

Our Ref: AFP:MSP.90009



Voluntary Planning Agreement

Ryde City Council (Council)

ABN 816 2129 2610

82-84 Belmore Street Pty Limited (Developer)

ACN 121 261 434

AMENDED PLAN

22 JUN 2009

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ATTORNEYS

LAWYERS

JSS15VP740

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Voluntary Planning Agreement made at _____ on _____

Parties

Name	Ryde City Council	
ABN	816 2129 2610	
Description	Council	
Notice details	Address	1 Devlin Street, Ryde NSW 2112
	Fax	9952 8070
	Attention	

Name	82-84 Belmore Street Pty Limited	
ABN	121 261 434	
Description	Developer	
Notice details	Address	19 Victoria Avenue, Concord West NSW 2138
	Fax	(02) 9743 0787
	Attention	Sarkis Nassif

Background

- A The Developer owns the property described as 100-102 Belmore Street, Ryde.
- B On or about 3 November 2008 a Development Application was lodged with Council seeking approval of additions and modifications to the approved development comprising five and six storey mixed-use buildings..
- C The Developer has offered to enter into this Agreement to make a Development Contribution in addition to any relevant section 94 contribution plan requirements.
- D Pursuant to section 93F of the Act, the parties wish to enter into an Agreement in connection with a Development Application on the terms and conditions of this Agreement.

Operative Provisions

1. Planning Agreement under the Act

This Agreement constitutes a planning agreement within the meaning of section 93F of the Act.

2. Application of this Agreement

The Agreement applies to the Land and the Development.

3. Operation of this Agreement

- (a) This Agreement operates from the Commencement Date and continues until the Sunset Date.
- (b) If a legal challenge to the Development Consent results in the Development Consent being rendered invalid or unenforceable, then the Developer may, in its

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absolute discretion, either terminate this Agreement or request the Council to consider changes to its terms.

- (c) If Development Consent is not granted for the Development Application within 3 months of the date hereof, the Developer may rescind this Agreement by giving written notice of that rescission to the Council:

4. Definitions and interpretation

The meaning of capitalised terms and the provisions relating to the interpretation of this Agreement are set out at Schedule No. 6. The Schedules form part of this Agreement.

5. Development Contributions

The Developer will provide, or procure the provision of, a Monetary Contribution to Council on the basis that half the Monetary Contribution will be payable upon the issue of a Construction Certificate and the balance upon the issue of an Occupation Certificate.

6. Enforcement

- (a) In the event of any dispute arising between the Parties including any breach of the Agreement, the enforcement of the Agreement is subject to Schedule 4 of this Agreement.
- (b) Subject to clause 6(a), this Agreement may be enforced by any Party in any Court of competent jurisdiction.

7. Application of s94, s94A of the Act to the Development

- (a) The application of sections 94 and 94A of the Act are not excluded in respect of the Development Consent.
- (b) The Council warrants that it will not make any claim or demand for additional Development Contributions (whether financial or otherwise) to that provided for in this Agreement and in the relevant section 94 Contributions plan (or upon any other third party or parties taking the benefit of the Development Consent).

8. Interests in the Developer's Land

8.1 Registration of this Agreement

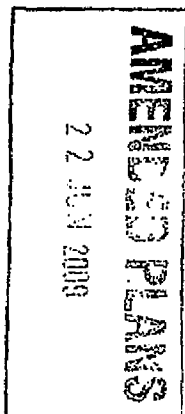
- (a) The Parties shall as soon as practicable do all things reasonably necessary to enable the Council to expeditiously register this Agreement under section 93H of the Act, such that on registration of this Agreement, the Registrar-General will have made an entry in the relevant folios of the register kept pursuant to the *Real Property Act 1900* in relation to the Land.

8.2 Release and Discharge of this Agreement

The Council agrees to release and discharge this Agreement on the Release and Discharge Terms.

