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

and

DEP Shepherds Bay Pty Limited
ACN 167 939 504

Planning Agreement

Environmental Planning and Assessment Act 1979

Planning Agreement made at 7th on August 2015.

Parties The Council of the City of Ryde (ABN 81 621 292 610) of 1 Devlin Street, Ryde, NSW (Council)

and

DEP Shepherds Bay Pty Ltd (ACN 167 939 504) c/- Dragon Eye Properties Suite 202, Level 2, 127 York Street, Sydney, NSW (Developer)

Background

- A. The Developers are the owners of the Land.
- B. For the purpose of Section 93F(1) of the Act, the Developer has entered into an agreement with, or is otherwise associated with, a person who has made the Development Application.
- C. On 18 July 2014 the Developer lodged (or authorised to be lodged, as the case may be) the Development Application with the Council to carry out the Development on the Land.
- D. The Developer has made an offer to enter into a planning agreement with the Council to provide the Contributions.
- E. This deed constitutes the planning agreement contemplated by the Development Application.

Operative provisions

1. Interpretation

1.1 Definitions

The following words have these meanings in this Deed unless the contrary intention appears:

Accessible means in accordance with the relevant requirements of "Australian Standard AS 1428.1 - 2009: Design for Access and Mobility".

Act means the Environmental Planning and Assessment Act, 1979 and Regulations (as amended).

Adjustment Date means each 30 June every year after the date of this Deed.

Affordable Housing has the same meaning as in the Act.

Affordable Housing Unit means the dwelling identified as Unit 16 including the associated off-street car parking space and storage area marked as CP 16 and (W) respectively in the Affordable Housing Unit Plan.

Affordable Housing Unit Plan means the plans identified in Schedule 12 as may be amended from time to time by agreement between the parties.

Appeal means an appeal (including an application for any kind of leave to appeal) in a Court of competent jurisdiction against the decision of a lower court.

Appeal Notice means:

- (a) in proceedings in the Court of Appeal:
 - (i) an application for leave to Appeal;

- (ii) a Notice of Intention to Appeal; or
- (iii) if a valid Notice of Intention to Appeal has been lodged, a Notice of Appeal; and

(b) in proceedings in the High Court, an application for Special Leave to Appeal.

Application means an application for any Approval.

Approval means any approvals, consents, certificates, permits, endorsements, licences, conditions or requirements (and any modifications or variations to them) which may be required by Law for the commencement and carrying out of the Contributions Works or the Development generally and includes a Development Consent or other approval under the EP&A Act (or modification of that approval).

Authority means any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity and includes an accredited certifier accredited under the *Building Professionals Act 2005*.

Bank Bill Rate means the average bid rate for Bills having a tenor of 90 days as displayed on the "BBSY" page of the Reuters Monitor System on the day the relevant payment is due (**Due Date**). However, if the average bid rate is not displayed by 10:30 am on the Due Date or if it is displayed but there is an obvious error in that rate, **Bank Bill Rate** means:

- (a) the rate the Council calculates as the average of the bid rates quoted at approximately 10:30 am on that day by each of five or more institutions chosen by the Council which provide rates for display on the "BBSY" page of the Reuters Monitor System for Bills of a 90 day tenor which are accepted by that institution (after excluding the highest and the lowest, or in the case of equality, one of the highest and one of the lowest bid rates); or
- (b) where the Council is unable to calculate a rate under paragraph (a) because it is unable to obtain the necessary number of quotes, the rate set by the Council in good faith at approximately 10:30 am on that day, having regard, to the extent possible, to the rates otherwise bid for Bills of a 90 day tenor at or around that time.

The rate calculated or set must be expressed as a percentage rate per annum and be rounded up to the nearest fourth decimal place.

The Council may calculate a rate under paragraph (a) or (b) before 11:00 am on the Due Date, but if the average bid rate appears on the "BBSY" page by 11:00 am and there is no obvious error in it, the "BBSY" page rate applies as the **Bank Bill Rate** under this Deed despite any calculation by the Council under paragraph (a) or (b).

Bills means a bill of exchange as defined in the *Bills of Exchange Act 1909* (Cth), but does not include a cheque.

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

- (a) Be signed and issued by an Australian Prudential Regulation Authority [APRA] regulated authorised deposit taking institution or an insurer authorised by APRA to conduct new or renewal insurance business in Australia;
- (b) Have at all times an investment grade security rating from an industry recognised rating agency of at least:
 - (i) BBB + [Standard & Poors and Fitch]; or

- (ii) Baa 1 [Moody's]; or
- (iii) bbb [Bests].
- (c) Be issued on behalf of the Developer;
- (d) Have no expiry or end date;
- (e) Have the beneficiary as the Council;
- (f) Be irrevocable;
- (g) State either individually, or in total with other lodged compliant forms of Guarantee, the relevant minimum amount required to be lodged as security; and
- (h) State the purpose of the deposit required in accordance with this Planning Agreement.

Bond Amounts means the face value of each Bond that is required to be provided by the Developer to Council under the terms of this Agreement.

Bond Works means the Contribution Works.

Building means a building proposed to be constructed on the Land, but excluding marketing suites or other buildings which are not part of the Development and which are not intended to remain on the Land indefinitely.

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

Call Option Deed means the Call Option Deed between the Land Owners as Vendor and the Developer as Purchaser dated 14 February 2014 and which grants the Developer the right to acquire the Land.

Cash Deposit has the meaning given to that term in paragraph 6 of Schedule 10.

Cash Deposit Account has the meaning given to that term in paragraph 6 of Schedule 10.

CEO means the General Manager or the person acting in that role for each of the Council and the Developer respectively.

Certifier means:

- (a) such person with the appropriate qualifications to provide the required certification and appointed by the Developer (at its cost); and
- (b) in the case of the Road Works only, the Council.

Certificate of Practical Completion has the meaning given to that term in paragraph 1.16 of Schedule 4.

Completion means in relation to any part of the Contribution Works, the point of time at which the Council notifies the Developer that it is satisfied that the Contribution Works have been completed in accordance with all relevant Approvals and the requirements of this Deed (except for minor omissions and defects).

Compliance Certificate means a certificate referred to in section 109C(1)(a) of the Act.

Consent Authority means, in relation to an Application, the Authority having the function to determine the Application.

Construction Certificate means a certificate issued under section 109C(1)(b) of the EP&A Act.

Construction Cost means the Costs of and directly attributable to the performance of the Contribution Works including:

- (a) preparation of design and construction drawings for the Contribution Works;
- (b) cost or materials used or installed (as the case may be) as part of the Contribution Works; and
- (c) labour, equipment hire and other Costs directly associated with the excavation, Remediation to the required standard, and construction of the Contribution Works.

Contribution Land means the land to be dedicated or transferred (as the case may be) by the Developer as described in Table 1 to Schedule 3 of this Deed and as indicated in Schedule 17-Land Dedication Plan.

Contribution Land for Road means that part of the Contribution Land that is to be dedicated as Public Road along the Faraday Lane frontage of the Land.

Contribution Works means the works to be undertaken by the Developer as described in Table 2 of Schedule 3.

Contributions means the dedication of land (free of any Encumbrance and Cost), and the provision of material public benefits, all as provided for in the Contributions Schedule of this Deed including the Contribution Land and the Contribution Works.

Contributions Schedule means the table and notes included in Schedule 3.

Costs includes all costs, charges and expenses, including those incurred in connection with advisers.

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

CPI means the Sydney Consumer Price Index (All Groups) published by the Commonwealth Statistician, or if that index no longer exists, any similar index which the Council determines in its sole discretion.

Deed means this deed.

Defects Liability Period means in respect of the Contribution Works, the period of 12 months which commences on the date of Practical Completion of the Contribution Works.

Development means the development described in paragraph 2 of Schedule 2.

Development Application means Development Application LDA 2014/307 dated 18 July 2014 for the construction of a residential flat building comprising 73 residential dwellings and 2 basement levels of car parking on the Land.

Development Consent means each 'Development Consent' as that term is defined in the EP&A Act or an approval under Part 5 of the EP&A Act and includes any Modification granted with respect to the Development Application.

Development Contributions Procedures means the development contribution procedures set out in Schedule 4 and Schedule 5 of this Deed.

Encumbrance, in relation to any land, means any:

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

or any agreement to create any of them or allow them to exist, in respect of that land.

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

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

Explanatory Note means the explanatory note relating to this Planning Agreement, as required by clause 25E of the EP&A Regulation, being Exhibit A to this Deed.

GST has the meaning it has in the GST Act.

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

GST Amount has the meaning given to that term in clause 14.3.

Home Warranty Insurance has the same meaning as in the Home Building Act 1989.

Indicative Public Domain Concept Plan means the plans set out in Schedule 16 as may be amended from time to time by agreement between the parties.

Insurer means an insurer that is licensed by the Australian Prudential Regulatory Authority (APRA) to operate in Australia or has an investment grade rating from an industry recognised rating agency such as Moodies, Standard & Poors or Bests.

Interest Rate in relation to interest payable on any payment due under this Deed means the rate which is the Bank Bill Rate plus a margin of 2% per annum.

Land means the land described in paragraph 1 of Schedule 2 or any subsequent Subdivision of those lots.

Land Dedication Plan means the plans set out in Schedule 17 as may be amended from time to time by agreement between the parties.

Law means:

- (a) the common law including principles of equity; and
- (b) the requirements of all statutes, rules, ordinances, codes, regulations, proclamations, by-laws or consents by an Authority.

Legal Costs means legal costs and expenses on a full indemnity basis or solicitor and own client basis, whichever is the higher.

Legal Challenge means proceedings in a Court in which a declaration that the Development Consent or Approval in relation to the Development Application is invalid, and includes, but is not limited to, any proceedings in which such a declaration is sought which are heard on remitter from another Court following an Appeal.

Modification means a "*modification*" of the Development Consent within the meaning of section 96 of the EP&A Act.

Occupation Certificate means a certificate referred to in section 109C(1)(c) of the EP&A Act and which may be interim or final as provided for in section 109C(2) of the EP&A Act.

Party means a Party to this Deed, and includes their successors and assigns.

Permitted Encumbrance means each of:

- (a) easements benefitting statutory authorities, encroachments authorised by Approvals and environmental management requirements;
 - (b) any of the following:
 - (i) an Encumbrance (other than a mortgage, charge, pledge, lien, security interest, title retention, contractual right of set-off, or any other security agreement or arrangement in favour of any person); and
 - (ii) such other agreement or arrangement,
- the Council (acting reasonably) agrees in writing are permitted encumbrances.

Planning Agreement means this Deed.

Practical Completion means in relation to each Contribution Works, the point of time at which the relevant Certifier is satisfied, acting reasonably, that the whole of that Contribution Works has been completed with all relevant Approvals and this Deed (except for minor defects or omissions).

Public Road has the same meaning as in the *Roads Act* 1993.

Quantity Surveyor means a registered quantity surveyor appointed by the Council and approved by the Developer (acting reasonably).

Real Property Act means the *Real Property Act* 1900 (NSW).

Recipient has the meaning given to that term in clause 14.3 to this Deed.

Recipient Supply has the meaning given to that term in clause 14.5 to this Deed.

Register means the Torrens title register maintained under the Real Property Act.

Relevant Easements has the meaning given to that term in paragraph 1.1 of Schedule 5.

Relevant Subdivision has the meaning given to that term in paragraph 1.1 of Schedule 5.

Remediation has the same meaning as in the *Contaminated Land Management Act* 1997 No. 140 (NSW).

Remediation Action Plan means a plan approved by a Site Auditor for the remediation of any part of the Land, including by way of adoption and implementation of an environmental management plan, if required for the purpose of obtaining any Approval.

Required Face Value means the face value equivalent to \$167,678 as increased by CPI in accordance with paragraph 1.3 of Schedule 10.

Revised Bond Amounts has the meaning given to that term in paragraph 1.3 of Schedule 10.

Road Works means those items as set out in part 2 of Table 2 of Schedule 3.

Site Auditor has the same meaning as in *Contaminated Land Management Act 1997 (No 140 (NSW))*.

Subdivision has the meaning given to "subdivision of land" in section 4B of the EP&A Act and **Subdivide** has a similar meaning.

Subdivision Certificate has the same meaning as in the EP&A Act.

Supplier has the meaning given to that term in clause 14.3 to this Deed.

Suspension Expiry Date means the date on which the Suspension Period ends.

Suspension Period means the period of time from and including the date on which a document initiating a Legal Challenge has been served on the Council and the Developer and ending on:

- (a) subject to paragraphs (b) and (c), the date on which:
 - (i) the Legal Challenge is discontinued;
 - (ii) final orders (apart from any orders as to costs) are made in the Legal Challenge; or
 - (iii) for any other reason, the Legal Challenge no longer includes an application for a declaration that the Development Consent is invalid;

whichever is the earlier;

- (b) subject to paragraph (c), if an Appeal Notice is filed and served in connection with final orders in the Legal Challenge or an Appeal from the Legal Challenge (apart from any orders as to costs), the date on which:

- (i) the Appeal is discontinued;
- (ii) final orders (apart from any orders as to costs) are made in the Appeal; or
- (iii) for any other reason, the Appeal no longer includes an appeal in respect of a Court decision regarding the validity of the Development Consent whichever is earlier,

unless the orders in the Appeal require the Legal Challenge to be remitted to another Court in relation to the validity of the Development Consent, in which case paragraph (a) re-applies; or

- (c) the date which is 15 Business Days after the date on which the period of time allowed for filing an Appeal Notice described in paragraph (b) has expired, if no valid Appeal Notice has been filed and served by that first-mentioned date.

For the avoidance of doubt, the Suspension Period continues if paragraph (b) applies.

Taxes means taxes, levies, imposts, deductions, charges and duties (including stamp and transaction duties) excluding GST together with any related interest, penalties, fines and expenses in connection with them, except if imposed on, or calculated having regard to, net income of a person.

1.2 General

In this Deed:

- (a) headings are for convenience only and do not affect interpretation;

and unless the context indicates a contrary intention:

- (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 document (including this Deed) is to that document as varied, novated, ratified or replaced from time to time;
- (e) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments, replacements and substitutions;
- (f) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (g) 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 Deed, and a reference to this Deed includes all schedules, exhibits, attachments and annexures to it;
- (h) 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;
- (i) "includes" in any form is not a word of limitation;
- (j) a reference to "\$" or "dollar" is to Australian currency;
- (k) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Deed; and
- (l) any capitalised term used, but not defined in this Deed, will have the meaning ascribed to it under, and by virtue of, the EP&A Act.

