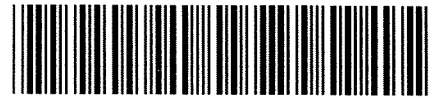


REQUEST

New South Wales
Real Property Act 1900



AI164784Q

PRIVACY NOTE: Section 31B of the Real Property Act 1900 (RP Act) authorises the use of this form for the establishment and maintenance of the Real Property Act Register. Section 96B RP Act requires that the Register is made available to any person for search upon payment of a fee, if any.

(A) **STAMP DUTY** If applicable. Office of State Revenue use only

(B) **TORRENS TITLE** 1/746089

(C) **REGISTERED DEALING**

Number	Torrens Title
--------	---------------

(D) **LODGED BY**

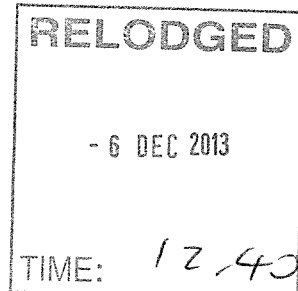
Document Collection Box 582W	Name, Address, or DX, Telephone, and Customer Account Number if any DX 189 SYDNEY LLPN123426A PH 9299 9969 FAX 9279 2185 Reference: MERITON - RYDE COUNCIL	CODE R
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(E) **APPLICANT** CITY OF RYDE COUNCIL

(F) **NATURE OF REQUEST** Application to register voluntary Planning Agreement
Section 93H Environmental Planning and Assessment Act 1979

(G) **TEXT OF REQUEST**

The Applicant, being a planning authority, applies to the Registrar-General pursuant to Section 93H of the Environmental Planning and Assessment Act 1979 for the attached voluntary planning agreement to be registered on the Folio of the Register abovementioned.



DATE 7 November 2013

(H) I certify that I am an eligible witness and that an authorised officer of the applicant signed this dealing in my presence. [See note* below].

Certified correct for the purposes of the Real Property Act 1900 by the authorised officer named below.

Signature of witness:

Signature of authorised officer:

Name of witness: BUDDY STEPHEN
Address of witness: RYDE CIVIC CENTRE
1 DEVLIN STREET
RYDE NSW 2112

Authorised officer's name: BRUCE McCANN
Authority of officer: General Manager
Signing on behalf of: City of Ryde Council

(I) This section is to be completed where a notice of sale is required and the relevant data has been forwarded through eNOS. The applicant certifies that the eNOS data relevant to this dealing has been submitted and stored under

eNOS ID No. Full name: Signature:

* s117 RP Act requires that you must have known the signatory for more than 12 months or have sighted identifying documentation.

Our Ref: MSP.LZM.122426



Planning Agreement

125-135 Church Street, Ryde NSW

City of Ryde Council (Council)

ABN 816 2129 2610

and

Motive Properties Pty Limited (Developer)

ABN 38 095 413 460

A handwritten signature in black ink, appearing to be 'JTKX74W3W6'.

T 61 2 8281 4555
F 61 2 8281 4567
E law@cbp.com.au
I www.cbp.com.au

Level 42, 2 Park Street
Sydney NSW 2000
Australia

DX 280 Sydney
GPO Box 214
Sydney 2001
Advoc Asia member

A handwritten signature in black ink, appearing to be 'Colin Biggers & Paisley'.

**Colin Biggers
& Paisley**
ABN 38 641 300 979

LAWYERS

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Details

Date 7 November 2013

Parties

Name **City of Ryde Council**
ABN 816 2129 2610
Description **Council**
Notice details Address 1 Devlin Street, Ryde NSW
Fax
Attention

Name **Motive Properties Pty Limited**
ABN 38 095 413 460
Description **Developer**
Notice details Address 603 Victoria Road, Ryde NSW
Fax (02) 8878 9579
Attention Adam Kaplan

Background

- A The Developer owns the Land.
- B On 28 March 2012 the Developer lodged a development application with the Council to carry out demolition of all existing buildings and to construct a mixed use development at the Property for residential and retail uses, including a total of 256 residential apartments and 376 basement car parking spaces.
- C On 17 September 2012, the Developer lodged an amended Development Application to carry out Development at the Land with Council.
- D The Development Application was accompanied by an offer by the Developer on 17 September 2012 to enter into this Agreement to make various Development Contributions, if that Development Consent is granted.
- E As contemplated by section 93F of the Act, the parties wish to enter into an Agreement in connection with the Development Application on the terms and conditions of this Agreement.



Operative Provisions

1. Definitions and Interpretation

1.1 Definitions

The following words have these meanings in this Agreement:

Act means the *Environmental Planning and Assessment Act 1979* (NSW) (as amended) and includes any regulations made under that Act.

Agreement means this planning agreement.

Approval means any approvals, consents, Section 96 Modifications, part 4A of the Act certificates or approvals, certificates, Construction Certificates, occupation certificates, Complying Development Certificates, permits, endorsements, licences, conditions or requirements (and any variation to them) which may be required by Law for the commencement and carrying out of the Contribution Works.

