Hall&Wilcox
Lawyers

Council of the City of Ryde
ABN 81 621 292 610

and

Buildex Gladesville Pty Ltd
ABN 53 606 547 460

Planning Agreement

Environmental Planning and Assessment Act 1979

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Planning Agreement

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Date 18 April 2019

Parties

Buildex Gladesville Pty Ltd ABN 53 606 547 460 of Suite 1, 1 Chaplin Drive, Lane Cove West, NSW (**Owner**)

City of Ryde Council ABN 81 621 292 of Level 1, 3 Richardson Place, North Ryde, NSW (**Council**)

Recitals

A The Owner is the registered proprietor of the Land.

B The Owner is the applicant under the Development Application lodged with the Council (known as LDA / 2017 / 0312) for Development Consent to carry out the Development on the Land.

C The Owner has offered to make Contributions in connection with the carrying out of the Development if the Council grants the Development Consent.

D The Owner has agreed to provide the Contributions on the terms and conditions set out in this Deed.

The parties agree

1 Definitions and interpretation

1.1 Definitions

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

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

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.

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Application means an application for any Approval.

Approval means any approvals, consents, certificates, permits, endorsements, licences, conditions, permissions 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* (NSW).

Bank Bill Rate means:

(a) 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**); or

(b) 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:

    (i) 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

    (ii) 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, and

(c) the rate calculated or set must be expressed as a percentage rate per annum and be rounded up to the nearest fourth decimal place; and

(d) 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 (b).

Bank Guarantee means an irrevocable and unconditional undertaking without any expiry or end date in favour of the Council to pay an amount or amounts of money to the Council on demand issued by:

(a) one of the following trading banks:

    (i) Australia and New Zealand Banking Group Limited,

    (ii) Commonwealth Bank of Australia,

    (iii) Macquarie Bank Limited,

(iv) National Australia Bank Limited,

(v) St George Bank Limited,

(vi) Westpac Banking Corporation,

(vii) Bank of China (Australia) Limited, or

(b) any other financial institution approved by the Council in its absolute discretion.

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

Builder means any entity contracted under the Construction Contract to carry out the Contribution Works or any part of them.

Building means a building proposed to be constructed on the Land.

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

Cash Deposit has the same meaning as given to that term in clause 1.6 Schedule 10.

Cash Deposit Account has the same meaning as given to that term in clause 1.6 of Schedule 10.

Certificate of Practical Completion means the certificate in writing confirming that the Contribution Works or any part of them have been completed to Council's satisfaction and issued under clause 7.1 of Schedule 4.

Claim means any claim, loss, liability, damage, proceeding, order, judgment or expense arising out of the operation of this Deed.

Compliance Certificate means a certificate referred to in section 6.4 of the EP&A Act.

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

Contributions means all of the public benefits described in the Contributions Schedule that must be provided under this Deed including (without limitation):

(a) the dedication or transfer to the Council (free of any Encumbrance and Cost) of the Contribution Land; and

(b) the conduct of the Contribution Works.

Contribution Land means the land identified in Part 1 of Schedule 3 that must be dedicated or transferred (as the case may be) to the Council pursuant to this Deed

Contributions Schedule means Schedule 3.

Contribution Value means in relation to each item specified in the Contributions Schedule the amount agreed between the Parties and stated in column 4 of the Parts 1 and 2 of Schedule 3 for that Item.

Contribution Works means each of the works described in Part 2 of Schedule 3 that must be undertaken by the Owner pursuant to this Deed being:

(a) the Public Domain Works; and

(b) the Road Land Works.

Contribution Works Concept Plans means plans, drawing, specification and other documents contained or referred to in that describe the Contribution Works, copies of which are contained or referred to in Schedule 5.

Construction Certificate means a certificate issued under section 6.4 of the EP&A Act.

Construction Contract means the contract to carry out the Contribution Works (whether or not that is a contract for the Contribution Works only or forms part of a contract for the building of other components of the Development).

Construction Cost means the Costs of and directly attributable to the construction 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, , and construction of the Contribution Works.

Construction Terms means the terms set out in Schedule 4.

Costs include all reasonable 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 document and includes all annexures, exhibits and Schedules to it.

Defects Liability Period means:

(a) in respect of the Road Land Works, the period of 12 months from the date of the Certificate of Practical Completion the Road Land Works; and

(b) in respect of the Public Domain Works, the period of 12 months from the date of the Certificate of Practical Completion the Public Domain Works.

Defects Securities means the Public Domain Works Defects Security and the Road Land Works Defects Security (or any one of them as the context may require).

Detailed Design means the final specifications and finishes for the Contribution Works, prepared in accordance with clause 4.2 of Schedule 4 and will include the design of those Contribution Works, the location for those Contribution Works and the installation specifications for those Contribution Works.

Development means the development described in clause 2 of Schedule 2

Development Application has the same meaning as in the EP&A Act.

Development Consent means each 'Development Consent' as that term is defined in the EP&A Act or an approval under Part 4 of the EP&A Act and includes any Modification granted with respect to a Development Consent.

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 Deed (being that required by clause 25E of the EP&A Regulation and exhibit A to this Deed).

GST has the meaning it has in the GST Act.

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

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.

Item means the object of a Contribution specified in Column 1 of the tables in Schedule 3.

Land means the land described in clause 1 of Schedule 2 or any subsequent Subdivision of that land.

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 reasonable 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 a Development Consent or Approval in relation to the Development 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 a Development Consent within the meaning of section 4.55 of the EP&A Act.

Occupation Certificate means a certificate referred to in section 6.4 of the EP&A Act and which may be interim or final as provided for in section 6.4 of the EP&A Act.

Party means a party to this Deed, and **Parties** means both of them.

Permitted Encumbrance means each of:

(a) easements benefitting statutory authorities, encroachments authorised by Approvals and environmental management requirements; and

(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;

(c) any Encumbrance that does not prevent the future use of the relevant land for the public purpose for which it is to be dedicated under this Deed, unless the Encumbrance is a charge arising as a result of unpaid taxes or charge.

Planning Agreement means this Deed.

Public Domain Land means that part of the Road Land on which the Public Domain Works will be carried out shown in the Contribution Works Concept Plans.

Public Domain Works means that part of the Contribution Works relevant to the design, construction and delivery of improvements to the public domain in the vicinity of the Land described in the Contribution Works Concept Plans.

Public Domain Works Security means the Security for the Public Domain Works (set out in the Security Schedule).

Public Domain Works Defects Security means the Security for the rectification of defects in the Public Domain Works pursuant to clause 8 of Schedule 4 (set out in the Security Schedule).

Real Property Act means the *Real Property Act 1900*.

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

Road Land means the public road shown in the Contribution Works Concept Plans.

Road Land Works means the part of the Contribution Works relevant to the design, construction and delivery of the Road Land pursuant to this Deed.

Road Land Works Security means the Security for the Road Land Works (set out in the Security Schedule).

Road Land Works Defects Security means the Security for the rectification of defects in the Road Land Works pursuant to clause 8 of Schedule 4 (set out in the Security Schedule)..

Security means each security set out in the Security Schedule (or any one of them as the context may require), each of which may either comprise a Bond or Bank Guarantee.

Security Amount means the amount of each Security stated in the Security Schedule (subject to indexation in accordance with clause 1.2 of Schedule 10).

Security Schedule means the matrix of Securities set out in Schedule 10.

Schedule means a schedule to this Deed.

Standard Requirement means a requirement in order to comply with the Building Code of Australia, any applicable Australian Standard required by a governmental entity or any other applicable requirement of a State governmental entity.

Subdivision has the meaning given to 'subdivision of land' in section 6.2 of the EP&A Act and Subdivide has a similar meaning.

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

Superintendent means the superintendent appointed under any Construction Contract.

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 Owner 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 or Approval for the Development 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 or Approval for the Development, 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 (which is dealt with at clause 15), 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 Interpretations

In this Deed headings are for convenience only and do not affect interpretation and unless the context indicates a contrary intention:

(a) *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;

(b) a reference to a Party includes that Party's executors, administrators, successors and permitted assigns, including persons taking by way of novation;

(c) a reference to a document (including this Deed) is to that document as varied, novated, ratified or replaced from time to time;

(d) 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;

(e) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;

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(f) 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;

(g) 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;

(h) 'includes' in any form is not a word of limitation;

(i) a reference to '$' or 'dollar' is to Australian currency;

(j) a reference to any notice, claim, demand, consent, approval, authorisation, direction, notification, request, communication, or waiver being given or made by a Party is a reference to its being given or made in writing, and the expression notice includes any of the foregoing;

(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

This Deed commences on 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 7.4 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- Works and Land

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

(i) undertake the Contribution Works in accordance with Schedule 3 and Schedule 4; and

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(i) dedicate or transfer (as the case may be) the Contribution Land to Council in accordance with Schedule 3.

(b) The Parties agree that the provision of the Contribution Works and the dedication of the Contribution Land will serve the public purposes set out in Column 2 in the Tables to Schedule 3.

4 Monetary Contributions

4.1 Application of sections 7.11, 7.12 and 7.24 of the EP&A Act

(a) Section 7.24 of the EP&A Act does not apply to this Deed..

(b) This Deed does not exclude the application of section 7.11 of the EP&A Act to the Development.

(c) Section 7.12 of the EP&A Act does not apply to this Deed.

5 Contribution Works

5.1 Contribution Works

(a) The Owner must carry out the Contribution Works in accordance with this Deed, including the Construction Terms and any Development Consent granted for the Contribution Works.

(b) The Contribution Works (or any part of them) required under this Deed will be taken to have been completed for the purposes of this Deed when a Certificate of Practical Completion has been issued for the Contribution Works or relevant part of them.

(c) The Road Land Works required under this Deed will be taken to have been delivered to Council when:

(i) a Certificate of Practical Completion has been issued in respect of the Road Land Works; and

(ii) the Road Land on which the Road Land Works are located is dedicated to the Council.

(d) The Public Domain Works required under this Deed will be taken to have been delivered to Council when a Certificate of Practical Completion has been issued in respect of the Public Domain Works.

(e) The Parties agree and acknowledge that the Contribution Works serve the public purposes specified for each of the in the Contributions Schedule.

5.2 Road Land dedication

The obligation to dedicate the Road Land will be taken to have been satisfied when:

(a) a certificate of title is issued by NSW Land and Property Information for the whole of the Road Land identifying the Council as the registered proprietor of that land (free of any Encumbrances in its capacity as roads authority under the *Roads Act 1993 (NSW)*; or

(b) when the Road Land is dedicated (free of any Encumbrance) to the Council by operation of the registration of a plan of subdivision in accordance with the *Roads Act 1993 (NSW)*.

6 Caveat

6.1 Caveatable interest

The Owner acknowledges and agrees that:

(a) when this Deed is executed the Council is deemed to have acquired, and the Owner is 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

(b) the Council has a sufficient interest in the Land in respect of which to lodge a caveat notifying that interest in the relevant folio of the Register.

6.2 Caveat Prior to Registration

The Owner acknowledges and agrees that:

(a) Subject to clause 7, the Council may lodge a caveat on the Land to protect its rights under this Deed and the Owner 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 6) will it seek to remove any caveat lodged by the Council.

(b) If Council lodges a caveat in accordance with this clause 6, 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 in the Land which is not inconsistent with this Deed, provided the Owner is not in breach of any obligations under this Deed.

(c) The Council (as the caveator) will provide any consent the Owner may reasonably require to enable this Deed or any dealing in the Land to be registered in accordance with this clause 6.2.

(d) The Council will promptly, following registration of this Deed, do all things reasonably necessary to remove the caveat from the relevant folio of the Register for the Land.

7 Registration of this Deed

7.1 Land Ownership

The Owner represents and warrants that it is the legal and beneficial owner of the Land as at the date of this Deed.

7.2 Registration on title

The Owner agrees 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 7.6 of the EP&A Act and Schedule 8.

8 Release and Discharge

The Council agrees to release and discharge this Deed and remove any caveat lodged by the Council pursuant to clause 6 on the release and discharge terms contained in clause 6 and Schedule 9 to this Deed.