2. Planning Agreement

2.1 Condition Precedent

- (a) The provisions of this deed, other than clauses 5, 6, 7, 8, 10, 12, 16, 19 will commence on the date that Development Consent for the Development has been granted by Council; and
- (b) Clauses 5, 6, 7, 8, 10, 12, 16, 19 will commence upon the execution of this deed by all parties.

2.2 Planning agreement under the EP&A Act

This Deed constitutes a planning agreement within the meaning of section 93F of the EP&A Act.

2.3 Application of the Planning Agreement

This Deed applies to:

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

3. Development Contributions

3.1 Payment or Delivery of Contributions.

The Parties agree that the Developer must (at its Cost and risk):

- (a) Undertake the Contribution Works in accordance with Schedule 3, Schedule 4 and Schedule 16(as applicable); and
- (b) Dedicated and transfer (as the case may be) the Contribution Land to Council in accordance with Schedule 3, Schedule 5, Schedule 12 and Schedule 17.

4. Application of s94, 94A and 94EF of the EP&A Act

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

5. Caveat

The Developer acknowledges and agrees that:

- (a) When this Deed is executed by the Land Owners (whether or not the Council has executed this Deed), the Council is deemed to have acquired, and the Land Owners have deemed to have granted, an equitable estate and interest in the Land for the purposes of section 74F(1) of the Real Property Act and consequently the Council has a sufficient interest in the Land in respect of which to lodge with the NSW Land and Property Information a caveat notifying that interest; and
- (b) Subject to clause 7, the Council may (but only whilst this Deed is not registered) lodge a caveat on the Land to protect its rights under this Deed and the Land Owners will not object to the Council lodging a caveat in the relevant folio of the Register for the Land nor (subject to the provisions of this clause 5) will it seek to remove any caveat lodged by the Council.
- (c) If Council lodges a caveat in accordance with this clause, then the Council will do all things reasonably required to ensure that the caveat does not prevent or delay either the registration of this Deed or any Dealing which is not inconsistent with this Agreement.
- (d) The Council (as the Caveator) will provide any consent the Land Owners may reasonably require to enable this Deed or any Dealing to be registered.
- (e) The Council will promptly, following registration of this Deed, do all things reasonably necessary to remove the caveat from the title to the Land.

6. Registration of this Deed

6.1 Ownership of the Land

The Land Owners represent and warrant that they are the legal and beneficial owners of the Land.

X **6.2 Registration on title**

The Land Owners agree to promptly do all things that are necessary for Council to procure the registration of this Deed in the relevant folio of the Register for the Land in accordance with section 93H of the EP&A Act and in accordance with Schedule 8,

7. Release and Discharge

The Council agrees to release and discharge this Deed and remove any caveat lodged by the Council pursuant to clause 5 on the release and discharge terms contained in clause 5 and Schedule 9 to this Deed.

8. Breaches to be rectified

(a) If the Council considers that the Developer or Land Owners (as the case may be) have defaulted on the performance of any of their obligations under this Deed, then the Council may give written notice to the Developer or Land Owners (as the case may be) which:

(i) identifies the nature of the breach; and

(ii) provides at least 20 Business Days (except in the case of an emergency or where there is an issue of public safety where less time may be specified) with which the Developer or Land Owners (as the case may be) must rectify that breach and what action must be taken to rectify that breach.

(b) In accordance with sections 109H and 109J of the EP&A Act and section 146A of the EP&A regulation, all breaches of this Deed for which the Council has provided a notice requiring rectification of that breach to the Developer or Land Owners (as the case may be) must be rectified prior to the issue (following the date that such notice is provided to the Developer) of any Construction Certificate, Subdivision Certificate or Occupation Certificate relating to the Land or the Development.

9. Additional Security

9.1 Bonds

The Developer has agreed to provide security (in the form of Bonds) to the Council for performance of its obligations under this Deed on the terms and conditions of Schedule 10.

10. Assignment and other dealings

The Land Owners agree that the provisions of Schedule 11 apply in relation to any proposed assignment or dealing in relation to the Land (or any part of it) or of the Developer's or Land Owners' (as the case may be) interest in this Deed.

11. Review of Deed

The Parties may agree to review this Deed. Any review or modification will be conducted in the circumstances and in the manner determined by the Parties.

12. Dispute resolution

The Parties agree that any disputes under or in relation to this Deed will be resolved in accordance with the procedures set out in Schedule 7.

13. Overdue payments**13.1 Interest on overdue money**

The Developer agrees to pay interest to the Council on any amount payable by it under this Deed from when it becomes due for payment, during the period that it remains unpaid, on demand or at times determined by the Council, calculated on daily balances. The rate to be applied to each daily balance is the Interest Rate.

13.2 Compounding

Interest which is not paid when due for payment may be capitalised by the Council at intervals which the Council determines from time to time or, if no determination is made, then on the first day of each month. Interest is payable on capitalised interest at the rate and in the manner referred to in this clause 13.

13.3 Interest on liability merged in judgment or order

If a liability under this Deed becomes merged in a judgment or order, then the Developer agrees to pay interest to the Council on the amount of that liability as an independent obligation. This interest accrues from the date the liability becomes due for payment both before and after the judgment or order until it is paid, at a rate that is the higher of the rate payable under the judgment or order and the rate referred to in this clause 13.

For the avoidance of doubt, if a liability under this Deed becomes merged in a judgment or order then the Developer will only be required to pay either interest payable under the judgment or order or interest calculated under this clause 13 but not both.

14. GST**14.1 Interpretation**

- (a) Except where the context suggests otherwise, terms used in this clause 14 have the meanings given to those terms by the GST Act.
- (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 14.
- (c) A reference to something done (including a supply made) by a party includes a reference to something done by any entity through which that party acts.

14.2 Reimbursements

Any payment or reimbursement required to be made under this Deed that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost,

expense or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates.

14.3 Additional amount of GST payable

Subject to clause 14.5, if GST becomes payable on any supply made by a party (Supplier) under or in connection with this Deed:

- (a) any amount payable or consideration to be provided under any provision of this Deed (other than this clause 14), for that supply is exclusive of GST;
- (b) any party (Recipient) that is required to provide consideration to the Supplier for that supply must pay an additional amount to the Supplier equal to the amount of the GST payable on that supply (GST Amount), and:
 - (i) where that GST Amount is payable by the Council, the GST Amount will be limited to the amount of the input tax credit (if any) to which the Council (or the representative member of any GST group of which the Council, in any capacity, is a member) is entitled in relation to the Council's acquisition of that supply and is payable within 5 Business Days after the Council (or the representative member of any GST group of which the Council, in any capacity, is a member) has received the benefit of that input tax credit; and
 - (ii) in any other case, the GST Amount is payable at the same time as any other consideration is to be first provided for that supply; and
- (c) the Supplier must provide a tax invoice to the Recipient for that supply, no later than the time at which the GST Amount for that supply is to be paid in accordance with clause 14.3(b).

14.4 Variation

- (a) If the GST Amount properly payable in relation to a supply (as determined in accordance with clause 14.3 and clause 14.5), varies from the additional amount paid by the Recipient under clause 14.3, then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this clause 14.4(a) is deemed to be a payment, credit or refund of the GST Amount payable under clause 14.3.
- (b) The Supplier must issue an adjustment note to the Recipient in respect of any adjustment event occurring in relation to a supply made under or in connection with this Deed as soon as reasonably practicable after the Supplier becomes aware of the adjustment event.

14.5 Exchange of non-monetary consideration

- (a) To the extent that the consideration provided for the Supplier's taxable supply to which clause 14.3 applies is a taxable supply made by the Recipient (Recipient Supply), the GST Amount that would otherwise be payable by the Recipient to the Supplier in accordance with clause 14.3 shall be reduced by the amount of GST payable by the Recipient on the Recipient Supply.
- (b) The Recipient must issue to the Supplier an invoice for any Recipient Supply on or before the time at which the Recipient must pay the GST Amount in accordance with clause 14.3 (or the time at which such GST Amount would have been payable in accordance with clause 14.3 but for the operation of clause 14.5(a)).

14.6 No merger

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

15. Explanatory Note

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

16. Notices

16.1 Form

Any notice, consent, information, application or request that must or may be given or made to a party under this Deed is only given or made if it is in writing and delivered or posted to that party at its address set out below or faxed to that party at its fax number set out below:

Council

Name: Council of the City of Ryde
Address: 1 Devlin Street, Ryde NSW 2112
Fax: (02) 9952 8222
For the attention of: General Manager

Developer

Name: DEP Shepherds Bay Pty Ltd (ACN 167 939 504)
Address: Suite 202, Level 2, 127 York Street, Sydney, NSW 2000
Fax: (02) 9931 4888
For the attention of: Chief Executive Officer

16.2 Change of address

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.

16.3 Receipt

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; and
- (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.

16.4 Receipt - next Business Day

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.

17. Schedules and Annexures to this Deed

The Parties agree:

- (a) that all the Schedules and Annexures form part of this Deed; and
- (b) to comply with the provisions of those Schedules and Annexures.

18. General provisions

The Parties agree to the miscellaneous and general provisions set out in Schedule 13 to this Deed apply.

19. Obligations under this Planning Agreement

- (a) Subject to paragraphs (e) and (h) in this clause 19, where a Legal Challenge is commenced the parties' obligations under this Deed are immediately suspended and neither the Developer shall have any obligation to make any Contributions under this Deed until the expiration of the Suspension Period or where paragraph (e) of this clause 19 applies.
- (b) Subject to paragraph (c) in this clause 19, where any Legal Challenge is commenced and/or where the Court declares or orders any Approval to be invalid, the Parties agree to:
 - (i) meet, no later than 5 Business Days after the date of service of commencement of the Legal Challenge and after any declaration or order that Approval is invalid, to discuss in good faith;
 - (ii) the suspension of the parties rights and obligations under this Agreement; and
 - (iii) their intentions in relation to that declaration or order, including, without limitation, any intention to Appeal that declaration; and
 - (iv) consult regularly with the other in relation to any Appeal and must respond within a reasonable period to each other's questions, queries and enquiries and generally keep each other informed regarding the progress of any such Appeal.
- (c) The parties will not be required to meet or consult pursuant to paragraph (b) of this clause 19 in circumstances where any of the Parties receives legal advice that it should not so meet or consult with the other Party in connection with any such declaration or Appeal.
- (d) The parties agree that any discussions held between the Parties under this clause 19 are confidential and that a common interest between them exists for the purposes of legal professional privilege in connection with those discussions.
- (e) Notwithstanding paragraph (a), the Developer may elect at its Cost and risk to proceed with the Development and in doing so, must continue to comply with its obligations under this Deed unless and until such time as the Approval is declared invalid.
- (f) The parties agree that if this clause 19 applies and there is a suspension of the parties' obligations under this Deed, where necessary, any Contribution Works that have been commenced, but not completed, will be left in a state that is safe to the public before

those Contribution Works cease notwithstanding the commencement of the Suspension Period.

- (g) If this Deed is terminated as the result of any Appeal the parties will meet in accordance with paragraph (b) of this clause 19 to discuss the return of the Bonds and any matters that may need to be addressed as a result of the commencement of the Contribution Works.
- (h) If any Approval is declared invalid, the parties will meet in accordance with clause 19 (b) of this Deed to discuss their respective rights and obligations under this Deed as a consequence of that determination.
- (i) If the Developer elects to proceed with the Development notwithstanding paragraphs (a) and (f), then the Developer is liable for and indemnifies the Council against all liability, loss, Costs and expenses (including Legal Costs) arising from or incurred in connection with the Developer proceeding with the Development despite the Legal Challenge and the operation of paragraph (a).

Schedule 1 - Section 93F Requirements

The Parties acknowledge and agree that the table set out below provides for certain terms, conditions and procedures for the purpose of the Planning Agreement complying with the EP&A Act.

Requirement under the EP&A Act	This Planning Agreement
<p>Planning instrument and/or development application - (Section 93F(1))</p> <p>The Developer has:</p> <p>(a) sought a change to an environmental planning instrument.</p> <p>(b) made, or proposes to make, a Development Application.</p> <p>(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.</p>	<p>(a) No</p> <p>(b) Yes</p> <p>(c) Yes</p>
<p>Description of land to which this Deed applies - (Section 93F(3)(a))</p>	<p>The Land described in paragraph 1 of Schedule 2.</p>
<p>Description of change to the environmental planning instrument or the development to which this Deed applies - (Section 93F(3)(b))</p> <p>Describe:</p> <p>(a) the proposed change to the environmental planning instrument to which this Deed applies; and</p> <p>(b) the development to which this Deed applies.</p>	<p>(a) Not applicable</p> <p>(b) The Development described in paragraph 2 of Schedule 2</p>
<p>The scope, timing and manner of delivery of contribution required by this planning agreement - (Section 93F(3)(c))</p>	<p>As set out in Schedule 3 - Contributions Schedule, Schedule 4 - Contribution Works Procedures and Schedule 5 - Contribution Land Procedures.</p>
<p>Applicability of Section 94 of the EP&A Act - (Section 93F(3)(d))</p>	<p>The application of section 94 of the EP&A Act is not excluded in respect of this Deed and for the avoidance of doubt, contributions (if any) under section 94 will be required to be paid.</p>
<p>Applicability of Section 94A of the EP&A Act - (Section 93F(3)(d))</p>	<p>The application of section 94A of the EP&A Act is not excluded in respect of this Deed and for the avoidance of doubt, contributions (if any) under section 94A will be required to be paid.</p>
<p>Applicability of Section 94EF of the EP&A Act - (Section 93F(3)(d))</p>	<p>The application of section 94EF of the EP&A Act is not excluded in respect of this Deed and for the avoidance of doubt, contributions (if any) under section 94EF will be required to be paid.</p>

Requirement under the EP&A Act	This Planning Agreement
<p>Consideration of benefits under this Deed if section 94 applies - (Section 93F(3)(e))</p> <p>Are the benefits under this Deed to be taken into consideration if Section 94 of the EP&A Act is not excluded?</p>	No
<p>Mechanism for Dispute resolution - (Section 93F(3)(f))</p> <p>This Deed provides a mechanism for the resolution of disputes under the agreement?</p>	Refer to clause 12 and Schedule 7.
<p>Enforcement of this Deed (Section 93F(3)(g) and section 93F(3)(h))</p> <p>This Deed provides for enforcement by a suitable means in the event of a breach.</p>	Refer to clauses 5, 6, 8 and 9 and Schedule 4 and Schedule 5
<p>Registration of this Deed</p> <p>The parties agree that this Deed will be registered in accordance with clause 6.</p>	Yes
<p>No obligation to grant consent or exercise functions - (Section 93F(9))</p> <p>The parties acknowledge that this Deed does not impose an obligation on a planning authority to grant a Development Consent, or to exercise any function under the EP&A Act in relation to a change to an environmental planning instrument.</p>	Refer to paragraph 1.8 of Schedule 13.