Authority means any government, local government, statutory, public, ministerial, administrative, fiscal or other authority or body, and includes the Joint Regional Planning Panel or such other consent authority as may be lawfully appointed and authorised to grant an Approval, including an accredited certifier defined under the Act.

Business Day means any day except for Saturday or Sunday or a day which is a public holiday in Sydney.

Complying Development Certificate means a complying development certificate referred to in section 85 of the Act.

Concept Drainage Plan means the plan as described and annexed to Schedule 4 of this Agreement.

Consent Authority means an Authority having the function to determine the Development Application.

Construction Certificate means a construction certificate issued pursuant to the Act.

Contribution Works means the works described in Schedule 1.

Contribution Works Portion means each part of the Contribution Works set out separately in Schedule 1.

Cost Plan means the plan as described and annexed to Schedule 4 of this Agreement.

Dedicated Land means the land identified at items 1 to 2 in Column 1 of Schedule 1 to be dedicated to Council in accordance with this Agreement.

Developed Lot means a lot created by the subdivision (including strata subdivision) forming part of the Land which at the date of the request for transfer has been improved by completed built form in respect of which an occupation certificate has issued.

Name/Signature

Name/Signature

Development means the development of the Land in accordance with the Development Consent as modified or amended from time to time.

Development Application means the application for development consent associated with the Land submitted to the Consent Authority for demolition and removal of all buildings and trees; construction of four mixed residential and retail buildings; 269 apartments; 1,080 square metres GFA of ground level retail floor space fronting the public plaza; 364 parking spaces; 36 spaces of bicycle parking; 2,150 square metres of public domain forming a central public plaza; landscaping works, utility upgrade works; perimeter planting and footpaths; including any amendment or modification of the Development Application.

Development Consent means the consent granted by the Consent Authority to the Development Application, has the same meaning as in the Act and includes any amendment or modification of the Development Consent, including a Section 96 Modification.

Development Contributions means the Dedicated Land, Contribution Works and the provision of material public benefits referred to in the Development Contributions Schedule and includes the contribution amounts attributed to the Dedicated Land and Contribution Works.

Development Contribution Procedures means the Development Contribution Procedures set out in Schedule 2 of this Agreement.

Development Contributions Schedule means Schedule 1 of this Agreement.

Development Plan means the plan as described and annexed to Schedule 4 of this Agreement.

Explanatory Note means the Explanatory Note set out in Schedule 3 of this Agreement.

Force Majeure means any physical or material restraint beyond the reasonable control of the Party claiming force majeure.

GST has the meaning as in the GST Law.

GST Law means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* and any other Act or regulation relating to the imposition or administration of GST.

Land means the whole of the Land comprised in the certificate of title for Lot 1 DP 746089, known as 125-135 Church Street, Ryde NSW.

Law means:

- (a) the common law including principles of equity, and
- (b) the requirement of all statutes, rules, ordinances, codes, instruments, regulations, proclamations, by-laws or consent by an Authority,

that presently apply or as they may apply in the future.

Name/Signature

Name/Signature

Landscape Plan means the plans as described and annexed to Schedule 4 of this Agreement.

Public Domain Finishes Plan means the plans as described and annexed to Schedule 4 of this Agreement.

Road Widening Plan means the plan as described and annexed to Schedule 4 of this Agreement.

Roundabout Modification Plan means the plan as described and annexed to Schedule 4 of this Agreement.

Section 96 Modification means any modification of the Development Consent pursuant to section 96 of the Act.

Signage and Line Marking Plan means the plan as described and annexed to Schedule 4 of this Agreement.

Sunset Date means the date on which the Development Consent lapses.

Threshold Detail Plan means the plans as described and annexed to Schedule 4 of this Agreement.

Traffic & Parking Impact Assessment Report means the Traffic & Parking Impact Assessment Report prepared by Barker Ryan Stewart dated September 2012 and annexed to Schedule 4 of this Agreement.

1.2 Interpretation

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

- (a) headings are for convenience only and do not affect interpretation.
- (b) **"person"** includes an individual, the estate of an individual, a corporation, an Authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust.
- (c) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation.
- (d) a reference to a party to the Agreement includes a reference to servants, representatives, agents, and contractors of the party.
- (e) a reference to a document (including this Agreement) is to that document as varied, novated, ratified, supplemented or replaced from time to time.
- (f) 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.

Name/Signature

Name/Signature

- (g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender.
- (h) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this Agreement, and a reference to this Agreement includes all schedules, exhibits, attachments and annexures to it.
- (i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning.
- (j) "includes" in any form is not a word of limitation.
- (k) the Explanatory Note set out in this Agreement is not to be used to assist in construing the Agreement.
- (l) a reference to "\$" or "dollar" is to Australian currency.