9 Breaches to be rectified

9.1 Notice

If a Party (**Notifying Party**) considers that another party (**Notified Party**) has defaulted on the performance of any of its obligations under this Deed, then the Notifying Party may give written notice to the Notified Party which:

(a) identifies the nature of the breach; and

(b) provides at least 20 Business Days (except in the case of emergency or where there is an issue of public safety where less time may be specified) within which the Notified Party must rectify that breach and what action must be taken to rectify that breach.

9.2 Schedule 6 applies

If a Notifying Party gives a notice under this clause 9 then the provisions in Schedule 6 will apply.

10 Security

10.1 Security to be provided

The Owner has agreed to provide security to the Council for performance of its obligations under this Deed on the terms and conditions of Schedule 10.

11 Assignment and other dealings

The Parties agree that provisions of Schedule 11 applies in relation to any proposed assignment or dealing in relation to the Land (or any part of it) or of a Party's interest in this Deed.

12 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.

13 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.

14 Overdue Payments

14.1 Interest on overdue money

The Owner 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.

14.2 Compounding

Interest 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 14.

14.3 Interest on liability merged in judgment or order

(a) If a liability under this Deed becomes merged in a judgment or order, then the Owner 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 14.

(b) For the avoidance of doubt, if a liability under this Deed becomes merged in a judgment or order then the Owner will only be required to pay either interest payable under the judgment or order or interest calculated under this clause 14 but not both.

15 GST

15.1 Interpretation

(a) Except where the context suggests otherwise, terms used in this clause 15 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 15.

(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.

15.2 Consideration GST exclusive

Unless otherwise expressly stated, all sums payable or consideration to be provided under this Deed is exclusive of GST.

15.3 GST not payable on Contributions

The Parties agree, in accordance with Class Ruling CR 2013/13 published by the Commissioner, that Contributions required to be made under this Deed are exempt from GST.

15.4 Additional amount of GST payable

If GST is imposed on any supply made under or in accordance with this Deed, the Owner must pay the GST or pay to Council an additional amount equal to the GST payable on or for the taxable supply, whichever is appropriate in the circumstances.

15.5 No merger

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

16 Explanatory Note

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

17 Notices

17.1 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:	Level 1 3 Richardson Place North Ryde NSW 2113
Fax:	9952 8222
For the attention of:	General Manager

Owner

Name:	Buildex Gladesville Pty Limited
Address:	Suite 1, 1 Chaplin Drive Lane Cove West NSW 2066

17.2 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.

17.3 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.

17.4 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.

18 Schedules and Annexures to this Deed

The Parties agree:

(c) that all the Schedules and Annexures form part of this Deed; and

(d) to comply with the provisions of those Schedules and Annexures.

19 General Provisions

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

20 Obligations under this Planning Agreement

20.1 Legal Challenge

Subject to clauses 20.5 to 20.9, where a Legal Challenge is commenced the parties' obligations under this Deed are immediately suspended and the Owner shall not have any obligation to make any Contributions under this Deed until the expiration of the Suspension Period or where clause 20.5 applies.

20.2 Parties to meet

Subject to clause 20.3, where any Legal Challenge is commenced or where the Court declares or orders any Approval to be invalid or any of them, the Parties agree to:

(a) 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:

(i) the suspension of the parties rights and obligations under this Deed; and

(ii) their intentions in relation to that declaration or order, including, without limitation, any intention to Appeal that declaration; and

(b) 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.

20.3 Legal advice

The Parties will not be required to meet or consult pursuant to clause 20.2 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.

20.4 Confidential

The Parties agree that any discussions held between the Parties under this clause 20 are confidential and that a common interest between them exists for the purposes of legal professional privilege in connection with those discussions.

20.5 Development may continue

Notwithstanding clause 20.1, the Owner may elect at its Cost and risk to proceed with the Development, in which circumstances, clause 20.1 will not apply and the Owner must continue to comply with all obligations under this Deed.

20.6 Termination

If this Deed is terminated as the result of any Appeal the parties will meet in accordance with clause 20.2 to discuss any matters that may need to be addressed as a result of the commencement of the Contribution Works.

20.7 Invalid Approval

If any Approval is declared invalid, the parties will meet in accordance with clause 20.2 of this Deed to discuss their respective rights and obligations under this Deed as a consequence of that determination.

20.8 Indemnity

If the Owner elects to proceed with the Development notwithstanding the commencement of any Legal Challenge, then the Owner is liable for and indemnifies Council against all liability, loss, Costs and expenses (including Legal Costs) arising from or incurred in connection with the Owner proceeding with the Development despite the Legal Challenge.

20.9 Public safety

The parties agree that if this clause 20 applies and there is a suspension of the parties' obligations under this Deed, 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 any Suspension Period.

20.10 No merger

This clause 20 will not merge on completion or termination of this Deed.

Schedule 1 - Requirements set out in section 7.4 of the EP&A Act

The Parties acknowledge and agree that the table set out below summarises how the Planning Agreement complies with the requirements set out in section 7.4 of the EP&A Act.

Requirement under the EP&A Act	This Planning Agreement
Planning instrument and/or development application - (Section 7.4) The Owner has:	
(a) sought a change to an environmental planning instrument.	(a) No.
(b) made, or proposes to make, a Development Application.	(b) Yes.
(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.	(c) No.
Description of land to which this Deed applies - (Section 7.4)	The Land described in certificate of title folio identifier 100 / 771721 and known as 312 Victoria Road, Gladesville, NSW
Description of change to the environmental planning instrument or the development to which this Deed applies - (Section 7.4) Describe:	
(a) the proposed change to the environmental planning instrument to which this Deed applies; and	(a) This does not apply.
(b) the development to which this Deed applies.	(b) The description of the Development is set out in Schedule 2
The scope, timing and manner of delivery of contribution required by this planning agreement - (Section 7.4)	There are provisions relating to scope, delivery and manner of delivery of contributions required by the Deed in (without limitation) clause 3 and Schedule 3 of this Deed.
Applicability of Section 7.11 of the EP&A Act - (Section 7.4)	The application of section 7.11 of the EP&A Act is not excluded in respect of the Development.
Applicability of Section 7.12 of the EP&A Act - (Section 7.4)	Section 7.12 of the EP&A Act does not apply in respect of the Development.
Applicability of Section 7.24 of the EP&A Act - (Section 7.4)	Section 7.24 of the EP&A Act does not apply in respect of the Development.

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Requirement under the EP&A Act	This Planning Agreement
Consideration of benefits under this Deed if section 7.11 applies - (Section 7.4) Are the benefits under this Deed to be taken into consideration if Section 7.11 of the EP&A Act is not excluded?	Yes in the manner and to the extent set out in Schedule 3.
Mechanism for Dispute resolution - (Section 7.4) This Deed provides a mechanism for the resolution of disputes under the agreement?	The mechanism for despite resolution is contained in clause 13 and Schedule 7 of this Deed.
Enforcement of this Deed (Section 7.4) and section 7.6) This Deed provides for enforcement by a suitable means in the event of a breach.	There are provisions for enforcement by suitable means by or through (without limitation) clauses 5, 6, 7, 8, 9, 10 and 11 and schedules 4, 5, 6, 8, 10 and 11.
Registration of this Deed The Parties agree that this Deed will be registered	Yes.
No obligation to grant consent or exercise functions - (Section 7.4) 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.	This is addressed in clause 1.8 of Schedule 13.

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Schedule 2- Description of the Land and the Development

1 Title

The Land described in certificate of title folio identifier 100/ 771721 and known as 312 Victoria Road, Gladesville, NSW

2 Development

Development means:

(a) Demolition of the existing development on the Land, remediation works at the Land and excavation to accommodate that part of the development comprising basement car parking and services;

(b) Construction of a seven (7) storey mixed use development that includes:

(i) 50 residential dwellings;

(ii) 2 retail tenancies

(iii) 3 basement levels accommodating 73 carparking spaces for the residential and retails uses, 19 bicycle spaces, garbage storeroom, garbage collection area and plant rooms;

(iv) A maximum building height of 23.3 m and a maximum floor space ratio (FSR) of 2.3:1;

(v) Removal of 8 trees;

(vi) Construction of an extension of Gerard Lane through the Land to the north-western boundary; and

(vii) Landscaping and public domain works.

Schedule 3- Contributions Schedule

Contributions Tables

Part 1- Contribution Land

Column 1 – Item	Column 2 – Public Purpose	Column 3 – Manner and Extent	Column 4 – Contribution Value	Column 5 - Date Contribution Land is to be transferred
1 Road Land	Public road	The Owner must dedicate the Road Land to Council (at no cost) in accordance with clause 5.	$1,030,000	No later than the date of the first Occupation Certificate in respect of the Development.

Part 2- Contribution Works

Column 1 – Item	Column 2 – Public Purpose	Column 3 – Manner and Extent	Column 4 – Contribution Value	Column 5 - Date Contribution Land is to be transferred
1 Road Land Works	Public road	The Owner must design and construct the Road Land Works in accordance with Schedule 4 and generally in the location shown in the Contribution Works Concept Plans	$136,747 for both the Road Land Works and the Public Domain Works.	No later than the date of the first Occupation Certificate in respect of the Development.
2. Public Domain Works	Community and open space	The Owner must carry out Public Domain Works in accordance with Schedule 4 and generally in the location shown in the Contribution Works Concept Plans	See item 1 above.	No later than the date of the first Occupation Certificate in respect of the Development.

Schedule 4- Contribution Works Procedures

1 Authority requirements

1.1 Construe

These Construction Terms must be read and construed subject to:

(a) any requirements or conditions of any Development Consent;

(b) the requirements of and conditions imposed by all relevant Authorities and all Laws relating to the Development and the construction of the Development.

1.2 Responsibility for Approvals

The Owner must (at its Cost) obtain all Approvals necessary to satisfy its obligations under this Deed and necessary to carry out the Contribution Works.

1.3 Compliance with Approvals

The Owner must ensure that the Contribution Works carried out under this Deed are undertaken:

(a) in accordance with the relevant Development Consent for the Contribution Works and all Approvals and the requirements of all Laws, including without limitation, work health and safety legislation; and

(b) in a good and workmanlike manner and so that they are diligently progressed until completion;

and it is acknowledged that to the extent that there is any inconsistency between this Deed and any Approval the terms of the Approval shall prevail.

2 Costs

All Costs of the Contribution Works must be borne by the Owner.

3 Project management and contractor engagement

3.1 Management

The Owner will be responsible for managing the Contribution Works.

2.1 Contractor engagement

The Owner must ensure that any contractor it engages to carry out the Contribution Works agrees to:

(a) carry out the Owner's obligations in these Construction Terms as part of any Construction Contract; and

(b) request a Council representative to be present at each on-site meeting attended by the Superintendent and to ensure the Council representative is present at the meeting.

4 Design development and approval

4.1 Concept design

(a) The Council and the Owner have worked in consultation with each other to prepare and agree that the Contribution Works Concept Plans.

(b) The Council and the Owner agree that the Contribution Works Concept Plans will be the basis for the Detailed Design.

4.2 Detailed Design

(a) The Owner must provide a copy of the draft Detailed Design to the Council for it's approval no later than the date of the first Construction Certificate issued in connection with the Development.

(b) No later than 20 Business Days of receiving the Detailed Design, the Council must give the Owner a notice:

(i) setting out suggested amendments to the Detailed Design; or

(ii) advising that the Detailed Design is acceptable.

(c) The Council and the Owner must work in consultation with each other to prepare and agree the Detailed Design and must both act reasonably and with due expedition in their consultations with each other.

(d) If the Detailed Design is not completed and agreed within 20 Business Days of the Council providing its suggested amendments in accordance with clause 4.2(b) of this Schedule 4, to avoid possible delays to the issue of a Construction Certificate, the Council will, in its sole discretion, be entitled to decide on any outstanding or undecided matter or item relating to areas that are to be accessible to the public, provided that any decision made by Council under this clause:

(i) is consistent with the obligation to provide the Contributions under this Deed;

(ii) is consistent with the Development Consent;

(iii) does not materially and adversely affect the Development; and

(iv) is reasonable.

(e) Any acceptance by the Council of the Detailed Design under this clause 4.2 of this Schedule 4 is not to be taken as approval of or to any Construction Certificate for the Contribution Works or any part of them.

