

AD905947L

Substitute Dealing

Time 2.45  
Date 20/6/08  
CSB2

REQUEST

New South Wales  
Real Property Act 1900

Property Act 1900 (RP Act) authorises the Registrar General to collect the information required by this form for the establishment and maintenance of the Real Property Act Register. Section 96B RP Act requires that the Register is made available to any person for search upon payment of a fee, if any.

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

(B) FOLIO OF THE REGISTER 1/563745

(C) REGISTERED DEALING  
Number Folio of the Register

(D) LODGED BY  
Document Collection Box Name, Address or DX, Telephone, and LLPN if any CODE  
485 Reference: Ks/A. Smith - 503181 R

(E) APPLICANT CITY OF RYDE COUNCIL

(F) NATURE OF REQUEST  
APPLICATION TO REGISTER VOLUNTARY PLANNING AGREEMENT  
SECTION 93H, ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

(G) TEXT OF REQUEST

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

ON  
PLA

see page 22

DATE 13 June 2008

(H) I certify that the person(s) signing opposite, with whom I am personally acquainted or as to whose identity I am otherwise satisfied, signed this instrument in my presence.

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

Signature of witness: Joe Strat  
Name of witness: JOE STRAT  
Address of witness: 1 DEVLIN ST  
RYDE NSW 2112

Signature of authorised officer: Michael Whittaker  
Authorised officer's name: Michael Whittaker  
Authority of officer: General Manager  
Signing on behalf of: City of Ryde Council

+ 40 mortgage consent  
42

CT-45A (ct.p.  
m: 10.4.2008)

M. Pepp



**Deacons**

Dated 4 February 2008

## **Voluntary Planning Agreement**

**Parties**

**Ryde City Council (Council)**

and

**88 Talavera Road North Ryde Pty Limited**

(ACN 122 714 818)

**Contact**

**Will Dwyer**

Partner

Gold Fields House, 1 Alfred Street, Circular Quay

Telephone: 9330 8614

Email: [will.dwyer@deacons.com.au](mailto:will.dwyer@deacons.com.au)

Website: [www.deacons.com.au](http://www.deacons.com.au)

Our ref: WAD: 2624721

**Voluntary Planning Agreement** dated 4 February 2008

**Parties** Ryde City Council  
of 1 Devlin Street, Ryde, NSW  
(Council)

88 Talavera Road North Ryde Pty Limited  
ACN 122 714 818  
(Developer)

**Background**

- A. On, 21 May 2007, the Developer made a Development Application to the Council seeking Development Consent to carry out the Development on the Land.
- B. The Development Application was accompanied by an offer by the Developer to enter into this Agreement to make various Development Contributions.
- C. The Developer proposes to offer to dedicate to the community certain land and to carry out certain works to embellish that land in exchange for an FSR Bonus and in lieu of a portion of the monetary contributions otherwise payable under the Ryde Section 94 Contributions Plan and certain fees otherwise payable as outlined in this Agreement.

**Operative provisions**

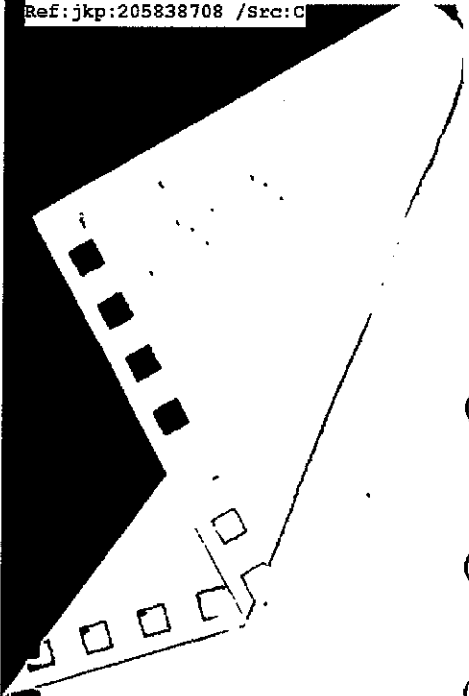
**1. Definitions and interpretation**

1.1 In this Agreement the following definitions apply:

- (1) **Act** means the *Environmental Planning and Assessment Act 1979 (NSW)*.
- (2) **Bonus FSR** means the additional 3925m<sup>2</sup> of floor area which the Developer applies to utilize pursuant to the Development Application and which the Council may permit in the Development Consent, in exchange for the Developer providing 4600 m<sup>2</sup> of Dedicated Land.
- (3) **Building** means the part of the Development as described in the Development Application.

