

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

and

SHRI GANESH CAPITAL PTY LIMITED ATF MACQUARIE  
BUSINESS CENTRE UNIT TRUST  
ACN 719 265 512

## Planning Agreement

Environmental Planning and Assessment Act 1979



Schedule 2 - Description of the Land and the Development .....	14
1. Title .....	14
2. Development .....	14
Schedule 3 - Contributions Schedule.....	15
Table 1 - Contribution Land.....	15
Table 2 - Contribution Works.....	15
Table 3 - Contribution Amount .....	16
Table 4 - Calculation of Contribution Amount.....	16
Schedule 4 - Contribution Works Procedures.....	18
Schedule 5 - Contribution Land Procedures .....	25
Schedule 6 - Notification and rectification of breach.....	27
1. Notice of breach .....	27
2. Council may rectify breach .....	28
Schedule 7 - Dispute Resolution .....	29
Schedule 8 - Registration .....	33
Schedule 9 - Release and Discharge Terms.....	34
Schedule 10 - Bonds.....	35
1. Bonds Required .....	35
2. Face value of Bond.....	36
3. Expiry of Bonds .....	37
4. Failure to replace expired Bond .....	37
5. No limitation of obligations.....	37
6. Cash deposit.....	37
7. Release of Cash Deposit .....	38
8. Claims under Bond .....	38
Schedule 11 - Assignment and Dealing.....	39
Schedule 12 - General Provisions.....	41
Schedule 13 - Costs .....	44
Schedule 14 - Pro-forma Novation Deed .....	45
1. Definitions and interpretation .....	46
2. Novation .....	47
2.1 Original Agreement.....	47
3. Affirmation of the Original Agreement.....	48
4. GST .....	48
5. Stamp duty and costs.....	48
6. Further acts .....	48
7. Governing law.....	49
8. Counterparts.....	49
Schedule 15 - Indicative Public Domain Concept Plan .....	50
Schedule 16 - Land Dedication Plan .....	52
Exhibit A - Explanatory Note .....	54

Planning Agreement made at *Ryde* on *11 February 2015* ~~2016~~

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

Shri Ganesh Capital Pty Limited ATF Macquarie Business Centre Unit Trust (ACN 719 265 512) of Level 18, Goldfields House, 1 Alfred Street, Sydney NSW 2000 (Developer)

**Background**

- A.        The Developer is the owner of the Land.
- B.        The Developer has lodged the Development Application with the Council to carry out the Development on the Land.
- C.        The Developer has made an offer to enter into a planning agreement with the Council to provide the Contributions in connection with the Development Application.
- D.        This Deed constitutes the planning agreement contemplated by the Development Application.

**Operative provisions**

---

**1. Interpretation**

**1.1 Definitions**

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

**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.

**Application** means an application for any Approval.

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

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

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

- (a)        the rate the Council calculates as the average of the bid rates quoted at approximately 10:30 am on that day by each of five or more institutions chosen by the Council which provide rates for display on the "BBSY" page of the Reuters Monitor System for Bills of a 90 day tenor which are accepted by that institution (after excluding the highest and the lowest, or in the case of equality, one of the highest and one of the lowest bid rates); or

- (b) where the Council is unable to calculate a rate under paragraph (a) because it is unable to obtain the necessary number of quotes, the rate set by the Council in good faith at approximately 10:30 am on that day, having regard, to the extent possible, to the rates otherwise bid for Bills of a 90 day tenor at or around that time.

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

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

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

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

- (a) Be signed and issued by an Australian Prudential Regulation Authority (APRA) regulated authorised deposit taking institution or an insurer authorised by APRA to conduct new or renewal insurance business in Australia;
- (b) Have at all times an investment grade security rating from an industry recognised rating agency of at least:
  - (i) BBB + [Standard & Poors and Fitch]; or
  - (ii) Baa 1 [Moody's]; or
  - (iii) bbb [Bests].
- (c) Be issued on behalf of the Developer;
- (d) Have no expiry or end date;
- (e) Have the beneficiary as the Council;
- (f) Be irrevocable;
- (g) State either individually, or in total with other lodged compliant forms of Guarantee, the relevant minimum amount required to be lodged as security; and
- (h) State the purpose of the deposit required in accordance with this Planning Agreement.

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

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

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

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

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

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

**Claim** means any claim loss, liability, damage, proceeding, order, judgment or expense.

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

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

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

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

**Contamination** has the same meaning as in the *Contaminated Land Management Act 1997* (NSW).

**Contribution Amount** means the amount specified in Table 3 to Schedule 3, which has been calculated in accordance with Table 4 to Schedule 3.

**Contribution Land** means the land to be dedicated by the Developer as described in Table 1 to Schedule 3 of this Deed and as indicated in Schedule 16 - Land Dedication Plan.

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

**Contributions** means the provision of the Contribution Works, the dedication of the Contribution Land (free of any Encumbrance and Cost) and the provision of the Contribution Amount, as required under this Deed.

**Contributions Schedule** means the tables and notes included in Schedule 3.

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

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

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

**Deed** means this deed.

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

**Development** means the development described in clause 2 of Schedule 2.

**Development Application** means development application LDA No. 2015/484 lodged by or on behalf of the Developer for the demolition of the existing dwellings and construction of

serviced apartments, corporate halls, terrace beer garden, roof top bar, swimming pool, gym and restaurants and 3 basement levels of car parking on the Land.

**Development Consent** means each 'Development Consent' as that term is defined in the EP&A Act.

**Encumbrance**, in relation to any land, means any:

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

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

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

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

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

**GST** has the meaning it has in the GST Act.

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

**Insurer** means an insurer that is licensed by APRA to operate in Australia or has an investment grade rating from an industry recognised rating agency such as Moodies, Standard & Poors or Bests.

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

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

**Land Dedication Plan** means the plans set out in Schedule 16 as may be amended from time to time by agreement between the parties.

**Law** means:

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

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

**Legal Challenge** means proceedings in a Court in which a declaration is sought to the effect that this Deed or the Development Consent or Approval in relation to the Development

Application is invalid, and includes, but is not limited to, any proceedings in which such a declaration is sought which are heard on remitter from another Court following an Appeal.

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

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

**Permitted Encumbrance** means each of:

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

the Council (acting reasonably) agrees in writing are permitted encumbrances..

**Planning Agreement** means this Deed.

**Practical Completion** means in relation to the Contribution Works, the point of time at which the Council is satisfied, acting reasonably, that the work has been completed in accordance with all relevant Approvals and this Deed (except for minor defects or omissions) and issues a Certificate of Practical Completion in accordance with Schedule 4.

**Public Domain Technical Manual** means the Council's Public Domain Technical Manual available as at the date of this Deed at <http://www.ryde.nsw.gov.au/Development/Town+Centres#PDTM>.

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

**Quantity Surveyor** means a registered quantity surveyor.

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

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

**Required Face Value** means the face value equivalent to \$53,129.53 as increased by CPI in accordance with clause 1.3 of Schedule 10.

**Revised Bond Amounts** has the meaning given to that term in clause 1.4 of Schedule 10.

**Site Auditor** has the same meaning as in the *Contaminated Land Management Act* 1997 (NSW).

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

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

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

## 1.2 General

In this Deed:

- (a) headings are for convenience only and do not affect interpretation; and unless the context indicates a contrary intention:
- (b) "person" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (c) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation;
- (d) a reference to a document (including this Deed) is to that document as varied, novated, ratified or replaced from time to time;
- (e) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments, replacements and substitutions;
- (f) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (g) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this Deed, and a reference to this Deed includes all schedules, exhibits, attachments and annexures to it;
- (h) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (i) "includes" in any form is not a word of limitation;
- (j) a reference to "\$" or "dollar" is to Australian currency;
- (k) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Deed; and
- (l) any capitalised term used, but not defined in this Deed, will have the meaning ascribed to it under, and by virtue of, the EP&A Act.

---

## 2. Planning Agreement

### 2.1 Commencement

The provisions of this Deed commence upon the execution of this Deed by all parties.

### 2.2 Planning agreement under the EP&A Act

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

### 2.3 Application of the Planning Agreement

This Deed applies to:

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



---

### 3. Development Contributions

#### 3.1 Payment or Delivery of Contributions

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

- (a) Undertake the Contribution Works in accordance with Schedule 3, Schedule 4 and Schedule 15; and
- (b) Dedicate the Contribution Land to Council in accordance with Schedule 3, Schedule 5, and Schedule 16; and
- (c) Pay the Contribution Amount in accordance with Schedule 3.

#### 3.2 Purpose of Contributions

The Contributions are to be delivered and paid under this Deed for the purpose of providing public facilities for community and cultural activities, open space and recreation, roads, traffic management and stormwater management, together with improvements to the civic and urban environment and the provision of cycleways across the Ryde Local Government Area.