4.3 Good faith

The Parties must act promptly and in good faith to consult in relation to the Detailed Design

5 Conduct of the Contribution Works

5.1 Communication

The Owner must:

(a) keep the Council reasonably informed of progress of the Contribution Works; and

(b) provide to the Council such information about the Contribution Works as the Council reasonably requests.

5.2 Standard of Contribution Works

(a) Unless otherwise provided, the Owner must, and must cause the Builder to, use suitable new materials and proper and tradesman like workmanship when carrying out the Contribution Works.

(b) The qualitative standard of the design and finishes for the Construction Works must be no less than those described in the following documents:

(i) any relevant Standard Requirements;

(ii) any relevant design standards or guidelines and any other requirements or policies applied by the Council from time to time in assessing the adequacy of any works or improvements proposed for the public domain or to be accessible to the public in accordance with this Deed.

(iii) the specification and finishes contained in the Contribution Works Concept Plans.

(c) The Owner will obtain any relevant standards (including design standards), specifications, or guidelines and any other requirements or policies referred to in clause 5.2(b)(ii) of this Schedule 4 from the Council if the Council fails to deliver them to the Owner.

5.3 Damage

(a) The Owner is to ensure to the fullest extent reasonably practicable that, in performing its obligations under this Deed:

(i) all necessary measures are taken to protect people and property;

(ii) unnecessary interference with the passage of people and vehicles is avoided; and

(iii) nuisances and unreasonable noise and disturbances are prevented.

(b) Without limiting clause 5.3(a) of this Schedule 4, the Owner is not to obstruct, interfere with, impair or damage any public road, public footpath, public cycleway or other public thoroughfare, or any pipe, conduit, drain, watercourse or other public utility or service on any land except as authorised in writing by the Council or any relevant Authority.

6 Inspection

6.1 Inspection schedule

(a) On completion of the Detailed Design, the Council will provide a schedule of inspections to be undertaken by Council which has been prepared as a result of consultation with the Owner (**Inspection Schedule**) to occur at specified stages of the construction of the Contribution Works (**Inspection Stage**).

(b) If the Council does not provide the Inspection Schedule, the Owner must request the Inspection Schedule from the Council prior to the Contribution Works commencing.

6.2 Inspection process

(a) No less than 5 Business Days prior to reaching an Inspection Stage as set out in the Inspection Schedule, the Owner must notify the Council of the proposed inspection date (**Inspection Date**).

(b) On the Inspection Date, or other agreed date, the Owner must ensure that any employees, contractors, agents or representatives of the Council have access to and may enter the Land to inspect the Contribution Works.

(c) In addition to carrying out inspections in accordance with the Inspection Schedule, the Council may enter the Land or any part of the Land on which the Contribution Works are located to inspect the progress of the Contribution Works, subject to:

(i) the terms of the Construction Contract (save for any clause of the Construction Contract which prevents the Council from accessing the Land);

(ii) giving reasonable notice to the Owner;

(iii) complying with all reasonable directions of the Owner; and

(iv) being accompanied by the Owner or a nominee, or as otherwise agreed.

(d) The Council may, acting reasonably, within 5 Business Days of carrying out an inspection (either under clause 6.2(b) or(c) of this Schedule 4), notify the Owner of any defect or non-compliance in the Contribution Works and direct the Owner to carry out work to rectify that defect or non-compliance within a reasonable period of time. Such work may include, but is not limited to:

(i) removal of defective or non-complying material;

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(ii) demolishing defective or non-complying work;

(iii) reconstructing, replacing or correcting any defective or non-complying work; and

(iv) not delivering any defective or non-complying material to the site of the Contribution Works.

(e) If the Owner is issued a direction to carry out further work under clause 6.2(d) of this Schedule 4, the Owner must, at its cost, rectify the defect or non-compliance specified in the Notice within the time period specified in the notice, provided that it is reasonable having regard to the nature of the works.

(f) If the Owner fails to comply with a direction to carry out work given under clause 6.2(d) of this Schedule 4, the Council will be entitled to refuse to accept that the Contribution Works (or the relevant part of the Contribution Works) meet the Council's standards and specifications and may refuse to issue a Certificate of Practical Completion, until the required Contribution Works have been completed to the Council's satisfaction, acting reasonably.

(g) For the avoidance of doubt, any acceptance by the Council that the Owner has rectified a defect or non-compliance identified in a notice issued under clause 6.2(d) of this Schedule 4 does not constitute:

(i) acceptance by the Council that the Contribution Works comply with all Approvals and Laws; or

(ii) an Approval by the Council in respect of the Contribution Works; or

(iii) an agreement or acknowledgment by the Council that the Contribution Works or the relevant part of the Contribution Works are complete and may be delivered to the Council in accordance with this Deed.

7 Completion

7.1 Practical Completion

(a) When the Owner considers that the Contribution Works, or any part of them, are complete, the Owner must send a notice to the Council accompanied by complete works as executed plans, any relevant certificates or consents of any public utility authority and a request for written certification from the Council that the Contribution Works or relevant part of them are complete.

(b) Within 20 Business Days of receipt of the notice under clause 7.1(a) of this Schedule 4, the Council will carry out an inspection of the Contribution Works or relevant part of them and will, acting reasonably, within a further 10 Business Days or other period of time as agreed between the Parties, either:

(i) provide written certification to the Owner that the Contribution Works or relevant part of them have been completed; or

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(ii) notify the Owner of any additional information required or matters which must be addressed by the Owner prior to the certification being issued.

(c) If the Owner is required to provide additional information or address any matters under clause 7.1(b)(ii) of this Schedule 4, the Owner will provide that information to the Council or address those matters within 10 Business Days of receiving the notice or within a reasonable period of time and make a further request under clause 7.1(a) of this Schedule 4 for written certification that the Works have been completed.

(d) Practical completion will be achieved in relation to the Contribution Works or any relevant part of them when a Certificate of Practical Completion has been issued for those works by the Council.

7.2 Delivery of documents

The Owner must as soon as practicable, and no later than 20 Business Days after the date on which the Certificate of Practical Completion is issued in respect of the Contribution Works or any relevant part of them, provide the Council with a tour of the land.

7.3 Assignment of warranties

(a) The Owner must assign (as beneficial owner) or cause to be assigned to the Council the benefit of any warranties and guarantees obtained by the Owner and the Builder (and capable of assignment) with respect to any material or goods incorporated in or forming part of the Contribution Works.

(b) To the extent that any such warranties or guarantees cannot be assigned, the Owner must at the request of the Council do anything reasonably required by the Council to enforce such warranties or guarantees for the benefit of the Council.

8 Defects liability

8.1 Obligation to rectify

(a) During the Defects Liability Period, the Council (acting reasonably) may give to the Owner a notice (**Rectification Notice**) in writing that identifies a defect in the Contribution Works and specifies:

(i) action required to be undertaken by the Owner to rectify that defect (**Rectification Works**); and

(ii) the date on which the defect must be rectified (**Rectification Date**).

(b) The Owner must comply with the Rectification Notice by:

(i) procuring the performance of the Rectification Works by the Rectification Date, or such other date as agreed between the Parties;

(ii) keeping the Council reasonably informed of the action to be taken to rectify the defect; and

(iii) carrying out the Rectification Works.

(c) The Council must give the Owner and its contractors any access required to carry out the Rectification Works.

8.2 Rectification complete

(a) When the Owner considers that the Rectification Works are complete, either the Owner must notify the Council and provide documentation, plans or invoices which establish that the Rectification Works were carried out.

(b) The Council may inspect the Rectification Works within 15 Business Days of receiving a notice from the Owner under clause 8.2(a) of this Schedule 4 and, acting reasonably:

(i) issue a further Rectification Notice if it is not reasonably satisfied that the Rectification Works are complete; or

(ii) notify the Owner in writing that it is satisfied the Rectification Works are complete.

8.3 Rectifications costs

(a) The Owner must meet all costs of and incidental to rectification of defects under this clause 8 of this Schedule 4.

(b) If the Owner fails to comply with a Rectification Notice, then the Council may do such things or take such action as is necessary to carry out the Rectification Works, including accessing and occupying any part of the Land without further notice to the Owner, and may:

(i) call upon any Security provided to the Council under clause 8.4 of this Schedule 4 to meet its costs of carrying out Rectification Works; and

(ii) recover as a debt due to the Council by the Owner in a court of competent jurisdiction, any difference between the amount of the security deposit and the costs incurred by the Council in carrying out Rectification Works.

8.4 Security for defects liability

(a) The Owner must deliver to Council each Defects Security:

(i) on the Commencement Date for that Defects Security; and

(ii) in the relevant Security Amount.

(b) The Owner advises and the Council acknowledges its awareness that the Securities may be supplied by the Builder and form a part of the security held by the Owner from the Builder under the terms of the Construction Contract, provided that:

(i) any Bond or Bank Guarantee provided by the Builder benefits the Council and satisfies the requirements of this Deed; and

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(ii) the Owner procures an agreement from the Builder that the Council will be entitled to call on any Security provided by the Builder, in accordance with the terms of this Deed and the terms of any Construction Contract.

(c) Within 10 Business Days after the Defects Liability Period for a particular item of Contribution Works has expired Council must (if it has not called on it) return the Security referred to in clause 8.4(a) of this Schedule 4 for that item of Contribution Works (or any remaining balance of it) to the Owner.

(d) Notwithstanding clause 8.4(c) of this Schedule 4, if during the Defects Liability Period for a particular item of Contribution Works, the Council issues a Rectification Notice and the Rectification Notice is not complied with, then the Council need not deliver the balance of any Defects Security provided to it in respect of that item of Contribution Works until that defect has been rectified.

(e) The Council must deliver the balance of any Defects Security to the Owner in accordance with Schedule 10.

9 Risk and insurance

9.1 Risk

The Owner undertakes the Contribution Works entirely at its own risk.

9.2 Indemnities

The Owner indemnifies the Council, its employees, officers, agents and contractors from and against all Claims in connection with the carrying out by the Owner of the Contribution Works except to the extent such Claim arises either directly or indirectly as a result of the Council or its employees, officers, agents, contractors or workmen's negligence, default, act or omission.

9.3 Insurance

(a) Prior to the commencement of the Contribution Works or any part of them, the Owner must ensure the Builder effects and the Owner must produce evidence to the Council of the following insurances issued by an insurer approved by the Council (acting reasonably) in a form approved by the Council (acting reasonably):

(i) construction works insurance for the value of the Contribution Works;

(ii) public risk insurance for at least $20 million;

(iii) workers compensation insurance as required by Law.

(b) The Owner must provide evidence of currency of insurance required by clause 9.3(a) of this Schedule 4 upon request by the Council, acting reasonably, throughout the term of this Deed.

10 Intellectual Property Rights

The Council acknowledges that the Owner or its contractors hold all rights to copyright and any intellectual property which may exist in the Contribution Works. To the extent the Owner have or receive intellectual property rights for the Contribution Works, the Owner shall assign those intellectual property rights to Council or permit use thereof.

11 Contamination risk

11.1 Responsibility

The Owner acknowledges and agrees:

(a) that it is responsible for the management and remediation of any contamination present upon or under the Land on which the Contribution Works are to be carried out;

(b) it will attend to any necessary remediation at its own Cost; and

(c) to the fullest extent permitted by Law indemnify and release the Council from any Claim which might arise from any contamination with respect to the Land on which the Contribution Works are to be carried out.

11.2 Certification

Prior to the dedication or transfer to Council of any part of the Land to Council, the Owner must provide to Council's reasonable satisfaction, certification by a qualified person, that the subject land is not contaminated and is suitable for the proposed use.

Schedule 5- Contribution Works Concept Plans

- Public Domain Works Plan for 312 Victoria Road, Gladesville dated July 2017, prepared by Australian Consulting Engineers Pty Ltd.

- Architectural Plan A 1.02 (Lower Ground) dated 2 August 2018, prepared by Architecture moMA.

PUBLIC DOMAIN WORKS PLAN

FOR

312 VICTORIA ROAD, GLADESVILLE

GENERAL NOTES.