1.3 Compliance with New Laws

If a Law is changed or a new Law comes into force (both referred to as "New Law"), and the Developer is obliged by the New Law to perform certain works or pay an amount which it is required to do in accordance with this Agreement, then, to the extent that the relevant obligation is required under the New Law and the Agreement, compliance with the New Law will constitute compliance with the relevant obligation under this Agreement.

2. Planning Agreement under the Act

The Parties agree that this Agreement is a planning agreement governed by Part 4 of the Act.

3. Application of this Agreement

The Agreement applies to the Land and the Development.

4. Operation of this Agreement

- (a) This Agreement takes effect on the date of this Agreement after execution by both parties, subject to clause 4(b).
- (b) This Agreement will remain in force until:
 - (i) it is terminated by operation of Law; or
 - (ii) all obligations are performed or satisfied; or
 - (iii) the Sunset Date is reached, or
 - (iv) the Development Consent is surrendered in accordance with the Act; or
 - (v) it is otherwise discharged or removed in accordance with the terms of this Agreement.

Name/Signature

Name/Signature

- (c) If a legal challenge to the Development Consent by a third party results in the Development Consent being rendered invalid or unenforceable, then the Developer may, in its absolute discretion, either terminate this Agreement or request the Council to consider changes to its terms.

5. Condition Precedent

The obligations of the Developer under this Agreement are conditional on the granting of Development Consent.

6. Development Contributions

The Developer will provide, or procure the provision of, the Development Contributions in accordance with this Agreement.

7. Application of the Act to the Development

- (a) This Agreement wholly excludes the application of:
 - (i) sections 94 and 94A of the Act; or
 - (ii) any Affordable Housing Levy; or
 - (iii) any other monetary contributions required under the Act;

in connection with any Development Consent or Approval that is granted in respect of the Development Application or the Land, including any Section 96 Modifications.
- (b) The Council warrants that it will not make any claim or demand for additional Development Contributions to those provided for in this Agreement.
- (c) The obligations of the Developer under this Agreement involve a contribution to or provision of public amenities and services over and above those which would otherwise be imposed under section 94 and section 94A of the Act.

8. Registration

- (a) The Parties will take all practical steps to procure:
 - (i) the consent of each person who:
 - (A) has an estate or interest in the Land registered under the *Real Property Act 1900 (NSW)*; or
 - (B) is seized or possessed of an estate or interest in the Land; and
 - (ii) the execution of any documents; and
 - (iii) the production of the relevant duplicate certificates of title,

Name/Signature

Name/Signature

to enable the registration of this Agreement under the *Real Property Act 1900* (NSW) in the relevant folios of the register for the Land in accordance with section 93H of the Act.

- (b) The Parties will take all practical steps to procure the lodgement of this Agreement with the Registrar-General as soon as reasonably practicable after the Agreement is entered into by the Parties.

9. Dealing with the Land

The Parties acknowledge and agree that nothing in this Agreement abrogates, fetters or in any way prevents the Developer from selling, transferring, assigning, subdividing, mortgaging, charging, encumbering or otherwise dealing with the Land (excluding, after dedication, the Dedicated Land).

10. GST

10.1 Interpretation

In this clause 10:

- (a) Words and expressions which are not defined in this Agreement but which have a defined meaning in GST Law have the same meaning as in the GST Law.

10.2 Consideration GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this Agreement are exclusive of GST.

10.3 Payment of GST - additional payment required

- (a) If GST is payable by an entity (**Supplier**) in respect of any supply made under this Agreement (**Relevant Supply**), then the party required under the other provisions of this Agreement to provide the consideration for that Relevant Supply (**Recipient**) must pay an additional amount to the Supplier (**GST Amount**), as calculated under clause 10.3(b).
- (b) To the extent that the consideration to be provided by the Recipient for the Relevant Supply under the other provisions of this Agreement is a payment of money, the Recipient must pay to the Supplier an additional amount equal to the amount of the payment multiplied by the rate of GST for that Relevant Supply.
- (c) To the extent that the consideration payable by the Recipient is a taxable supply made to the Supplier by the Recipient, no additional amount shall be payable by the Recipient to the Supplier on account of the GST payable on that taxable supply.
- (d) The Recipient will pay the GST Amount referred to in this clause 10.3 in addition to and at the same time as the first part of the consideration is provided for the Relevant Supply.

Name/Signature

Name/Signature

10.4 Stamp Duty and GST

The Developer must pay all stamp duty and other duties, levies or charges including GST payable on or in respect of this Agreement.

10.5 Tax invoice

The Supplier must deliver a tax invoice to the Recipient before the Supplier is entitled to payment of the GST Amount under clause 10.3. The Recipient can withhold a payment of the GST Amount until the Supplier provides a tax invoice.

10.6 Adjustment event

If an adjustment event arises in respect of a taxable supply made by a Supplier under this Agreement, the amount payable by the Recipient under clause 10.3 will be recalculated to reflect the adjustment event and a payment will be made by the Recipient to the Supplier or by the Supplier to the Recipient as the case requires.