Schedule 2 - Description of the Land and the Development

1. Title

Those parts of the land comprised in as Lot 13 in Deposited Plan 7533 and Lots A and B in Deposited Plan 343831, being the whole of the land in Certificate of Title Folio Identifiers 13/7533, A/343831 and B/343831 and know as 21-24 Railway Street, Meadowbank.

2. Development

The construction of a residential flat building on the Land comprising of seventy three (73) dwellings, two (2) basement levels of car parking future development and the Contribution Works and Contribution Land identified in Schedule 3, Schedule 4 and Schedule 16 (as the case may be).

Schedule 3 - Contributions Schedule

1.1 Contributions Tables

Table 1 – Contribution Land

Column 1 - Contribution	Column 2 - Date Contribution Land is to be dedicated
<p>1. The Contribution Land for Road</p> <p>The dedication of part of the Land, being that area identified as "Proposed Road Widening" (approximately 161 square metres and 2.6 metres wide) in Schedule 17 - Land Dedication Plan, to the Council as Public Road.</p>	<p>Prior to the earlier occurrence of:</p> <p>(a) the issue of any Occupation Certificate for any part of the Development; and</p> <p>(b) the occupation of any part of the Development.</p>
<p>2. The Contribution Land for Affordable Housing</p> <p>The transfer in strata to Council of that part of the Building, being the Affordable Housing Unit marked as Unit 16 and the associated car parking space and storage area marked as CP16 and (W) respectively (with a combined total area of approximately 92m² square metres) in Schedule 12 – Affordable Housing Unit Plan.</p>	<p>Prior to the earlier occurrence of:</p> <p>(a) the issue of any Occupation Certificate for any part of the Development; and</p> <p>(b) the occupation of any part of the Development.</p>

Table 2 - Contribution Works

Column 1 - Contribution	Column 2 - Date Contribution Works are to be delivered/Practically Completed
<p>1. Remediation of Contribution Land</p> <p>The Developer must ensure that prior to the Contribution Land being transferred to the Council:</p> <p>(i) The Contribution Lands are to be remediated in accordance with any Remediation Action Plan as approved by a Site Auditor so that they are made suitable for their use as road and public domain (as the case may be) in accordance with the <i>Contaminated Lands Management Act 1997</i>; and</p> <p>(ii) Provide certification from a Site Auditor that the Contribution Lands have been remediated and are suitable for their intended use by Council as contemplated under the terms of this Deed.</p>	<p>To be Practically Completed and Remediation verified by the Site Auditor prior to the date Contribution Land is to be dedicated and transferred (as the case may be) to Council as identified in Table 1 of this Schedule 3.</p>
<p>2. Road, footpath and public domain construction and utility services installation</p> <p>The Developer will undertake all road and footpath construction</p>	<p>To be Practically Completed</p>

	<p>within the area identified as "Proposed Road Widening" (approximately 161 square metres and 2.6 metres wide) on the plan contained in Schedule 17 - Land Dedication Plan and to at least the construction standard referred to in Schedule 16 - Indicative Public Domain Concept Plan (security for which works is to be provided for the value of the Required Face Value as indexed in accordance with paragraph 1.3 of Schedule 10)</p> <p>The works must include the following:</p> <ul style="list-style-type: none"> (i) Roads including wear to surface, pavement, sub base, subgrade, kerb and gutter, drainage, line marking and sign posting; (ii) Paving, including compacted sub-grade, concrete substrate, concrete unit pavers; (iii) Kerb re-alignment and replacement; (iv) Drainage works; (v) Service requirements (power, water, gas etc., including undergrounding these services with provision of a 1.5 metre depth below design ground level for these services); (vi) Adjustments to all existing services pits and man holes; (vii) Demolition of existing kerbs and infra-structure; (viii) Street lighting and associated services; (ix) Street trees and associated urban details; and (x) Traffic control and associated temporary infrastructure. 	<p>prior to the date that the Contribution Land for Road is to be dedicated to Council as listed in Table 1 of this Schedule 3.</p>
<p>3.</p>	<p>Affordable Housing Unit</p> <p>The Developer will design, construct and complete the Affordable Housing Unit in accordance with the following requirements:</p> <ul style="list-style-type: none"> (a) It is to have a minimum floor area of 92m²; (b) It is to be constructed and finished so as to be fully operational but with the exclusion of any loose furniture; and (c) It is to be designed so as to be Accessible. 	<p>Prior to the earlier occurrence of:</p> <ul style="list-style-type: none"> (a) the issue of any Occupation Certificate for any part of the Development; and (b) the occupation of any part of the Development.

Schedule 4 - Contribution Works Procedures

This Schedule 4 applies to all Contribution Works.

1.1 Approvals and Design responsibility

- (a) The Developer must at its Cost and risk:
 - (i) prepare all Applications and submit such applications to Council and obtain all Approvals necessary to carry out the Contribution Works; and
 - (ii) comply with all conditions of all such Approvals
- (b) The Developer agrees to procure the design of the Contribution Works in accordance with this Deed and the Development Consent; and
- (c) The Council acknowledges that a Construction Certificate for the Development may be issued prior to the Approvals for the Contribution Works relating to the Road.

1.2 Construction phase

- (a) Subject to paragraph 1.2(b) of this Schedule 4, the Developer must procure the execution and completion of the Contribution Works in accordance with:
 - (i) the Approvals;
 - (ii) any Contribution Works program agreed with the Council; and
 - (iii) its other obligations under this Deed.
- (b) The Developer must not commence construction of any of the Contribution Works until it has given the Council copies of all Approvals relating to the Contribution Works.
- (c) The Developer must not commence construction of the Contribution Works comprising the Road Works unless and until the Council has received:
 - (i) the design of the Road Works; and
 - (ii) the program for the construction of the Road Works, including anticipated dates for construction and completion.

1.3 Review of Contribution Works and Construction Documents

The Developer acknowledges and agrees that:

- (a) the Council may but is not obliged to critically analyse the plans and specifications of the Contribution Works;
- (b) the Council is not responsible for any errors omissions or non-compliance with any Law or the requirement of any Authority by reason of agreeing to the plans and specifications of the Contribution Works;
- (c) the Council is not liable for any liability, loss or Cost incurred by the Developer because of any defect in the design or construction of any part of the Contribution Works; and

- (d) no comment, review or information supplied to the Developer by the Council alters or alleviates the Developer from its obligation to construct and complete the Contribution Works in accordance with this Deed.

1.4 Developer responsibilities

- (a) The Developer is responsible for the delivery and care of the Contribution Works at all times prior to Practical Completion of the Contribution Works.
- (b) Prior to Practical Completion, the Developer is responsible for:
 - (i) providing all things and taking all measures reasonably within its control to protect people and property in relation to the Land where failure to do so may render the Council or the Developer liable under the Law; and
 - (ii) taking any urgent action in relation to the Land necessary to protect people and the consequences of any failure to take such action where failure to do so may render the Council or the Developer liable under the Law.

1.5 Damage

If the Developer or the employees or agents of the Developer damage any public utilities and services or property on or adjacent to the Land, the Developer must promptly make good the damage and pay any compensation which the Law requires the Developer to pay.

1.6 Best Industry Practice

The Developer must ensure that the Contribution Works it has procured to be designed and carried out are designed and carried out according to Best Industry Practice.

1.7 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 purpose for which they are required under this Deed;
- (b) without the use of asbestos in any form;
- (c) in compliance with relevant standards determined by Australian Standards Limited, the Building Code of Australia and any relevant manufacturers' standards; and
- (d) so that the Contribution Works, when completed, are suitable for the purpose for which they are required as contemplated by the relevant Approvals.

1.8 Insurance

The Developer must ensure that there is effected and maintained insurance policies covering such risks, and on terms, reasonably acceptable to the Council including:

- (a) physical loss, damage or destruction of each aspect of the Contribution Works (including any associated temporary works);
- (b) third party liability;
- (c) contractors;
- (d) professional indemnity insurance with respect to design works only; and

- (e) If required by law, Home Warranty Insurance.

The policies must provide cover for the period from the date of the commencement of construction of the Contribution Works until the end of any relevant Defects Liability Period for each and every aspect of the Contribution Works and as required under the Home Building Act 1989 in the case of Home Warranty Insurance.

1.9 Amount of property insurance

The insurance cover in relation to works insurance must be for an amount not less than the full insurable value of the relevant Contribution Works on a full reinstatement and replacement basis (including extra Costs of reinstatement, Costs of demolition and removal of debris, and professional fees).

1.10 Insurance generally

All insurances which the Developer is required by this Deed to effect and maintain:

- (a) must be with an Insurer;
- (b) must note the rights and interests of the Council; and
- (c) must not in any respect limit or derogate from the liabilities or obligations of the Developer under this Deed.

1.11 Providing proof of insurance

Whenever reasonably requested in writing by the Council, the Developer must give the Council certificates of the insurance policies which the Developer is required by this Deed to effect and maintain.

1.12 Premiums

The Developer must punctually pay all premiums in respect of all insurances required under this Agreement.

1.13 Additional Obligations

The Developer must:

- (a) not do or omit to do anything which if done or not done might vitiate, impair, derogate or prejudice any insurance or might prejudice any claim under any insurance policy;
- (b) if necessary, rectify anything which might prejudice any insurance policy;
- (c) reinstate an insurance policy if it lapses;
- (d) immediately notify the Council in writing if an insurer gives notice of cancellation in respect of any insurance policy; and
- (e) give full, true and particular information to the insurer of all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or the payment of all or any benefits under the insurance.

1.14 Application of insurance proceeds

If all or any part of the Contribution Works are damaged or destroyed prior to Practical Completion thereof:

- (a) all insurance proceeds in respect of that damage or destruction must be applied to repair or reinstate the Contribution Works, except if the damage or destruction is caused by the Council;
- (b) if the insurance proceeds received under the insurances in respect of the damage or destruction are less than the cost of repairing or replacing the Contribution Works (or those insurances are void or unenforceable and there are no proceeds), the Developer must complete the repair and replacement of the Contribution Works using its own funds; and
- (c) if the insurance proceeds received under the insurances in respect of the damage or destruction exceed the Costs of repairing or replacing the Contribution Works, the Developer will be entitled to keep that excess.

1.15 Input tax credits

Where the Developer has effected any insurance policy referred to in this Deed before the date of this Deed, the Developer:

- (a) warrants that it informed the insurer of the extent of its entitlement to an input tax credit for the last premium it paid at or before the time of first making any subsequent claim under the insurance policy; and
- (b) must inform the insurer of the extent of its entitlement to an input tax credit for any future premium it pays immediately after paying that premium.

Where the Developer effects any insurance policy referred to in this Deed after the date of this Deed, the Developer must inform the insurer of the extent of its entitlement to an input tax credit for any premium it pays immediately after paying that premium.

1.16 Certification

When the Developer is of the opinion that the Contribution Works have reached Practical Completion, the Developer must:

- (a) request the relevant Certifier to issue a certificate confirming Practical Completion (Certificate of Practical Completion); and
- (b) at the same time give the Certifier (if the Council is not the Certifier) a copy of that request.

1.17 Certifier to respond

Within 10 Business Days after the receipt of the Developer's request, the Council must procure the Certifier to either:

- (a) give the Developer (with a copy to the Council at the same time) a Certificate of Practical Completion certifying that the Contribution Works have reached Practical Completion; or
- (b) give the Developer (with a copy to the Council at the same time) the reasons for not issuing that certificate and provide a detailed list of work required to be completed in order for that certificate to be issued.

1.18 Dispute where no Certificate of Practical Completion

If within 10 Business Days after receipt of the Developer's request the Certifier does not either issue the Certificate of Practical Completion for the Contribution Works or give the Developer reasons for not issuing the certificate, then either the Council or the Developer may regard the circumstances as constituting a dispute between the Council and the Developer.

1.19 Dispute of detailed list

- (a) If the Certifier issues the detailed list referred to in paragraph 1.17(b), then the Developer may dispute the detailed list within 10 Business Days of the detailed list being issued by notice in writing to the Certifier.
- (b) If the Certifier and the Developer are not able to resolve the dispute about the detailed list within 10 Business Days of the Developer notifying the Certifier of the dispute about the detailed list, then either the Council or the Developer may regard the circumstances as constituting a dispute between the Council and the Developer.
- (c) If the Certifier and the Developer resolve the dispute about the detailed list, then the Certifier must provide an updated detailed list or withdraw the detailed list and issue the Certificate of Practical Completion.

1.20 Carrying out required work

- (a) On receipt of the detailed list referred to in paragraph 1.17(b) in this Schedule 4 or the updated detailed list referred to in paragraph 1.19(c) in this Schedule 4 the Developer must carry out the work referred to in that list and, on completion of that work, request the Certifier to issue a Certificate of Practical Completion.
- (b) If the Certifier is satisfied that all such work has been completed in accordance with this Deed then, the Developer must procure the Certifier to issue the Certificate of Practical Completion within 10 Business Days after receipt of the Developer's request. Otherwise the provisions of paragraphs 1.17 to 1.19 in this Schedule 4 inclusive re-apply.