1. ALL WORK TO BE CARRIED OUT IN ACCORDANCE WITH RYDE CITY COUNCIL'S **DEVELOPMENT ENGINEERING STANDARD UNLESS OTHERWISE NOTED.**

2. ALL EROSION AND SEDIMENTATION CONTROL MEASURES ARE TO BE CARRIED OUT IN ACCORDANCE WITH COUNCIL'S CODE OF PRACTICE FOR EROSION AND SEDIMENTATION, AND MUST BE IMPLEMENTED PRIOR TO THE COMMENCEMENT OF ANY BUILDING OF CIVIL WORKS. THE DEVELOPER IS RESPONSIBLE FOR ONGOING MAINTENANCE OF EROSION AND SILTATION CONTROL MEASURES.

3. ALL PUBLIC UTILITIES ARE TO BE CLEARLY IDENTIFIED IN THE FIELD PRIOR TO ANY CIVIL WORKS. COUNCIL ACCEPTS NO RESPONSIBILITY FOR DAMAGE OR RELOCATION COSTS TO UTILITIES DURING CONSTRUCTION

4. SUPERVISING ENGINEER IS TO BE NOTIFIED PRIOR TO THE COMMENCEMENT OF ANY WORKS.

5. IT IS THE CONTRACTOR'S RESPONSIBILITY TO ENSURE THAT ALL WORKS ARE CARRIED OUT IN ACCORDANCE WITH WORK HEALTH AND SAFETY ACT 2011.

6. PERMISSION TO ENTER, CONSTRUCT WORKS AND DISCHARGE STORMWATER ONTO **ADJOINING PROPERTIES IS TO BE OBTAINED AND SUBMITTED TO COUNCIL PRIOR TO** COMMENCEMENT OF ANY WORKS.

7. ALL WORKS AS A RESULT OF THE SUBMITTED PLANS IS TO BE CARRIED OUT TO THE SUPERVISING ENGINEER'S SATISFACTION.

8. ANY DISTURBED LANDSCAPING AREA IS TO BE SHAPED AND TURFED. APPROVED **TOP SOIL & TURF IS TO BE REINSTATED TO THE SUPERVISING ENGINEER'S** SATISFACTION .

9. ALL DRAINAGE GRATES TO BE BICE SAFE TO LOAD TYPE CLASS"D" AS PER AS3996-2006 (LOAD CLASSIFICATION). GRATES TO BE "DURHAM-MEDIUM TRAFFICABLE" OR SIMILAR

10. RETAINED TREES TO BE FENCED WITH A 1.8m HIGH CHAINWIRE LINK FENCE FULLY SUPPORTED AT GRADE TO MINIMISE THE DISTURBANCE TO EXIST. GROUND CONDITIONS WITHIN THE CANOPY DRIP LINE. "TREE PROTECTION ZONE" SIGNAGE TO **BE ATTACHED TO PROTECTIVE FENCING.**

11. A VEHICLE CROSSING APPLICATION SHALL BE SUBMITTED TO AND APPROVED BY COUNCIL PRIOR TO COMMENCEMENT OF WORK.

12. A ROAD-OPENING PERMIT SHALL BE OBTAINED FOR WORKS IN THE ROAD RESERVE PRIOR TO COMMENCEMENT OF WORK IN THE ROAD RESERVE.

13. ALL REDUNDANT LINE MARKING SHALL BE GRINDED OFF THE PAVEMENT AND PROPOSED LINE MARKING SHALL BE REFLECTIVE WHITE THERMOPLASTIC OR SIMILAR.

14. SERVICES SHOWN ON THIS PLAN HAVE BEEN LOCATED FROM INFORMATION SUPPLIED FROM THE RELEVANT AUTHORITIES VIA A "DIAL BEFORE YOU DIG" ENQUIRY DURING DESIGN. THE LOCATION OF SERVICES SHOWN ON THIS DRAWING HAVE BEEN PLOTTED AS ACCURATELY AS POSSIBLE FROM DIAGRAMS PROVIDED BY SERVICE AUTHORITIES. A NEW "DIAL BEFORE YOU DIG" ENQUIRY MUST BE CARRIED OUT TO VERIFY SERVICE LOCATIONS JUST PRIOR TO CONSTRUCTION. NEW ENQUIRES MAY BE DONE ONLINE AT WWW.1100.COM.AU OR TEL 1100.

DIAL 1100 BEFORE YOU DIG

LOCALITY PLAN
N.T.S.

DRAWING SCHEDULE

DRAWING No.	DRAWING TITLE	REV
C00	GENERAL NOTES, LOCALITY PLAN & DRAWING SCHEDULE	D
C01	CIVIL WORKS LAYOUT PLAN	E
C02	GERARD LANE – LONGITUDINAL SECTION	C
C03	GERARD LANE – CROSS SECTIONS	D
C07	TYPICAL CROSS SECTIONS	A
C10	CONSTRUCTION SPECIFICATIONS AND DETAILS – SHEET 1 OF 2	A
C11	CONSTRUCTION SPECIFICATIONS AND DETAILS – SHEET 2 OF 2	A

D

DANGER :

LOCATION OF ALL EXISTING UNDERGROUND SERVICES SHOWN ARE APPROXIMATE AS TAKEN OFF DBYD INFO. EXTREME CAUTION TO BE EXERCISED WHEN WORKING IN THE VICINITY **OF AND AROUND THESE SERVICES. PLEASE CALL THE** RELEVANT AUTHORITIES TWO DAYS PRIOR TO CONSTRUCTION FOR A MORE EXACT LOCATION OF THE EXISTING SERVICES

IT IS THE CONTRACTOR RESPONSIBILITY TO CONTACT **"DIAL BEFORE YOU DIG" OR PHONE 1100 FOR THE LOCATION** OF EXISTING PUBLIC UTILITIES, PRIOR TO EXCAVATION.

DISCLAIMER

ALL INFRASTRUCTURE INFORMATION (MAINS, SEWER, PIPES ETC.) IS DERIVED FROM DIAL BEFORE YOU DIG RECORDS.

EVERY EFFORT WAS MADE TO ENSURE ACCURACY OF THESE RECORDS WHEN COMPILED.

NO WARRANTY IS GIVEN TO CURRENCY OF DEPTHS AND LEVELS DUE TO THE POSSIBILITY OF SUBSEQUENT ALTERATION OF LEVELS THROUGH FILLING OR EXCAVATION. USERS OF THE INFORMATION IN THIS DRAWING/DESIGN SHOULD TAKE ALL REASONABLE STEPS TO VERIFY THE RELEVANT INFORMATION BEFORE COMMENCING EXCAVATING OR CONSTRUCTION WORK.

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A1 formats

No.	AMENDMENT	ENG	DRAFT	DATE
8	ISSUED FOR C.C. APPROVAL	M.D.	J.L.	17.01.18
7	ISSUED FOR C.C. APPROVAL	M.D.	J.L.	26.02.18
6	ISSUED FOR C.C. APPROVAL	M.D.	M.L.	13.02.18
4	ISSUED FOR C.C. APPROVAL	O.C.	I.I.	14.07.17

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PROJECT
RESIDENTIAL DEVELOPMENT
312 VICTORIA ROAD, GLADESVILLE

SHEET SUBJECT
GENERAL NOTES, LOCALITY PLAN AND DRAWING SCHEDULE

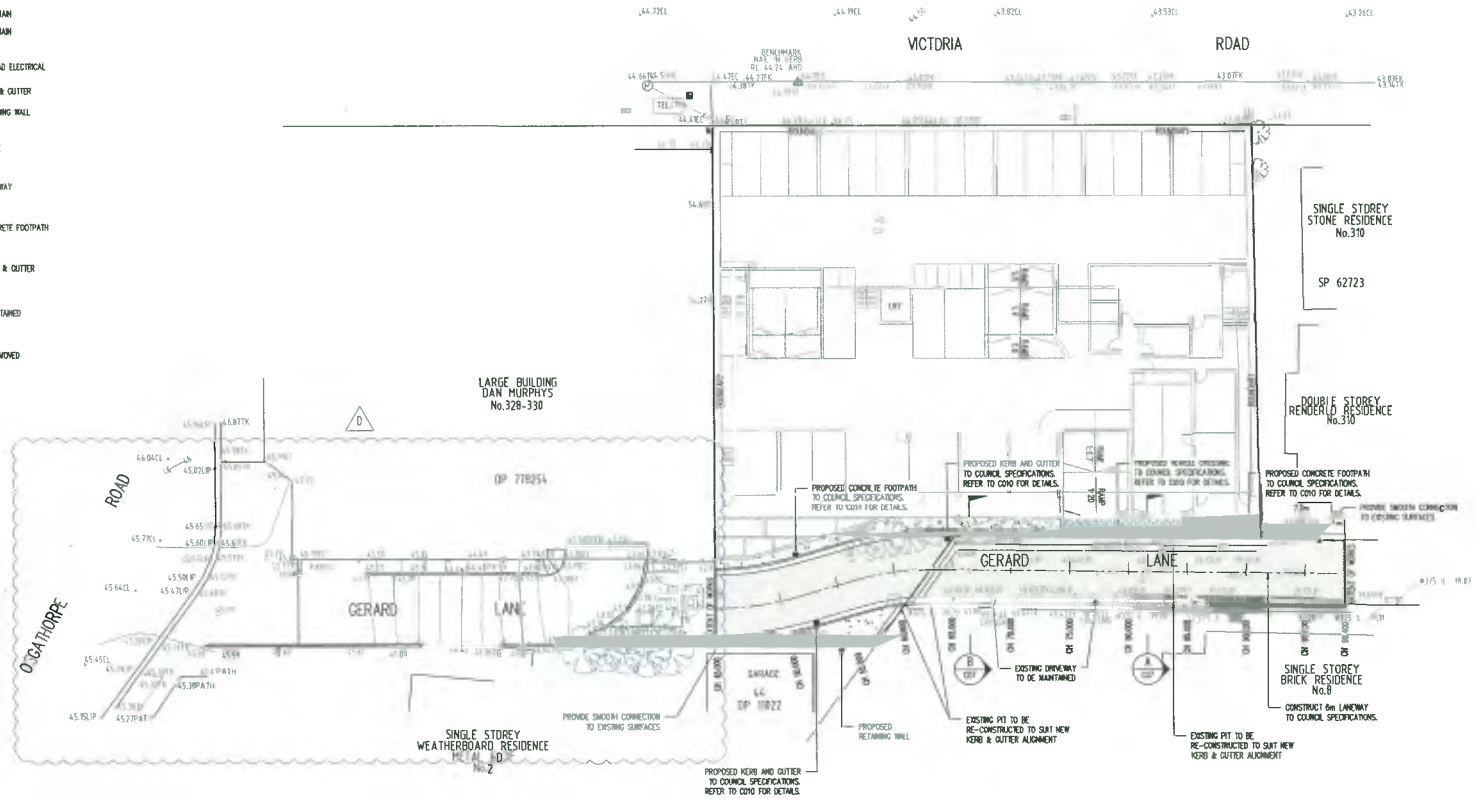
PROJECT 312 VICTORIA ROAD, GLADESVILLE

DATE	DRAWN	DESIGNED	CHECKED
JULY 2017	E.E.	O.C.	A.S.H.

SCALE @ A1: N.T.S.
JOB No: 170366
AUTHORISED: Dr Anthony S. Hoyhom
DWG No: C00
REV: D

LEGEND

- LOT BDY
- 32.00 DESIGN CONTOUR
- 30.00 EXISTING CONTOUR
- ExW EXISTING WATER MAIN
- ExS EXISTING SEWER MAIN
- ExT EXISTING TELSTRA
- ExE EXISTING OVERHEAD ELECTRICAL
- K&G PROPOSED KERB & GUTTER
- PROPOSED RETAINING WALL
- PROPOSED VERGE
- PROPOSED DRIVEWAY
- PROPOSED CONCRETE FOOTPATH
- PROPOSED KERB & GUTTER
- TREES TO BE RETAINED
- TREES TO BE REMOVED



DIAL 1100 BEFORE YOU DIG

NOTE:
ALL EXISTING SERVICES TO BE ADJUSTED TO MATCH PROPOSED SURFACE LEVELS.