---

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

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

---

### 5. Caveat

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

---

## 6. Registration of this Deed

### 6.1 Ownership of the Land

The Developer represents and warrants that it is the legal and beneficial owner of the Land.

### 6.2 Registration on title

The Developer agrees, promptly upon this Deed commencing, to do all things that are reasonably necessary for Council to procure the registration of this Deed in the relevant folio of the Register for the Land in accordance with section 93H of the Act and in accordance with Schedule 8.

---

## 7. Release and Discharge

The Council agrees to release and discharge this Deed, remove any caveat lodged by the Council pursuant to clause 5 and / or do all that is necessary to procure the removal of this Deed from the relevant folio of the Register for the Land on the release and discharge terms contained in clause 5(d) and Schedule 9 to this Deed.

---

## 8. Breaches to be rectified

- (a) If the Council acting reasonably considers that the Developer has defaulted on the performance of any of its material obligations under this Deed, then the Council may give written notice to the Developer which:
- (i) identifies the nature of the breach; and
  - (ii) provides at least 20 Business Days (except in the case of an emergency or where there is an issue of public safety where less time may be specified) with which the Developer must rectify that breach and what action must be taken to rectify that breach.
- (b) If Council issues a notice under clause 8(a), the provisions of Schedule 6 apply.
- (c) If the Developer has not disputed the contents of the written notice issued under clause 8(a), then in accordance with sections 109H and 109J of the EP&A Act and section 146A of the EP&A regulation, all material breaches of this Deed for which the Council has provided a written notice under clause 8(a) must be rectified prior to the issue (following the date that such notice is provided to the Developer) of any Construction Certificate, Subdivision Certificate or Occupation Certificate relating to the Land or the Development.

---

## 9. Security

### 9.1 Bonds

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

### 9.2 Restriction on the issue of Certificates

- (a) In accordance with section 109F of the EP&A Act and clause 146A of the EP&A Regulation, the obligation to pay the Contribution Amount under this Deed must be satisfied prior to the issue of any Construction Certificate for any part of the Development on the Land.

- (b) In accordance with section 109H(2) of the EP&A Act, the obligations to dedicate the Contribution Land and to complete and deliver the Contribution Works under this Deed must be satisfied prior to the issue of any Occupation Certificate for any part of the Development on the Land.

---

**10. Assignment and other dealings**

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

---

**11. Review of Deed**

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

---

**12. Dispute resolution**

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

---

**13. Overdue payments**

**13.1 Interest on overdue money**

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

**13.2 Compounding**

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

**13.3 Interest on liability merged in judgment or order**

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

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

---

**14. GST**

**14.1 Interpretation**

- (a) Except where the context suggests otherwise, terms used in this clause 14 have the meanings given to those terms by the GST Act.

- (b) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 14.
- (c) A reference to something done (including a supply made) by a party includes a reference to something done by any entity through which that party acts.

#### 14.2 Consideration GST exclusive

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

#### 14.3 Additional amount of GST payable

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

#### 14.4 No merger

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

---

### 15. Explanatory Note

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

---

### 16. Notices

#### 16.1 Form

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

##### Council

Name: Council of the City of Ryde  
Address: 1 Devlin Street, Ryde NSW 2112  
Fax: 9952 8222  
Email: cityofryde@ryde.nsw.gov.au

For the attention of: General Manager

##### Developer

Name: Shri Ganesh Capital Pty Ltd ATF Macquarie Business Centre  
Unit Trust  
Address: Level 18, 1 Alfred Street Sydney NSW 2000  
email: anurag@starin.com.au  
For the attention of: Anurag Thukral

#### 16.2 Change of address

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

### 16.3 Receipt

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

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

### 16.4 Receipt - next Business Day

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

---

## 17. Schedules and Annexures to this Deed

The Parties agree:

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

---

## 18. General provisions

The Parties agree to the miscellaneous and general provisions set out in Schedule 12 to this Agreement apply.

---

## 19. Obligations under this Planning Agreement

- (a) If this Deed is terminated as the result of any Legal Challenge the parties will meet to discuss the affect of termination and, if a valid Development Consent has been granted, will use their best endeavours to reach a further agreement giving effect to the terms of this Deed in a legal manner as soon as practicably possible.
- (b) If any Approval is declared invalid, the parties will meet to discuss their respective rights and obligations under this Deed as a consequence of that determination.
- (c) This clause 19 will not merge on completion or termination of this Deed.

**Schedule 1 - Section 93F Requirements**

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

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

Requirement under the EP&A Act	This Planning Agreement
	will be required to be paid.
<p><b>Consideration of benefits under this Deed if section 94 applies - (Section 93F(3)(e))</b></p> <p>Are the benefits under this Deed to be taken into consideration if Section 94 of the EP&amp;A Act is not excluded?</p>	Not applicable.
<p><b>Mechanism for Dispute resolution - (Section 93F(3)(f))</b></p> <p>This Deed provides a mechanism for the resolution of disputes under the agreement?</p>	Refer to clause 12 and Schedule 7.
<p><b>Enforcement of this Deed (Section 93F(3)(g))</b></p> <p>This Deed provides for enforcement by a suitable means in the event of a breach.</p>	Refer to clause 9 and Schedule 10
<p><b>Registration of this Deed (Section 93H)</b></p> <p>The parties agree that this Deed will be registered.</p>	Refer to clause 6 and Schedule 8.
<p><b>No obligation to grant consent or exercise functions - (Section 93F(9))</b></p> <p>The parties acknowledge that this Deed does not impose an obligation on a planning authority to grant a Development Consent, or to exercise any function under the EP&amp;A Act in relation to a change to an environmental planning instrument.</p>	Refer to clause 1.8 of Schedule 12.

## Schedule 2 - Description of the Land and the Development

---

### 1. Title

Those parts of the land comprised in Lots 44, 45 and 46 in Deposited Plan 1111722, being the whole of the land in Certificate of Title Folio Identifiers 44/1111722, 45/111172 and 46/111172 and known as 388-392 Lane Cove Road, Macquarie Park, 2113.

---

### 2. Development

The demolition of existing houses on the Land, construction and use of a building, landscaping and ancillary works for the purpose of serviced apartments on the Land and construction of the Contribution Works on the Contribution Land.



Schedule 3 - Contributions Schedule

Table 1 – Contribution Land

<b>Column 1 - Contribution</b>	<b>Column 2 - Date Contribution Land is to be dedicated</b>
<p>1. <b>The Contribution Land</b></p> <p>The dedication of part of the Land, being land marked as “Area to be dedicated back to City of Ryde” (approximately 276.3 square metres) in Schedule 16 - Land Dedication Plan, to the Council as Public Road.</p>	<p>At the same time as delivery of the Contribution Works, which must be prior to the issue of any Occupation Certificate for the Development or any part of the Development, or prior to the first occupation of any part of the Development (whichever occurs first).</p>

The Contribution Land will be taken to have been delivered under this Deed when the dedication as a Public Road is confirmed in writing by Land and Property Information.

Table 2 - Contribution Works

<b>Column 1 - Contribution</b>	<b>Column 2 - Date Contribution Works are to be delivered/Practically Completed</b>
<p>1. <b>Road, footpath and public domain construction and utility services installation</b></p> <p>The Developer will undertake all road and footpath construction within the area marked as “Area to be dedicated back to City of Ryde” on the plan contained in Schedule 16 - Land Dedication Plan and to at least the construction standard referred to in Schedule 15 – Indicative Public Domain Concept Plan</p> <p>The works must include the following:</p> <ul style="list-style-type: none"> <li>(i) Roads including wear to surface, pavement, sub base, subgrade, kerb and gutter, drainage, line marking and sign posting;</li> <li>(ii) Paving, including compacted sub-grade, concrete substrate, concrete unit pavers;</li> <li>(iii) Kerb re-alignment and replacement (standard City of Sydney Council blue stone details);</li> <li>(iv) Drainage works;</li> <li>(v) Service requirements (power, water, gas etc, including undergrounding these services with provision of a 1.5 metre depth below design ground level for these services);</li> <li>(vi) Adjustments to all existing services pits and man holes;</li> <li>(vii) Demolition of existing kerbs and infra-structure;</li> </ul>	<p>To be Practically Completed prior to the earliest occurrence of:</p> <ul style="list-style-type: none"> <li>(a) the issue of any Occupation Certificate for the Development or any part of the Development; and</li> <li>(b) the first occupation of any part of the Development.</li> </ul>

(viii) Street lighting and associated services; (ix) Street trees and associated urban details; and (x) Traffic control and associated temporary infrastructure. The Contribution Works includes survey, design, engineering, demolition, earthworks, relocation of utilities and construction works.	
--	--

The Contribution Works will be taken to have been delivered under this Deed when the Council issues a Certificate of Practical Completion for those works in accordance with Schedule 4 and the Contribution Land has been dedicated to Council in accordance with this Deed.

