this Planning Agreement

This Planning Agreement is not required to be registered on the titles of the Land.

9 Review of this Planning Agreement

- (a) This Planning Agreement may be reviewed or modified and any review or modification of this Planning Agreement will be conducted in the circumstances and in the manner determined by the Parties.
- (b) No modification or review of this Planning Agreement will be of any force or effect unless it is in writing and signed by the Parties to this Planning Agreement.

10 Dispute Resolution

10.1 Notice of Dispute

If a Party claims that a dispute has arisen under this Planning Agreement (**Claimant**), it must give written notice to the other Party (**Respondent**) stating the matters in dispute and designating as its representative a person to negotiate the dispute (**Claim Notice**). No Party may start court proceedings (except for proceedings seeking interlocutory relief) in respect of a dispute unless it has first complied with this **clause 10**.

10.2 Response to Notice

Within 10 Business Days of receiving the Claim Notice, the Respondent must notify the Claimant of its representative to negotiate the dispute

10.3 Negotiation

The nominated representative must:

- (a) meet to discuss the matter in good faith within 5 Business Days after service by the Respondent of notice of its representative; and
- (b) use reasonable endeavours to settle or resolve the dispute within 15 Business Days after they have met.

10.4 Further Notice if Not Settled

If the dispute is not resolved within 15 Business Days after the nominated representatives have met, either Party may give to the other a written notice calling for determination of the dispute (**Dispute Notice**) by mediation under **clause 10.5**.

10.5 Mediation

If a Party gives a dispute Notice calling for the dispute to be mediated:

- (a) the Parties must agree to the terms of reference of the mediation within 5 Business Days of the receipt of the Dispute Notice (the terms shall include a requirement that the mediation rules of the Institute of Arbitrators and Mediators Australia (NSW Chapter) apply);
- (b) the Mediator will be agreed between the Parties, or failing agreement within 5 Business Days of receipt of the Dispute Notice, either Party may request the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter) to appoint a mediator;
- (c) the Mediator appointed pursuant to this **clause 10.5** must:
 - (i) have reasonable qualifications and practical experience in the area of the dispute; and
 - (ii) have no interest or duty which conflicts or may conflict with his function as mediator, he being required to fully disclose any such interest or duty before his appointment;

- (d) the Mediator shall be required to undertake to keep confidential all matters coming to his knowledge by reason of his appointment and performance of his duties;
- (e) the Parties must within 5 Business Days of receipt of the Dispute Notice notify each other of their representatives who will be involved in the mediation;
- (f) the Parties agree to be bound by a mediation settlement and may only initiate judicial proceedings in respect of a dispute which is the subject of a mediation settlement for the purpose of enforcing that mediation settlement;
- (g) in relation to costs and expenses:
 - (i) each Party will bear their own professional and expert costs incurred in connection with the mediation; and
 - (ii) the costs of the Mediator will be shared equally by the Parties unless the Mediator determines a party has engaged in vexatious or unconscionable behaviour in which case the Mediator may require the full costs of the mediation to be borne by that Party.

10.6 Litigation

If the dispute is not finally resolved in accordance with this **clause 10**, if either Party is at liberty to litigate the dispute.

10.7 Continue to perform obligations

Each Party must continue to perform its obligations under this Planning Agreement, notwithstanding the existence of a dispute.

11 Security and Enforcement

11.1 Security

The Developer is to provide to the Council Security for the Security Amount on the execution of this Planning Agreement.

11.2 Release of Security to the Developer

In respect of the Security provided to the Council under **clause 11.1** the Council must release the Security to the Developer upon:

- (a) the payment by the Developer of the Development Contribution for the Development; or
- (b) on the happening of an event under **clause 12**.

11.3 Call on Security

- (a) The Security is given to secure compliance by the Developer with its obligations to pay the Development Contribution in accordance with this Planning Agreement.
- (b) The Council must only exercise its rights under the Security in accordance with this **clause 11.3**.

- (c) The Council must not request a payment (**Security Payment**) under the Security from the provider of it, unless:
 - (i) the Council has first given 20 Business Days written notice (**Claim Notice**) to the Developer of its intention to do so;
 - (ii) the Claim Notice specifies the Development Contribution to which that Security Payment relates and the amount of the Security Payment; and
 - (iii) the reason for the request is that:
 - (A) the Developer has, in breach of this Planning Agreement, failed to pay a Development Contribution to which the Council is entitled, within 20 Business Days of the Council demanding payment of it; and
 - (B) there is no dispute between the Developer and the Council:
 - (1) as to whether the Developer is obliged to pay the Development Contribution or is otherwise in breach of its obligations to do so; or
 - (2) about the amount of the Development Contribution, for which the Security Payment is requested.
- (d) The Council must not request a Security Payment unconscionably or in bad faith.
- (e) The Council must upon demand account to the Developer for any Security Payment to the extent that it exceeds or is otherwise not required to pay the Development Contribution for which the Security Payment is requested.