1.21 Prerequisites for Certificate of Practical Completion

Despite paragraph 1.18 in this Schedule 4, a Certificate of Practical Completion for any separate aspect of the Contribution Works may not issue unless and until:

- (a) where relevant copies of all necessary documents and Approvals issued by the Consent Authority or relevant accredited certifier acknowledging completion of a specific aspect of the Contribution Works have been delivered to the Council; and
- (b) copies of all other certificates, consents and Approvals required of any relevant Authority, whose certificate, consent or approval is required for the erection, use or occupancy of that Contribution Works have been delivered to the Council;

1.22 Bond

If there is a defect or omission in relation to the Contribution Works which prevents the Certificate of Practical Completion being issued, and, if the Council (in its absolute discretion) agrees to accept a Bond to secure completion of that defect or omission, then:

- (a) if the Developer agrees, the Developer must:

- (i) provide the Bond for the amount required by the Council (in its absolute discretion) to secure that defect or omission; and
- (ii) undertake in writing to rectify that defect or omission within the time nominated by Council (acting reasonably);
- (b) upon receipt of the Bond and the Developer's undertaking, the Council will direct the relevant Certifier to disregard that defect or omission for the purposes of certifying Practical Completion of the Contribution Works;
- (c) the Developer must rectify the defect or omission in accordance with its undertaking; and
- (d) if the Developer fails to rectify the defect or omission in accordance with its undertaking, then the Council may call on the Bond in accordance with paragraph 8 of Schedule 10 and/or rectify the breach in accordance with paragraph 2 of Schedule 6.

1.23 Providing documents to the Council

If the Council reasonably so requires, the Developer must use all reasonable endeavours to procure the issue and delivery to the Council of copies of the following items (as may be relevant) in relation to the Contribution Works:

- (a) a copy of as built drawings and all warranties and operations manuals given in connection with the Contribution Works; and
- (b) a copy of all certificates issued by any Authority in relation to any part of the Contribution Works which have not previously been delivered to the Council,

promptly, and in any event within 90 Business Days, after Practical Completion.

1.24 Rectification

- (a) At any time during the Defects Liability Period (in respect of a Contribution), the Council may inspect the Contribution Works for the purpose of ascertaining what defects and omissions (if any) in the Contribution Works are required to be made good by the Developer.
- (b) The Council may give notice to the Developer that:
 - (i) states that part of the Contribution Works that are defective, giving details;
 - (ii) specifies the works which the Council considers are required to rectify the defect;
 - (iii) provides a reasonable estimate of the Costs and Legal Costs to rectify such works, including particulars of how those Costs and Legal Costs were calculated; and
 - (iv) allows the Developer a reasonable period to rectify such works.
- (c) The Developer must rectify any defects or omissions in the Contribution Works which are identified in a notice issued in accordance with paragraph 1.24 (b) of this Schedule 4.
- (d) If the Developer fails to complete or rectify such works within the period required by a notice issued under paragraph 1.24 (b) of this Schedule 4 then the Council may have such works completed or rectified and the Developer must reimburse the Council

promptly following any demand by the Council for all Costs and Legal Costs incurred by the Council in completing or rectifying such works.

- (e) The Developer indemnifies the Council for all monies payable by the Developer to the Council pursuant to paragraph 1.24 (d) of this Schedule 4.
- (f) The indemnity in paragraph 1.24 (e) of this Schedule 4 is a continuing obligation, separate and independent from the Developer's other obligations and survives completion, rescission or termination of this Deed. The Developer must pay on demand any amount it must pay under the indemnity in paragraph 1.24(e) of this Schedule 4.

1.25 Development Program

- (a) The Developer must provide an updated Development Program to the Council from time to time as the Development progresses, and as a minimum must provide an updated program:
 - (i) as soon as possible upon lodgement of an Application for construction of a Building with the relevant Consent Authority;
 - (ii) whenever there are delays in the Development which materially impact on the milestones identified in the previous Development Program provided to Council which relate to the issue of a Construction Certificate or Occupation Certificate; and
 - (iii) no less than 6 months before the Developer lodges an Application for an Occupation Certificate for any Building with the relevant Consent Authority.
- (b) The Council is not to disclose the Development Program referred to in clause 1.25(a) above to any third party unless required by law or in any other circumstances, with the consent of the Developer.

1.26 Remediation

Prior to the dedication of the Contribution Land to Council, the Developer must:

- (a) comply with all legislation and guidelines in carrying out the Remediation; and
- (b) satisfy any conditions in the Site Auditor's statement, including any measures required to be implemented to ensure any ongoing monitoring obligations.

Schedule 5 - Contribution Land Procedures

1.1 Approvals

No less than 10 Business Days before the timing identified in Column 2 of Table 1 of Schedule 3, the Developer must at its Cost and risk:

- (a) prepare all Applications and obtain all Approvals necessary to:
 - (i) Subdivide the Land by one or more plans of subdivision to separate the Contribution Land from the Land (Relevant Subdivision); and
 - (ii) As required, create such easements, restrictions on use and covenants as agreed by the Council and the Developer (both acting reasonably), as being necessary or usual in the circumstances to permit and promote public access to the Contribution Land, which easements, restrictions on use or covenants must be registered at or about the same time as the relevant plan of subdivision (Relevant Easements);
- (b) comply with all conditions of all such Approvals; and
- (c) procure Land and Property Information NSW to register the relevant documentation and plans to create the Relevant Subdivision and register the Relevant Easements consistent with all such Approvals.

1.2 Developer undertakings regarding Contribution Land

In accordance with the timing identified in Column 2 of Table 1 of Schedule 3, the Developer must (at its Cost and risk):

- (a) Do all acts and execute and deliver all documents (in form and content reasonably satisfactory to the Council) to the Council (or such other person as the Council may reasonably direct) in order to give effect to the dedication or transfer (as the case may be) of the Contribution Land to the Council for a consideration of \$1.00
- (b) Deliver to the Council:
 - (i) the certificate or certificates of title for the Contribution Land;
 - (ii) any consents and other documentation in registrable form required for the transfer (and registration) of the Contribution Land;
 - (iii) any permits in connection with the Contribution Land and any consents and other documentation in a registrable form necessary, or otherwise required by the Council, for the transfer (and registration) of those permits;
- (c) Take any other necessary action (including paying all Taxes) to give effect to the transfer of the title of the Contribution Land to the Council (or such other person as the Council may direct) free of all Encumbrances (other than a Permitted Encumbrance) and affectations (including any charge or liability for rates, taxes and charges) except any caveat lodged over the Contribution Land by the Council in accordance with clause 5 of this Agreement; and
- (d) Without limiting paragraph 1.2 of this Schedule 5, enter into and complete a Contract for the Sale of Land with Council for the transfer of the Affordable Housing Unit to Council for the consideration amount referred to in paragraph 1.2 (a), being \$1.00. Such contract is to be on terms acceptable to Council at its absolute discretion.

1.3

Acquisition

- (a) If the Developer does not transfer or grant to the Council the interests in land as required by this Deed (including the dedication and transfer of the Contribution Land to Council (as the case may be)), the Developer confers on Council an irrevocable option to purchase the Contribution Land and any interests for the amount of \$1.00.
- (b) Except as otherwise agreed between the Developer and the Council, the Developer must ensure that the Contribution Land is free of all Encumbrances (other than Permitted Encumbrances) and affectations (including any charge or liability for rates, taxes and charges), on the date that the Developer is liable to dedicate or transfer (as the case may be) the Contribution Land to the Council in accordance with paragraph 1.2 of this Schedule 5.
- (c) The Developer indemnifies and keeps indemnified the Council against all Claims made against the Council as a result of any acquisition by the Council of the whole or any part of the relevant interest in land under paragraph 0 of this Schedule 5.
- (d) The Developer must pay the Council, promptly on demand, an amount equivalent to all Costs and Legal Costs incurred by the Council acquiring the whole or any part of the relevant interest in land where the Developer is in breach of Schedule 5.

Schedule 6 - Notification and rectification of breach

1. Notice of breach

1.1 Notice of Breach by the Council

If the Council considers that the Developer has defaulted on the performance of any of its respective obligations under this Deed, then the Council may give written notice to the Developer which:

- (i) identifies the nature of the breach; and
- (ii) specifies that the breach must be rectified within at least 20 Business Days (except in the case of an emergency or where there is an issue of public safety where less time may be specified) of the Council's notice.

1.2 Developer's Response to Notice

(a) Promptly upon receipt of a notice under paragraph 1.1 of this Schedule 6, the Developer must either:

- (i) rectify the breach identified in that notice within the time period specified in that notice; or
- (ii) notify the Council in writing that it does not agree that the breach identified in that notice has occurred, and refer the matter for dispute resolution in accordance with clause 12 and Schedule 7.

(b) In the absence of a manifest error on the face of the notice, nothing in paragraph 1.2(a)(ii) of this Schedule 6 will constrain or limit the Council's rights of recourse under this Deed.

1.3 Rights of the Council after Giving Notice

(a) If:

- (i) the Developer does not take either of the actions outlined in paragraph 1.2 (a) of this Schedule 6; or
- (ii) any dispute notified by the Developer is resolved in favour of the Council,

then the Council may take any or all of the actions available to it under this Deed including:

- A. taking any action under paragraph 2.1 of this Schedule 6;
- B. calling on the Bond under Schedule 10;
- C. issue a notice to the Developer which:
 - 1) identifies the nature of the breach; and
 - 2) specifies that the breach must be rectified by the Developer within at least 20 Business Days (except in the case of an emergency or where there is an

issue of public safety where less time may be specified) of the Council's notice,

and the provisions of paragraphs 1.2 and 1.3 of this Schedule 6 will apply in respect of that notice (with the necessary changes having been made) and if the Developer does not take either of the actions outlined in paragraph 1.2(a) of this Schedule 6 then the Council may have recourse against the Developer in relation to the breach.

- (b) The rights of the Council under this Deed, and any action taken by it as referred to in paragraph 1.3 of this Schedule 6 or otherwise, are without derogation from the other rights and remedies available to the Council under this Deed, at law and in equity in relation to any default of the Developer.

2. Council may rectify breach

2.1 Council may perform Developer's obligations

- (b) Before exercising its rights under paragraph 2.1 of this Schedule 6, the Council will give at least 20 Business Days' (except in the case of an emergency or where there is an issue of public safety where less time may be specified) written notice to the Developer of its intention to exercise its rights under paragraph 2.1 of this Schedule 6.
- (c) The Council may (but is not obliged to):
- (i) perform the Developer's obligations where the Developer fails to:
 - A. rectify the breach identified in the notice referred to in paragraph 1.1 of this Schedule 6 within the time period specified in that notice; or
 - B. notify the Council in writing that it does not agree that the breach identified in the notice referred to in paragraph 1.1 of this Schedule 6 and refer the matter for dispute resolution in accordance with clause 12 and Schedule 7;
 - (ii) rectify any breach of this Deed;
 - (iii) carry out other works that are necessary to be carried out; and
 - (iv) otherwise do anything which the Developer should have done under this Deed.
- (d) Without limiting paragraph 2.1 of this Schedule 6 the Developer agrees that the Council, its employees, agents and contractors, may enter onto the Land and do whatever is necessary to remedy the breach, in the absolute discretion of the Council, subject to compliance with the reasonable directions of the Developer relating to work, health and safety and compliance with all Laws.
- (e) The Developer indemnifies and will keep the Council indemnified from and against all claims, actions, demands, losses, damages, Costs and Legal Costs incurred by the Council or for which the Council may become liable in the exercise or purported exercise of the rights of the Council under this paragraph 2.1 of this Schedule 6, except in the event that such Claim is caused by or contributed to by the negligence of the Council or where the Council has exercised its rights in breach of this Deed.

Schedule 7 - Dispute Resolution

1.1 Not commence

A party must not commence any court proceedings relating to a dispute unless it complies with the provisions of this Schedule 7.

1.2 Written notice of dispute

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

1.3 Attempt to resolve

On receipt of notice under clause 1.2 of this Schedule 7, the parties must endeavour in good faith to resolve the dispute expeditiously using informal dispute resolution techniques such as mediation, expert evaluation or other techniques agreed by them.

1.4 Mediation

If the parties do not agree within 10 Business Days of receipt of notice under clause 1.2 of this Schedule 7 (or any further period agreed in writing by them) as to:

- (a) the dispute resolution technique and procedures to be adopted;
- (b) the timetable for all steps in those procedures; or
- (c) the selection and compensation of the independent person required for such technique,

the parties must mediate the dispute in accordance with the Mediation Rules of the Law Society of NSW. The parties must request the president of the Law Society of NSW or the president's nominee to select the mediator and determine the mediator's remuneration.

1.5 Expert evaluation generally

- (a) If the parties agree under clause 1.3 of this Schedule 7 that expert evaluation is the appropriate dispute resolution technique, expert evaluation must be carried out in accordance with this clause 1.5.
- (b) Where the parties are not able to agree on an appropriate expert, the expert is to be appointed by the President of the appropriate institute or association.
- (c) If the parties cannot agree on which institute or association is appropriate in the circumstances (within the same 10 Business Days), either party may refer the selection of the institute or association to the President of the Bar Association of New South Wales to select the most appropriate institute or association.
- (d) The institutes or associations from which the expert may be appointed are:
 - (i) if an architect: the Royal Australian Institute of Architects, New South Wales Chapter;
 - (ii) if an engineer: Engineers Australia,
 - (iii) if a valuer: the Australian Property Institute Incorporated ARBN 007 505 866, New South Wales Division;

- (iv) if an expert in decontamination: Engineers Australia - Environmental College
 - (v) if an expert in insurance: the Australian and New Zealand Institute of Insurance and Finance, New South Wales Branch;
 - (vi) if a real estate agent: the Real Estate Institute of New South Wales;
 - (vii) if a quantity surveyor: the Australian Institute of Quantity Surveyors, New South Wales Chapter;
 - (viii) if a barrister: the New South Wales Bar Association;
 - (ix) if an accountant: the Institute of Chartered Accountants, New South Wales Division;
 - (x) if a solicitor or mediator: the Law Society of New South Wales
- (e) If:
- (i) more than two types of experts are required to determine the dispute; or
 - (ii) the parties agree to appoint a lead expert; or
 - (iii) the President of the Bar Association exercising his or her functions in accordance with clause 1.5(c) consider the appointment of a lead expert appropriate
- then the parties must appoint a lead expert.
- (f) The lead expert must be a solicitor who has practised for not less than 15 years and who has not less than 5 years' experience in alternative dispute resolution. The lead expert must be agreed by the parties and failing agreement will be appointed by the President of the Law Society of New South Wales.
- (g) If a lead expert is appointed the functions of that person are:
- (i) to determine the type of expert required to determine the dispute;
 - (ii) in the absence of agreement between the parties as to the identity of the expert, to request the appropriate institute or association referred to in clause 1.5(b) ("Institutes and associations") to appoint an expert;
 - (iii) to determine the questions to be put to the expert and, if there is more than one expert, to co-ordinate and determine the timing of each expert determination;
 - (iv) if the dispute requires determination by an expert solicitor, to perform that function;
 - (v) if the expert determinations obtained are ambiguous, contradictory or in conflict, to determine the ambiguity, contradiction or conflict;
 - (vi) on receipt of the expert determinations to deliver to the parties a final determination of the dispute;
 - (vii) to determine any question of procedure concerning the dispute resolution process.