**Table 3 - Contribution Amount**

	<b>Column 1 - Contribution Amount</b>	<b>Column 2 - Date Contribution Amount to be provided</b>
1	(a) \$1,659,139.25 or (b) \$1,659,139.25 indexed in accordance with CPI from the date of this Deed to the date of payment, whichever is the greater.	Prior to the issue of any Construction Certificate for the Development or any part of the Development

The Contribution Amount will be taken to have been paid under this Deed when cleared funds are deposited by means of electronic funds transfer into a bank account nominated by Council. At least twenty four (24) hours prior to payment of the Contribution Amount, the Developer must notify Council of the amount it proposes to pay and must provide Council with reference details for the payment.

**Table 4 - Calculation of Contribution Amount**

Contribution	Quantum	Council published current rate (2)	
FSR Uplift	2,477.00	\$263.34	\$652,293.18
S94 whole building	7,431.00	\$131.24	\$975,244.44
Additional Contribution (3)	1.00	\$200,000.00	\$200,000.00
<b>Subtotal</b>			<b>\$1,827,537.62</b>
<b>Offset:</b>			
Dedicated Land*	276.30	\$263.34	\$72,760.84
Works to Embellish Land (1)*	139.00	\$400.27	\$55,637.53
Existing structures on site	2.00	\$20,000.00	\$40,000.00
<b>Subtotal</b>			<b>\$168,398.37</b>
<b>Net Total</b>			<b>\$1,659,139.25</b>

Note (1) "embellishment" relates only to that part of the land to be used as roadway. The works to provide the footpath area 143m2 (3 metres wide subject to design and survey) would be part of a Condition of Consent and therefore excluded from this offer.

Note (2) Clause 6.9 of Ryde Local Environmental Plan Rates are indexed from base date of June 2013, when the CPI Index was at 103.1. The index now stands at 108.6 at the time of exhibiting the Draft VPA. Note contribution Plan Rate Base was 107.3 at time VPA offer was made.

Therefore:

FSR Uplift	\$ 250.00	becomes	\$263.34
Dedicated Land	\$ 250.00	becomes	\$263.34
Embellishment Works	\$ 380.00	becomes	\$400.27
Contribution Plan Rate	\$129.67	becomes	\$131.24

Note (3) The Developer has offered \$200,000 in addition to the amount calculated in accordance with this table.

\* Areas of land subject to survey.

## Schedule 4 - Contribution Works Procedures

---

This Schedule 4 applies to all Contribution Works.

### 1.1 Approvals and Design responsibility

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

### 1.2 Construction phase

- (a) Subject to clause 1.2(b) of this Schedule 4, the Developer must procure the execution and completion of the Contribution Works in accordance with:
  - (i) the Approvals;
  - (ii) any Contribution Works program agreed with the Council;
  - (iii) the Public Domain Technical Manual as at the date of this Deed; and
  - (iv) its other obligations under this Deed.
- (b) The Developer must not commence construction of any of the Contribution Works unless and until:
  - (i) it has given the Council copies of all Approvals relating to the Contribution Works, and
  - (ii) the Council has received the design of the Contribution Works and the program for the construction of the Contribution Works, including anticipated dates for construction and completion.
- (c) The Developer acknowledges to Council that it is responsible for the management and remediation of any Contamination present upon or under the Dedication Land prior to dedication and that it fully accepts this obligation and will attend to any necessary remediation at its own costs and to the fullest extent permitted by law releases Council from any Claim which might arise from any Contamination with respect to the Dedication Land that was present prior to dedication.

### 1.3 Review of Contribution Works and Construction Documents

The Developer acknowledges and agrees that:

- (a) the Council is the Roads Authority under the Roads Act 1993 and must approve the Contribution Works under that Act;
- (b) the Council is not responsible for any errors omissions or non-compliance with any Law or the requirement of any Authority by reason of agreeing to the plans and specifications of the Contribution Works;
- (c) the Council is not liable for any liability, loss or Cost incurred by the Developer because of any defect in the design or construction of any part of the Contribution Works; and
- (d) no comment, review or information supplied to the Developer by the Council alters or alleviates the Developer from its obligation to construct and complete the Contribution Works in accordance with this Deed.

### 1.4 Developer responsibilities

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

### 1.5 Damage

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

### 1.6 Quality of Material and Work

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

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

### 1.7 Inspection

- (a) The Council may enter the Land to inspect the progress of the Contribution Works, subject to:
- (i) the terms of any building contract for the Contribution Works (save for any clause of such contract which prevents the Council from accessing the Land);
  - (ii) giving reasonable notice to the Developer;
  - (iii) complying with all reasonable directions of the Developer; and
  - (iv) being accompanied by the Developer or its nominee, or as otherwise agreed.
- (b) The Council may, within 5 Business Days of carrying out an inspection, notify the Developer of any defect or non-compliance in the Contribution Works and direct the Developer to carry out work to rectify that defect or non-compliance. Such work may include, but is not limited to:
- (i) removal of defective or non-complying material from the Land;
  - (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.
- (c) If the Developer is issued a direction to carry out further work under clause 1.7(b) of this Schedule 4, the Developer must, at the Developer's cost, rectify the defect or non-compliance specified in the notice within the time period specified in the notice, unless the Developer has disputed anything within the notice, in which case the dispute is to be resolved in accordance with Schedule 7.
- (d) If the Developer fails to comply with a direction to carry out work given under clause 1.7(b) of this Schedule 4, the Council will be entitled to refuse to accept that the Contribution Works meet Council's standards and specifications and may refuse to issue a Certificate of Practical Completion, until the required works have been completed to the Council's satisfaction, acting reasonably, or until any dispute about the work required has been resolved between the parties in accordance with Schedule 7.
- (e) For the avoidance of doubt, any acceptance by the Council that the Developer has rectified a defect or non-compliance identified in a notice issued under clause 1.7(b) 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.

**1.8 Insurance**

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

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

The policies must provide cover for the period from the date of the commencement of construction of the Contribution Works until the end of any relevant Defects Liability Period for each and every aspect of the Contribution Works.

#### **1.9 Amount of property insurance**

The insurance cover in relation to clause 1.8(a) must be for an amount not less than the full insurable value of the relevant Contribution Works on a full reinstatement and replacement basis (including extra Costs of reinstatement, Costs of demolition and removal of debris, and professional fees).

#### **1.10 Insurance generally**

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

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

#### **1.11 Providing proof of insurance**

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

#### **1.12 Premiums**

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

#### **1.13 Additional Obligations**

The Developer must:

- (a) not do or omit to do anything which if done or not done might vitiate, impair, derogate or prejudice any insurance or might prejudice any claim under any insurance policy;
- (b) if necessary, rectify anything which might prejudice any insurance policy;
- (c) reinstate an insurance policy if it lapses;

- (d) immediately notify the Council in writing if an insurer gives notice of cancellation in respect of any insurance policy; and
- (e) give full, true and particular information to the insurer of all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or the payment of all or any benefits under the insurance.

#### 1.14 Application of insurance proceeds

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

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

#### 1.15 Indemnity

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

#### 1.16 Certification

- (a) When the Developer is of the opinion that the Contribution Works are complete, the Developer must send a notice to the Council requesting written certification from the Council that the Contribution Works are complete (**Certificate of Practical Completion**).
- (b) Within 10 Business Days of a notice issued under clause 1.16(a) of this Schedule 4, the Council may inspect the Contribution Works in accordance with clause 1.7 of this Schedule 4 and may issue a notice under clause 1.7(b) of this Schedule 4, in which case the provisions of clause 1.7 will apply.
- (c) The Developer must ensure that it has provided the Council with an adequate opportunity to carry out an inspection under clause 1.7 of this Schedule 4 and this clause 1.16 prior to the issue of a Certificate of Practical Completion for any part of the Contribution Works.



#### 1.17 Dispute where no Certificate of Practical Completion

If within 10 Business Days after receipt of the Developer's request for a Certificate of Practical Completion the Council does not either issue the Certificate of Practical Completion for the Contribution Works or give the Developer a notice under clause 1.7(b) of this Schedule 4, then either the Council or the Developer may regard the circumstances as constituting a dispute between the Council and the Developer.

#### 1.18 Issue of Certificate

If the Council is satisfied that all work has been completed in accordance with this Deed and any notice issued under clause 1.7(b) and clause 1.19 has been complied with then the Council may issue a Certificate of Practical Completion.

#### 1.19 Prerequisites for Certificate of Practical Completion

Council will not issue a Certificate of Practical Completion unless and until:

- (a) where relevant, copies of all necessary documents and Approvals issued by the Consent Authority or relevant accredited certifier acknowledging completion of a specific aspect of the Contribution Works are required, have been delivered to the Council; and
- (b) copies of all other certificates, consents and Approvals required of any relevant Authority, whose certificate, consent or approval is required for the erection, use or occupancy of that Contribution Works have been delivered to the Council; and
- (c) the Developer delivers to Council appropriate written certification from a qualified person demonstrating that the Contribution Land is not Contaminated to any extent requiring remediation and is suitable for its intended purpose as a public footpath and public road as contemplated under this Deed. For the avoidance of doubt, a phase 1 environmental assessment which concludes that no further investigations are required will suffice for the purpose of this clause.