10.7 Reimbursements

Where a party is required under this Agreement to pay or reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of:

- (a) the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other party, or to which the representative member for a GST group of which the other party is a member, is entitled; and
- (b) any additional amount payable under clause 10.3 in respect of the reimbursement.

11. Default

11.1 Notice

In the event a party considers another party has failed to perform and fulfil an obligation under this Agreement, it may give notice in writing to that party (**Default Notice**) giving all particulars of the matters in respect of which it considers default has occurred and by such notice require the default to be remedied within a reasonable time not being less than 21 days.

11.2 Reasonable Time

In determining a reasonable time, regard must be had to both the nature of the default and the work or other action required to remedy it and whether or not the continuation of the default constitutes or causes a public nuisance or raises other circumstances of urgency or emergency.

11.3 Suspension of time-dispute

If a party disputes the Default Notice it may refer that dispute to dispute resolution under clause 12 of this Agreement.

Name/Signature

Name/Signature

12. Dispute Resolution

12.1 Notice of Dispute

If a party claims that a dispute has arisen under this 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 12.

12.2 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.

12.3 Negotiation

- (a) The nominated representative must:
- (i) meet to discuss the matter in good faith within 5 business days after service by the Respondent of notice of its representative;
 - (ii) use reasonable endeavours to settle or resolve the dispute within 15 business days after they have met.

12.4 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 12.5 or by expert determination under clause 12.6.

12.5 Mediation

- (a) If a party gives a dispute Notice calling for the dispute to be mediated:
- (i) 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);
 - (ii) 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;
- (b) the Mediator appointed pursuant to this clause 12.5 must:
- (i) have reasonable qualifications and practical experience in the area of the dispute; and

Name/Signature

Name/Signature

- (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;
- (c) 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;
- (d) 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;
- (e) 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;
- (f) each party will bear their own professional and expert costs incurred in connection with the mediation.

12.6 Expert Determination

- (a) If the dispute is not resolved under clause 12.3 or 12.5, the dispute may, by agreement between the parties, both acting reasonably having regard to the nature of the dispute, be resolved by expert determination, in which event:
 - (i) the dispute must be determined by an independent expert in the relevant field:
 - (A) agreed upon and appointed jointly by the Council and the Developer; or
 - (B) in the event that no agreement is reached or appointment made within 30 business days, appointed on application of a party by the then current President of the Law Society of New South Wales;
 - (ii) the expert must be appointed in writing and the terms of appointment must not be inconsistent with this clause;
 - (iii) the determination of the dispute by such expert will be made as an expert and not as an arbitrator and will be in writing and contain the reasons for the determination;
 - (iv) the expert will determine the rules for the conduct of the process but must conduct the process in accordance with the rules of natural justice;
 - (v) each party will bear its own costs in connection with the process and the determination by the expert together with an equal proportion of the expert's fees and costs; and
 - (vi) any determination made by an expert pursuant to this clause is final and binding upon the parties except where the determination is in respect of, or relates to, termination or purported termination of this Agreement by any party, in which event the expert is deemed to be giving a non-binding appraisal and any party may commence litigation in relation to the dispute

Name/Signature

Name/Signature

if it has not been resolved within 20 business days of the expert giving his or her decision.

12.7 Litigation

If the dispute is not finally resolved in accordance with this clause 12, either party is at liberty to litigate the dispute.

13. Notices

- (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 on page 3 of this Agreement; or
 - (ii) faxed to that Party at its fax number on page 3 of this Agreement.
- (b) If a Party gives another 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.
- (c) Any notice, consent, information, application or request is to be treated as given or made at the following time:
 - (i) if it is delivered, when it is left at the relevant address;
 - (ii) if it is sent by post, 2 Business Days after it is posted;
 - (iii) 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.
- (d) 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, 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.

14. General

14.1 Entire agreement

This 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, anything said or done by another Party, agent or employee of the Party, before this Agreement was executed, except as permitted by Law.

Name/Signature

Name/Signature

14.2 Further acts

Each party must promptly sign and execute all documents and do all things that another Party from time to time reasonably requests to effect, perfect or complete this Agreement and all transactions incidental to it, including giving an approval or consent.

14.3 Governing Law and Jurisdiction

This 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.

14.4 Joint and individual liability and benefits

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

14.5 No fetter

Nothing in this Agreement is to be construed as requiring a Council to do, or refrain from doing, anything that would cause it to be in breach of any of its obligations at Law, and without limitation, nothing in this Agreement is to be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

14.6 Representations and warranties

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

14.7 Severability

- (a) If any part of this Agreement can be read in any 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.
- (b) If any part of this Agreement is illegal, unenforceable or invalid, that part is to be treated as removed from this Agreement, but the rest of this Agreement is not affected.