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

1.6 Court proceedings

If the dispute is not resolved within 30 Business Days after notice is given under clause 1.2 of this Schedule 7, then any party which has complied with the provisions of this Schedule 7, may in writing terminate any dispute resolution process undertaken under this clause and may then commence court proceedings in relation to the dispute.

1.7 Not use information

The parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement under the provisions of this Schedule 7 is to attempt to settle the dispute. No party may use any information or documents obtained through any dispute resolution process undertaken under the provisions of this Schedule 7 for any purpose other than in an attempt to settle the dispute.

1.8 No prejudice

The provisions of this Schedule 7 do not prejudice the right of a party to institute court proceedings for urgent injunctive or declaratory relief in relation to any matter arising out of or relating to this deed.

1.9 Costs

The Costs of appointing a mediator or expert under this Schedule 7, will be borne equally by the Parties. Each Party will be responsible for its own Legal Costs with respect to any dispute resolution process.

Schedule 8 - Registration of Deed

1.1 Registration

- (a) The Developer warrants that it has obtained all consents to the registration of this Deed on the Title to the Land as are necessary and in particular the consent of any Mortgagee or Lessee registered on the Certificate of Title to the Land;
- (b) The Developer must on execution of this Agreement, produce to the Council together with this Deed for execution by the Council, a letter from the mortgagee (if any) and lessees of any registered lease on the Land (if any) consenting to the registration of this Deed and a copy of the Production Ticket as evidence that the Mortgagee (if any) has produced the Certificate of Title to Land and Property Information for the purpose of registration of the Deed and a bank cheque for the relevant registration fees. If the Land is unencumbered by a mortgagee the Developer must produce the Certificate of Title to Land and Property Information and give a copy of the Production Slip to the Council;
- (c) The Developer must promptly comply with any Requisitions that may be raised with regard to registration of the Deed from Land and Property Information;
- (d) Subject to paragraphs 1.1 (a), (b) and 1.2 of this Schedule 8, the Council will register this Deed on the relevant folio of the Register as soon as reasonably practicable, but in any event no later than 20 Business Days after the execution of this Deed by the Council.
- (e) The Council will notify the Developer following registration of the Deed by the Council and forward the Developer's copy of the Deed to it.

1.2 Caveat

- (a) Without limiting any other provision of this Agreement, until such time as the registration of this Deed is completed, the Developer agrees that Council may register a caveat over the Land precluding any dealing which is not consistent with this Agreement.
- (b) Following registration of this Planning Agreement in the relevant folio of the Register, the Council must promptly remove any caveat registered under clause as soon as possible.

Schedule 9 - Release and Discharge Terms

- (a) Once the Council is satisfied that the Developer has fully complied with all of its obligations under this Deed, at the Developer's request (and Cost), the Council must within ten (10) Business Days of being requested to do so by the Developer:
- (i) provide a full release and discharge of this Deed with respect to the whole of the Land; and
 - (ii) (should the Council not already have done so) sign such documentation as is necessary to remove any caveat lodged by the Council in relation to the Land pursuant to clause 5 of this Deed.
- (b) Despite paragraph (a) above of this Schedule 9, from time to time, the Developer may request the Council to provide a release and discharge of the Planning Agreement to the extent the Planning Agreement affects any part of the Development where:
- (i) the Developer has fully satisfied their obligations under this Planning Agreement (including paying any relevant Contribution Amount) in respect of that part of the Development or provided security to the Council's satisfaction (in its sole and unfettered discretion) to secure performance of any outstanding obligations under this Planning Agreement in respect of that Development;
 - (ii) to the extent the Defects Liability Period for any Contribution Works, the Developer has provided the Council with a Bond in accordance with Schedule 10; and
 - (iii) the Developer is not otherwise in default of any of their obligations under this Planning Agreement (as determined by the Council (acting reasonably), at the time of the Developer's request, unless the Council waives the default.
- (c) If the conditions in paragraph (b) of Schedule 9 are satisfied, the Council will provide a release and discharge of the Planning Agreement with respect of only that part of the Development, which will be registered in priority to the plan of strata subdivision of that Development.

Schedule 10 - Bonds

1. Bonds Required

1.1 Developer to provide

- (a) Prior to the issue of the first Construction Certificate for any part of the Development, the Developer must provide a Bond to the Council for the Contribution Works for the Required Face Value.
- (b) The Bond referred to in paragraph 1.1(a) of this Schedule 10, secures the:
 - (i) Practical Completion of the Contribution Works; and
 - (ii) as reduced in accordance with paragraph 1.2, rectification of any defects and omissions (if any) of the Contribution Works during the Defects Liability Period,in accordance with this Deed.
- (c) For the avoidance of doubt, the Developer acknowledges and agrees that if the actual construction cost of the Contribution Works exceeds the Required Face Value, then the Contribution Works must be completed at the Developer's cost and the scope of the Contribution Works may not be reduced.

1.2 Reduction of the Bonds for the Contribution Works

- (a) Subject to paragraph 1.2(b) of this Schedule 10, the Developer may by written notice to the Council, upon Practical Completion of any part of the Contribution Works, request a reduction of the Bond Amounts for the Contribution Works having regard to the works completed at the time of the request. The Council will act reasonably in the consideration of whether a partial release or exchange (as the case may be) leaves appropriate or adequate security for the balance of the Bond Works.
- (b) If the Developer provides an assessment of the Contribution Works and the Construction Cost from a Quantity Surveyor with its request under paragraph (a) and Council (acting reasonably) is satisfied that the relevant Contribution Works have achieved Practical Completion, then the Council must release to the Developer a reasonable portion of the Bond having regard to the Construction Cost of the relevant completed Contribution Works.
- (c) The Developer acknowledges and agrees that, to secure the Developer's obligations under paragraph 1.24 of Schedule 4 during the Defects Liability Period for each of the Contribution Works, the Bond Amount must not be reduced to an amount which is less than 10 per cent of the Required Face Value.
- (d) Following Practical Completion of all the Bond Works, the Bond Amount will be reduced to an amount which is equal to 10 per cent of the Required Face Value.

1.3 Adjustment of Bond Amounts

- (a) On each Adjustment Date the Bond Amounts are to be adjusted to the Revised Bond Amount as determined in accordance with the following formula:

$$RBA = \frac{BA \times A}{B}$$

where:

RBA is the Revised Bond Amount applicable from the relevant Adjustment Date;

BA is the Bond Amount that is current on the relevant Adjustment Date;

A is the CPI published immediately before the relevant Adjustment Date (and in the case of the first adjustment, the CPI (All Groups Sydney) for the September 2014 quarter);

B is the CPI published immediately before the date of this Deed and, in the case of subsequent adjustments, the immediately preceding Adjustment Date.

No increase or other change will be made to the Revised Bond Amount where B is greater than A or where the Revised Bond Amount is less than 10 per cent of the Required Face Value.

- (b) The Council must give the Developer written notice of the Revised Bond Amounts to apply from the relevant Adjustment Date.
- (c) The Developer must give the Council replacement or further Bonds so that the Council holds Bonds for an amount equal to the Revised Bond Amounts no later than 15 Business Days after receipt of a notice given under paragraph 1.3(b) of this Schedule 10.

2. Face value of Bond

If a Bond is required to be provided by the Developer to the Council under this Deed, then the Developer must procure and give to the Council a Bond with a face value of an amount equivalent to the amount and at the time specified in this Deed.

3. Expiry of Bonds

If, despite the requirements of this Deed, any Bond provided by the Developer is expressed as expiring on a certain date, the Developer must provide the Council with a replacement Bond 20 Business Days prior to the expiry of any Bond subject to paragraph 4 of this Schedule 10.

4. Failure to replace expired Bond

If the Developer fails to provide the Council with a replacement Bond in accordance with paragraph 3 of this Schedule 10, the Council may call on the full amount of such Bond after giving 10 Business Days prior written notice to the Developer.

5. No limitation of obligations

The provision of the Bond does not:

- (a) relieve the Developer from any of its obligations under any other provision of this Deed; or
- (b) limit the right of the Council to recover from the Developer in full all money payable to the Council under this Deed, including without limitation, interest on any such amounts or damages or other losses incurred by the Council.

6. Cash deposit

- (a) If the Council makes demand under any Bond pursuant to paragraph 4 of this Schedule 10, the Council must hold the full amount so paid to the Council as a cash deposit (Cash Deposit) in a separate account opened with any body corporate that is

an ADI (authorised deposit-taking institution) for the purposes of the Banking Act, 1959 in the name of the Council and with beneficial ownership vesting at all times in the Council (**Cash Deposit Account**). The Cash Deposit will operate to secure the same obligations under this Deed that the relevant Bond secured.

- (b) As beneficial owner of the Cash Deposit, the Council may, at any time and without notice to the Developer, withdraw money (including accrued interest) from the Cash Deposit Account and retain that money absolutely to satisfy or reimburse the Council for any liability, loss, cost, charge or expense incurred by the Council because of failure by the Developer to comply with those of the Developer's obligations under this Deed that the relevant Bond secured.
- (c) All Costs, charges, duties and taxes payable in connection with the Cash Deposit Account or interest accruing on moneys credited to the Cash Deposit Account may be satisfied by the Council withdrawing money from the Cash Deposit Account and applying the money for that purpose.
- (d) If no moneys are, or may become, payable to the Council under this Deed in connection with the obligations under this Deed secured by the relevant Bond and the Developer has satisfied all of its obligations under this Deed which were secured by the relevant Bond, the Council must pay the balance of the Cash Deposit Account, less all Costs, charges, duties and taxes payable in connection with such payment, to the Developer.
- (e) For the avoidance of doubt, the Developer has no right to require the Council to release the Cash Deposit until the Council is reasonably satisfied that no moneys are, or may become, payable to the Council under this Deed in relation to obligations secured by the relevant Bond.

7. Release of Cash Deposit

The Council must release the Cash Deposit to the Developer if the Developer provides the Council with a replacement Bond complying with the requirements of paragraph 3 of this Schedule 10.

8. Claims under Bond

The Developer agrees that the Council may after giving at least 10 business days prior written notice to the Developer make claims under a Bond provided by it on the following basis the Council may call upon the Bond (in full or in part) in the event that:

- (a) the Developer breaches its obligation to carry out and complete any of the Bond Works in accordance with this Deed; and
- (b) a notice has been issued by Council requiring the Developer to remedy the breach in accordance with the requirements of paragraph 1 of Schedule 6, and the breach remains unremedied following the expiry of the rectification period specified in that notice,

and retain and use such monies in its discretion to compensate the Council for the Developer's breach of those obligations.

Schedule 11 - Assignment and Dealing

1.1 Developer's proposed assignment of rights

- (a) Unless the matters specified in paragraph 1.1(b) of this Schedule 11 are satisfied and subject to paragraph 1.1(c) of this Schedule 11, the Developer is not to assign or novate to any person the Developer's rights or obligations under this Deed.
- (b) The Developer must not assign or novate to any person its rights or obligations under this Deed and the Developer must not transfer the whole or any part of the Land or its interest in the Land unless the prior written consent of Council is obtained. The Council must not unreasonably withhold its consent in circumstances where the following matters have been satisfied:
 - (i) the Developer has, at no cost to the Council, first procured the execution by the person to whom the Developer's rights or obligations under this Deed are to be assigned or novated (**incoming party**), of a deed poll in favour of the Council in the form of Schedule 15, completed in a manner satisfactory to the Council. Such deed includes covenants that the incoming party:
 - A. will perform the obligations of the Developer under this Deed; and
 - B. is bound by the terms and conditions of this Deed (relevant to the Developer as if the incoming party had executed the Deed; and
 - (ii) the Developer is not in breach of this Deed with respect to the relevant part of the Land in case of an assignment or novation of the Developer's interest in part of the Land only, unless the breach is waived by the Council.

1.2 Right of Developer to sell Land

- (a) The Developer must not sell or transfer the whole or any part of the Land or any of their interest in the Land (and must procure that the whole or any part of the Land is not sold or transferred) prior to this Deed being removed from title to that Land (or any part of it) unless before any such sale, transfer or disposal of any such part of the Land or such part of their interest in the Land to another person (**Transferee**) the Developer obtains Council's prior written consent. The Council must not unreasonably withhold its consent in circumstances where the requirements specified in paragraph 1.1(b) of this Schedule 11 are satisfied.
- (b) This paragraph 1.2 does not apply to the transfer of a single lot in a strata plan (irrespective of whether the strata plan has been registered).

1.3 Council's Costs

The Developer must pay to the Council (or reimburse the Council on demand) for all the Costs and Legal Costs incurred by the Council in connection with any assignment or dealing proposed under paragraphs 1.1 or 1.2 of this Schedule 11.

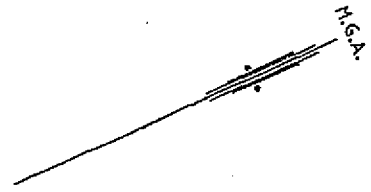
1.4 Council's assignment of rights

Council may assign its rights under this Deed to any successor in title.