#### 1.20 Providing documents to the Council

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

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

promptly, and in any event within 30 Business Days, after Practical Completion.

#### 1.21 Rectification

- (a) At any time during the Defects Liability Period (in respect of a Contribution), the Council may inspect the Contribution Works for the purpose of ascertaining what defects and omissions (if any) in the Contribution Works are required to be made good by the Developer.
- (b) The Council may give notice to the Developer that:
  - (i) states that part of the Contribution Works that are defective, giving details;

- (ii) specifies the works which the Council considers are required to rectify the defect;
  - (iii) provides a reasonable estimate of the Costs and Legal Costs to rectify such works, including particulars of how those Costs and Legal Costs were calculated; and
  - (iv) allows the Developer a reasonable period to rectify such works.
- (c) The Developer must rectify any defects or omissions in the Contribution Works which are identified in a notice issued in accordance with clause 1.21(b) of this Schedule 4, unless the Developer has disputed the requirement to carry out the specified rectification, in which case, the dispute is to be resolved in accordance with Schedule 7.
- (d) If the Developer fails to complete or rectify such works within the period as required by a notice issued under clause 1.21(b) of this Schedule 4 or, if the Developer has disputed the requirement to carry out the specified rectification, in accordance with any resolution of the dispute under Schedule 7, then the Council may call upon the Bond lodged by the Developer in accordance with schedule 10 and have such works completed or rectified and the Developer must reimburse the Council promptly following any demand by the Council for all Costs and Legal Costs incurred by the Council in completing or rectifying such work.
- (e) The Developer indemnifies the Council for all monies payable by the Developer to the Council pursuant to clause 1.21(d) of this Schedule 4.
- (f) The indemnity in paragraph 1.21(e) of this Schedule 4 is a continuing obligation, separate and independent from the Developer's other obligations and survives completion, rescission or termination of this Deed. The Developer must pay on demand any amount it must pay under the indemnity in paragraph 1.21(e) of this Schedule 4.

## 1.22 Development Program

- (a) If requested by Council, the Developer must provide an updated Development Program to the Council from time to time as the Development progresses, and as a minimum must provide an updated program:
- (i) as soon as possible upon lodgement of an Application for construction of a Building with the relevant Consent Authority;
  - (ii) whenever there are delays in the Development which materially impact on the milestones identified in the previous Development Program provided to Council which relate to the issue of a Construction Certificate or Occupation Certificate; and
  - (iii) no less than 6 months before the Developer lodges an Application for an Occupation Certificate for any Building with the relevant Consent Authority.
- (b) The Council is not to disclose the Development Program referred to in clause 1.22(a) above to any third party unless required by law or in any other circumstances, with the consent of the Developer.

## Schedule 5 - Contribution Land Procedures

---

### 1.1 Approvals

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

- (a) prepare all Applications and obtain all Approvals necessary to Subdivide the Land by one or more plans of subdivision to separate the Contribution Land from the Land; and
- (b) comply with all conditions of all such Approvals; and
- (c) procure Land and Property Information NSW to register the relevant documentation and plans to create a separate title for the Contribution Land consistent with all such Approvals.

### 1.2 Developer undertakings regarding Contribution Land

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

- (a) Do all acts and execute and deliver all documents (in form and content reasonably satisfactory to the Council) to the Council (or such other person as the Council may reasonably direct) in order to give effect to the dedication or transfer (as the case may be) of the Contribution Land to the Council for a consideration of \$1.00 (including GST).
- (b) Deliver to the Council:
  - (i) the certificate or certificates of title for the Contribution Land;
  - (ii) an executed transfer;
  - (iii) appropriate forms (in registrable form) to discharge all Encumbrances (other than Permitted Encumbrances) from the Contribution Land; and
  - (iv) any consents and other documentation in registrable form required for the transfer (and registration) of the Contribution Land;
- (c) Take any other necessary action (including paying all Taxes) to give effect to the transfer of the title of the Contribution Land to the Council free of all Encumbrances (other than a Permitted Encumbrance) and affectations (including any charge or liability for rates, taxes and charges);
- (d) Pay Council's Costs and Legal Costs in connection with the transfer of the Contribution Land.
- (e) Take all practical steps and sign all documents as reasonably required by Council or the NSW Land and Property Information to give effect to the transfer of the Contribution Land, including promptly responding to any requisitions issued by NSW Land and Property Information.

### 1.3 Acquisition

- (a) If the Developer does not transfer or grant to the Council the interests in land as required by this Deed (including the dedication and transfer of the Contribution Land to Council (as the case may be)), the Developer confers on Council an irrevocable option to purchase the Contribution Land and any interests for the amount of \$1.00 (including GST).
- (b) Except as otherwise agreed between the Developer and the Council, the Developer must ensure that the Contribution Land is free of all Encumbrances (other than Permitted Encumbrances) and affectations (including any charge or liability for rates, taxes and charges), on the date that the Developer is liable to dedicate or transfer (as the case may be) the Contribution Land to the Council in accordance with clause 1.2 of this Schedule 5.
- (c) The Developer indemnifies and keeps indemnified the Council against all Claims made against the Council by any person who claims an interest in the land following any acquisition by the Council of the whole or any part of the relevant interest in land under clause 1.3 of this Schedule 5.
- (d) The Developer must pay the Council, promptly on demand, an amount equivalent to all Costs and Legal Costs incurred by the Council acquiring the whole or any part of the relevant interest in land where the Developer is in breach of Schedule 5.

## Schedule 6 - Notification and rectification of breach

---

### 1. Notice of breach

#### 1.1 Developer's Response to Notice

- (a) Promptly upon receipt of a notice under clause 8(a), the Developer must either:
  - (i) rectify the breach identified in that notice within the time period specified in that notice; or
  - (ii) notify the Council in writing that it does not agree that the breach identified in that notice has occurred, and refer the matter for dispute resolution in accordance with clause 12 and Schedule 7.
- (b) For the avoidance of doubt, if the Developer disputes the contents of the written notice in accordance with clause 1.1(a)(ii) of this Schedule 6, the Developer will only be held to be in breach of this Deed if and when the dispute is determined in favour of the Council.

#### 1.2 Rights of the Council after Giving Notice

- (a) If, after the Council notifies the Developer in writing under clause 8(a), and:
  - (i) the Developer does not take either of the actions outlined in clause 1.1(a) of this Schedule 6; or
  - (ii) any dispute notified by the Developer under clause 1.1(a)(ii) is resolved in favour of the Council; or
  - (iii) the Council considers that action is required because there is an emergency or an issue of public safety (despite any dispute resolution process being commenced under clause 1.1(b)),then the Council may take any or all of the actions available to it under this Deed including:
  - A. taking any action under clause 2.1 of this Schedule 6;
  - B. calling on the Bond in respect of Contribution Works under Schedule 10;
  - C. issuing a further written notice to the Developer in accordance with clause 8(a).
- (b) The rights of the Council under this Deed, and any action taken by it as referred to in clause 1.2 of this Schedule 6 or otherwise, are without derogation from the other rights and remedies available to the Council under this Deed, at law and in equity in relation to any default of the Developer.

---

## 2. Council may rectify breach

### 2.1 Council may perform Developer's obligations

- (a) Before exercising its rights under clause 1.2(a) of this Schedule 6, the Council must give at least 20 Business Days' (except in the case of an emergency or where there is an issue of public safety where less time may be specified) written notice to the Developer of its intention to exercise its rights under clause 2.1 of this Schedule 6.
- (b) Subject to clause 1.1(b) and clause 1.2(a)(iii), in the circumstances that the Council is entitled to take the action available to it under clause 1.2(a), then, the Council may (but is not obliged to):
  - (i) perform the Developer's obligations;
  - (ii) rectify any breach of this Deed;
  - (iii) carry out other works that are necessary to be carried out; and
  - (iv) otherwise do anything which the Developer should have done under this Deed.
- (c) Subject to clause 1.1(b) and clause 1.2(a)(iii), without limiting clause 2.1 of this Schedule 6 the Developer agrees that the Council, its employees, agents and contractors, acting reasonably, may enter onto the Land and do whatever is necessary to remedy the breach, in the absolute discretion of the Council, subject to compliance with the reasonable directions of the Developer relating to work, health and safety and compliance with all Laws.
- (d) The Developer indemnifies and will keep the Council indemnified from and against all Claims, Costs and Legal Costs incurred by the Council or for which the Council may become liable in the exercise or purported exercise of the rights of the Council under this 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.

## Schedule 7 - Dispute Resolution

---

### 1.1 Not commence

Subject to clause 1.8, 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 as agreed by them.