14.8 Release and Discharge

- (a) To the extent the Developer has:
 - (i) satisfied its obligations under this Agreement; or
 - (ii) the Agreement no longer applies as a consequence of any event referred to in clause 4(b) of this Agreement;

 Name/Signature

 Name/Signature

the Council will provide a release and discharge of this Agreement with respect to any part of, or the whole of, the Land.

- (b) To the extent the Developer has:
 - (i) satisfied its obligations under this Agreement in respect of that part of the Land; or
 - (ii) the Agreement no longer applies as a consequence of any event referred to in clause 4(b) of this Agreement;

the Council will provide a release and discharge of this Agreement with respect to any part of the Land:

- (iii) if the Developer requests a partial release and discharge of this Agreement for the purpose of selling part of the Land as a Developed Lot; or
 - (iv) if the Developer requests a partial release and discharge of this Agreement in connection with the completion of a sale contract for a Developed Lot; or
 - (v) if the Developer requests a partial release and discharge of this Agreement to effect the transfer of part of Land to the Council or any other authority pursuant to this Agreement.
- (c) The Council will execute any form, and supply such other information, as is reasonably required to enable the removal of the Agreement from the title to the Land or part of the Land in accordance with this clause 14.8.

14.9 Modification, Review and Replacement

- (a) No modification of this Agreement will be of any force or effect unless it is in writing and signed by the Parties to this Agreement.
- (b) The Parties agree that this Agreement may be reviewed or modified in the circumstances using their best endeavours and acting in good faith, and in accordance with this clause 14.9.
- (c) Any review or modification will be conducted in the circumstances and in the matter determined by the Parties and in accordance with the provisions of the Act and Regulations. For clarity, no such review or replacement shall have any force or effect unless and until formal documents are signed by the Parties in accordance with this clause 14.9.

14.10 Waiver

The fact that a Party fails to do, or delays in doing, something the Party is required or entitled to do under this Agreement, does not amount to a waiver of any obligation by another Party.

Name/Signature

Name/Signature

14.11 Confidentiality

The Parties agree that the terms of this Agreement are not confidential and this Agreement may be treated as a public document and exhibited or reported without restriction by any Party.

14.12 Assignment and Novation

- (a) This Agreement may be assigned or novated by the Developer in accordance with any dealings the Developer may have with respect to its interests in the Land without requiring the Developer to obtain Council's Approval in respect of either the dealing or the assignment or the novation of this Agreement.
- (b) Council agrees to execute any deeds of assignment or novation or other documents necessary to assign, novate or otherwise transfer all of the Developer's rights and obligations under the Agreement to a successor as contemplated by the agreement.

14.13 Force Majeure

- (a) If a Party is unable by reason of force majeure to carry out wholly or in part its obligations under the Agreement, it must give to the other Party prompt notice of the force majeure with reasonably full particulars.
- (b) The obligations of the Parties so far as they are affected by the force majeure are then suspended during continuance of the force majeure and any further period as may be reasonable in the circumstances.
- (c) The Party giving such notice under this clause must use all reasonable effort and diligence to remove the force majeure or ameliorate its effects as quickly as practicable.
- (d) If the Parties are unable to agree on the existence of an event of force majeure or the period during which the obligations of the Parties are suspended during the continuance of the force majeure, that dispute must be referred for determination under the Agreement.

14.14 Legal and associated costs

Each party is responsible for payment of its own legal costs in connection with the preparation, execution and enforcement of this Agreement, unless otherwise agreed between the Parties or as may be ordered by a Court of competent jurisdiction.

14.15 Counterparts

This Agreement may be executed in counterparts. All counterparts when taken together are to be taken to constitute one instrument.

Name/Signature


Name/Signature

Execution

Dated:


Executed as an Agreement

Signed by **Motive Properties Pty Limited** under s.127(1) of the *Corporations Act 2001*

_____	
sign	sign
_____	<i>Sole</i> DIRECTOR & SECRETARY
office (director)	office (director or secretary)
_____	Adam Kaplan
full name	full name

Signed by **The City of Ryde Council** by ~~Ray Newsome~~, ~~Acting General Manager~~ under Delegated Authority under section 37 of the *Local Government Act 1993 (NSW)*

Brian McCann
GENERAL COUNSEL / PUBLIC OFFICER

X _____	
sign	sign
X _____	GENERAL COUNSEL / PUBLIC OFFICER
office (director)	office (director or secretary)
X _____	BRIAN McCANN
full name	full name

Name/Signature

Name/Signature

Schedule 1 Development Contributions Schedule

1. Development Contributions

The Developer undertakes to provide the following Development Contributions as set out and provided for in the Table below.