9. Review or replacement of this Agreement

The Parties agree that this Agreement may be reviewed or modified in the circumstances using their best endeavours and acting in good faith, and in accordance with, the Review or Replacement Procedures.



10. Dispute Resolution

The Parties agree that any disputes under or in relation to this Agreement will be resolved in accordance with the Dispute Resolution Procedures.

11. GST**11.1 Interpretation**

In this clause 11:

- (a) words and expressions which are not defined in this Agreement but which have a defined meaning in GST Law have the same meaning as in the GST Law,
- (b) GST Law has the same meaning given to that expression in the *A New Tax System (Goods and Services Tax) Act 1999*.

11.2 Payment of GST - additional payment required

If any Party reasonably decides that it is liable to pay GST on a supply made to the other Party under this Agreement and the supply was not priced to include GST, then the recipient of the supply must pay an additional amount equal to the GST on that supply upon receipt of a valid GST invoice.

12. Explanatory Note relating to this Agreement

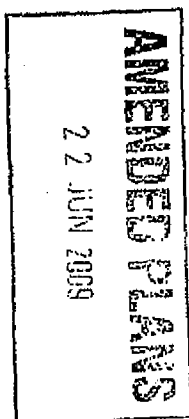
- (a) Schedule 7 contains the Explanatory Note relating to this Agreement required by clause 25E of the Regulation, and
- (b) Pursuant to clause 25E(7) of the Regulation, the Parties agree that the Explanatory Note in Schedule 7 is not to be used to assist in construing this Agreement.

13. Effect of Scheduled terms and conditions

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

14. General Provisions

The Parties agree to the miscellaneous and general provisions set out in Schedule 5.



Schedule 1 - Developer's Land

1. Title

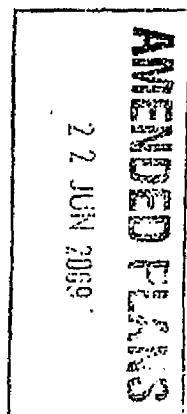
The whole of the land described in Lot 102 DP 1099888.

2. Development

The development of the Land in accordance with the Development Consent granted pursuant to the Development Application, as modified or amended.

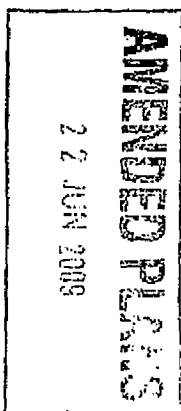
3. Development Application

The Development Application or Applications, including subsequent Applications (including Applications for section s96 Modifications), to Council that fall within the parameters of Development Application No. 731/2008 in respect of the Development.



Schedule 2 - Release and Discharge Terms

- (a) To the extent the Developer has satisfied its obligations under this Agreement, the Council agrees to provide a release and discharge of this Agreement with respect to any part of the Developer's Land:
- (i) if the Developer requests a partial release and discharge of this Agreement for the purpose of selling part of the Developer's Land as a Developed Lot, and
 - (ii) if the Developer requests a partial release and discharge of this Agreement in connection with the completion of a sale contract for a Developed Lot, and
 - (iii) if the Developer requests a partial release and discharge of this Agreement to effect the transfer of part of the Developer's Land to the Council or any other authority pursuant to this Agreement.
- (b) Once the Council is satisfied that the Developer has fully complied with all of its obligations under this Agreement, the Council agrees to provide a full release and discharge of this Agreement with respect to the whole of the Developer's Land.



Schedule 3 - Review or Replacement Procedures

The Parties may agree to review this Agreement. Any review or modification will be conducted in the circumstances and in the matter determined by the Parties and in accordance with the provisions of the Act and Regulations. For clarity, no such review or replacement shall have any force or effect unless and until formal documents are signed by the Parties.