### 1.4 Mediation

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

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

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

### 1.5 Expert evaluation generally

- (a) If the parties agree under clause 1.3 of this Schedule 7 that expert evaluation is the appropriate dispute resolution technique, expert evaluation must be carried out in accordance with this clause 1.5, unless the parties agree in writing to waive the requirements of this clause 1.5.
- (b) Where the parties are not able to agree on an appropriate expert, the expert is to be appointed by the President of the appropriate institute or association.
- (c) If the parties cannot agree on which institute or association is appropriate in the circumstances (within the same 10 Business Days), either party may refer the selection of the institute or association to the President of the Bar Association of New South Wales to select the most appropriate institute or association.
- (d) The institutes or associations from which the expert may be appointed are:

- (i) if an architect: the Royal Australian Institute of Architects, New South Wales Chapter;
  - (ii) if an engineer: Engineers Australia,
  - (iii) if a valuer: the Australian Property Institute Incorporated ARBN 007 505 866, New South Wales Division;
  - (iv) if an expert in decontamination: Engineers Australia - Environmental College
  - (v) if an expert in insurance: the Australian and New Zealand Institute of Insurance and Finance, New South Wales Branch;
  - (vi) if a real estate agent: the Real Estate Institute of New South Wales;
  - (vii) if a quantity surveyor: the Australian Institute of Quantity Surveyors, New South Wales Chapter;
  - (viii) if a barrister: the New South Wales Bar Association;
  - (ix) if an accountant: the Institute of Chartered Accountants, New South Wales Division;
  - (x) if a solicitor or mediator: the Law Society of New South Wales
- (e) If:
- (i) more than two types of experts are required to determine the dispute; or
  - (ii) the parties agree to appoint a lead expert; or
  - (iii) the President of the Bar Association exercising his or her functions in accordance with clause 1.5(c) consider the appointment of a lead expert appropriate
- then the parties must appoint a lead expert.
- (f) The lead expert must be a solicitor who has practised for not less than 15 years and who has not less than 5 years' experience in alternative dispute resolution. The lead expert must be agreed by the parties and failing agreement will be appointed by the President of the Law Society of New South Wales.
- (g) If a lead expert is appointed the functions of that person are:
- (i) to determine the type of expert required to determine the dispute;
  - (ii) in the absence of agreement between the parties as to the identity of the expert, to request the appropriate institute or association referred to in clause 1.5(b) ("Institutes and associations") to appoint an expert;



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

**1.6 Court proceedings**

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

**1.7 Not use information**

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

**1.8 No prejudice**

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

**1.9 Costs**

The Costs of appointing any required mediator, expert or other independent person agreed between the parties for the dispute resolution technique under this Schedule 7, will be borne equally by the Parties. Each Party will be responsible for its own Legal Costs with respect to any dispute resolution process.

## Schedule 8 - Registration

---

- (a) The Developer warrants that it has obtained all consents to the registration of this Deed on the title to the Land as are necessary and in particular the consent of any mortgagee or lessee registered on the Certificate of Title to the Land.
- (b) The Developer must on commencement of this Deed, produce to the Council together with this Deed for execution by the Council, a letter or document in registrable form 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 to Land and Property Information for the purpose of registration of the Deed and a bank cheque for the relevant registration fees. If the Land is unencumbered by a mortgagee the Developer must produce the Certificate of Title to Land and Property Information and give production details to the Council.
- (c) The Developer must promptly comply with any requisition that may be raised with regard to registration of the Deed from Land and Property Information.
- (d) Subject to clause (a) and (b) of this Schedule 8, the Council may register this Deed on the relevant folio of the Register after commencement of this Deed.
- (e) The Council will notify the Developer following registration of the Deed by the Council and will forward the Developer's copy of the Deed to it.

## Schedule 9 - Release and Discharge Terms

---

Once the Developer has complied with all of its obligations under this Deed in relation to the dedication of the Contribution Land and the completion of the Contribution Works and the payment of the Contribution Amount, at the Developer's request (and Cost), the Council must within ten (10) Business Days of being requested to do so by the Developer:

- (a) provide a full release and discharge of this Deed with respect to the whole of 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 in relation to the Land pursuant to clause 5 of this Deed, and
- (c) do anything requested by the Developer and reasonably necessary to have this Deed removed from the relevant folio of the Register for the Land.

## Schedule 10 - Bonds

---

### 1. Bonds Required

#### 1.1 Contribution Amount Bond

- (a) On execution of this Deed, the Developer must provide a Bond to the Council for the Contribution Amount.
- (b) The Bond referred to in clause 1.1(a) of this Schedule 10, is for the purpose of securing the payment of the Contribution Amount in accordance with this Deed.

#### 1.2 Contribution Works Bond

- (a) Prior to the issue of the first Construction Certificate for any part of the Development, the Developer must provide a Bond to the Council for the Contribution Works for the Required Face Value.
- (b) The Bond referred to in clause 1.2(a) of this Schedule 10, is for the purpose of securing the:
  - (i) Practical Completion of the Contribution Works; and
  - (ii) as reduced in accordance with clause 1.3, rectification of any defects and omissions (if any) of the Contribution Works during the Defects Liability Period,in accordance with this Deed.
- (c) For the avoidance of doubt, the Developer acknowledges and agrees that if the actual construction cost of the Contribution Works exceeds the Required Face Value, then the Contribution Works must be completed at the Developer's cost and the scope of the Contribution Works may not be reduced.

#### 1.3 Reduction of the Bonds for the Contribution Works

- (a) Subject to clause 1.3(b) of this Schedule 10, the Developer may by written notice to the Council, upon Practical Completion of any part of the Contribution Works, request a reduction of the Bond Amounts for the Contribution Works having regard to the works completed at the time of the request. The Council will act reasonably in the consideration of whether a partial release or exchange (as the case may be) leaves appropriate or adequate security for the balance of the Contribution Works.
- (b) If the Developer provides an assessment of the Contribution Works and the Construction Cost from a Quantity Surveyor with its request under clause 1.3(a) and Council (acting reasonably) is satisfied that the relevant Contribution Works have achieved Practical Completion, then the Council must release to the Developer the applicable portion of the Bond as relates to the relevant completed Contribution Works, having regard to the Construction Cost of those completed Contribution Works.
- (c) The Developer acknowledges and agrees that, to secure the Developer's obligations under clause 1.21 of Schedule 4 during the Defects Liability Period for each of the Contribution Works, the Bond Amount must not be reduced to an amount which is less than 10 per cent of the portion of the Required Face Value that relates to the Contribution Works.

- (d) Following Practical Completion of all the Contribution Works, the portion of the Bond Amount which relates to the Contribution Works will be reduced to an amount which is equal to 10 per cent of the portion of the Required Face Value that relates to the Contribution Works.

#### 1.4 Adjustment of Bond Amounts

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

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

where:

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

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

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

B is the CPI published on the immediately preceding Adjustment Date to the relevant Adjustment Date for A, and in the case of the first adjustment, the CPI published immediately before the date of this Deed.

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

- (b) The Council must give the Developer written notice of the Revised Bond Amounts to apply from the relevant Adjustment Date.
- (c) The Developer must give the Council replacement or further Bonds so that the Council holds Bonds for an amount equal to the Revised Bond Amounts no later than 15 Business Days after receipt of a notice given under clause 1.4(b) of this Schedule 10.

#### 1.5 Replacement of Bonds

If at any time following the provision of a Bond under this Schedule 10, the investment grade security rating for the Bond is reduced so that it is not at least:

- (i) BBB + [Standard & Poors and Fitch]; or
- (ii) Baa 1 [Moody's]; or
- (iii) bbb [Bests],

the Developer must provide Council with one or more replacement Bonds in the sum equivalent to the Bond to be replaced, which replacement Bonds must, for the avoidance of doubt, have an investment grade security rating equivalent or better than those specified in this clause.

---

## 2. Face value of Bond

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

---

### 3. Expiry of Bonds

- (a) If, despite the requirements of this Deed, any Bond provided by the Developer is expressed as expiring on a certain date, the Developer must provide the Council with a replacement Bond 20 Business Days prior to the expiry of that Bond.
- (b) This clause is not to be taken as an agreement that Council will accept a Bond under this Deed that is expressed as expiring on a certain date.

---

### 4. Failure to replace expired Bond

- (a) If the Developer fails to provide the Council with a replacement Bond in accordance with clause 3 of this Schedule 10, the Council may call on the full amount of such Bond after giving 10 Business Days prior written notice to the Developer.
- (b) This clause is not to be taken as an agreement that Council will accept a Bond under this Deed that is expressed as expiring on a certain date.