- (4) **Completion** means when an occupation certificate is issued which certifies that the physical works component of the Mandatory Elements are reasonably capable of immediate use for their intended purpose.
- (5) **Commencement Date** means the day the Construction Certificate for any aspect of the Development Consent is issued.
- (6) **Construction Costs** means the costs actually incurred, or directly attributable to, construction activity, including relevant site establishment costs, building material costs (including any fill, soil, landscape materials and plantings), tipping fees, wages, salaries or other costs of labour, shop drawings, costs of project management, and the administrative costs directly incurred in the construction process, but excluding project contingencies, design development fees, and other costs which are not directly related to the performance of construction.
- (7) **Construction Certificate** means a construction certificate issued pursuant to the *Environmental Planning & Assessment Act* authorizing construction works in respect of the Development Consent.
- (8) **Council's Representative** means a partner from an independent Project Management firm agreed by the parties as one of the following:
  - (i) Ryder Hunt
  - (ii) WT Partnership
  - (iii) Davis Langdon.
- (9) **Council's Section 94 Plan** means the City of Ryde –Section 94 Contribution Plan No. 1 dated 2003 as in force at the date of this Agreement.
- (10) **Dealing**, in relation to the Land, means, without limitation, selling, transferring, assigning, mortgaging, charging, encumbering or otherwise dealing with the Land.
- (11) **Dedicated Land** means the land identified at Item 6 of Schedule 1 to be dedicated to Council free of cost in accordance with this agreement as shown on the plans attached to Schedule 5.
- (12) **Developer's Contribution Obligation** means the developer's legal obligation to provide the Development Contributions in accordance with the EP&A Act and this Agreement.

- (13) **Development** means the development described in the Development Application to be completed in accordance with the Development Consent.
- (14) **Development Application** has the same meaning as in the Act and includes any amendment or modification of the Development Application.
- (15) **Development Consent** has, in respect of the Development, the same meaning as in the Act and includes any amendment or modification of the Development Consent.
- (16) **Development Contribution** means the Monetary Contribution, Mandatory Elements, Dedicated Land or Public Benefits.
- (17) **GST** has the same meaning as the GST Law.
- (18) **GST Law** has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition or administration of the GST.
- (19) **Guarantee** means an unconditional bank guarantee, issued by a bank licensed to carry on business in Australia or other financial institution approved by the Council, that:
  - (a) is in favour of the Council;
  - (b) for the Guarantee Amount; and
  - (c) on such terms and conditions the Council may approve from time to time.
  - (d) 50% of Guarantee amount is to be released at issue of Occupation Certificate.
  - (e) 50% of Guarantee amount is to be released at completion of Defect Liability Period.
- (20) **Guarantee Amount** means the fixed amount specified in Item 8 of Schedule 1.
- (21) **Land** means Item 3 in Schedule 1.
- (22) **Mandatory Elements** means the elements of the Owner's Works identified as Mandatory Elements in column D of Schedule 2 designed and constructed to the value of that set out in column G of Schedule 2.
- (23) **Material Increase to the Costs** means one or more increases which (when taken together) in respect to any relevant stage of



the Mandatory Elements exceed the value attributable by more than 10%.