SCALE 1:200 @ A1

No.	AMENDMENT	ENG	DRAFT	DATE
F	ISSUED FOR C.C. APPROVAL	W.D.	JJ	17.01.19
D	ISSUED FOR C.C. APPROVAL	W.D.	JJ	26.02.18
C	ISSUED FOR C.C. APPROVAL	W.D.	W.D.	13.02.18
B	ISSUED FOR C.C. APPROVAL	M.D.	M.D.	15.01.18
A	ISSUED FOR C.C. APPROVAL	E.E.	E.E.	14.07.17

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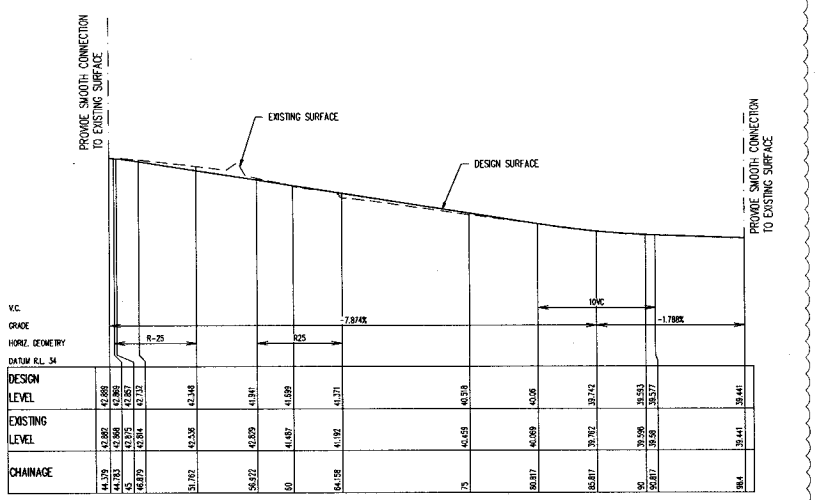
PROJECT
RESIDENTIAL DEVELOPMENT
312 VICTORIA ROAD, GLADESVILLE

SHEET SUBJECT
CIVIL WORKS PLAN

PROJECT 312 VICTORIA ROAD, GLADESVILLE

DATE	DRAWN	DESIGNED	CHECKED
JULY 2017	E.E.	O.C.	A.S.H.

SCALE @ A1: 1:200
JOB No: 170366
AUTHORISED: Dr Anthony S. Hoehnam
DWG No: C01
REV: E



GERARD LANE – LONGITUDINAL SECTION CENTRELINE

SCALE (H) 1:200
(V) 1:100

SCALE 1:200 @ A1
HORIZONTAL SCALE

SCALE 1:100 @ A1
VERTICAL SCALE

A1 Metric 0 1 2 3 4 5 6 7 8 9 10

No	AMENDMENT	ENG	DRAFT	DATE	No	AMENDMENT	ENG	DRAFT	DATE	No	AMENDMENT	ENG	DRAFT	DATE
C	ISSUED FOR C.C. APPROVAL	M.B.	J.L.	17.01.19										
B	ISSUED FOR C.C. APPROVAL	M.D.	M.B.	13.02.18										
A	ISSUED FOR C.C. APPROVAL	O.C.	E.E.	14.07.17										

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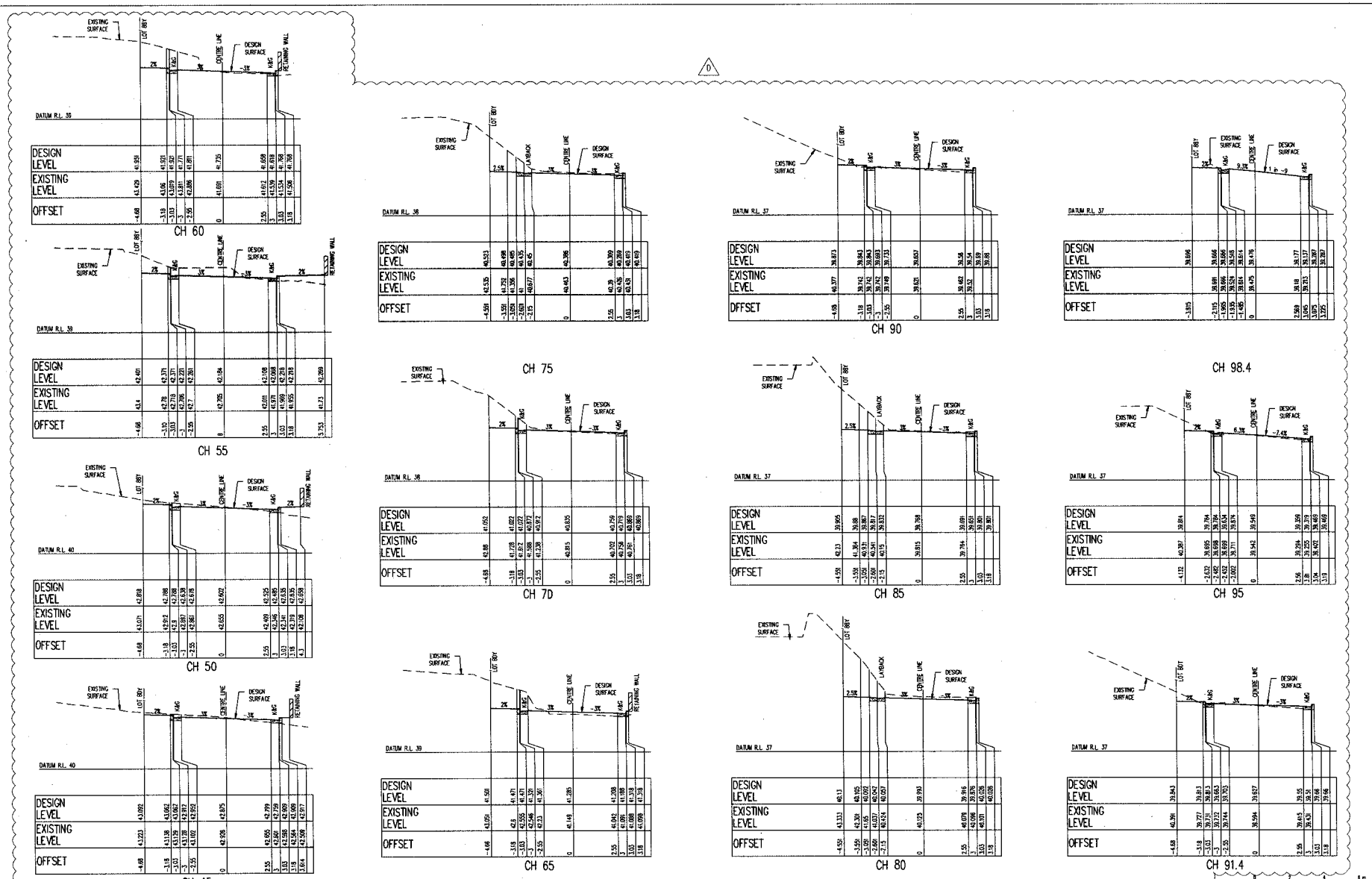
PROJECT
RESIDENTIAL DEVELOPMENT
312 VICTORIA ROAD, GLADESVILLE

SHEET SUBJECT
GERARD LANE
LONGITUDINAL SECTION

PROJECT 312 VICTORIA ROAD, GLADESVILLE

DATE	DRAWN	DESIGNED	CHECKED
JULY 2017	E.E.	O.C.	A.S.H.

SCALE @ A1: AS SHOWN
JOB No: 170366
AUTHORISED: Dr Anthony S. Hasham
DWG No: C02
REV: C



No	AMENDMENT	ENG	DRAFT	DATE
D	ISSUED FOR C.C. APPROVAL	M.D.	J.L	17.01.18
C	ISSUED FOR C.C. APPROVAL	M.D.	J.L	26.02.18
B	ISSUED FOR C.C. APPROVAL	M.D.	M.D.	13.02.18
A	ISSUED FOR C.C. APPROVAL	D.C.	E.E.	14.07.17

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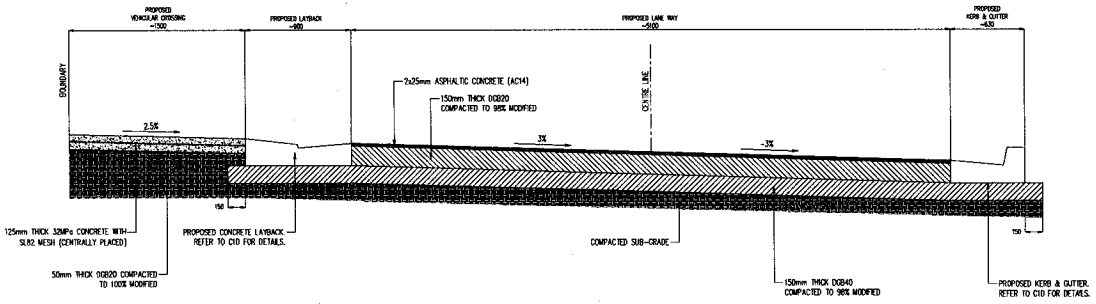
PROJECT
RESIDENTIAL DEVELOPMENT
312 VICTORIA ROAD, GLADESVILLE

SHEET SUBJECT
CROSS SECTIONS

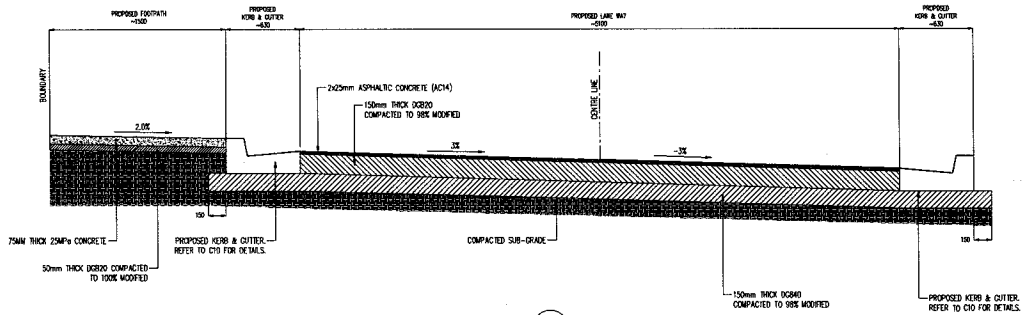
PROJECT 312 VICTORIA ROAD, GLADESVILLE

DATE	DRAWN	DESIGNED	CHECKED
JULY 2017	E.E.	O.C.	A.S.H.

SCALE @ A1: 1:100
JOB No: 170366
AUTHORISED: Dr Anthony S. Hasham
DWG No: C03
REV: 0



TYPICAL VEHICLE CROSS SECTION A / C01
SCALE 1:20



TYPICAL FOOTPATH CROSS SECTION B / C01
SCALE 1:20

0 400 800 1200 mm
SCALE 1:20 @ A1

A1 1 2 3 4 5 6 7 8 9 10

No	AMENDMENT	ENG	DRAFT	DATE	No	AMENDMENT	ENG	DRAFT	DATE	No	AMENDMENT	ENG	DRAFT	DATE
A	ISSUED FOR C.C. APPROVAL	D.C.	E.E.	14.07.17										

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PROJECT
RESIDENTIAL DEVELOPMENT
312 VICTORIA ROAD, GLADESVILLE

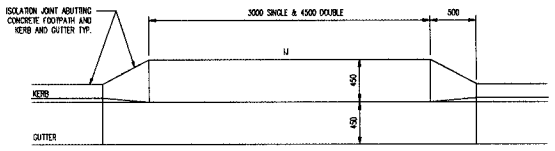
SHEET SUBJECT
TYPICAL CROSS SECTION

PROJECT 312 VICTORIA ROAD, GLADESVILLE

DATE	DRAWN	DESIGNED	CHECKED
JULY 2017	E.E.	D.C.	A.S.H.