---

### 5. No limitation of obligations

The provision of a Bond does not:

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

---

### 6. Cash deposit

- (a) If the Council makes demand under any Bond pursuant to clause 4 of this Schedule 10, the Council must hold the full amount so paid to the Council as a cash deposit (**Cash Deposit**) in a separate account opened with any body corporate that is an ADI (authorised deposit-taking institution) for the purposes of the Banking Act, 1959 in the name of the Council and with beneficial ownership vesting at all times in the Council (**Cash Deposit Account**). The Cash Deposit will operate to secure the same obligations under this Deed that the relevant Bond secured.
- (b) As beneficial owner of the Cash Deposit, the Council may withdraw money (including accrued interest) from the Cash Deposit Account and retain that money to satisfy or reimburse the Council for any liability, loss, cost, charge or expense secured by the Deed and incurred by the Council because of failure by the Developer to comply with those of the Developer's obligations under this Deed that the relevant Bond secured, provided the Council first provides the Developer with 10 business days written notice of its intention to do so.
- (c) All Costs, charges, duties and taxes payable in connection with the Cash Deposit Account may be satisfied by the Council withdrawing money from the Cash Deposit Account and applying the money for that purpose.
- (d) If no moneys are, or may become, payable to the Council under this Deed in connection with the obligations under this Deed secured by the relevant Bond and the Developer has satisfied all of its obligations under this Deed which were secured by the relevant Bond, the Council must pay the balance of the Cash

Deposit Account, less all Costs, charges, duties and taxes payable in connection with such payment, to the Developer.

---

**7. Release of Cash Deposit**

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

---

**8. Claims under Bond**

The Developer agrees that the Council may after giving at least 10 Business Days prior written notice to the Developer that it intends to make a claim under a Bond, call upon the Bond (in full or in part) in the event that:

- (a) the Developer breaches its obligations under this Deed to:
  - (i) pay the Contribution Amount; or
  - (ii) carry out and complete any of the Contribution Works; or
  - (iii) rectify a defect within the Defects Liability Period; and
- (b) a notice has been issued by Council requiring the Developer to remedy the breach in accordance with the requirements of clause 8(a), and the breach remains unremedied following the expiry of the rectification period specified in that notice;
- (c) for claims that do not relate to a breach in relation to the payment of the Contribution Amount, the Developer has not disputed Council's intention to make a claim under a Bond within 10 Business Days of receipt of written notice, or such dispute has been resolved in favour of the Council;

and Council may retain and use such monies received from calling upon the Bond in its discretion to compensate the Council for the Developer's breach of those obligations.



## Schedule 11 - Assignment and Dealing

---

### 1.1 Developer's proposed assignment of rights

- (a) Unless the matters specified in clause 1.1(b) of this Schedule 11 are satisfied, the Developer is not to assign or novate to any person the Developer's rights or obligations under this Deed.
- (b) The Developer must not assign or novate to any person its rights or obligations under this Deed, or transfer the whole or any part of the Land or its interest in the Land, unless the prior written consent of Council, acting reasonably, is obtained. The Council must not unreasonably withhold its consent in circumstances where the following matters have been satisfied:
- (i) the Developer has, at no cost to the Council, first procured the execution by the person to whom the Developer's rights or obligations under this Deed are to be assigned or novated (**incoming party**), of a deed poll in favour of the Council in the form of Schedule 14, completed in a manner satisfactory to the Council. Such deed includes covenants that the incoming party:
    - A. will perform the obligations of the Developer under this Deed; and
    - B. is bound by the terms and conditions of this Deed (relevant to the Developer as if the incoming party had executed a Deed; and
  - (ii) the Developer is not in breach of this Deed with respect to the relevant part of the Land in case of an assignment or novation of the Developer's interest in part of the Land only, unless the breach is waived by the Council.

### 1.2 Right of Developer to Sell Land

The Developer must not sell or transfer the whole or any part of the Land or any of their interest in the Land (and must procure that the whole or any part of the Land is not sold or transferred) to another person prior to this Deed being removed from the title to that Land (or any part of it) unless before any such sale, transfer or disposal the Developer obtains Council's prior written consent, acting reasonably. The Council must not unreasonably withhold its consent in circumstances where the requirements specified in clauses 1.1(b)(i) and 1.1(b)(ii) of this Schedule 11 are satisfied.

### 1.3 Council's Costs

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

## Schedule 12 – General Provisions

---

### 1.1 Approvals and Consent

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

### 1.2 Costs

- (a) Unless otherwise specified in this Deed, all Costs and Legal Costs relating to the drafting, preparation and notification of this Deed are to be borne by the Developer in the amount specified in Schedule 13 and is payable on demand. In all other respects, each Party is to bear its own Costs and Legal Costs.
- (b) Without limiting clause 1.2(a) of this Schedule 12, the Developer agrees to pay or reimburse the Council on demand for:
  - (i) Costs and Legal Costs of the Council reasonably incurred in connection with:
    - A. exercising, enforcing or preserving, or attempting to exercise, enforce or preserve, rights under this Deed, in respect of a breach of this Deed committed by the Developer;
    - 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:

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

### 1.5 Further acts

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

### 1.6 Governing Law and jurisdiction

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

**1.7 Enforcement**

- (a) This Deed may be enforced by any Party in any court of competent jurisdiction, subject to Schedule 7.
- (b) For the avoidance of doubt, nothing in this Deed prevents:
  - (i) a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Deed or any matter to which this Deed relates; and
  - (ii) an Authority or the Council from exercising any function under the EP&A Act or any other Law relating to the enforcement of any aspect of this Deed or any matter to which this Deed relates.

**1.8 No fetter**

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

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

**1.9 Representations and warranties**

- (a) Each Party each individually represents and warrants that:
  - (i) (power) it has power to enter into this Deed and comply with its obligations under the Deed;
  - (ii) (no contravention or exceeding power) this Deed does not contravene its constituent documents (if any) or any law or obligation by which it is bound or to which any of its assets are subject, or cause a limitation on its powers or the powers of its officers to be exceeded;
  - (iii) (authorisations) it has in full force and effect the authorisations necessary for it to enter into this Deed to which it is a party, to comply with its obligations and exercise its rights under this Deed and to allow this Deed to be enforced;
  - (iv) (no immunity) does not have immunity from the jurisdiction of a court or from legal process; and
  - (v) (benefit) it benefits by entering into this Deed to which it is a Party.
- (b) Each Party acknowledge that each other Party has entered into this Deed to which it is a party in reliance on the representations and warranties in this clause 1.9 of this Schedule 12.

**1.10 Severability**

- (a) If a clause or part of a clause of this Deed can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way.
- (b) If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Deed, but the rest of this Deed is not affected.

**1.11 Modification**

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

**1.12 Waiver**

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

**1.13 Confidentiality**

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

**1.14 Release and indemnity**

- (a) The Developer agrees that the obligation to provide the Contributions is at the risk of the Developer. The Developer releases the Council from any Claim, liability or loss arising from, and Costs and Legal Costs incurred in connection with, the Developer's obligation to provide the Contributions except insofar as such Claim, liability, loss, Costs and Legal Costs arise in connection with negligence by the Council its employees, agents or contractors.
- (b) The Developer indemnifies the Council against all Claims, liabilities or loss arising from, and any Costs and Legal Costs reasonably incurred in connection with, the Council enforcing the Developer's obligation to provide the Contributions in accordance with this Deed and/or the Council exercising the Council's rights under or by virtue of this Deed, provided the Council has acted reasonably and acted to mitigate any Claim, liability, loss, Costs and Legal Costs suffered or incurred by Council.
- (c) The indemnity in clause 1.14(b) of this Schedule 12 is a continuing obligation, independent of the Developer's other obligations under this Deed and continues after this Deed ends.
- (d) It is not necessary for a Party to incur expense or to make any payment before enforcing a right of indemnity conferred by this clause 1.14
- (e) A Party must pay on demand any amount it must pay under an indemnity in this clause 1.14.

### Schedule 13 - Costs

---

The Developer is to pay Council's reasonable legal costs in connection with the negotiation, preparation, execution and carrying into effect of this Deed.

## Novation Deed

*[Planning Authority]*  
Council

*[Developer]*  
Transferor

**[Insert Transferee's name]**  
Transferee

Novation Deed made at \_\_\_\_\_ on \_\_\_\_\_

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

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

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

#### Recitals

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

#### This deed provides

##### 1.        Definitions and interpretation

##### 1.1       Definitions

Effective Date means *[insert]*.

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

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

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

Transferor means *[insert]*.

##### 1.2       References to certain general terms

In this deed unless the contrary intention appears:

- (a)       a reference to this deed or another instrument includes any variation or replacement of them;
- (b)       a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;



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

### 1.3 Headings

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

---

## 2. Novation

### 2.1 Original Agreement

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

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

### 2.2 Performance by Transferee

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

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

### 2.3 Release of Bonds

The parties expressly acknowledge and agree that:

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

#### **2.4 Liability before Effective Date**

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

#### **3. Affirmation of the Original Agreement**

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

---

#### **4. GST**

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

---

#### **5. Stamp duty and costs**

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

#### **6. Further acts**

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

7. **Governing law**

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

---

8. **Counterparts**

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

Executed as a deed.