- (24) **Monetary Contribution** means the amount set out in Item 5 of Schedule 1 to be paid by the Owner to the Council in accordance with this Agreement, subject to adjustment in accordance with clause 8.6.
- (25) **Notification** means the public notification of the Development Consent effected in accordance with the EP&A Act and Regulations.
- (26) **Occupation Certificate** means an occupation certificate issued pursuant to the *Environmental Planning & Assessment Act* authorising occupation of the building or part of the building.
- (27) **Owner's Works** means all of the works described in the Development Consent and includes the Mandatory Elements.
- (28) **Party** means a party to this Agreement, including their successors and assigns.
- (29) **Public Benefits** means the public benefits described in Schedule 3 which are to be provided as a result of the Owner Works.
- (30) **Quantity Surveyor Assessment** means an assessment by and independent quantity surveyor of the Construction Cost to the reasonable satisfaction of the Council.
- (31) **Regulations** means the *Environmental Planning and Assessment Regulation 2000*.
- (32) **Relevant Australian Standards** means the relevant Australian Standards for the nature of work and includes the standards identified in Schedule 2 (as amended, supplemented or replaced from time to time).
- (33) **Section 96 Modification** means any modification of the Development Consent pursuant to section 96 of the *Environmental Planning & Assessment Act*.
- (34) **Value** means the amount attributed by the parties for the Mandatory Elements as shown on Schedule 2, indexed in accordance with Consumer Price Index.

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

- (1) Headings are inserted for convenience only and do not affect the interpretation of this Agreement.
- (2) A reference in this Agreement to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
- (3) If the day on which any act, matter or thing is to be done under this Agreement is not a business day, the act, matter or thing must be done on the next business day.
- (4) A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- (5) A reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or reenactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- (6) A reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- (7) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
- (8) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- (9) Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- (10) A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- (11) References to the word 'include' or 'including' are to be construed without limitation.
- (12) A reference to this Agreement includes the agreement recorded in this Agreement.
- (13) A reference to a party to this Agreement includes a reference to the servants, agents and contractors of the party, and the party's successors and assigns.

(14) Any schedules and attachments form part of this Agreement

**2. Planning agreement under the Act**

2.1 The Parties agree that this Agreement is a voluntary planning agreement governed by Subdivision 2 of Division 6 of Part 4 of the Act.

**3. Application of this Agreement**

3.1 This Agreement is made in respect of the Development Application and Development Consent that applies to the Land.

**4. Commencement**

4.1 This Agreement is effective on and from the Commencement Date.

**5. Development Contributions to be made under this Agreement**

5.1 The Developer must provide the Development Contribution set out in Schedule 1 and in accordance with clause 6.

**6. Application of the Development Contributions**

6.1 The Development Contribution provided pursuant to clause 5 must be given, provided for or carried out in the form or manner as set out in Schedule 2 excluding:

- (a) the provision of the Dedicated Land which is to be effected in accordance with clause 7 of this agreement; and.
- (b) The Monetary Contribution which is to be provided for in accordance with the timing provisions set out in Schedule 4.

**7. Dedicated Land**

7.1 Dedication of Land

The Owner must, at no cost to the Council, carry out all steps required to dedicate the Dedicated Land to the Council (including making any necessary subdivision application) prior to the issue of the Occupation Certificate.



7.2 Directions by the Council

The Owner must comply with any reasonable directions of Council in respect of the dedication of the Dedicated Land to the Council provided that there is no increase in the Construction Costs or Value of the Developer Contributions.

7.3 The Acceptance

Council must accept the dedication of the Dedicated Land made pursuant to this Agreement.

7.4 The Dedicated Land will be transferred to Council only after the registration on title of that land of an Easement burdening the Dedicated Land and benefiting the Land for the following purposes:

- (1) to enable the owner of 88 Talavera Rd and their agents and contractors to access the Dedicated Land for the purposes of carrying out maintenance works to the western creek bank; and
- (2) to ensure that Council, as Landowner of the Dedicated Land, will not unreasonably object to any works permit required to be obtained by the owner of the Land to carry out works to the Dedicated Land.

At the same time as the above Easement is registered on the title to the Dedicated Land, an Easement is to be registered on the title to the Land for the benefit of the Dedicated Land for the following purposes:

- (a) to enable the owner of the Dedicated Land to access the Land for the purpose of maintaining, repairing and/or reconstructing the pedestrian bridge servicing the Land; and
- (b) for the Land to provide support for the pedestrian bridge servicing the Land."

7.5 The parties will, prior to the issue of an occupation certificate, enter into an agreement for the maintenance of park and associated assets by the Developer, for a period of ten (10) years. The maintenance agreement will provide for the commissioning of a handover report confirming the structural adequacy of the park and creek assets.

The maintenance agreement will commence operation on the date the land is dedicated to Council or at Occupation Certificate stage, whichever is the later.