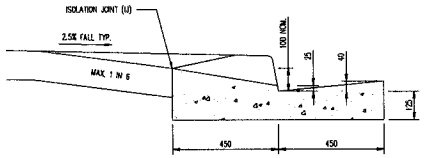
SCALE @ A1	JOB No
1:20	170366

AUTHORISED	DWG No	REV
Dr Anthony S. Hosham	C07	A

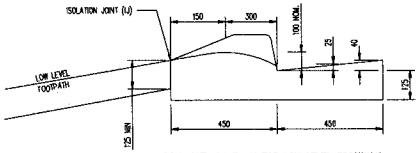


PLAN
SCALE 1:50 @A4

ELEVATION
SCALE 1:50 @A4



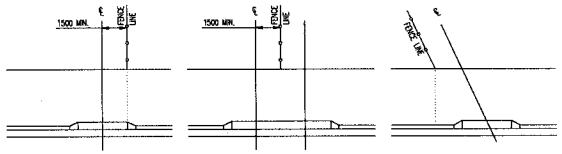
SECTION
SCALE 1:20 @A4



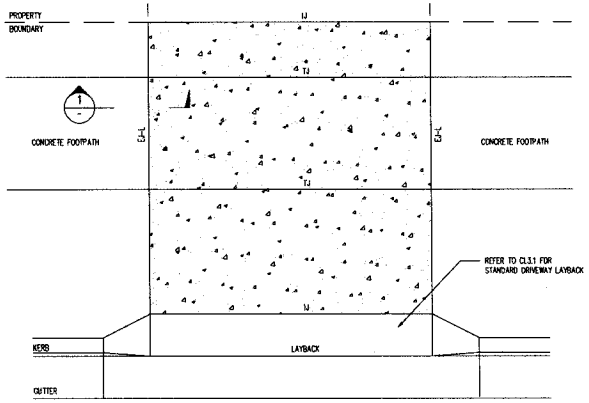
ROLL OVER LAYBACK FOR LOW LEVEL FOOTWAYS
SCALE 1:20 @A4

NOTES:

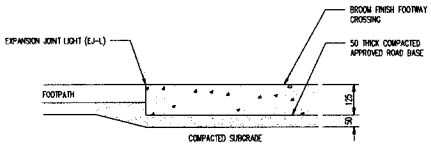
1. STANDARD LAYBACKS CONSIST OF 125mm MINIMUM THICKNESS BROOM FINISHED UNREINFORCED CONCRETE OVER 150mm MINIMUM THICKNESS COMPACTED APPROVED ROADBASE.
2. THE GUTTER SHALL BE STEEL FLOAT FINISHED.
3. EXPANSION JOINTS SHALL BE PLACED AT INTERVALS OF 6m MAXIMUM AND 4m MINIMUM. REFER TO CIV.1.1.1 FOR JOINTS DETAIL.
4. CONCRETE SHALL HAVE A 28 DAY STRENGTH OF 25MPA MINIMUM.
5. CONCRETE SHALL HAVE A 28 DAY STRENGTH OF 25MPA MINIMUM.
6. SUBJECT TO APPROVAL FROM COUNCIL'S ENGINEER THE NOMINAL HEIGHT OF DRIVEWAY LAYBACK MAY BE LOWERED TO MINIMUM 75mm TO REDUCE THE CHANCE OF VEHICLE SCRAPING.
7. THE COUNCIL ENGINEER REQUIRES 24 HOURS NOTICE PRIOR TO POURING OF CONCRETE TO INSPECT THE FORMWORK. NO CONCRETE SHALL BE POURED UNTIL THE EXCAVATION AND FORMWORK HAVE BEEN INSPECTED.
8. REFER TO CIV.1.2.1 FOR ROAD RESTORATION DETAIL.
9. ALL DIMENSIONS IN MILLIMETRES UNLESS NOTED OTHERWISE (U.N.O)



CONVENTIONAL ABUTTING OBLIQUE



PLAN
SCALE N.T.S.



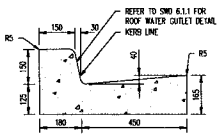
SECTION
SCALE 1:20 @A4

NOTES:

1. FOOTPATH CROSSINGS SHALL CONSIST OF 125mm THICK BROOM FINISHED UNREINFORCED CONCRETE OVER 50mm THICK OF APPROVED ROADBASE.
2. REFER TO CIV.11 FOR JOINT DETAIL.
3. CONCRETE EDGES SHALL BE FINISHED WITH AN EDGING TOOL.
4. CONCRETE SHALL HAVE A 28 DAY STRENGTH OF 25MPA MINIMUM.
5. CONCRETE SHALL BE PLACED WITH A MAXIMUM SLUMP OF 80mm.
6. THE COUNCIL ENGINEER REQUIRES 24 HOURS NOTICE PRIOR TO POURING OF CONCRETE TO INSPECT THE FORMWORK. NO CONCRETE SHALL BE POURED UNTIL THE EXCAVATION AND FORMWORK HAS BEEN INSPECTED.
7. REFER TO CIV.5 SERIES FOR STANDARD FOOTPATH DETAILS.
8. ALL DIMENSIONS IN MILLIMETRES UNLESS NOTED OTHERWISE (U.N.O).

NOTES:

1. ALL ROADSIDE KERBS SHAL BE LAID ON A MINIMUM 150mM THICKNESS COMPACTED APPROVED ROADBASE.
2. ALL CORNERS SHALL HAVE A 25mm RADIUS UNLESS NOTED OTHERWISE.
3. ALL KERBS, GUTTERS AND EDGE STRIPS SHALL BE STEEL FLOAT FINISHED.
4. EXPANSION JOINTS SHALL BE PROVIDE BETWEEN HARD SURFACE AND AT INTERVALS OF 6M MAXIMUM AND 4m MINIMUM. REFER TO CIV.11.1.1 FOR JOINT DETAIL.
5. CONCRETE SHALL HAVE A 28 DAY STRENGTH OF 25MPa MINIMUM.
6. CONCRETE SHALL BE PLACED WITH A MAXIMUM SLUMP OF 80mm.
7. REFER TO CIV.1.2.1 FOR ROAD RESTORATION DETAIL.
8. ALL DIMENSIONS IN MILLIMETRES UNLESS NOTED OTHERWISE (U.N.O).



KERB AND GUTTER

A1 0 1 2 3 4 5 6 7 8 9 10

No	AMENDMENT	ENG	DRAFT	DATE	No	AMENDMENT	ENG	DRAFT	DATE	No	AMENDMENT	ENG	DRAFT	DATE
A	ISSUED FOR C.C. APPROVAL	O.C.	E.E.	11.07.17										

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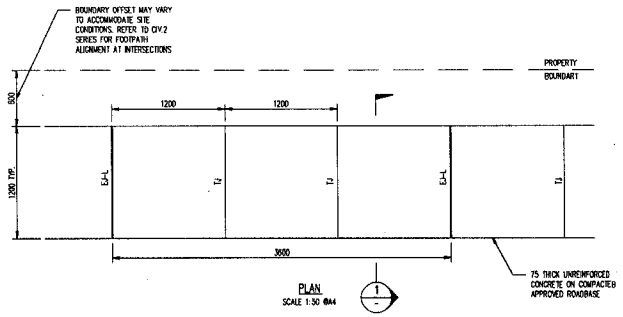
PROJECT
RESIDENTIAL DEVELOPMENT
312 VICTORIA ROAD, GLADESVILLE

SHEET SUBJECT
CONCTRUCTION NOTES AND DETAILS SHEET 1 OF 2

PROJECT 312 VICTORIA ROAD, GLADESVILLE

DATE	DRAWN	DESIGNED	CHECKED
JULY 2017	E.E.	O.C.	A.S.H.

SCALE @ A1: N.T.S.
JOB No: 170366
AUTHORISED: Dr Anthony S. Hesham
DWG No: C1D
REV: A



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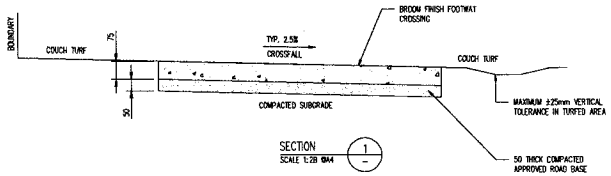

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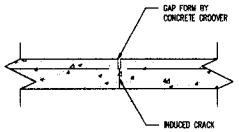
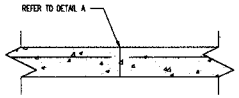
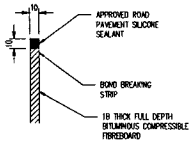


TOOLED JOINT (TJ)
SCALE N.T.S.



LIGHT DUTY EXPANSION JOINT (EJ-L)
SCALE N.T.S.



DETAIL 'A'
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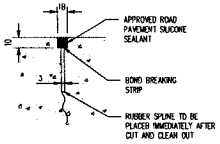

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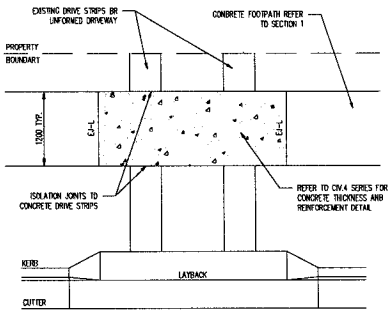

FOOTPATH THICKENING
SCALE N.T.S.

NOTES:

1. FOOTPATHS TO HAVE A 2.5% CROSSFALL TOWARDS THE KERB – THIS IS A 30mm FALL OVER A 1.2m WIDE FOOTPATH.
2. REFER TO CIV/11 FOR JOINT DETAIL.
3. CONCRETE EDGES SHALL BE FINISHED WITH AN EDGING TOOL.
4. CONCRETE SHALL HAVE A 28 DAY STRENGTH OF 25MPa MINIMUM.
5. CONCRETE SHALL BE PLACED WITH A MAXIMUM SLUMP OF 80mm.
6. MINIMUM CONCRETE COVER TO BE 40mm UNLESS NOTED OTHERWISE.
7. THE COUNCIL ENGINEER REQUIRES 2 HOURS NOTICE PRIOR TO POURING OF CONCRETE SHALL BE POURED UNTIL THE EXCAVATION AND FORMWORK HAVE BEEN INSPECTED.
8. ALL DIMENSIONS IN MILLIMETRES UNLESS NOTED OTHERWISE.

NOTES:

1. KEY JOINTS AND DOWELS SHALL BE PLACED AND STAKED ACCORDING TO THE MANUFACTURER'S SPECIFICATION.
2. CONCRETE SHALL HAVE A 28 DAY STRENGTH OF 25MPa MINIMUM UNLESS NOTED OTHERWISE.
3. REINFORCEMENT MESH OR BAR MAY BEND TO ACCOMMODATE DOWELS.
4. CONCRETE SHALL BE PLACED WITH A MAXIMUM SLUMP OF 80mm.
5. ALL DOWELS SHALL BE GRADE 300 STEEL TO AS3679.1.
6. ALL DOWELS AND DEFORMED BARS ARE TO BE CENTRALLY PLACED.
7. ALL DIMENSIONS IN MILLIMETRES UNLESS NOTED OTHERWISE.

A1 1 2 3 4 5 6 7 8 9 10

No	AMENDMENT	ENG	DRAFT	DATE	No	AMENDMENT	ENG	DRAFT	DATE	No	AMENDMENT	ENG	DRAFT	DATE
A	ISSUED FOR C.C. APPROVAL	O.C.	E.E.	14.07.17										