*[insert Appropriate execution clauses for the Council and Developer]*

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

---

Signature of Secretary/other Director

---

Name of Secretary/other Director in full

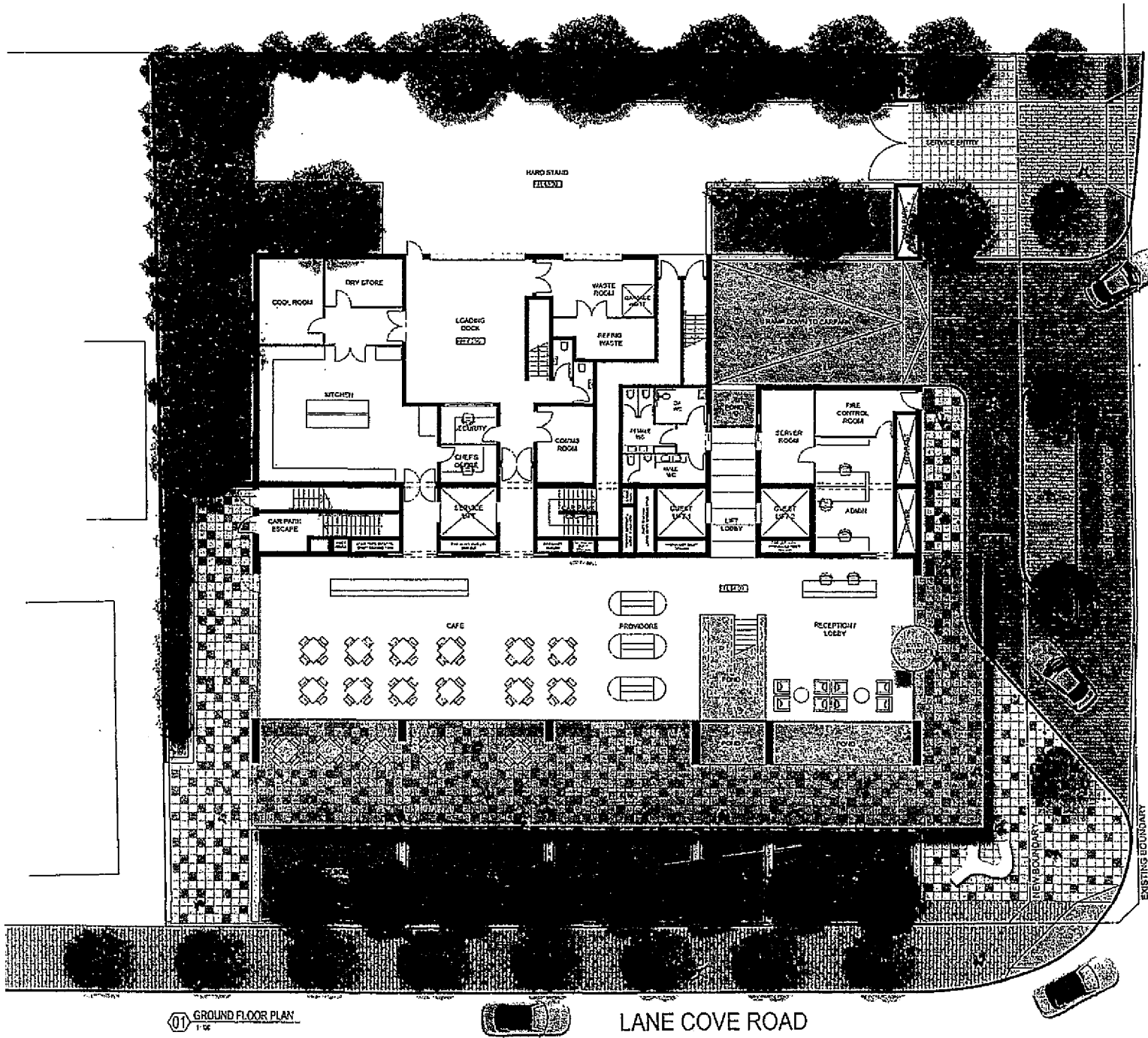
---

Signature of Director

---

Name of Director in full





01 GROUND FLOOR PLAN  
1 OF 2

LANE COVE ROAD

HYUNDAI DRIVE

NO.	REMARKS	DATE
1	ISSUED FOR PERMIT	08/11/10
2	ISSUED FOR PERMIT	10/07/10
3	ISSUED FOR PERMIT	11/07/10

STARIN  
Level 11, 2008-2009  
11111111111111111111



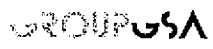
**Starin Serviced Apartments**  
**Starin Associates Pty Ltd**  
 21111111111111111111  
 11111111111111111111  
 11111111111111111111  
 11111111111111111111

**Donnelly Simpson Clercy**  
 11111111111111111111  
 11111111111111111111  
 11111111111111111111

**EWBY**  
 11111111111111111111  
 11111111111111111111  
 11111111111111111111

**C & M Cosentino Engineers Pty Ltd**  
 11111111111111111111  
 11111111111111111111  
 11111111111111111111

**Parking and Traffic Consultants**  
 11111111111111111111  
 11111111111111111111  
 11111111111111111111



**GROUP USA**  
 11111111111111111111  
 11111111111111111111  
 11111111111111111111

**Starin Serviced Apartments**  
 385-387 Lane Cove Road Ruzique Park NSW

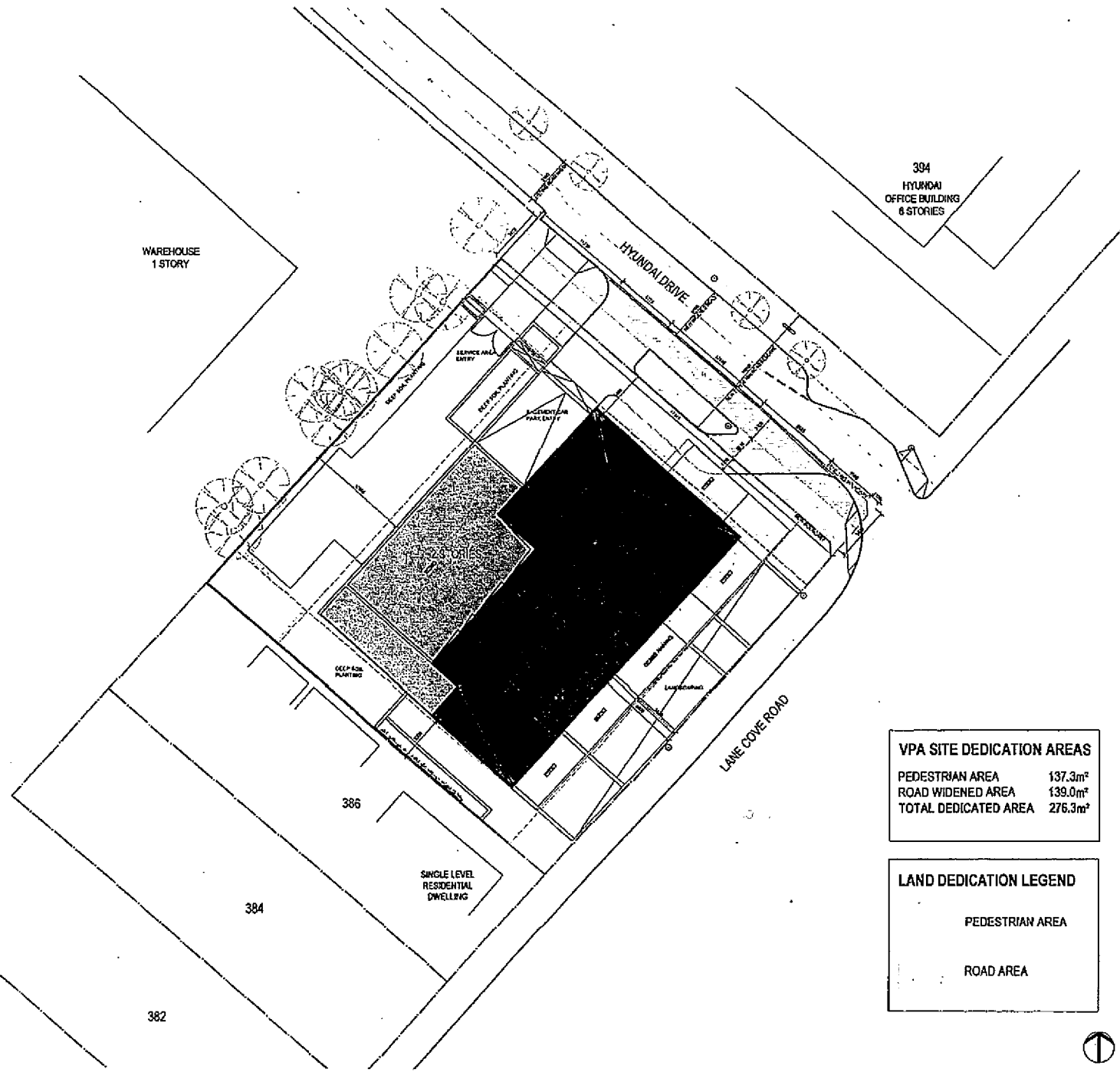
**Grouping Title**  
 Public Domain  
 Concept Plan

Scale	1:100 (S)
Drawing created by	AC/2010
By	AC
Station and sheet no.	10
Sheet no.	01
Approved by	10/10/10
Drawing No.	14160 VPA-A1002 D
Date	10/10/10
File	14160 VPA-A1002 D

This drawing is the property of Group USA Pty Ltd and is not to be used for any other purpose without the written consent of Group USA Pty Ltd. The design is for information only and is not to be used for any other purpose without the written consent of Group USA Pty Ltd.