11.4 Enforcement

- (a) Without limiting any other remedies available to the Parties, this Planning Agreement may be enforced by any Party in any court of competent jurisdiction.
- (b) Nothing in this Planning Agreement prevents:
 - (i) A Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Planning Agreement or any matter to which this Planning Agreement relates; and
 - (ii) The Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Planning Agreement or any matter to which this Planning Agreement relates.

12 Release and Discharge

The Developer will be released from its obligations under this Agreement if:

- (a) the Development Application for the Development is determined by way of refusal;
- (b) the Development Consent for the Development is declared invalid;
- (c) the Development Consent for the Development lapses;
- (d) the Agreement is terminated;
- (e) the Parties agree that the performance of the Agreement has been frustrated by an event outside the control of the Parties; or
- (f) the Parties otherwise agree to modify or discharge the Agreement in accordance with **clause 9**.

13 Notices

13.1 Delivery of notices and other documents

- (a) 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:
 - (i) Delivered or posted to that Party at its address set out below.
 - (ii) Faxed to that Party at its fax number set out below.

Council

Attention: General Manager
Address: 1 Devlin Street, Ryde
Fax Number: 9952 8070

Developer

Attention: Rob Thomas
Address: Level 5, 45 Jones Street, Ultimo, NSW
Fax Number: 02 9356 1073

13.2 Change of Details

If a Party gives the other Party three Business Days notice of a change of its address:

- (a) any notice, consent or invoice is only given or made by that other Party if it is served or posted by way of registered post to the latest address.

13.3 Giving of Notice

Subject to **clause 13.4**, any notice, consent, invoice, information, application or request is to be treated as given or made at the following time:

- (a) if it is delivered by process server, when it is served at the relevant address; and
- (b) if it is sent by registered post, two Business Days after it is posted.

13.4 Delivery outside of business hours

If any notice, consent, information, application or request is delivered on a day that is not a Business Day, or if on a Business Day, after 5.00 pm 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.

14 Approvals and consent

Except as otherwise set out in this Planning Agreement, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Planning 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.

15 Assignment and Dealings

15.1 Assignment

- (a) Subject to **clause 15.2**, a Party must not assign or deal with any right under this Planning Agreement without the prior written consent of the other Party.
- (b) Consent to any dealing or assignment referred to in **subclause (a)** must not be unreasonably withheld.
- (c) Any purported dealing in breach of this clause is of no effect.

15.2 Transfer Dealings

- (a) Subject to **subclauses 15.2 (b),(c) and (d)**, the Developer must not have any Transfer Dealings with the Land unless the proposed assignee, purchaser or other Party (the "**Incoming Party**") accepts the obligations of this Agreement.
- (b) For the purpose of giving effect to paragraph (a) the Council, the Developer and the Incoming Party must enter into a deed of novation whereby the Incoming Party agrees to carry out the obligations of the Developer under the Planning Agreement and the Developer is released, from the date of the deed of novation, from the obligations contained in this Agreement to the extent that they:
 - (i) are novated to the Incoming Party, and
 - (ii) remain to be performed.
- (c) The deed of novation may be amended as agreed from time to time by the Parties acting reasonably.
- (d) **Subclauses 15.2(a) – (c)** do not apply to:
 - (i) any Transfer Dealings with the Residential or Strata Lots; or
 - (ii) the transfer of the Land or any part of the Land to the Developer.

16 Costs

The Parties agree to bear their own costs of preparing, negotiating, executing and stamping this Planning Agreement and any document related to this Planning Agreement.

17 Entire Agreement

- (a) This Planning Agreement contains everything to which the Parties have agreed in relation to the matters it deals with. No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Planning Agreement was executed, except as permitted by law.
- (b) Pursuant to clause 25E(7) of the Regulation, the Parties agree that the Explanatory Note is not to be used to assist in construing this Agreement.

18 Further acts

Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to affect, perfect or complete this Planning Agreement and all transactions incidental to it.

19 Governing law and jurisdiction

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

20 Joint and individual liability and benefits

Except as otherwise set out in this Planning Agreement, any agreement, covenant, representation or warranty under this Planning Agreement by 2 or more persons binds them jointly and each of them individually, and any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

21 No fetter

Nothing in this Planning 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.