7.6 The parties agree that if the Macquarie Park Flood Plain Management Committee deem modification is required to the weir (as a result of catchments modeling) then the Developer will carry out those works at its own cost.

7.7 Prior to the issue of a construction certificate, the parties must enter into an implementation deed which provides terms satisfactory to Council for the design, construction and delivery of the Mandatory Elements. The terms must not be inconsistent with any terms of this Agreement

## 8. Approval of Owner Works

### 8.1 Finalising the General Scope of Mandatory Elements

The works comprising the Mandatory Elements are described in Schedule 2. The parties acknowledge and agree that further design detail and refinement may be reasonably necessary and desirable before construction, having regard to the following:

- (a) the extent to which the design of any stage has been completed at the date of execution of this agreement;
- (b) the conditions of the Development Consent;
- (c) the Relevant Australian Standards;
- (d) to take into account a section 96 modification;
- (e) to alter the scope having regard to a Material Increase to the Construction Costs of the Mandatory Elements.

8.2 The Owner will use all reasonable endeavours to promptly advise the Council (as a party to this Agreement) in writing of any proposal to amend the design of the Mandatory Elements, identifying why the amendment, or alteration, is sought. The Owner must establish that any design alteration or amendment is generally consistent with the relevant Public Benefit identified in Schedule 3.

### 8.3 No Alteration for Design Refinement

For the avoidance of doubt, the parties expressly agree that any refinement to the Mandatory Elements of the nature set out in clause 8.1 does not amount to a variation of this Agreement and does not of itself give rise to a claim for adjustment of the Development Contribution including the Monetary Contribution under clause 8.6.

### 8.4 No Reduction of Mandatory Elements

The parties acknowledge and agree that nothing in this Agreement will be read or construed as permitting either the Owner or the Council to reduce the obligations of the Owner to provide the Mandatory Elements of the Development.

- 8.5 The Council must act promptly and reasonably in responding to a request for amendment made under clauses 8.2 and 8.3 of this Agreement. The Council may, in its discretion:
- (a) agree to the alteration, amendment, or adjustment as proposed by the Owner;
  - (b) decline the amendment for the reasons set out in the following clause, but allow the adjustment of the Monetary Contribution in accordance with the following clause 8.3;
  - (c) decline to countenance the amendment and decline any alteration to the Monetary Contribution.

If the Council declines to permit an amendment under clause 8.4(c), then it must provide its reasons in writing. The Owner may refer the subject matter for dispute resolution in accordance with clause 15 of this Agreement.

## 9. Insurance of Owner Works

### 9.1 Insurance

The Owner must:

- (a) maintain public liability insurance, with an insurer approved by the Council, with the Council nominated as an interested party, for an amount not less than the amount stated in Item 9 of Schedule 1 covering all aspects and staging of the Mandatory Elements and submit a copy of the certificate of insurance to the Council prior to the commencement of the construction of the Mandatory Elements and when otherwise required by the Council;
- (b) maintain all other necessary insurance policies in respect of the Mandatory Elements including, but not limited to, insurance of the Mandatory Elements and insurance against death or injury to persons employed in relation to the undertaking of the Mandatory Elements; and
- (c) maintain the insurances in clauses 9.1(a) and 9.1(b) until the expiration of the Defects Liability Period.

## 10. Works Completion

10.1 When in the opinion of the Owner, any stage of the Mandatory Elements are nearing completion, the Owner must promptly notify the Council's Representative of that opinion and must attach to that notice copies of the following:

- (a) any certification relating to the relevant Mandatory Elements, including records of inspection;
- (b) any warranties, guarantees, maintenance information, or any other record held by or on behalf of the Owner and provided a manufacturer or supplier (as the case may be) as to the quality, durability and/or maintenance requirements the relevant stage of the Mandatory Elements;
- (c) a set of the drawings (including any shop drawings) issued for construction, together with any "as built" drawings held by the Owner at the date of issue of the notice;
- (d) copies of a certificate of practical completion issued under any relevant building contract in respect of the relevant stage of construction, or (if no such certificate has or will be issued) a statement signed by either the Owner's Representative under the building contract or the Principal Certifying Authority that the relevant stage of the Mandatory Elements has been constructed as specified in the Development Consent, the Agreement, and the building contract.