Access	Access	Description	Date
A	Public		19/04
B	From Road		19/04
C	From Road		19/04
D	From Road		19/04
E	From Road		19/04
F	From Road		19/04



VPA SITE DEDICATION AREAS	
PEDESTRIAN AREA	137.3m <sup>2</sup>
ROAD WIDENED AREA	139.0m <sup>2</sup>
<b>TOTAL DEDICATED AREA</b>	<b>276.3m<sup>2</sup></b>

LAND DEDICATION LEGEND	
	PEDESTRIAN AREA
	ROAD AREA

Client  
**STARIN**  
 Level 11, 2 Park St,  
 SYDNEY NSW 2000



Structural Engineers  
**Stella Associates Pty Ltd**  
 241 Darling Street  
 SYDNEY NSW 2000  
 www.stella.com.au

**Donnelly Simpson Cleary**  
 25 Pitt Street  
 SYDNEY NSW 2000  
 www.dsc.com.au

**EWFFW**  
 11/11/11, 230 North Bond  
 SYDNEY NSW 2000  
 www.ewffw.com.au

**C & M Consulting Engineers Pty Ltd**  
 1/11/11, 1/11/11, 1/11/11  
 SYDNEY NSW 2000  
 www.cmc.com.au

**Parling and Traffic Consultants**  
 1/11/11, 1/11/11, 1/11/11  
 SYDNEY NSW 2000  
 www.parling.com.au

**GROUP USA**  
 Group USA Pty Ltd  
 Level 11, 2 Park St  
 SYDNEY NSW 2000

**Starin Serviced Apartments**  
 365-382 Lane Cove Road Macquarie Park NSW

Drawing Title  
**Land Dedication Plan**

Scale  
 Drawing created (date)  
 By  
 Project No (checked by)  
 Verified  
 Approved

Drawing No  
**14180 VPA-A1D01 F**  
 Title  
 DATE

This drawing is the property of Stella Associates Pty Ltd and may not be copied, reproduced or distributed in any form without the written consent of Stella Associates Pty Ltd. It is to be used for the project and site only and is not to be used for any other purpose. The client is responsible for the accuracy of the data and the design of the drawing. The design is based on the information provided by the client and is not to be used for any other purpose.

**01 PROPOSED SITE PLAN**  
 1:200

## EXPLANATORY NOTE

### Cl. 25E of Environmental Planning and Assessment Regulation 2000

Planning Agreement – Lots 44, 45 and 46 in Deposited Plan 1111722, known as 388-392 Lane Cove Road, Macquarie Park (Land)

#### Introduction

The purpose of this Explanatory Note is to provide a summary to support the notification of a draft Planning Agreement (**Planning Agreement**), under Section 93F of the *Environmental Planning and Assessment Act 1979 (Act)*, prepared in connection with a development application (LDA No. 2015/484) lodged by or on behalf of the Developer for the demolition of the existing dwellings and construction of serviced apartments, corporate halls, terrace beer garden, roof top bar, swimming pool, gym and restaurants and 3 basement levels of car parking on the Land (**Development Application**).

The *Ryde Local Environmental Plan 2014* was amended on 11 September 2015 to increase the maximum height and floor space ratio limits applicable to the Land, so that the Development can be undertaken.

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

Contributions under sections 94 and 94A of the Act are excluded under the Planning Agreement, however, the relevant amount which would be payable by the Developer will be included as part of the monetary contribution portion of the contributions required under the Planning Agreement. Section 94EF of the Act will continue to apply.

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

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

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

#### 1. Parties to the Planning Agreement

The parties to the Planning Agreement are Shri Ganesh Capital Pty Limited ATF Macquarie Business Centre Unit Trust (**Developer**) and the Council of the City of Ryde (**Council**).

#### 2. Description of the Land

The Planning Agreement applies to Lots 44, 45 and 46 in Deposited Plan 1111722, being the whole of the land in Certificate of Title Folio Identifiers 44/1111722,



45/111172 and 46/111172, known as 388-392 Lane Cove Road, Macquarie Park, 2113 (Land).

**3. Description of the Proposed Development**

The Planning Agreement relates to the proposed Development on the Land, subject to the Development Application.

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

The objective of the Planning Agreement is to ensure the provision of a two-way road at part of Hyundai Drive, together with associated infrastructure to meet the needs of the local community.

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

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

**a. Contribution Land**

The Developer (at its cost) agrees to dedicate to Council part of the Land (being approximately 276.3 square metres) as public road.

**b. Contribution Works**

The Developer agrees to deliver (at its cost) the construction of the public road and associated infrastructure, including a footpath.

**c. Monetary Contribution**

The Developer has agreed to pay a monetary contribution in the amount of \$1,659,139.25, which will be increased in accordance with movements in the Consumer Price Index from the date of the Deed to the date of payment. The monetary contribution is calculated by reference to the section 94 contributions that would otherwise be payable for the Development, plus an amount attributed to FSR uplift and an additional amount of \$200,000 offered by the Developer.

Further details about the proposed contributions are set out in the Annexure to this Explanatory Note.

**5. Assessment of the merits of the Planning Agreement**

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

The Planning Agreement promotes the objects of the Act, in particular objects (iv) and (viii) which relate to "the provision of land for public purposes". In this regard, this

object is satisfied as the planning agreement will ensure the delivery of the Public Road.

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

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

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

The Planning Agreement requires the Developer to construct and dedicate land for a two way road at part of Hyundai Drive. It also requires the Developer to construct and transfer to Council the road, and a footpath and associated works, as well as pay a monetary contribution to Council.

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

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

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

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

It is envisaged that the Contributions to be delivered under the Planning Agreement will have a positive impact on the locality by virtue of improving public road access.

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

Yes. The Planning Agreement is consistent with the Council's capital works program.

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

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

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

The Contributions under the Planning Agreement, being the Contribution Works and the transfer / dedication of the Contribution Land, must be provided in accordance with the timing provisions as set out in Schedule 3 of the Planning Agreement.

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

The monetary contribution payable under the Planning Agreement must be paid prior to the issue of a Construction Certificate for the Development.

For more specific details as to the compliance of certain requirements under the Planning Agreement prior to the issue of construction, occupation or subdivision certificates please refer to clause 8.2 and Schedule 3 of the Planning Agreement, a copy of which is attached to and forms part of this Explanatory Note.

In addition to the above, on execution of the Planning Agreement, the Developer is required to provide a Bond to the Council for the Required Face Value (i.e. \$53,129.53) as security for its obligations under the Agreement relating to the Contribution Works.

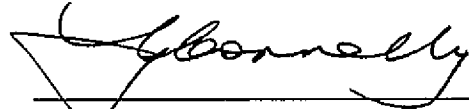
**Annexure to Explanatory Note - Contributions Schedule (Schedule 3 of the Planning Agreement)**

Executed as a Deed.

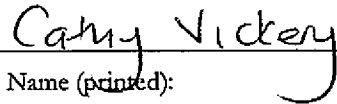
EXECUTED by COUNCIL OF THE )  
CITY OF RYDE by the General Manager, )  
under delegated authority pursuant to Section )  
377 of the Local Government Act 1993, in )  
accordance with a resolution of the Council )  
dated 27 October 2015 in the presence of:



Witness (signature):



GAIL CONNOLLY



Name (printed):

1 Devlin street  
Ryde NSW 2112

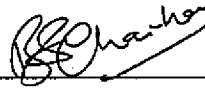
EXECUTED by SHRI GANESH )  
CAPITAL PTY LIMITED ATF )  
MACQUARIE BUSINESS CENTRE )  
UNIT TRUST (ACN 719 265 512) in )  
accordance with section 127 of Corporations )  
Law:



Signature:

Name: ANURAG PURI

Position: DIRECTOR & CEO



Signature:

Name: BHAGWAT CHAUHAN

Position: DIRECTOR, OPERATIONS