22 Representations and warranties

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

23 Severability

If a clause or part of a clause of this Planning 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 Planning Agreement, but the rest of this Planning Agreement is not affected.

24 Waiver

The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Planning 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.

25 Effect of Schedules

The Parties agree to comply with any terms contained in schedules to this Planning Agreement as if those terms were included in the operative part of the Planning Agreement.

26 Relationship of parties

This Planning Agreement is not intended to create a partnership, joint venture or agency relationship between the parties.

27 Counterparts

This document may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

28 Rights cumulative

Except as expressly stated otherwise in this Planning Agreement, the rights of a Party under this Planning Agreement are cumulative and are in addition to any other rights of that Party.

29 GST

29.1 Interpretation

- (a) Words or expressions used in this **clause 29** which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* have the same meaning in this clause.
- (b) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 28.

29.2 Consideration GST exclusive

Unless expressly stated otherwise in this Planning Agreement, all amounts payable or consideration to be provided under this Planning Agreement are exclusive of GST.

29.3 Intention of the Parties

Without limiting the operation of this **clause 29**, as at the date of this Planning Agreement, the Parties intend that:

- (a) Divisions 81 and 82 of the GST Act apply to the supplies made under and in connection with this Planning Agreement;
- (b) no tax invoices will be exchanged between the Parties; and
- (c) no additional amount will be payable to a Supplier (as defined in **clause 29.4** below) on account of GST.

29.4 Payment of GST

- (a) Subject to **clause 29.8**, if any party (**Supplier**) makes a supply to another party (**Recipient**) under or in connection with this Planning Agreement on which GST is payable, and the consideration for the supply does not expressly include GST:
 - (i) the consideration payable or to be provided for that supply but for this clause (**GST exclusive consideration**) is increased by, and the Recipient must also pay to the Supplier, an amount equal to the GST payable on the supply (**GST Amount**);
 - (ii) the Recipient must pay the GST Amount to the Supplier at the same time as the GST exclusive consideration is to be provided under this Agreement. However, the Recipient need not pay the GST Amount until the Supplier has issued a valid tax invoice or an adjustment note to the Recipient for the relevant supply.

29.5 Adjustment event

- (a) If any adjustment event occurs in relation to a supply made under or in connection with this Planning Agreement then the GST Amount shall also be adjusted as follows:

- (i) if the adjustment event gives rise to an increase in the GST Amount, a payment equal to that increase will be made by the Recipient to the Supplier; and
 - (ii) if the adjustment event gives rise to a decrease in the GST Amount, a payment equal to that decrease will be made by the Supplier to the Recipient.
- (b) Any payment that is required under **clause 29.5(a)** will be made within 5 Business Days of the issuing of an adjustment note or an amended valid tax invoice, as the case may be, by the Supplier.

29.6 Reimbursements

If a payment to a party under this Planning Agreement is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party or its representative member is entitled or will become entitled in respect of the acquisition to which that loss, cost or expense relates.

29.7 Consideration calculated by reference to other amounts

If a payment to be made under or in connection with this Planning Agreement is calculated by reference to or as a specified percentage of another amount or revenue stream, that payment shall be calculated by reference to or as a specified percentage of the amount or revenue stream exclusive of any GST component.

29.8 Exchange of non-monetary consideration

- (a) To the extent that the consideration provided for the Supplier's taxable supply to which **clause 29.4** applies is itself a taxable supply made by the Recipient attributed to the same tax period (Recipient Supply), the GST Amount that would be otherwise be payable by the Recipient to the Supplier in accordance with **clause 29.4** shall be reduced by the amount of GST payable by the Recipient on the Recipient Supply.
- (b) The Recipient must issue to the Supplier a tax invoice for any Recipient Supply on or before the time at which the Recipient must pay the GST Amount in accordance with **clause 29.4(a)(ii)** (or the time at which such GST Amount would have been payable in accordance with **clause 29.4** but for the operation of **clause 29.8(a)**).