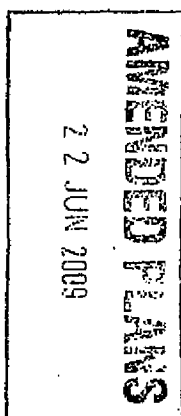
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Schedule 4 - Dispute Resolution

- (a) If a dispute arises out or in connection with this Agreement, including any dispute as to breach or termination of this Agreement or to any claim in tort, in equity or under any legislation, a Party cannot commence any Court proceedings relating to this dispute unless and until that Party has complied with the following clauses, except where the Party seeks urgent interlocutory relief.
- (b) A Party claiming that a dispute has arisen must serve a notice on the other Party specifying the nature of the dispute in accordance with Schedule 5 of this Agreement.
- (c) On receipt of that notice by that other Party, the Parties must endeavour in good faith to resolve the dispute expeditiously using informal dispute resolution techniques such as mediation, expert evaluation or similar techniques agreed by the Parties.
- (d) If the Parties do not agree within seven days of service of a notice of dispute, or any further period agreed in writing by them, as to:
- (i) the dispute resolution technique and procedures to be adopted,
 - (ii) the timetable for all steps in those procedures, and
 - (iii) the selection and compensation of any independent person required for that technique,

the Parties must mediate the dispute in accordance with the mediation rules of the Law Society of New South Wales and must request the President of the Law Society of New South Wales or the President's nominee to select the mediator and determine the mediator's remuneration.

- (e) Each Party to the dispute must pay its own costs of complying with this Schedule 4. The Parties to the dispute must equally pay the costs of any mediator.
- (f) If the dispute is not finally resolved through the forum of mediation, each Party is at liberty to litigate the dispute.



Schedule 5 - General Terms

1. Notices

1.1 Form

Any notice, consent, information, application or request that must or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:

- (a) delivered or posted to that Party at its address set out below; or
- (b) faxed to that Party at its fax number set out below.

1.2 Change of address

If a Party gives another Party 3 Business Days notice of a change of its address, 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.

1.3 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;
- (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.

1.4 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.

2. Entire agreement

This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with. No Party can rely on an earlier document, anything said or done by another Party, or by an Authorised Officer, agent or employee of the Party, before this Agreement was executed, except as permitted by law.

3. Further acts

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

4. Governing Law and jurisdiction

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

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5. Joint and individual liability and benefits

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

6. No fetter

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

7. Severability

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

8. Waiver

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

9. Confidentiality

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

10. Assignment of Dealings

This Agreement may be assigned by the Developer in accordance with any dealings the Developer may have with respect to its interests in the Land without requiring the Developer to obtain Council's approval in respect of either the dealing or the assignment of this Agreement.

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Schedule 6 - Definitions and Interpretation

1. Definitions

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

Application means an application for any Approval.

Approval means any approvals, consents, Modifications, Part 4A Certificates, Part 3A of the Act approvals, certificates, Construction Certificates, Occupation Certificates, Complying Development Certificates, permits, endorsements, licences, conditions or requirements (and any variation to them) which may be required by law or otherwise.

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 section 109T of the Act.

Authorised Officer means, in the case of any Party, a director or secretary or an officer whose title contains the word "manager" or a person performing the functions of any of them, or any other person appointed by that Party to act as an Authorised Officer for the purpose of this Agreement.

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

Commencement Date means the day the Construction Certificate of the Development Consent is issued.

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

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

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

Construction Certificate means a construction certificate issued pursuant to the Act authorising construction works in respect of the Development Consent.

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

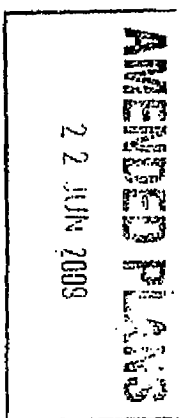
Council means Ryde City Council.

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

Developer means the Party described as such under the section headed "Parties" of this Agreement.

Developer's Land means the whole of the land comprised in the certificates of title referred to in Schedule 1.

Development means the development described in Schedule 1 ("Land").



Development Application means DA/731/2008 and has the same meaning as in the Act and includes any amendment or modification of the Development Application.