## 10.2 Inspection by Council

Council may (but is not obliged to) inspect the relevant stage of the Mandatory Elements within 10 days of receipt of the notice issued in accordance with the preceding sub-clause. The Council must promptly (and in any event within 14 days of inspection) notify the Owner in writing that:

- (a) the relevant Mandatory Elements have been completed in a manner generally satisfactory to Council; or
- (b) subject to finalisation of aspects identified in that notice) the relevant Mandatory Elements are being completed in a manner which is generally satisfactory to Council;
- (c) the Mandatory Elements are materially defective, or deficient in a matter which requires rectification.

If a notice is issued under paragraph (c), then the Council must identify the nature of the defect or deficiency and the manner in which this may

be addressed. The Owner must consider in good faith any methodology put forward by the Council.

### 10.3 Completion of the Works

The Owner must ensure that the Mandatory Elements reach completion (having regard to the terms of any notice issued by the Council under clause 10.4) before the date of issue of an Occupation Certificate. Upon completion, the Owner must deliver to Council:

- (a) any additional or amended documents of the nature identified in Item F of Schedule 2, including a full set of the "as built" drawings;
- (b) a statement signed by a duly qualified quantity surveyor as to the costs actually incurred in respect of the completion of the relevant stage of Mandatory Elements.
- (c) a certificate of practical completion issued in respect of the relevant stage of construction or (if not such certificate has been issued), a statement signed by the Owner's representative under the building contract that the relevant stage of the Mandatory Elements has achieved practical completion; and
- (d) any list or other record relating to defects, errors or omissions relating to the relevant stage of the Mandatory Elements; and
- (e) a statement signed by the Owner as to the time and manner in which the Owner intends to rectify the defects, errors or omissions referred to in (d) above.

### 10.4 Non-completion of Mandatory Elements

- (a) If:
  - (i) the Council awards completion, but the Owner does not rectify any defects identified on or before completion within a reasonable period (and in any event before the expiration of the Defects Liability Period); or
  - (ii) after completion and before the expiration of the Defects Liability Period, the Council (acting reasonably) identifies any other defects, errors or omissions in the relevant stage of the Mandatory Elements and the Owner does not rectify these defects, errors or omissions (as the case may be) within a reasonable period after receipt of notice in writing (and in any event before the expiration of the Defects Liability Period)

then Council may claim upon the Guarantee in accordance with this Agreement.

- (b) If the Council permits the Owner **not** to complete the Mandatory Elements (or any part of them), other than in the circumstances identified in clause 8.6, then the Council may make an appropriation from the Guarantee in such amount as the Council considers necessary to complete or rectify (as the case may be) the Mandatory Elements. The Owner will make no objection to any such appropriation by the Council.

## **11. Defects Liability Period**

### **11.1 Defects in the Mandatory Elements**

If the Council notifies the Owner of a defect in the Mandatory Elements within the Defects Liability Period, the Owner must remedy that defect to the satisfaction of the Council's Representative, within a reasonable period and in any event prior to the expiration of the Defects Liability Period.

### **11.2 No Limitation**

Clause 11.1 does not limit any other right, power or privilege of the Council whether arising under this Agreement, any other document or otherwise at law.

### **11.3 Security for Defects Liability Period**

Until the expiration of the Defects Liability Period, the Council may retain from the Guarantee, an amount equal to half of item 8 of Schedule 1 as security for the performance by the Owner of its obligations under this clause 11. If the owner does not rectify any defect in the Mandatory Elements, the Council may rectify the defect in the Mandatory Elements. The Council may make an appropriation from the Guarantee to reimburse itself for all costs and expenses the Council has incurred in rectifying the defect.

### **11.4 Defects Liability Period**

Defect Liability Period is 1 year from issue of Occupation Certificate.

## **12. Application of s94 and s94A of the Act to the Development**

- 12.1 The Council agrees that Development Contribution to be provided pursuant to this Agreement is the totality of the Developer's Contribution Obligation.