Execution

Dated:

Executed as an Deed/Agreement:

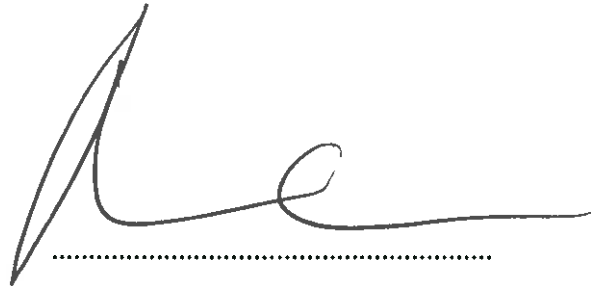
Executed by Toga Macquarie
Developments Pty Limited (ABN
65149 533 353)



.....
Company Secretary/Director

ADRIAN PAUL WHITING

.....
Name of Company Secretary/Director
(print)



.....
Director
ALLAN BOYD VIDOR

.....
Name of Director (print)

Executed by Ryde City Council (ABN
81 621 292 610) by its duly appointed
officer in the presence of:



.....
Witness

Buddy Stephen
SOLICITOR

.....
Name of Witness (print)



.....
Officer

PAUL McCANN

.....
Name of Officer (print)

**GENERAL COUNSEL /
PUBLIC OFFICER**

Schedule 1

Development Contributions

No	Development Contribution	Public Purpose	Timing of Payment
1	Monetary contribution of \$310,310 (plus GST) and subject to indexation in accordance with clause 5(b) .	Community Facilities	Prior to the issue of the Construction Certificate for the Development.

Schedule 2

Section 93F Requirements

Provision of the Act	This Planning Agreement
Under section 93F(1), the Developer has:	
(c) sought a change to an environmental planning instrument.	(a) No
(d) made, or proposes to make, a concept plan approval or project approval under Part 3A of the Act or a development application under Part 4 of the Act.	(b) Yes
(e) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.	(c) No
Description of the land to which this Planning Agreement applies- (Section 93F(3)(a))	That part of the land located at 120-128 Herring Road, Macquarie Park, New South Wales upon which Building E is to be constructed and which is currently contained in Lot 2 DP1163230 (and proposed to be contained in Lot 22 in the stage 2 subdivision plan)
Description of the development to which this Planning Agreement applies- (Section 93F(3)(b)(ii))	The Development, being the development of Building E for residential use and associated works.
The scope, timing and manner of delivery of Development Contributions required by this Planning Agreement - (Section 93F(3)(c))	See clauses 5 and 6.
Applicability of Section 94 of the Act - (Section 93F(3)(d))	The application of section 94 of the Act is not excluded in respect of the Development on the Land.

Provision of the Act	This Planning Agreement
Applicability of Section 94A of the Act - (Section 93F(3)(d))	The application of section 94A of the Act is not excluded in respect of the Development on the Land.
Applicability of Section 94EF of the Act - (Section 93F(3)(d))	The application of section 94EF of the Act is not excluded in respect of the Development on the Land.
Applicability of Section 93F(3)(e) of the Act	Not applicable. See clause 7 .
Mechanism for Dispute resolution - (Section 93F(3)(f))	See clause 10 to this Planning Agreement.
Enforcement of this Planning Agreement - (Section 93F(3)(g))	See clause 11 to this Planning Agreement.
Registration of this Planning Agreement (Section 93H)	No. See clause 8 .
No obligation to grant consent or exercise functions - (Section 93F(9))	See clause 21 of this Planning Agreement.

Schedule 3

Explanatory Note

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Explanatory Note Draft Planning Agreement

Under s93F of the *Environmental Planning and Assessment Act 1979*

Introduction

The purpose of this Explanatory Note is to provide a plain English summary to support the notification of the proposed Planning Agreement (**Planning Agreement**) prepared under subdivision 2 of Division 6 of Part 4 (section 93F) of the *Environmental Planning and Assessment Act 1979 (Act)*.

This Explanatory Note has been prepared by the Parties as required by clause 25E of the *Environment Planning and Assessment Regulation 2000* (Regulation).

Parties to the Planning Agreement

The parties to the Planning Agreement are Toga Macquarie Developments Pty Limited (**Developer**) and Ryde City Council (**Council**).

Description of Subject Land

That part of the land located at 120-128 Herring Road, Macquarie Park, New South Wales upon which Building E is to be constructed and which is currently contained in Lot 2 DP1163230 (and proposed to be contained in Lot 22 in the Stage 2 subdivision plan) (**Land**). As at the date of this Planning Agreement, the Land is owned by the Baptist Union of NSW, ABN 24 941 624 663.

Description of the Development Application

On 20 January 2011, Concept Plan Approval MP09_0195 was granted by the Deputy Director-General of the Department of Planning for a mixed use residential/retail development with basement car parking and private/public infrastructure provision

(Concept Plan Approval). The development consists of 5 main buildings, being buildings A, B, C, D and E **(Development)**.