Development Consent means the Approval by the Consent Authority of an Application in accordance with the Development Application and has the same meaning as in the Act and includes any amendment or modification of the Development Consent.

Development Contribution means the Monetary Contribution.

Dispute Resolution Procedures means the procedures imposed on the relevant Parties under Schedule 4 of this Agreement.

Explanatory Note means the Explanatory Note set out in Schedule 7 of this Agreement.

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).

Land means the land described in Schedule 1.

Law means:

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

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

Legislation means any statute, rule, ordinance, code, regulation, proclamation, by-law or consent by any Authority.

Monetary Contribution means the amount of \$500,000 to be paid by the Developer to the Council in accordance with this Agreement.

Occupation Certificate means an occupation certificate issued pursuant to the Act authorising occupation in respect of the Development Consent.

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

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

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

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

Release and Discharge Terms means the obligations imposed on the relevant Parties under, and by virtue of Schedule 2.

Review or Replacement Procedures means the procedures set out in Schedule 3.

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

State means the State of New South Wales.

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

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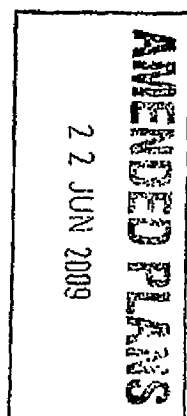
2. Interpretation

In this paragraph 2:

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

and unless the context indicates a contrary intention:

- (b) if more than one person is identified as the Council, that expression refers to them, and the obligations of the Council under this Agreement bind them, jointly and severally;
- (c) "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;
- (d) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation;
- (e) a reference to a document (including this Agreement) is to that document as varied, novated, ratified or replaced from time to time;
- (f) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either including consolidations, amendments, re-enactments and replacements;
- (g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (h) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause schedule, exhibit, attachment or annexure to or of this Agreement, and a reference to this Agreement includes all schedules, exhibits, attachments and annexures to it;
- (i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (j) "includes" in any form is not a word of limitation; and
- (k) a reference to "\$" or "dollar" is to Australian currency.



Schedule 7 - Explanatory Note

Voluntary Planning Agreement for the Provision of a Monetary Contribution to Council

Precls

A planning agreement results from an offer by a developer to a planning authority to provide any material public benefit toward a public purpose. The objective of the planning agreement is to provide a range of benefits to the community that cannot be levied as section 94 development contributions. Section 93F of the *Environmental Planning and Assessment Act 1979* provides that a voluntary agreement can be entered into by a planning authority and a person (usually a developer) who wishes to submit a development application and the agreement can require a person to provide a material public benefit to be used for or applied towards a public purpose.

In this instance, the Council has no relevant section 94 plan in existence.

Parties

82-84 Belmore Street Pty Limited (Developer)
19 Victoria Avenue, Concord West NSW 2138

Ryde City Council (Council)
1 Devlin Street, Ryde NSW 2112

Description of the Land the subject of the Development Application

This Development Application pertains to the land described in the following Folio Identifiers:

Description of the Development

Holdmark Pty Limited has made a Development Application and has offered to enter into a planning agreement with Ryde City Council under which it proposes to pay a contribution. The works identified in the Development Application generally comprise the addition of one storey to the existing approved five and six storey mixed-use buildings.

The proposed development will provide a harmonious blend into the already approved structure and natural environment. The new dwellings will provide contemporary lifestyle and housing choices within an environmentally sustainable community.

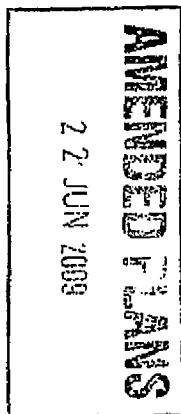
Objectives, Nature and Effect of the Agreement

The objective of the Agreement is to create an instrument which will record the terms of the substantial and valuable offer made by the Developer and its ensuing obligations to pay certain monetary contributions to the Council. The contribution will go towards enhancing public amenities.