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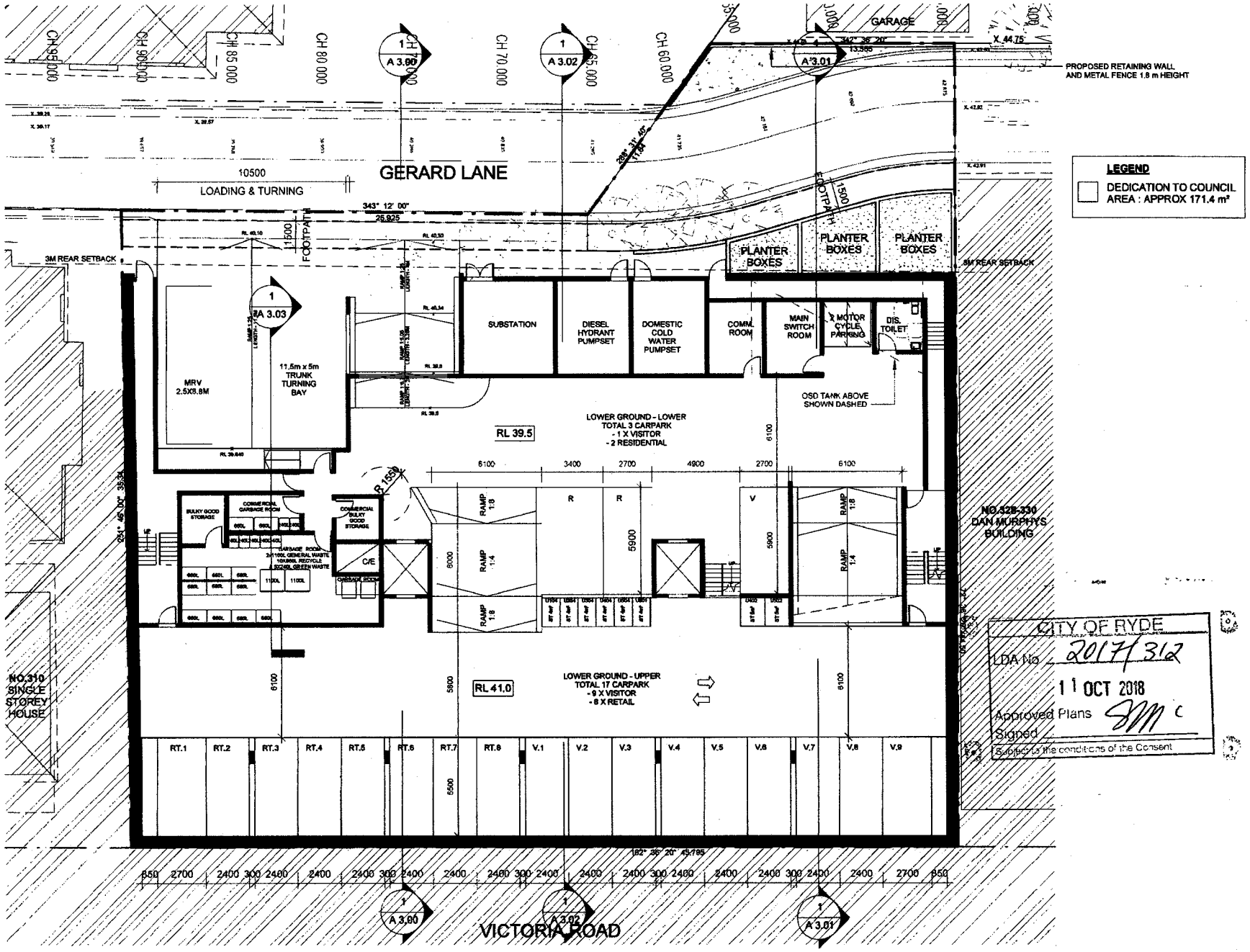
PROJECT
RESIDENTIAL DEVELOPMENT
312 VICTORIA ROAD, GLADESVILLE

SHEET SUBJECT
CONCTRUCTION NOTES AND DETAILS SHEET 2 OF 2

PROJECT 312 VICTORIA ROAD, GLADESVILLE

DATE	DRAWN	DESIGNED	CHECKED
JULY 2017	E.E.	O.C.	A.S.H.

SCALE @ A1: N.T.S.
JOB No: 170366
AUTHORISED: Dr Anthony S. Hasham
DWG No: C11
REV: A



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Nominated Architects
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Issue	Description	Date
B	Issue to council	23.02.2018
B1	Issue to planner for review	26.02.2018
C	Issue for DA amendment	27.02.2018
C1	Issue for additional shadow study	16.04.2018
C2	Additional section for garbage area	24.04.2018
D	Issue to council	06.06.2018
E	Issue to council	18.06.2018
F	Issue to council	02.08.2018

Client Name
Buildex Gladesville P/L

Project Name
312 Victoria Road Gladesville

Drawing Title
Plan - Lower Ground

Job No.	Scale	Drawing no:	ISSUE
A15041	1 : 200 @A3	A 1.02	F

Schedule 6- Notification and rectification of breach

1 Notice of breach

1.1 Response to Notice

(a) Promptly upon receipt of a notice under clause 9, the defaulting party 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 clause13 and Schedule 7.

(b) In the absence of a manifest error on the face of the notice, nothing in clause 1.1(a)(ii) of this Schedule 6 will constrain or limit the Council's rights of recourse under this Deed.

2.1 Rights of the Council after Giving Notice

(a) This clause 1.2 of this Schedule 6 applies where Council is the Notifying Party.

(b) If:

(i) the defaulting party does not take either of the actions outlined in clause 1.1(a) of this Schedule 6; or

(ii) any dispute notified by the defaulting party 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:

(i) taking any action under clause 2.1 of this Schedule 6;

(iii) calling on the Securities in accordance with Schedule 10;

(iv) issuing a notice to the defaulting party which:

(v) identifies the nature of the breach; and

(vi) specifies that the breach must be rectified by the Owner within a reasonable period of time which must not be less than 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 clauses 1.1 and 2.1 of this Schedule 6 will apply in respect of that notice (with the necessary changes having been made) and if the defaulting party does not take either of the actions outlined in clause 1.1(a) of this Schedule 6 then the Council may have recourse against the Owner in relation to the breach.

(c) The rights of the Council under this Deed, and any action taken by it as referred to in this clause 2.1 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 defaulting party.

2 Council may rectify breach

2.1 Council may perform obligations

(a) This clause 2 of this Schedule 6 applies only if the Council has first complied with clause 1 of this Schedule 6.

(b) Before exercising its rights under the remainder of this clause 2.1 of this Schedule 6, the Council will give not less than 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 defaulting party of its intention to exercise those rights.

(c) The Council may (but is not obliged to):

(i) perform the defaulting party's obligations where the defaulting party fails to:

(A) rectify the breach identified in the notice referred to in clause 9 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 clause 9 has occurred and refer the matter for dispute resolution in accordance with clause 13 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 defaulting party should have done under this Deed.

(d) Without limiting clause 2.1 of this Schedule 6 the defaulting party 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 defaulting party relating to work, health and safety and compliance with all Laws.

(e) The defaulting party indemnifies and will keep the Council indemnified from and against all claims, actions, demands, losses, damages, Costs and Legal Costs (**Claim**) 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 clause 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, and may call on any relevant Security provided to it under Schedule 10 to satisfy any such Claim.

Schedule 7- Dispute Resolution

1 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 1.3 (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,

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

(b) 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.

(c) 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.

(d) 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.

(e) 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

(f) 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) considers the appointment of a lead expert appropriate

then the Parties must appoint a lead expert.

(g) 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.

(h) 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.

(i) The expert is to be engaged on his standard terms of engagement subject to any amendments required to ensure consistency with this clause.

(j) 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.

(k) 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.

(l) The expert's decision is final and binding on the Parties. 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.

(m) 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 60 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

(c) The Costs of appointing a mediator under this Schedule 7, will be borne equally by the Parties

(a) Each Party will be responsible for its own Legal Costs with respect to any dispute resolution process.

Schedule 8 - Registration of Deed

1 Deed Registration

1.1 Consents

The Owner warrants that they have obtained all consents to the registration of this Deed on the relevant folio of the Register for the Land as are necessary and in particular the consent of any mortgagee or lessee.

1.2 Mortgage

(a) The Owner must 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 accompanied by production information as evidence that the mortgagee (if any) has produced the Certificate of Title for the Land at Land and Property Information for the purpose of registration of the Deed and a bank cheque for the relevant registration fees.

(b) If the Land is unencumbered by a mortgagee the Owner must produce the Certificate of Title for the Land at Land and Property Information and give a copy of the production slip to the Council.

1.3 Council to lodge

Subject to clause 1.2 of this Schedule 8, the Council will lodge this Deed with Land and Property Information for registration on the relevant folio of the Register for the Land as soon as reasonably practicable, but in any event no later than 10 Business Days after receiving the documents referred to in clause 1.2 of this Schedule 8.

1.4 Registration requisitions

The Owner must promptly comply with any requisitions that may be raised with regard to registration of the Deed in the relevant folio of the Register for the Land.

1.5 Registration notification

The Council will notify the Owner of registration of the Deed and forward a copy of the registered instrument to them.

1.6 Costs

The Owner must pay the Council's reasonable Costs of registering this Deed upon receipt of a notice from the Council as to the amount of those Costs.

Schedule 9 - Release and Discharge Terms

1 Release and discharge terms

1.1 Full release

Once the Council is satisfied that the Owner has complied with all of their obligations under this Deed, at the Owner's request (and Cost), the Council must within 10 Business Days of being requested to do so by the Owner:

(a) provide a full release and discharge of this Deed with respect to the whole of the Land and documentation (in registrable form) required to remove the notation of this Deed from the relevant folio of the Register for the Land; and

(b) (should the Council not already have done so) sign such documentation as is necessary to remove any caveat lodged by the Council from the relevant folio of the Register for the Land.

1.2 Partial release

Despite clause 1.1 of this Schedule 9, from time to time, the Owner may request and the Council is to provide a release and discharge of this Deed so that it may remove the notation of this Deed from the Register in respect of any part of the Land provided that:

(a) all obligations under clause 3.1 of this Deed have been met;

(b) the Owner has provided the Council with a Security in accordance with Schedule 10 for the purpose of completing the outstanding, rectifying any defects in the Contribution Works or carrying out any maintenance of the Contribution Works as required by Schedule 4; monetary Contributions that are required under Schedule 4 of this Deed to be paid for the Development on that part of the Land (if any) have been paid; and

(c) the Owner is not otherwise in default of any of its obligations under this Deed (as determined by the Council (acting reasonably), at the time of the Owner's request, unless the Council waives the default.

1.3 Outstanding obligations

For the avoidance of doubt, a release under clause 1.2 of this Schedule 9 does not operate as a release from any outstanding obligation under this Deed, and is intended only to allow removal of the notation of this Deed from the Register in respect of the relevant part of the Land.

Schedule 10 - Security

1 Securities

1.1 Owner to provide

(a) Clauses 1.1 to 1.8 of this Schedule apply in relation to the Contributions.

(b) The Owner must provide each Security to the Council (in the relevant Security Amount) on or before the times set out in the Security Schedule.

(c) The Securities referred to in paragraph 1.1(b) of this clause, secure:

(i) in respect of the Road Land Works, the performance by the Owner of its obligations under this Deed in respect of the Road Land Works and dedication of the Road Land to the Council including causing the Road Land Works to achieve Practical Completion;

(ii) in respect of the Public Domain Works, the performance by the Owner of its obligations under this Deed in respect of the Public Domain Works and dedication of the Public Domain Land to the Council including causing the Public Domain Works to achieve Practical Completion;

(iii) in respect of the Road Land Works Defects Security, the performance by the Owner of its obligations under this Deed to rectify Defects in the Road Land Works; and

(iv) in respect of the Public Domain Works Defects Security, the performance by the Owner of its obligations under this Deed to rectify Defects in the Public Domain Works;

1.2 Adjustment of Security Amounts

(a) On each Adjustment Date each Security Amount is to be adjusted to the Revised Security Amount as determined in accordance with the following formula:

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

where:

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

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

A is the CPI published immediately before the relevant Adjustment Date;

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 a Revised Security Amount where B is greater than A.

(b) The Council must give the Owner written notice of each Revised Security Amount to apply from the relevant Adjustment Date.

(c) The Owner must give the Council replacement or further Securities so that the Council holds each Security for an amount equal to the revised Security Amounts no later than 15 Business Days after receipt of a notice given under paragraph 1.2(b) of this clause.

1.3 Expiry of Security

If, despite the requirements of this Deed, any Security provided by the Owner is expressed as expiring on a certain date, the Owner must provide the Council with a replacement Security 20 Business Days prior to the expiry of any Security.

1.4 Failure to replace expired Security

If the Owner fails to provide the Council with a replacement Security in accordance with clause 1.3 of this Schedule 10, the Council may call on the full amount of such Security after giving 10 Business Days prior written notice to the Owner.

1.5 No limitation of obligations

The provision of the Security does not:

(a) relieve the Owner from any of its obligations under any other provision of this Deed; or

(b) other than as expressly set out in this Deed, limit the right of the Council to recover from the Owner 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.

1.6 Cash Deposit

(a) If the Council makes demand under any Security pursuant to clause 1.4 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 Security secured.

(b) As beneficial owner of the Cash Deposit, the Council may, at any time and without notice to the Owner, 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 Owner to comply with those of the Owner's obligations under this Deed that the relevant Security 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.

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(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 Security and the Owner has satisfied all of its obligations under this Deed which were secured by the relevant Security, 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 Owner.

(e) For the avoidance of doubt, the Owner 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 Security.