Column 1	Column 2
Development Contribution	Description
Dedicated Land	
<p>1. Dedication to Council of approximately 295 m² of the Land for the purposes of road widening and boundary realignment along Porter Street, Meadowbank NSW, to achieve a street reserve width of a minimum of 16 metres.</p> <p>Representing a total value of \$765,950</p>	<p>Item 1 in the Development Plan and road widening as depicted in the Road Widening Plan.</p> <p>A larger public road.</p>
<p>2. Dedication to Council of approximately 42 m² of the Land for the purposes of a splayed corner and boundary realignment along Well Street/Porter Street intersection Meadowbank NSW.</p> <p>Representing a total value of \$109,050</p>	<p>Item 2 in the Development Plan and as described in the Traffic & Parking Impact Assessment Report and the Roundabout Modification Plan.</p> <p>A larger public road.</p>
Dedicated Land Subtotal: \$875,000**	
Contribution Works	
<p>3. Contribution Works in the construction of road works and infrastructure works comprising of new smart pole street lighting, new kerb realignment, new road sub-base and surfacing from centre of road, new line marking, street signage, stormwater diversion, tree planting, granite paving to footpath and turf. Only those works which are as a direct result of the Porter Street widening described in Item 1 of this Schedule, and the corner splay of</p>	<p>Item 1 and 2 in the Development Plan.</p> <p>Items 8, 12 and 14 in the Cost Plan.</p> <p>Upgrading works to provide an improved public road.</p>

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<p>Porter St/Well St described in Item 2 of this Schedule, are included within the contribution costs.</p> <p>Refer to Landscape Plan and Public Domain Finishes Plan.</p> <p>Representing a total value of approximately \$771,280</p>	
<p>4. Contribution Works in the construction of site-through link from Porter St to Church St comprising of granite paving, stairs and lighting. Only 50% of construction costs are to be included.</p> <p>Refer to Landscape Plan and Public Domain Finishes Plan.</p> <p>Representing a total value of \$227,587; 50% of which is \$113,793</p>	<p>Item 3 in the Development Plan.</p> <p>Items 10 and 13 in the Cost Plan.</p> <p>Upgrading works to provide an improved pedestrian/cycle path for the public.</p>
<p>5. Contribution Works in the construction of raised pedestrian threshold connecting the site-through link to adjacent development across Porter St and comprising of new speed humps, raised painted walkway, street signage, lighting at walkway and landscaped kerb blisters at each end of walkway.</p> <p>Refer to Landscape Plan; Public Domain Finishes Plan.</p> <p>Representing a total value of \$66,445</p>	<p>Item 4 in the Development Plan</p> <p>Upgrading works to provide an improved through-link for the public.</p> <p>Detail to be adopted as per the details outlined in the Threshold Detail Plan.</p> <p>Item 9 in the Cost Plan.</p>
<p>6. Contribution Works in the form of corner park embellishment works on public land between Well and Church Street comprising of new granite paving to walkways and turf. Only 50% of construction costs are to be included.</p> <p>Refer to Landscape Plan and Public Domain Finishes Plan.</p> <p>Representing a total value of</p>	<p>Item 5 in the Development Plan</p> <p>For the purpose of upgrading community facilities.</p> <p>Item 11 in the Cost Plan.</p>

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	\$63,033; 50% of which is \$31,516.	
7.	Monetary Contribution towards traffic upgrade within the Meadowbank Employment Area. Representing a total value of \$113,000.	N/A
Contribution Works Subtotal: approximately \$1,096,034**		
Dedicated Land and Contribution Works Total: \$1,971,034**		
8.	General Monetary Contribution Representing a total value of \$1,032,582.78	N/A
Subtotal: approximately \$3,003,616.78**		
**Note: all figures provided are GST Exclusive.		

2. Development Contributions

- (a) The Development Contributions provided pursuant to Clause 6 and this Schedule must be delivered prior to the issue of any occupation certificate in accordance with the Act.
- (b) The Parties acknowledge and agree that the estimates relating to the Development Contributions pursuant to Clause 6 and this Schedule are estimates only and may not reflect the costs actually incurred.
- (c) The parties acknowledge and agree that further detail and refinement of the plans and documents at Schedule 4 may be necessary, having regard to the following:
 - (i) conditions reasonably affecting the Contribution Works which were not reasonably capable of identification on or before the date of this Agreement; or
 - (ii) to take into account a Section 96 Modification to the Development Consent.

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Schedule 2 Development Contribution Procedures

1. Developer's undertakings

The Developer undertakes to carry out or procure the carrying out of, the design and construction of the Contribution Works set out in Schedule 1 as contemplated by, and in accordance with this Schedule 2 so as to ensure that completion of each Contribution Works Portion is achieved.

2. Contribution Works Procedures

2.1 Approvals

The Developer must:

- (a) prepare and obtain all Approvals necessary to carry out the Contribution Works; and
- (b) comply with all conditions of such Approvals.

2.2 Quality of Material and Work

The Developer must procure the Contribution Works to be carried out:

- (a) using good quality materials, which must be suitable for the purposes for which they are required under this Agreement;
- (b) in compliance with relevant standards determined by Australian Standards Limited, the Building Code of Australia and any relevant manufacturers' standards; and
- (c) so that the Contribution Works, when completed, are suitable for the purpose for which they are required as contemplated by the relevant Approvals.