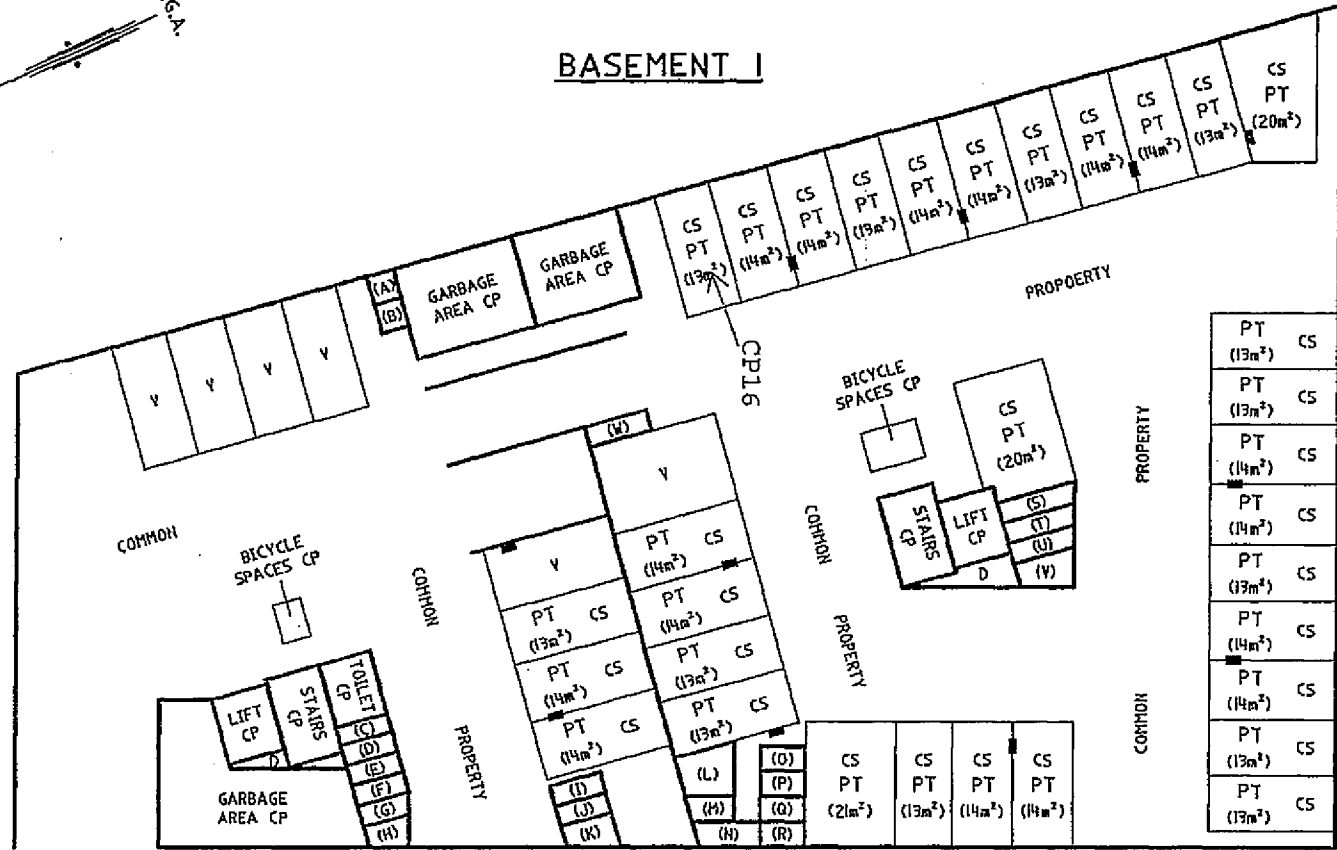
1.5 Council to act promptly

The Council must act promptly in dealing with any application made by the Developer in respect of any proposed assignment or dealing proposed under paragraphs 1.1 or 1.2 of this Schedule 11.

Schedule 12 – Affordable Housing Unit Plan



BASEMENT 1



STORAGE AREAS (TO BE ALLOCATED)

- (A) PT (1m²)
- (B) PT (1m²)
- (C) PT (2m²)
- (D) PT (2m²)
- (E) PT (2m²)
- (F) PT (2m²)
- (G) PT (2m²)
- (H) PT (2m²)
- (I) PT (2m²)
- (J) PT (2m²)
- (K) PT (3m²)
- (L) PT (5m²)
- (M) PT (2m²)
- (N) PT (3m²)
- (O) PT (2m²)
- (P) PT (2m²)
- (Q) PT (2m²)
- (R) PT (2m²)
- (S) PT (3m²)
- (T) PT (3m²)
- (U) PT (3m²)
- (V) PT (3m²)
- (W) PT (2m²)

THIS PLAN IS PREPARED FROM ARCHITECTURAL DRAWINGS BY ALEKSANDAR DRAWINGS No. DA. 04 ISSUE A DATED JUNE 2014 MINOR CHANGES MAY OCCUR DURING CONSTRUCTION. DIMENSIONS AND AREAS ARE APPROXIMATE AND SUBJECT TO FINAL SURVEY. THE PLAN IS A DRAFT ONLY AND IS NOT CHECKED OR REGISTERED BY THE LAND TITLES OFFICE. ALTERATIONS MAY BE REQUIRED PRIOR TO ITS ACCEPTANCE AND REGISTRATION.

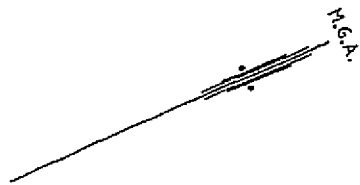
NOTES:
 D - DENOTES DUCT - COMMON PROPERTY
 V - DENOTES VISITOR PARKING
 CS - DENOTES CAR SPACE
 CP - DENOTES COMMON PROPERTY

THE AREAS SHOWN ARE FOR THE PURPOSE OF THE STRATA SCHEMES (FREEHOLD DEVELOPMENT) ACT 1973 ONLY AND ARE APPROXIMATE

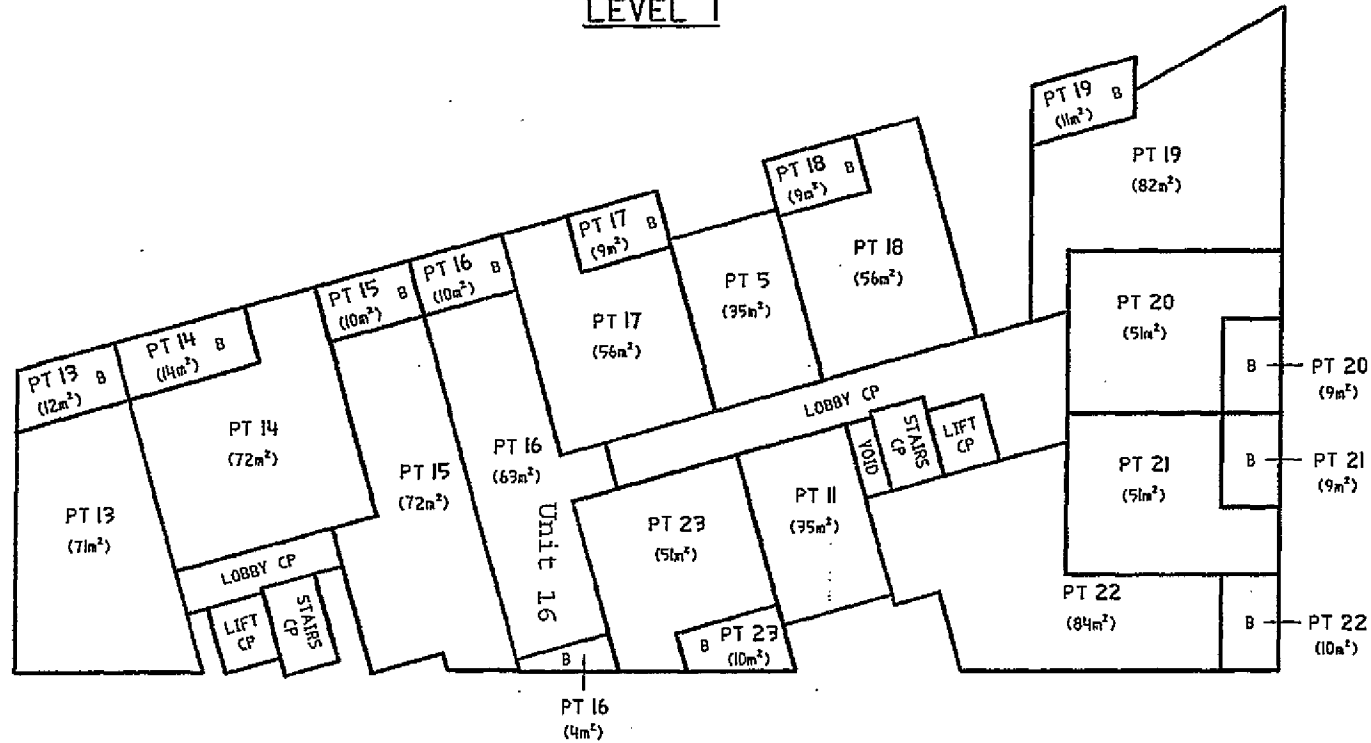
Surveyor: COPLAND C. LETHBRIDGE Surveyor's Ref: 19134 SP Subdivision No: Lengths are in metres Reduction Ratio 1:200	Registered	DRAFT 06/08/2014
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10	20	30	40	50	Table of mm	90	100	110	120	130	140
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LEVEL I



THIS PLAN IS PREPARED FROM ARCHITECTURAL DRAWINGS BY ALEKSANDAR DRAWING No. DA. 05 ISSUE A DATED JUNE 2014 MINOR CHANGES MAY OCCUR DURING CONSTRUCTION. DIMENSIONS AND AREAS ARE APPROXIMATE AND SUBJECT TO FINAL SURVEY. THE PLAN IS A DRAFT ONLY AND IS NOT CHECKED OR REGISTERED BY THE LAND TITLES OFFICE. ALTERATIONS MAY BE REQUIRED PRIOR TO ITS ACCEPTANCE AND REGISTRATION.

NOTES:
 B - DENOTES BALCONY
 CP - DENOTES COMMON PROPERTY
 BALCONIES ARE LIMITED IN HEIGHT TO 3 METRES ABOVE THE UPPER SURFACE OF THEIR RESPECTIVE FLOORS EXCEPT WHERE COVERED WITHIN THIS LIMIT.

THE AREAS SHOWN ARE FOR THE PURPOSE OF THE STRATA SCHEMES (FREEHOLD DEVELOPMENT) ACT 1979 ONLY AND ARE APPROXIMATE

Surveyor: COPLAND C. LETHBRIDGE Surveyor's Ref: 19134 SP Subdivision No: Lengths are in metres Reduction Ratio 1:200	Registered	DRAFT 06/08/2014
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10	20	30	40	50	Table of mm	90	100	110	120	130	140
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Schedule 13 – General Provisions

1.1 Approvals and Consent

Except as otherwise set out in this Deed, and subject to any statutory obligations, a Party will not unreasonably withhold an approval or consent to be given under this Deed but may give its approval or consent subject to any conditions reasonably determined by that Party.

1.2 Costs

- (a) Unless otherwise specified in this Deed, all Costs and Legal Costs relating to this Deed are to be borne by the Developer in the amount specified in Schedule 14 and is payable on demand.
- (b) Without limiting paragraph 1.2(a) of this Schedule 13, the Developer agrees to pay or reimburse the Council on demand for:
 - (i) Costs and Legal Costs of the Council in connection with:
 - A. exercising, enforcing or preserving, or attempting to exercise, enforce or preserve, rights under this Deed, including in connection with the Developer default;
 - B. any waiver, variation, release or discharge of this Deed; and
 - (ii) Taxes and fees (including, without limitation, registration fees and stamp duty) and fines and penalties in respect of fees which may be payable or determined to be payable in connection with this Deed or a payment or receipt or any transaction contemplated by this Deed.

1.3 Effect of terms and conditions in Schedules and Annexures

The Parties agree to comply with the terms and conditions contained in the Schedules and Annexures as if those terms and conditions were expressly set out in full in the operative parts of this Deed.

1.4 Entire agreement

To the extent permitted by law, in relation to its subject matter only, this Deed:

- (a) embodies the entire understanding of the parties, and constitutes the entire terms agreed by the parties; and
- (b) supersedes any prior written or other agreement of the parties.

1.5 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 Deed and all transactions incidental to it.

1.6 Governing Law and jurisdiction

This Deed 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.

1.7 Enforcement

- (a) This Deed may be enforced by any Party in any court of competent jurisdiction.
- (b) For the avoidance of doubt, nothing in this Deed prevents:
 - (i) a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Deed or any matter to which this Deed relates; and
 - (ii) an Authority or the Council from exercising any function under the EP&A Act or any other Law relating to the enforcement of any aspect of this Deed or any matter to which this Deed relates.

1.8 No fetter

Nothing in this Deed is to be construed as requiring an Authority (including the Council) to do anything that would cause it to be in breach of any of its obligations at Law, and without limitation:

- (a) nothing in this Deed is to be construed as limiting or fettering in any way the exercise of any statutory discretion or duty; and
- (b) nothing in this Deed imposes any obligation on an Authority to:
 - (i) grant any Development Consent; or
 - (ii) exercise any function or power under the EP&A Act in relation to a change, or a proposed change, in an environmental planning instrument.

1.9 Representations and warranties

- (a) Each Party each individually represents and warrants that:
 - (i) **(power)** it has power to enter into this Deed and comply with its obligations under the Deed;
 - (ii) **(no contravention or exceeding power)** this Deed does not contravene its constituent documents (if any) or any law or obligation by which it is bound or to which any of its assets are subject, or cause a limitation on its powers or the powers of its officers to be exceeded;
 - (iii) **(authorisations)** it has in full force and effect the authorisations necessary for it to enter into this Deed to which it is a party, to comply with its obligations and exercise its rights under this Deed and to allow this Deed to be enforced;
 - (iv) **(validity of obligations)** its obligations under this Deed are valid and binding and are enforceable against it in accordance with the terms of the Deed;
 - (v) **(no immunity)** does not have immunity from the jurisdiction of a court or from legal process;
 - (vi) **(benefit)** it benefits by entering into this Deed to which it is a Party; and
 - (vii) **(legal advice)** it has obtained its own independent legal advice as to its obligations and rights under the terms of this Deed prior to entering into this Deed.
- (b) Each Party acknowledge that each other Party has entered into this Deed to which it is a party in reliance on the representations and warranties in this paragraph 1.9 of this Schedule 13.