- 12.2 The Council warrants that it will not make any claim or demand for additional Development Contribution to that provided for in this Agreement with respect to the Development Consent.
- 12.3 The Council acknowledges that any additional monetary or other contribution provided in addition to the Value of the Development Contribution will, if not refunded or credited pursuant to clause 8.6, be acknowledged by Council as a credit owing to the Developer or any related entity to be applied as an offset against contributions owing in respect of any future development in the Ryde Local Government Area.

### **13. Review of this Agreement**

- 13.1 This Agreement may be varied or amended only by the express written approval of both parties.

### **14. Dispute Resolution**

- 14.1 The Parties agree to deal with any dispute which may arise between them in relation to this Agreement in the following manner:
- (a) initially the Parties must negotiate in good faith to seek resolution of the dispute;
  - (b) failing such resolution, the Parties must engage in mediation, through a process to be agreed or failing agreement as nominated by the President of the Law Society of New South Wales;
  - (c) if not resolved by mediation, the dispute shall be referred for expert determination by an appropriately qualified expert selected by agreement between the Parties or failing agreement as appointed by the President of the Law Society of New South Wales.
- 14.2 The determination made pursuant to clause 14.1(3) shall be final and binding on the Parties, save in the case of manifest error, in which case either Party may have recourse to any available legal process.
- 14.3 The Parties shall each bear their own costs of the process described in clause 14.1(1) and one-half of the costs of any mediator or expert who is appointed under clause 14.1(2) and 14.1(3).

### **15. Registration on Title**

- 15.1 Upon issue of the Development Consent, Council may register this Agreement on the title to the Land.

15.2 Upon completion of the Defect Liability Period the Developer may request the LPI, to remove the registration of this Agreement on title of the Land and Council must do all things reasonably necessary to enable the Developer to remove the notation of this Agreement on title to the Land.

**16. Termination**

16.1 This Agreement terminates on the happening of any of the following events:

- (a) the lapse of the Development Consent;
- (b) a declaration by a Court of competent jurisdiction that the Development Consent is invalid;
- (c) Surrender of the Development Consent.

**17. Notices**

17.1 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.
- (b) Faxed to that Party at its fax number set out below.
- (c) Emailed to that Party at its email address set out below.

**Council**

Attention: Michael Whittaker  
Address: 1 Devlin Street, Ryde, NSW  
Fax Number: 9952 8070  
Email: mwhittaker@ryde.nsw.gov.au

**Developer**

Attention: Nick Perks  
Address: 88 Talavera Road, North Ryde Pty Limited  
88 Cumberland Street  
THE ROCKS NSW 2000



Fax Number: 02 9259 5201

Email: NPerks@sthilliers.com.au

- 17.2 If a Party gives the other Party 3 business days notice of a change of its address or fax number, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or faxed to the latest address or fax number.
- 17.3 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.
- 17.4 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, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

## 18. Approvals and consent

- 18.1 Except as otherwise set out in this Agreement, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Agreement in that Party's absolute discretion and subject to any conditions determined by the Party. A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

## 19. Assignment and Dealings

- 19.1 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, but only if the Developer procures an executed deed of novation pursuant to which the assignee agrees to provide the Contributions under this Agreement and adopt the rights and obligation under the maintenance agreement and implementation deed.

**20. Costs**

20.1 The Developer will pay \$5,000.00 towards Council's costs of negotiating, preparing and executing the Agreement.

**21. Entire agreement**

21.1 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, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Agreement was executed, except as permitted by law.

**22. Further acts**

22.1 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 Agreement and all transactions incidental to it.

**23. Governing law and jurisdiction**

23.1 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.

**24. Joint and individual liability and benefits**

24.1 Except as otherwise set out in this Agreement, any agreement, covenant, representation or warranty under this Agreement by 2 or more persons binds them jointly and each of them individually, and any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

**25. No fetter**

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

**26. Representations and warranties**

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

**27. Severability**

27.1 If a clause or part of a clause of this Agreement 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. 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 Agreement, but the rest of this Agreement is not affected.

**28. Modification**

28.1 No modification of this Agreement will be of any force or effect unless it is in writing and signed by the Parties to this Agreement.

**29. Waiver**

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

**30. GST**

30.1 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 recipient of the supply must pay an additional amount equal to the GST on that supply.