2.3 Standards

The Parties agree that the design and specifications of the Contributions Works shall take into consideration Council's relevant development control plans, design codes and technical manuals.

2.4 Standards as conditions of Approval

The Parties agree that to the extent the Contribution Works are to be undertaken in accordance with clause 2.3 of this Schedule, where any inconsistency with the requirements of any Approvals exist, the requirements of that Approval shall prevail.

2.5 Reinstatement on damage or destruction

The Developer may but is not obliged to reinstate any Contribution Works where the damage or destruction is the result of:

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- (a) any negligent act or omission of the Council or its employees, consultants or agents relating to any part of the Contribution Works under this Agreement; or
- (b) the use or occupation by the Council or its employees, consultants or agents, Council's representatives or other contractor of Council of any part of the Contribution Works.

2.6 Implementation

- (a) During the period commencing on the date of issue of the final occupation certificate and ending 3 months later, the Developer is required to complete or rectify such works relating to the Contribution Works after receiving notice from the Council detailing any alleged defect and the works required to rectify the defect.
- (b) Whenever reasonably requested in writing by Council, the Developer must provide evidence of insurance prior to commencement of Contribution Works.

2.7 Works Completion

- (a) When, in the opinion of the Developer, the Contribution Works have reached completion, the Developer must notify Council.

2.8 Final Inspection by Council

- (a) Following the notification by the Developer pursuant to clause 2.7 of this Schedule, the Council's representative must inspect the Contribution Works within 14 days and must by written notice to the Developer concur that completion of the Contribution Works has been achieved; or identify with reasonable particularity what is required to occur to enable completion of the Contribution Works.

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Schedule 3 Explanatory Note

Name/Signature

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Explanatory Note

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Planning Agreement

Under s93F of the Environmental Planning and Assessment Act 1979 (NSW)

1. Parties

Motive Properties Pty Limited – ABN 38 095 413 460, 603 Victoria Road, Ryde NSW
(Developer)

City of Ryde Council – ABN 816 2129 2610 1 Devlin Street, Ryde (Council)

2. Description of Subject Land

The subject land is 125-135 Church Street, Ryde NSW being Lot 1 in DP746089.

The Developer is the owner of the subject land.

3. Description of Proposed Development Application

The proposed development is documented in Development Application No. 2012/0097 and includes the following:

- demolition and removal of all buildings and trees
- construction of four mixed residential and retail buildings including 269 apartments
- 1,080 square metres of GFA of ground level retail floor space fronting the public plaza; 364 parking spaces; 36 spaces of bicycle parking; 2,150 square metres of public domain forming a central public plaza
- landscaping works; utility upgrade works, perimeter planting and footpaths.

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

4.1 Summary of Objectives

The objectives of the draft Planning Agreement are to:

- (a) dedicate land to Council for the purposes of road widening and boundary alignment;
- (b) provide a range of road works, infrastructure works and corner park embellishment works;

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- (c) provide monetary contributions to Council;

in order to provide a benefit for the public and to address the impacts of the proposed development on the locality and the need for additional infrastructure works and facilities to address these impacts.

4.2 Nature and Effect of the Draft Planning Agreement

The draft Planning Agreement requires the Developer to provide the following dedicated land, works and monetary contributions:

- (a) dedication to Council of land for the purposes of road widening and boundary realignment along Porter Street, Meadowbank NSW, to achieve a street reserve width of a minimum of 16 metres; and land for the purposes of a splayed corner and boundary realignment along Well Street/Porter Street intersection Meadowbank NSW
- (b) contribution works, including:
- construction of road works and infrastructure works as a direct result of Porter Street road widening and the corner splay of Porter street/Well street
 - construction of site-through link from Porter Street to Church Street comprising of granite paving, stairs and lighting
 - construction of raised pedestrian threshold connecting the site through-link to adjacent development across Porter Street
 - corner park embellishment works on public land between Well Street and Church Street comprising of new granite paving to walkways and turf
- (c) monetary contribution in the sum of \$113,000 to Council for the purposes of traffic upgrade within the Meadowbank Employment Area
- (d) general monetary contribution in the sum of \$877,152.96.

The estimated value of the works, monetary contributions and dedicated land provided by the Developer is \$2,848,186.96 (excluding GST).

The draft Planning Agreement provides that the obligations of the Developer under the draft Planning Agreement will be taken into consideration in determining the section 94 contributions in connection with the Development Application. The obligations of the Developer are over and above and comprise 120% of those contributions imposed under section 94, section 94A and section 94EF of the *Environmental Planning and Assessment Act 1979* (NSW) in connection with the proposed development.

The draft Planning Agreement will not come into effect until and unless consent is granted to the Development Application.