1.7 Release of Cash Deposit

The Council must release the Cash Deposit to the Owner if the Owner provides the Council with a replacement Security complying with the requirements of clause 1.3 of this Schedule 10.

1.8 Claims under Securities

(a) The Owner agrees that the Council may after giving not less than 10 Business Days prior written notice to the Owner make claims (in full or in part) under a Security if:

(i) a notice has been issued by Council requiring the Owner to remedy the breach in accordance with the requirements of Schedule 6; and

(ii) the breach remains unremedied following the expiry of the rectification period specified in that notice; and

(iii) the claim relates to the non-performance of obligations secured by that Security.

(b) The Council may retain and use any money it has obtained by making a claim under this clause in its discretion to compensate the Council for the Owner's breach of those obligations.

1.9 Security Schedule

The Parties agrees that the table below is the Security Schedule setting out the Securities, their amount and when they are to be provided:

Number	Security	Security Amount	Date for delivery
1	Road Land Works Security	Incorporated in the Public Domain Works Security	The date of this Deed
2	Public Domain Works Security	$174,926.00	The date of this Deed
3	Road Land Works Defects Security	Incorporated in the Public Domain Works Defects Security	No later than the date of the Certificate of Practical Completion in respect of the Road Land Works
4	Public Domain Works Defects Security	An amount equal to 10% of the Security Amount for the Public Domain Works Security as the date of the Certificate of Practical Completion in respect of the Public Domain Works	No later than the date of the Certificate of Practical Completion in respect of the Public Domain Works

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Schedule 11 - Assignment and Dealing

1 Assignment and Dealing

1.1 Dealing by the Owner

(a) Unless the matters specified in clause 1.1(b) of this Schedule 11 are satisfied, the Owner is not to assign or novate to any person their rights or uncompleted obligations under this Deed.

(b) The Owner must not assign or novate to any person its rights or uncompleted obligations under this Deed 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 Owner has, at no cost to the Council, first procured the execution by the person to whom the Owner's rights or uncompleted obligations under this Deed are to be assigned or novated (**incoming party**), of a deed in favour of the Council in the form similar to Schedule 12, completed in a manner satisfactory to the Council. Such deed includes covenants that the incoming party:

(A) will perform the relevant obligations of the Owner under this Deed; and

(B) is bound by the terms and conditions of this Deed (relevant to the Owner) as if the incoming party had executed the Deed;

(ii) the Owner is not in breach of this Deed or the Council has waived a subsisting breach;

(iii) the Owner provides to the satisfaction of Council (acting reasonably) a Bond and any other documents required under Schedule 10 to secure the outstanding obligations under this Deed;

(iv) the Owner provides to the satisfaction of Council (acting reasonably) copies of insurances or any other documents required under this Deed for the carrying out of any outstanding Contribution Works.

1.2 Dealing with the Land by the Owner

(a) The Owner 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) 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 Owner obtains the Council's prior written consent. The Council must not unreasonably withhold its consent in circumstances where the requirements specified in clause 1.1(b) of this Schedule 11 are satisfied.

(b) This clause 1.2 of this Schedule 11 does not apply to the transfer of any part of the Land, in respect of which the Council has provided a release and discharge of this Deed in accordance with Schedule 9.

(c) The Council acknowledges that before the date of this Deed the Owner may have entered into land sale contract for dwellings proposed as part of the Development. Despite anything else stated in this Deed:

(i) the consent of the Council under this Schedule 11 is not required for any such land sale contract entered into before the date of this Deed; and

(ii) nothing in this Deed prohibits the Owner undertaking marketing and sale of lots proposed as part of the Development.

1.3 Council's Costs

The Owner or the Owner (as the case may be) 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 clauses 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 Owner or the Owner (as the case may be) in respect of any proposed assignment or dealing proposed under clauses 1.1 or 1.2 of this Schedule 11.

Schedule 12 - Pro-forma Novation Deed

Hall&Wilcox
Lawyers

Novation Deed

Council of the City of Ryde

Buildex Gladesville Pty Limited

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Novation Deed

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Novation Deed

Date

Parties

Council of the City of Ryde ABN 81 621 292 610 of Level 1, 3 Richardson Place, North Ryde, NSW (**Council**)

Buildex Gladesville Pty Ltd ABN 53 606 547 460 of Suite 1, 1 Chaplin Drive, Lane Cove West, NSW (**Landowner**)

[# insert details of the new party #] (**Transferee**)

Recitals

A Council and the Landowner are parties to the Original Agreement.

B The Original Agreement relates to the whole of the Land.

C The parties to this Deed have agreed to the novation of all of Landowner's obligations under the Original Agreement to the Transferee.

OR

D The parties to this Deed have agreed to the novation of the part of the Landowner's obligations under the Original Agreement that are relevant to the part of the Land to be transferred, to the Transferee.

The parties agree

1 Definitions and interpretation

1.1 Definitions

In this Deed:

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 and the Landowner.

Required Obligations means [insert - whole or part of the terms of the Original Agreement as is required to suit the circumstances].

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 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 Landowner as a party to the Original Agreement insofar as the Original Agreement relates to the Required Obligations, 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 Landowner insofar as the Original Agreement relates to the Required Obligations; and

(c) the Landowner 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

(a) The Transferee must perform all of the Required Obligations under the Original Agreement required to be provided on and from the Effective Date, as if named as the Landowner including, but not limited to the delivery of all the Contributions to Council.

(b) On the Effective Date the Transferee must provide to Council one or more Bank Guarantees which meet the requirements of clause 9 and Schedule 10 of the Original Agreement in substitution for any Bank Guarantee provided by the Landowner under clause 9 of the Original Agreement.

2.3 Release of Guarantees

The parties expressly acknowledge and agree that:

(a) Council will release any Bank Guarantee provided to Council by the Landowner under the provisions of the Original Agreement to the Landowner or as the Landowner otherwise directs in writing) promptly and in any event within 14 days of the provision of replacement Bank Guarantee by the Transferee pursuant to clause 12.3(b) of this Deed; 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 Landowner before the date of this Deed.

2.4 Liability before Effective Date

Notwithstanding clause 2.3, the Landowner 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 Landowner 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.

2.5 Indemnities

On and from the Effective Date, the Transferee indemnifies the Landowner against all costs, expenses, liabilities, claims, loss or damages suffered or incurred by the Landowner in connection with:

(a) the Original Agreement in so far as the Original Agreement relates to the Required Obligations; and

(b) any failure by the Transferee to comply with its obligations under this Deed.

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

4.1 Definitions and Interpretation

In this clause 4:

(a) words or expressions which are defined in the GST Law have the same meaning, except where the context suggests otherwise;

(b) **GST Law** has the meaning given to that term in the A New Tax System (Goods and Services Tax Act) 1999 (Cth);

(c) any part of a supply which is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) is treated as a separate supply;

(d) references to GST payable and to input tax credit entitlement include GST payable by, and input tax credit entitlement of, the representative member for a GST group of which the entity is a member; and

(e) references to something done (including a supply made) by a Party includes something done by any entity through which that Party acts.

All consideration for a supply made under or in connection with this Deed is exclusive of GST, unless specified to be GST inclusive. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 4.

4.1 Passing-on provision

If GST is payable in relation to a supply made under or in connection with this Deed, then any party (**Recipient**) that is required to provide consideration to another party (**Supplier**) for that supply must pay an additional amount to the Supplier equal to the amount of that GST at the same time as any other consideration is to be first provided for that supply.

4.2 GST Invoice

The Supplier must deliver a tax invoice to the Recipient of the supply no later than the time at which the Recipient is required to provide the consideration for the taxable supply.

4.3 Variation

(a) Where there is a variation to the consideration provided in relation to a taxable supply for which a GST Amount was paid under clause 4.1:

(i) the Supplier will recalculate the amount of the GST Amount properly payable and will provide a corresponding refund or credit to, or will be entitled to receive the amount of the variation of the GST Amount from, the Recipient. The amount paid, refunded or credited is taken to form part of the GST Amount should a subsequent adjustment event occur; and

(ii) where the variation is an adjustment event the Supplier must deliver an adjustment note to the Recipient as soon as reasonably practicable after the Supplier becomes aware of the adjustment event.

(b) 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.

5 Representations and warranties

(a) Each Party individually represents and warrants that:

(i) it has power to enter into this Deed and comply with its obligations under the Deed;

(ii) 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) it has in full force and effect the authorisations necessary for it to enter into this Deed, to comply with its obligations and exercise its rights under this Deed and to allow this Deed to be enforced;

(iv) its obligations under this Deed are valid and binding and are enforceable against it in accordance with the terms of the Deed;

(v) it does not have immunity from the jurisdiction of a court or from legal process; and

(vi) it benefits by entering into this Deed to which it is a Party.

(b) Each Party acknowledges that each other Party has entered into this Deed in reliance on the representations and warranties in this clause 5.

6 Stamp duty and costs

(a) The Landowner is liable for Council's Legal Costs of and incidental to the negotiation, preparation and execution of this deed, and must reimburse Council for such Legal Costs promptly on demand.

(b) The Transferee will pay all stamp duty arising directly or indirectly from this Deed.

7 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.

8 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.

9 Counterparts

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

Signing page

SIGNED as a deed

Signature by Council

SIGNED for and on behalf of the **Council of the City of Ryde** by a duly authorised officer (who by their signature testifies that they are duly authorised to sign this instrument) in the presence of:

Signature of witness	Signature of the Authorised Officer
Name of witness *(please print)*	Name and position of the Authorised Officer

Signature by the Owner

Executed by **Buildex Gladesville Pty Ltd ABN 53 606 547 460** in accordance with section 127 of the *Corporations Act 2001* (Cth) by being signed by the following officers:

Signature of Director	Signature of director/company secretary
Name of director *(please print)*	Name of director/company secretary *(please print)*

Schedule 13 - General Provisions

1 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 reasonably and properly incurred Legal Costs relating to this Deed are to be borne by the Owner in the amount specified in Schedule 14 and are payable on demand.

(b) Without limiting clause 1.2(a) of this Schedule 13, the Owner agrees to pay or reimburse the Council on demand for:

(i) reasonably and properly incurred 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 Owner 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 effect, 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 individually represents and warrants that:

(i) it has power to enter into this Deed and comply with its obligations under the Deed;

(ii) 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) it has in full force and effect the authorisations necessary for it to enter into this Deed, to comply with its obligations and exercise its rights under this Deed and to allow this Deed to be enforced;

(iv) its obligations under this Deed are valid and binding and are enforceable against it in accordance with the terms of the Deed;

(v) it does not have immunity from the jurisdiction of a court or from legal process; and

(vi) it benefits by entering into this Deed to which it is a Party.

(b) Each Party acknowledges that each other Party has entered into this Deed in reliance on the representations and warranties in this clause 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 Owner agrees that the obligation to provide the Contributions is at the risk of the Owner. The Owner releases the Council from any Claim, liability or loss arising from, and Costs and Legal Costs incurred in connection with, the Owner's obligation to provide the Contributions.

(b) The Owner indemnifies the Council against all liabilities or loss arising from, and any Costs and Legal Costs incurred in connection with the Council enforcing the Owner's obligation to provide the Contributions in accordance with this Deed or the Council exercising the Council's rights under or by virtue of this Deed or both.

(c) The indemnity in paragraph 1.14(b) of this Schedule 13 is a continuing obligation, independent of the Owner'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 clause 1.14 of this Schedule 13.

Schedule 14- Costs

The Owner is to pay Council's Legal Costs associated with the preparation and execution of this Deed.

Planning Agreement

Signing page

SIGNED as an agreement

Signature by the Council

SIGNED for and on behalf of the **Council of the City of Ryde** by a duly authorised officer (who by their signature testifies that they are duly authorised to sign this instrument) in the presence of:

Signature of witness

Signature of the Authorised Officer

CARMELINA LOUGHLAND

Name of witness *(please print)*

GEORGE DEDES GENERAL MANAGER

Name and position of the Authorised Officer

Signature by the Owner

Executed by **Buildex Gladesville Pty Ltd ABN 53 606 547 460** in accordance with section 127 of the *Corporations Act 2001* (Cth) by being signed by the following officer~~s~~:

~~Signature of Director~~

Signature of sole director/company secretary

~~Name of director~~
~~*(please print)*~~

JIA XIN CHEN

Name of sole director/company secretary
(please print)