1.10 Severability

- (a) If a clause or part of a clause of this Deed 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.
- (b) 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 Deed, but the rest of this Deed is not affected.

1.11 Modification

No modification of this Deed will be of any force or effect unless it is in writing and signed by the Parties as a Deed.

1.12 Waiver

- (a) The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Deed, does not amount to a waiver of any obligation of, or a breach of obligation by, another Party.
- (b) A waiver by a party is only effective if it is in writing.
- (c) 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.

1.13 Confidentiality

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

1.14 Release and indemnity

- (a) The Developer agrees that the obligation to provide the Contributions is at the risk of the Developer. The Developer releases the Council from any Claim, liability or loss arising from, and Costs and Legal Costs incurred in connection with, the Developer's obligation to provide the Contributions.
- (b) The Developer indemnifies the Council against all liabilities or loss arising from, and any Costs and Legal Costs incurred in connection with the Council enforcing the Developer's obligation to provide the Contributions in accordance with this Deed and/or the Council exercising the Council's rights under or by virtue of this Deed.
- (c) The indemnity in paragraph 1.14(b) of this Schedule 13 is a continuing obligation, independent of the Developer's other obligations under this Deed and continues after this Deed ends.
- (d) It is not necessary for a Party to incur expense or to make any payment before enforcing a right of indemnity conferred by this paragraph 1.14
- (e) A Party must pay on demand any amount it must pay under an indemnity in this paragraph 1.14.

Schedule 14 - Costs

Developer is to pay Council's legal costs associated with the preparation and execution of this Deed being the sum of \$5,000 (excl. GST).

Novation Deed

Council of the City of Ryde
Council

[Developer]
Transferor

[Insert Transferee's name]
Transferee

Novation Deed made at _____ on _____ 2015

Parties The Council of the City of Ryde (ABN 81 621 292 610) of 1 Devlin Street, Ryde
NSW 2112
(Council)

[Insert Transferor's name] of [INSERT]
(Transferor)

[Insert Transferee's name] of [INSERT]
(Transferee)

Recitals

- A The Council and the Transferor are parties to the Original Agreement.
- B The Transferor is defined as the Developer under the terms of the Original Agreement.
- C The Original Agreement relates to the whole of the Land.
- D The Transferor wishes to assign its rights and obligations under the Original Agreement to the Transferee.
- E The parties to this Deed have agreed to the novation of the Transferor's obligations under the Original Agreement to the Transferee.

This deed provides

1. Definitions and interpretation

1.1 Definitions

Effective Date means *[insert]*.

Land has the meaning given to that term in the Original Agreement.

Original Agreement means the voluntary planning agreement dated *[insert]* and made between the Council the Developer and the Land Owners.

Required Obligations means the Developer's obligations under the terms of the Original Agreement.

Transferor means *[insert]*.

1.2 References to certain general terms

In this deed unless the contrary intention appears:

- (a) a reference to this deed or another instrument includes any variation or replacement of them;

- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (c) the singular includes the plural and vice versa;
- (d) the word person includes a firm, body corporate, an unincorporated association or an authority;
- (e) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and assigns;
- (f) an agreement, representation or warranty on the part of or in favour of two or more persons binds or is for the benefit of them jointly and severally;
- (g) a reference to anything (including, without limitation, any amount) is a reference to the whole or any part of it and a reference to a group of persons is a reference to anyone or more of them;
- (h) "include" in any form when introducing a list of items does not limit the meaning of the words to which the list relates to those items or to items of a similar nature; and
- (i) capitalised terms which are used in this deed but are not otherwise defined have the meaning given to them in the Original Agreement.

1.3 Headings

Headings are inserted for convenience and do not affect the interpretation of this deed.

2. Novation

2.1 Original Agreement

Subject to clause 2.4 and with effect from the Effective Date:

- (a) the Transferee is substituted for the Transferor as a party to the Original Agreement, and agrees to perform the Required Obligations;
- (b) the Transferee will be bound by the Original Agreement, and will be entitled to the benefit of the Original Agreement, as if the Transferee was a party to the Original Agreement instead of the Transferor insofar as the Original Agreement relates to the Required Obligations; and
- (c) the Transferor is released and discharged from all obligations and liabilities, and from all claims (whether for Costs, Legal Costs, damages, fees or otherwise), arising under the Original Agreement insofar as the Original Agreement relates to the Required Obligations.

2.2 Performance by Transferee

The Transferee must perform all of the Transferor's obligations under the Original Agreement as if named as the Transferor, whether or not the relevant obligations relate to works performed prior to the date of this Deed, including, but not limited to:

- (a) the delivery of all public benefits to Council (including the Contribution Amounts, Contribution Lands and Contribution Works); and
- (b) the provision of all Guarantees to Council.

2.3 Release of Guarantees

The parties expressly acknowledge and agree that:

- (a) Council will release any Guarantee provided to Council by the Transferor under the provisions of the Original Agreement to the Transferor (or as the Transferor otherwise directs in writing) promptly and in any event within 14 days of the provision of replacement Guarantee by the Transferee; and
- (b) Nothing in this clause 2.3 will be read or construed as a waiver of any right held by Council relating to or arising from the performance of the Original Agreement by the Transferor before the date of this Deed.

2.4 Liability before Effective Date

Notwithstanding clause 2.1, the Transferor is not released, relieved or discharged from liability under the Original Agreement before the Effective Date, or any breach of any provision of the Original Agreement by the Transferor occurring before the Effective Date (to the extent that it is not remedied by the Effective Date) in so far as the Original Agreement relates to the Required Obligations.

3. Affirmation of the Original Agreement

The Original Agreement will be read and construed subject to this deed, and in all other respects the provisions of the Original Agreement are ratified and confirmed, and, subject to the variation and novation contained in this deed, the Original Agreement will continue in full force and effect.

4. GST

Where a supply made under this deed gives rise to a liability for GST, the consideration to be provided for that supply (other than under this clause) shall be increased by an additional amount equal to the GST payable on the supply. The additional amount must be paid, and the supplier must provide a tax invoice, at the same time as the other consideration for that supply is to be provided under this deed. Terms used in this clause have the meanings in the *A New Tax System (Goods and Services Tax) Act 1999*.

5. Stamp duty and costs

- (a) The Transferor and the Transferee are jointly and severally liable for the Council's Legal Costs of and incidental to the negotiation, preparation and execution of this deed, and must reimburse the Council for such Legal Costs promptly on demand.
- (b) The Transferee will pay all stamp duty arising directly or indirectly from this deed.

6. **Further acts**

- (a) Each party will take all steps, execute all deeds and do everything reasonably required by any other party to give effect to any of the actions contemplated by this deed.
- (b) This deed binds each party which signs it even if other parties do not, or if the execution by other parties is defective, void or voidable.

7. **Governing law**

This deed is governed by the law in force in the place specified in the New South Wales and the parties submit to the non-exclusive jurisdiction of the courts of that place.

8. **Counterparts**

This deed may consist of a number of counterparts and the counterparts taken together constitute one and the same instrument.

Executed as a deed.

[INSERT appropriate execution clauses for the Council, Developer and Land Owners]

Signed, sealed and delivered by [insert Transferee] in accordance with section 127 of the *Corporations Act* by or in the presence of:

Signature of Secretary/other Director

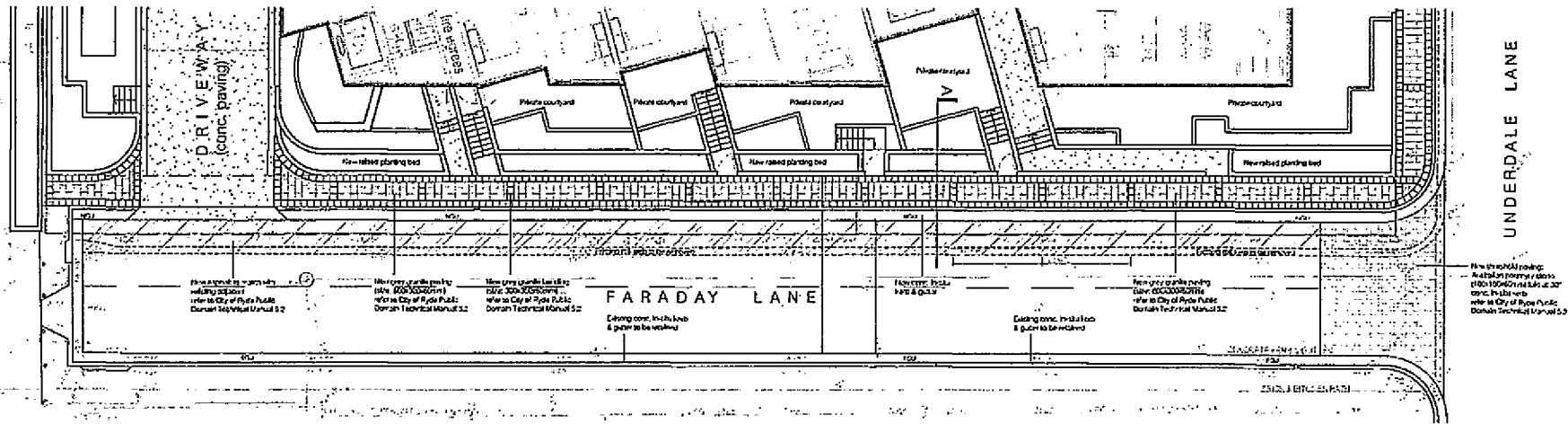
Signature of Director

Name of Secretary/other Director in full

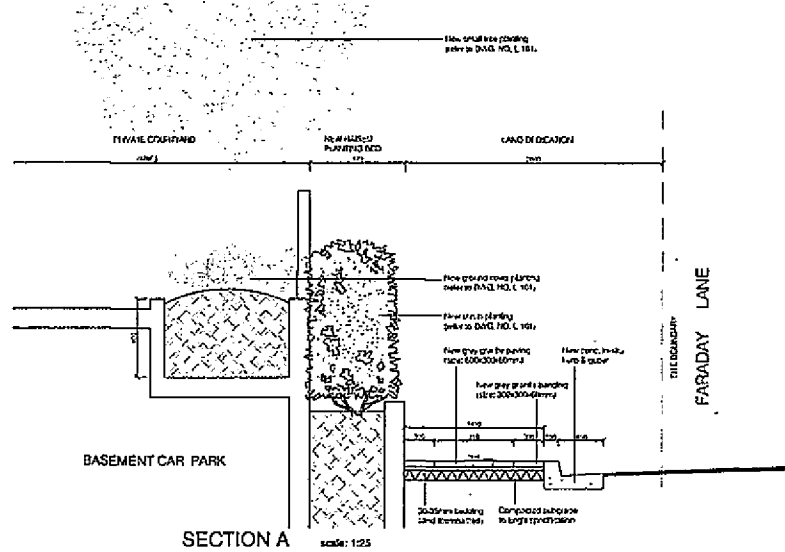
Name of Director in full

Schedule 16 – Indicative Public Domain Concept Plan

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PUBLIC DOMAIN PLAN: faraday lane scale: 1:100



SECTION A scale: 1:25

- LEGEND**
- Proposed granite paving (refer to City of Ryde PDTM 5.2)
 - Proposed granite banding (refer to City of Ryde PDTM 5.2)
 - Proposed asphalt paving (refer to City of Ryde PDTM 5.2)
 - Proposed Australia's Best Stone seal paving (refer to City of Ryde PDTM 5.2)
 - Proposed conc. in-situ kerb & gutter (refer to City of Ryde PDTM 5.2)
 - Existing conc. in-situ kerb & gutter to be retained
 - Land celection
 - Site boundary

54



21-24 Railway Road, Meadowbank NSW

0 1 2 3 4 5 10 scale @ 1:100 & 25@1
dwg no.: PD-101



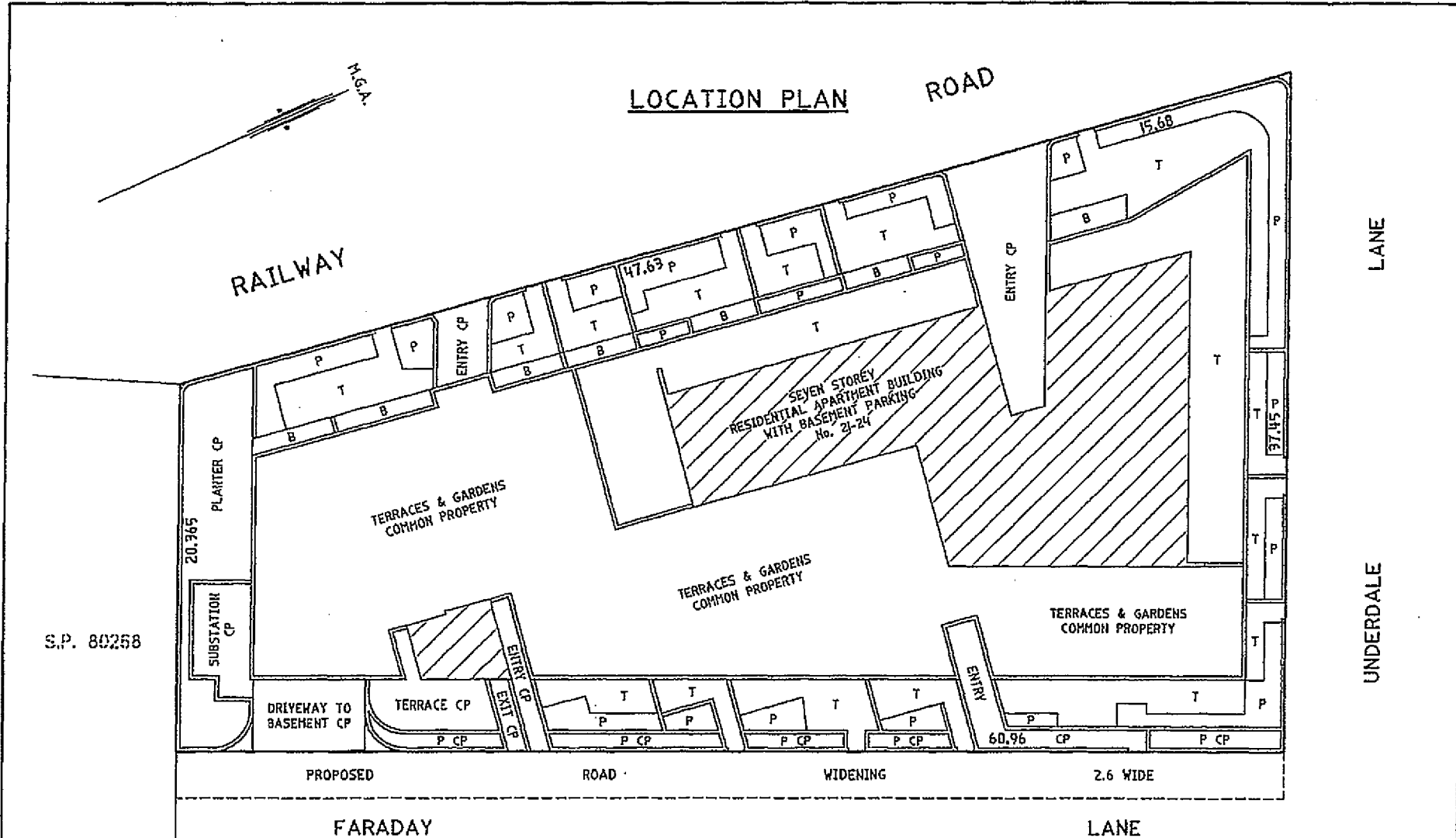
dwg title
public domain plan
: faraday lane

scale: 1:100 & 25@1
dwg no.: PD-101
Client:
DEP Shepherds Bay Pty Ltd

revision	date
P1 client's review	16/06/14
A da submission	07/07/14
B council RFI	08/08/14

Do not scale off this drawing. Use 1:100 dimensions only. Accurate dimensions with the Landscape Architect before proceeding. Copyright in drawing and design documents remains with CANVAS landscape architects. Copyright remains with the Landscape Architect. Reproduction of this document is not permitted without the approval of the Landscape Architect. Contractors to verify all conditions and dimensions.