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5. Assessment of the Merits of the Draft Planning Agreement

5.1 The Planning Purposes Served by the Draft Planning Agreement

In accordance with section 93F(2) of the *Environmental Planning and Assessment Act 1979* (NSW), the Planning Agreement promotes the following public purposes:

- (a) the provision of (or the recoupment of the cost of providing) public amenities or public services
- (b) the provision of (or the recoupment of the cost of providing) transport or other infrastructure relating to land
- (c) the funding of recurrent expenditure relating to the provision of public amenities or public services, affordable housing or transport or other infrastructure
- (d) the monitoring of the planning impacts of development
- (e) the conservation or enhancement of the natural environment

5.2 How the Draft Planning Agreement Promotes the Objects of the Environmental Planning and Assessment Act 1979 (NSW)

The draft Planning Agreement promotes the following objects of the *Environmental Planning and Assessment Act 1979* (NSW):

- (a) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment
- (b) the promotion and co-ordination of the orderly and economic use and development of land
- (c) the protection, provision and co-ordination of communication and utility services
- (d) the provision of land for public purposes, and
- (e) the provision and co-ordination of community services and facilities.

The draft Planning Agreement provides for a reasonable means of achieving those purposes.

6. How the Draft Planning Agreement Promotes the Public Interest

6.1 How the Draft Planning Agreement Promotes the Elements of the Council's Charter

The draft Planning Agreement promotes Council's Charter under section 8 of the *Local Government Act 1993* (NSW) by:

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- (i) the provision of adequate, equitable and appropriate services and facilities for the community in the form of providing land, road works, infrastructure works, corner park embellishment works and monetary contributions
- (ii) ensuring that the services and facilities are managed efficiently and effectively
- (iii) properly managing, developing, protecting, restoring, enhancing and conserving the environment of the area for which it is responsible, in a manner that is consistent with and promotes the principles of ecologically sustainable development.

6.2 Whether the draft Planning Agreement Conforms with the Council's Capital Works Program

The draft Planning Agreement conforms with Council's Capital Works Program to the extent that it will supplement the Program by providing works and infrastructure and additional public facilities that will provide a public benefit. Also, it will provide contributions that Council would not normally be able to provide.

6.3 Whether the draft Planning Agreement specifies that certain requirements must be complied with before an occupation certificate is issued

The draft Planning Agreement provides that all development contributions including dedication of land, works, provision of infrastructure, and monetary contributions, must be delivered prior to the issue of any occupation certificate for the proposed development in accordance with the *Environmental Planning and Assessment Act 1979* (NSW).

7. The Impact of the Draft Planning Agreement on the Public or Any Section of the Public

The draft Planning Agreement impacts on the Public by promoting the Public's interest as outlined above.

8. Other Matters

None.

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Schedule 4 Plans and Documents

1. Plans and Documents

- (a) The Development Contributions are generally identified in the following plans and documents, which are **annexed** and provided to show the scope of the Development Contributions and for the purposes of quantifying the Development Contributions.

No	Plan/Document	Plan Number	Author	Date
1.	Development Plan	Drawing No. DA0013 Rev C	Architectus Sydney	22 April 2013
2.	Road Widening Plan	Drawing No. 10099_RWP	Total Surveying Solutions	4 October 2012
3.	Roundabout Modification Plan	Drawing No, 10102E5.01 Rev H	Barker Ryan Stewart	3 April 2013
4.	Signage and Line-marking Plan	Drawing No. 10102E5.02 Rev A	Barker Ryan Stewart	3 April 2013
5.	Traffic & Parking Impact Assessment Report	N/A	Barker Ryan Stewart	September 2012
6.	Cost Plan	9323 - VPA Review Complete	Slattery Australia Pty Limited	21 May 2013
7.	Threshold Detail Plan	Drawing No. 10102E5.03 Rev A	Barker Ryan Stewart	3 April 2013
8.	Landscape Plan and Public Domain Finishes Plan	Drawing No. 001 Rev F; Landscape Plan and Public Domain Finishes Plan	Scott Carver Pty Limited	22 April 2013
9.	Landscape Plan and Public Domain Finishes Plan	Drawing No. 002 Rev E; Landscape Plan and Public Domain	Scott Carver Pty Limited	16 November 2012

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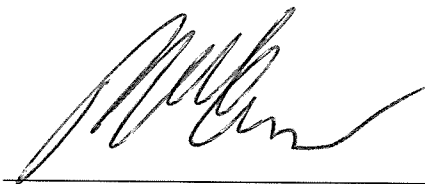
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		Finishes Plan		
10.	Landscape Plan	Drawing No. 003 Rev B; Sections	Scott Carver Pty Limited	16 November 2012
11.	Landscape Plan	Drawing No. 004 Rev B; Typical Details and Section	Scott Carver Pty Limited	16 November 2012
12.	Landscape Plan	Drawing No. 005 Rev B; Landscape Specification Notes and Council Detail	Scott Carver Pty Limited	16 November 2012
13.	Concept Drainage Plan	Drawing No. 100102SK1 Rev B	Barker Ryan Stewart	29 August 2012



Name/Signature

ADAM KAPLAN
Sole Director/Secretary.



Name/Signature

Bruce McCann