In accordance with the Concept Plan Approval, Development consent under Part 3A of the Act was granted for Building A on 20 January 2011 (at the same time the Concept Plan was approved) and Development Consent under Part 4 of the Act was granted on 15 March 2012 for Building B by the Joint Regional Planning Panel (**JRPP**). Development Consent was granted for Buildings C and D on 9 August 2012 by the JRPP.

A Development Application for Building E is currently under assessment by Council.

The development contributions made under the Planning Agreement are made to satisfy condition 3 of schedule 3 of the Concept Plan Approval which requires the provision of a new child care centre with a minimum gross floor area of 300 sqm at the ground floor level of Building E or at another appropriate location easily accessible to the public.

Summary of Objectives, Nature and Effect of the Draft Planning Agreement

The objective of the Planning Agreement is to facilitate the improvement of Community Facilities in the Ryde local government area (**Ryde LGA**) for the benefit of the public through the payment of a monetary contribution to Council by the Developer towards those Community Facilities.

The Planning Agreement contains a schedule (schedule 1) identifying the development contributions to be made to the Council as well as the timing and manner of the delivery of those development contributions.

The Developer will be providing development contributions with a value of \$310,310 (plus GST) and subject to indexation in accordance with CPI (up to the date of payment) **(Development Contributions)**.

The Development Contributions provided under the Planning Agreement will benefit the Ryde LGA.

Timing of Delivery of the Public Community Benefit (having regard to whether certain requirements must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued).

The payment of the Development Contributions to Council is required to be made by the Developer prior to the issue of the Construction Certificate for the Development, being Building E.

The provision of the Development Contributions are secured through the requirement for appropriate security (bank guarantee, insurance bond or as agreed by the parties) to be provided at the execution of this Planning Agreement.

The Relationship between the Negotiated Planning Agreement Outcomes and the Development Contributions under Section 94.

The Planning Agreement makes provision for community benefits by the payment of monetary contributions for Community Facilities.

Identify whether the Planning Agreement conforms with the Council's capital works program

The proposed contribution will be included in Council's Four Year Delivery Plan.

Assessment of the Merits of the Draft Planning Agreement

Arising from the Planning Agreement, the public will gain the benefits of the Development Contributions towards Community Facilities for the benefit of the Ryde LGA.

The Planning Purposes served by the Draft Planning Agreement

In accordance with section 93F(2) of the Act, the Planning Agreement has the following public purpose:

- (a) the provision of (or the recoupment of the cost of providing) public amenities or public services,

The Planning Agreement provides for a reasonable means of achieving the public purpose through the provision of monetary contributions, assessed and valued to be appropriate by the Planning Authority, for the purposes of providing adequate Community Facilities to the public.

How the Draft Planning Agreement Promotes the Objects of the Environmental Planning and Assessment Act 1979

The Planning Agreement assists in promoting the objects under the *Environmental Planning and Assessment Act 1979 (EPA Act)*, in particular, by:

- (a) co-ordinating, managing and securing the orderly and economic development of the Land; and
- (b) the provision and co-ordination of community services and facilities.

The Planning Agreement promotes these objects of the EPA Act by securing funds for the provision of future community facilities.

How the Planning Agreement promotes the objects (if any) of the Act under which it is constituted

Section 7 of the *Local Government Act 1993 (LG Act)* includes the purposes of the LG Act. Subsection 7(d) provides as follows:

"to give councils:

- the ability to provide goods, services and facilities, and to carry out activities, appropriate to the current and future needs of local communities and of the wider public*
- the responsibility for administering some regulatory systems under this Act*

- *a role in the management, improvement and development of the resources of their areas,*

The Planning Agreement is consistent with the first and the third dot point as the Planning Agreement provides contributions to provide for Community Facilities for the wider community and to improve and develop the resources of the Ryde LGA.

In respect of the Council's charter under section 8 of the LG Act, the Planning Agreement promotes the following objects of that charter:

- (a) to provide directly or on behalf of other levels of government, after due consultation, adequate, equitable and appropriate services and facilities for the community and to ensure that those services and facilities are managed efficiently and effectively;
- (b) to promote and to provide and plan for the needs of children; and
- (c) to engage in long-term strategic planning on behalf of the local community.

How the Planning Agreement Promotes the Public Interest

The Development Contributions provided under the Planning Agreement will benefit the Ryde LGA through the funding of Community Facilities for the area.

The Impact of the Planning Agreement on the Public or any Section of the Public

The Planning Agreement is expected to have a positive impact for the public through the provision of additional Community Facilities in the area which will benefit the Ryde LGA.

Interpretation of the Planning Agreement

This Explanatory Note is not to be used to assist in construing the Planning Agreement.