Schedule 17 -- Land Dedication Plan



S.P. 80258

THIS PLAN IS PREPARED FROM ARCHITECTURAL DRAWINGS BY ALEKSANDAR DRAWINGS No's. DA_03-10 ISSUE DATED JUNE 2014 MINOR CHANGES MAY OCCUR DURING CONSTRUCTION. DIMENSIONS AND AREAS ARE APPROXIMATE AND SUBJECT TO FINAL SURVEY. THE PLAN IS A DRAFT ONLY AND IS NOT CHECKED OR REGISTERED BY THE LAND TITLES OFFICE. ALTERATIONS MAY BE REQUIRED PRIOR TO ITS ACCEPTANCE AND REGISTRATION.

- NOTES:
- B - DENOTES BALCONY
 - P - DENOTES PLANTER
 - T - DENOTES TERRACE
 - CP - DENOTES COMMON PROPERTY

Surveyor: COPLAND C. LETHBRIDGE
 Registered
 Surveyor's Ref: 19134 SP
 Subdivision No:
 Lengths are in metres Reduction Ratio 1:200

DRAFT
 06/08/2014

56

10	20	30	40	50	Table of mm	90	100	110	120	130	140
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Exhibit A – Explanatory Note

EXPLANATORY NOTE

Cl. 25E of Environmental Planning and Assessment Regulation 2000

Planning Agreement – DEP Shepherds Bay Pty Limited, 21-24 Railway Street, Meadowbank (Land)

Introduction

The purpose of this Explanatory Note is to provide a summary to support the notification of a draft Planning Agreement (**Planning Agreement**), under Section 93F of the *Environmental Planning and Assessment Act 1979 (Act)*, prepared in connection with a Development Application (LDA 2014/307) (**Development Application**).

The Development Application seeks approval for the construction of a high density residential flat building on the Land (**Development**).

The Planning Agreement specifies the public benefits to be provided by the Developer in connection with the Development.

Contributions under sections 94, 94A and 94EF of the Act are not excluded under the Planning Agreement and are therefore payable by the Developer if development consent is granted for the Development.

This explanatory note has been prepared jointly by the parties as required by clause 25E of the *Environmental Planning and Assessment Regulation 2000 (Regulation)*.

For the purposes of this explanatory note, capitalised terms which are used in this explanatory note but which are not otherwise defined have the meaning given to those terms in the Planning Agreement.

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

1. Parties to the Planning Agreement

The parties to the Planning Agreement are DEP Shepherds Bay Pty Limited (ACN 167 939 504) (**Developer**) and the Council of the City of Ryde (**Council**).

2. Description of the Land

The Planning Agreement applies to Lot 13 in Deposited Plan 7533 and Lots A and B in Deposited Plan 34383, being the whole of the land in Certificate of Title Folio Identifiers 13/7533, A/34383 and B/34383, known as 21-24 Railway Street, Meadowbank (**Land**).

3. Description of the Proposed Change to the Environmental Planning Instrument and Development

The Planning Agreement relates to Development Application LDA 2014/307 dated 18 July 2014 for the construction of a residential flat building comprising 73 residential dwellings and 2 basement levels of car parking on the Land.

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

The objective of the Planning Agreement is to ensure the provision of a Public Road and an Affordable Housing Unit to meet the needs of the local community.

In order to secure the obligations of the Developer under the Planning Agreement, the terms of the Planning Agreement requires the provision of security in the form of Bonds, the registration of the Planning Agreement on the title of the Land and allows the Council to acquire the Contribution Land.

The public benefits to be provided under the Planning Agreement are summarised as follows:

a. Contribution Land

The Developer (at its cost) agrees to dedicate / transfer (as the case may be) to Council the following Contribution Land:

- (i) part of the Land adjacent to Faraday Lane as Public Road; and
- (ii) the Affordable Housing Unit within the Development as a strata title lot.

b. Contribution Works

The Developer agrees to deliver (at its cost) the following works:

- (i) the remediation of the Contribution Land so that they are made suitable for their use as Public Road and the Affordable Housing Dwelling; and
- (ii) the construction of the Public Road, being the widening of Faraday Lane as indicated in *Schedule 19 - Land Dedication* of the Planning Agreement.

5. Assessment of the merits of the Planning Agreement

(a) How the Planning Agreement promotes the public interest and one or more of the objects of the Act

The Planning Agreement promotes the objects of the Act, in particular objects (iv) and (viii) which relate to "*the provision of land for public purposes*" and "*the provision and maintenance of affordable housing*" respectively. In this regard, these objects are satisfied as the planning agreement will ensure the delivery of the Public Road and the Affordable Housing Unit.

(b) How the Planning Agreement promotes elements of the Council's charter

The Planning Agreement promotes a number of elements of the Council's charter under section 8 of the *Local Government Act 1993* (NSW). In particular it promotes Council's long-term strategic planning on behalf of the local community.

The Council's strategic planning for Meadowbank envisions an attractive, vibrant and sustainable urban place which provides quality residential developments complimented with enhanced pedestrian, bike and road access through Meadowbank.

The Planning Agreement requires the Developer to construct and dedicate land for a Public Road. It also requires the Developer to construct and transfer to Council an Affordable Housing Unit.

In summary, the Planning Agreement promotes the Council's charter by ensuring the delivery of the public benefits under the Planning Agreement which in turn satisfy the following aspects of Council's charter:

- (i) the engagement by Council in long-term strategic planning on behalf of the local community;
- (ii) the provision of adequate, equitable and appropriate services and facilities for the community; and
- (iii) the appropriate response as to the provision and planning for the needs of the community.

(c) The impact of the Planning Agreement on the public or any section of the public.

The scope of the Planning Agreement will benefit the local and wider community as it will improve the public domain by providing improved local roads and much needed Affordable Housing opportunities.

It is envisaged that the Contributions to be delivered under the Planning Agreement will have a positive impact on the locality by virtue of improving public road access and providing a much needed affordable housing unit.

(d) Whether the Planning Agreement conforms with Council's capital works program

The Planning Agreement is not inconsistent with the Council's capital works program.

(f) The planning purpose or purposes of the Planning Agreement

The Planning Agreement will provide a major public benefit in terms of the provision of improved public road access and an affordable housing unit. As it would be difficult to obtain these public benefits through other statutory means, the Planning Agreement is the most suitable instrument by which the Contributions can be delivered.

(g) Compliance of certain requirements prior to issue of construction, occupation or subdivision certificates.

The Contributions under the Planning Agreement, being the Contribution Works and the transfer / dedication of the Contribution Land, must be provided in accordance with the timing provisions as set out in Schedule 3 of the Planning Agreement, which are linked, where relevant, to the issue of any occupation certificates for the Development.

In summary, the dedication and transfer (as the case may be) of the Contribution Land to Council are required to occur prior to the issue of an Occupation Certificate or the occupation of the Development, whichever occurs first.

For more specific details as to the compliance of certain requirements under the Planning Agreement prior to the issue of construction, occupation or subdivision certificates please refer to Schedule 3 of the Planning Agreement, a copy of which is attached to and forms part of this Explanatory Note.

In addition to the above, prior to the issue of the first Construction Certificate for any Building within the Development, the Developer is required to provide a Bond to the Council for the Required Face Value (i.e. \$167,678) as security for its obligations under the Agreement relating to the Contribution Works.

Annexure to Explanatory Note - Contributions Schedule (Schedule 3 of the Planning Agreement)

Schedule 3 - Contributions Schedule

1.1 Contributions Tables

Table 1 – Contribution Land

<u>Column 1 - Contribution</u>	<u>Column 2 - Date Contribution Land is to be dedicated</u>
<p>1. The Contribution Land for Road</p> <p>The dedication of part of the Land, being that area identified as "Proposed Road Widening" (approximately 161 square metres and 2.6 metres wide) in Schedule 17 - Land Dedication Plan, to the Council as Public Road.</p>	<p>Prior to the earlier occurrence of:</p> <p>(a) the issue of any Occupation Certificate for any part of the Development; and</p> <p>(b) the occupation of any part of the Development.</p>
<p>2. The Contribution Land for Affordable Housing</p> <p>The transfer in strata to Council of that part of the Building, being the Affordable Housing Unit marked as Unit 16 and the associated car parking space and storage area marked as CP16 and (W) respectively (with a combined total area of approximately 92m² square metres) in Schedule 12 – Affordable Housing Unit Plan.</p>	<p>Prior to the earlier occurrence of:</p> <p>(a) the issue of any Occupation Certificate for any part of the Development; and</p> <p>(b) the occupation of any part of the Development.</p>

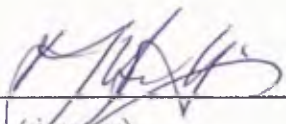
Table 2 - Contribution Works

<u>Column 1 - Contribution</u>	<u>Column 2 - Date Contribution Works are to be delivered/Practically Completed</u>
<p>1 Remediation of Contribution Land</p> <p>The Developer must ensure that prior to the Contribution Land being transferred to the Council:</p> <p>(iii) The Contribution Lands are to be remediated in accordance with any Remediation Action Plan as approved by a Site Auditor so that they are made suitable for their use as road and public domain (as the case may be) in accordance with the <i>Contaminated Lands Management Act 1997</i>; and</p> <p>(iv) Provide certification from a Site Auditor that the Contribution Lands have been remediated and are suitable for their intended use by Council as contemplated under the terms of this Deed.</p>	<p>To be Practically Completed and Remediation verified by the Site Auditor prior to the date Contribution Land is to be dedicated and transferred (as the case may be) to Council as identified in Table 1 of this Schedule 3.</p>

2.	<p>Road, footpath and public domain construction and utility services installation</p> <p>The Developer will undertake all road and footpath construction within the area identified as "Proposed Road Widening" (approximately 161 square metres and 2.6 metres wide) on the plan contained in Schedule 17 - Land Dedication Plan and to at least the construction standard referred to in Schedule 16 – Indicative Public Domain Concept Plan (security for which works is to be provided for the value of the Required Face Value as indexed in accordance with paragraph 1.3 of Schedule 10)</p> <p>The works must include the following:</p> <ul style="list-style-type: none"> (i) Roads including wear to surface, pavement, sub base, subgrade, kerb and gutter, drainage, line marking and sign posting; (ii) Paving, including compacted sub-grade, concrete substrate, concrete unit pavers; (iii) Kerb re-alignment and replacement; (iv) Drainage works; (v) Service requirements (power, water, gas etc., including undergrounding these services with provision of a 1.5 metre depth below design ground level for these services); (vi) Adjustments to all existing services pits and man holes; (vii) Demolition of existing kerbs and infra-structure; (viii) Street lighting and associated services; (ix) Street trees and associated urban details; and (x) Traffic control and associated temporary infrastructure. 	<p>To be Practically Completed prior to the date that the Contribution Land for Road is to be dedicated to Council as listed in Table 1 of this Schedule 3.</p>
3.	<p>Affordable Housing Unit</p> <p>The Developer will design, construct and complete the Affordable Housing Unit in accordance with the following requirements:</p> <ul style="list-style-type: none"> (a) It is to have a minimum floor area of 92m²; (b) It is to be constructed and finished so as to be fully operational but with the exclusion of any loose furniture; and (c) It is to be designed so as to be Accessible. 	<p>Prior to the earlier occurrence of:</p> <ul style="list-style-type: none"> (a) the issue of any Occupation Certificate for any part of the Development; and (b) the occupation of any part of the Development.

Executed as a Deed.

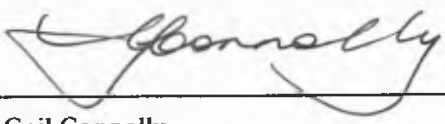
EXECUTED by THE COUNCIL OF)
THE CITY OF RYDE by Gail Connolly,)
General Manager under delegated authority)
pursuant to Section 377 of the Local)
Government Act 1993 in the presence of:)



Witness (signature):


DAVID HARRIS

Name (printed):



Gail Connolly
General Manager

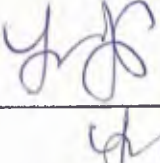
EXECUTED by DEP SHEPHERDS BAY)
PTY LTD (ACN 167 939 504) in accordance)
with section 127 of Corporations Law:)
)
)



Signature:

Geoffrey McKinnon

Name:
Position: CEO



Signature:

NINA FLYNN ZHM

Name:
Position: Director