The policy objectives are to enable the provision of community facilities in a manner which provides flexibility. This is achieved by securing a monetary contribution to meet the demands created by the public.

The Agreement has been entered into by the Developer as a gesture of goodwill and to indicate the Developer's support for the improvement of services and facilities within the community.

The contribution will be made in the form of a monetary contribution to Council in the sum of \$500,000.



The Agreement will not exclude the application of ss94 and 94A of the *Environmental Planning and Assessment Act 1979*.

Merits of the Agreement and the Impact on the Public

The monetary contribution facilitated by the Agreement is to be applied towards the provision of additional and the upgrading of current public amenities.

The planning agreement promotes the public interest by securing contributions towards a public purpose which serves both the development, and surrounding development and community.

Promotion of the Objects of the Act

By making the contribution, the Agreement promotes the following objectives of the *Environmental Planning and Assessment Act 1979*:

to encourage the provision and co-ordination of community services and facilities.

The contribution made to the Council will promote these objects by supporting the Council's efforts to ensure that sufficient public amenities are provided to the public within Ryde.

Promotion of the Public interest

The Agreement supports the following public purposes:

- the provision of an injection of funds for public amenities or public services. This is achieved by way of monetary contribution by the Developer.

Promotion of Council's Charter pursuant to the terms of the *Local Government Act 1993*

The following is a summary of the Agreement in terms of the relevant elements of Council's Charter pursuant to s8 of the *Local Government Act 1993*.

- To provide directly or on behalf of other levels of government, after due consultation, adequate, equitable and appropriate services and facilities for the community and to ensure that those services and facilities are managed efficiently and effectively.*

The Agreement facilitates the provision of additional and enhancement of public facilities for public use in Ryde.

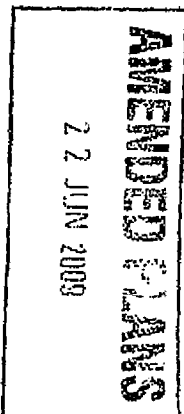
- To have regard to the long term and cumulative effects of its decisions.*

The Agreement ensures that an increase in demand for public amenities will be accommodated by the provision of the monetary contribution by the Developer.

The planning agreement is publically exhibited with comments invited from the public. The agreement may only be entered into subject to public participation. This will ensure the community is well informed of the agreement and will enable Council to consider any matters which may be raised prior to entering into any agreement.

Planning purposes served by the Agreement

The Agreement provides a reasonable means of achieving the public planning purposes, by facilitating a monetary contribution to Council. In the absence of the Agreement, the costs associated with providing additional public amenities would not be met until sufficient funds were sourced elsewhere.



The planning agreement will promote:

- orderly social, economic and environmentally sustainable development that provides safe and healthy places for people to live,
- the land to be developed in a timely and efficient manner to promote economic development,
- the construction of a building with high ecologically sustainable initiatives, and
- public exhibition.

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Signing page

Dated:

Executed as an Agreement:

Executed by 82-84 Belmore Street Pty Limited

Signature of

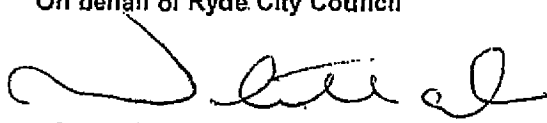
Signature of witness


Name of

Name of witness

Executed by

On behalf of Ryde City Council





Signature of

Signature of witness

MICHAEL WHITTAKER

Jemma Heuston

Name of

Name of witness

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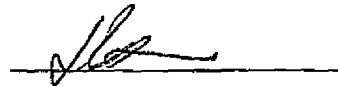
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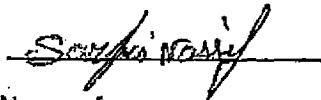
Executed by 82-84 Belmore Street Pty Limited



Signature of



Signature of witness



Name of



Name of witness

Executed by

On behalf of Ryde City Council

Signature of

Signature of witness

Name of

Name of witness