**31. Force majeure**

31.1 If a Party is unable by reason of Force Majeure to carry out wholly or in part its obligations under this deed (other than an obligation to transfer land or make a payment), it must:

- (a) give to the other Party prompt notice of the Force Majeure with reasonably full particulars; and
- (b) suggest an alternative method, if any, of satisfying its obligation under this deed.

31.2 If a Party is unable to satisfy its obligations under this deed by an alternative method, the obligations of the Parties so far as they are affected by the Force Majeure are then suspended during continuance of the Force Majeure and any further period as may be reasonable in the circumstances.

31.3 The Party giving such notice under this clause must use all reasonable efforts and diligence to remove the Force Majeure or ameliorate its effects as quickly as practicable.

31.4 The Parties agree that any costs associated in ameliorating a Force Majeure event will be apportioned, if necessary, in such manner as may be fair and reasonable.

31.5 The Parties agree that this Force Majeure provision does not apply to an obligation of a Party to transfer land or to pay money.

31.6 If the Parties are unable to agree on the existence of an event of Force Majeure or the period during which the obligations of the Parties are suspended during the continuance of the Force Majeure, that dispute must be referred for determination under clause 11.

31.7 The Parties agree that a Force Majeure includes the actual commencement of any legal proceedings by any person challenging the validity of the Development Consent or any provision of this Agreement.

## 32. Compliance with laws

32.1 If a Law is changed or a new Law comes into force (both referred to as **New Law**) and the Developer is obliged by the New Law to:

- (a) do something or pay an amount which it is already contractually obliged to do or pay under this Agreement then, to the extent only that the relevant obligation is required under both the New Law and this Agreement, compliance with the Agreement will constitute compliance with the New Law; and
- (b) make a further contribution not contemplated by this Agreement, the Developer may require that the Development Contributions pursuant to this be taken into account in the assessment of that further contribution.

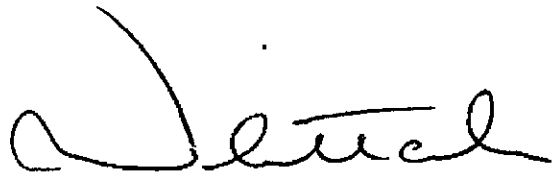
32.2 The Council agrees that the total value of the Contributions is a matter to be taken into consideration in calculating the Developer's Contribution Obligations in respect only of the Development Application.

**Execution**

**Dated:** 4 February 2008

**Executed as an Agreement:**

Signed / executed by **Michael Whittaker** as **Attorney for Ryde City Council** under Power of Attorney registered No. 726 Book 4523 in the presence of



ATL  
Witness

\_\_\_\_\_  
Attorney

ANGELA STEINKE  
Name of Witness  
(BLOCK LETTERS)

\_\_\_\_\_  
MICHAEL WHITTAKER

Executed by 88 Talavera Road North  
Ryde Pty Limited ACN: 122 714 818  
in accordance with section 127 of the  
Corporations Act 2001:

[Signature]  
Director/company secretary

[Signature]  
Director

Rodolph Cappiano  
Name of director/company secretary  
(BLOCK LETTERS)

JOSEPH CUMMINGS  
Name of director  
(BLOCK LETTERS)

## Attachment B

### **Environmental Planning and Assessment Regulation 2000 (Clause 25E)**

#### **Explanatory Note**

**Parties**      **Ryde City Council**  
of 1 Devlin Street, Ryde, NSW  
(Council)

**88 Talavera Road North Ryde Pty Limited**  
**ACN 122 714 818**  
(Developer)

**1. Description of Subject Land**

1.1 Lot 1, DP563745, 84-92 Talavera Road, Macquarie Park

**2. Description of Proposed Change to Environmental Planning  
Instrument / Development Application**

**2.1 Proposed Development**

This Development Application seeks development consent for the demolition of the existing two (2) storey commercial/industrial building, with basement car parking, on the land; the construction of a commercial office complex comprising three (3) buildings, Buildings A, B and C, with a height of six (6) storeys, a total floor space of some 32,313m<sup>2</sup> and four hundred and five (405) car parking spaces accommodated largely in two (2) basement levels of car parking under the buildings; and the carrying out of earthworks and landscaping of the surrounding areas and park east of Shrimpton Creek.

The buildings are to be of the same height as the development approved by virtue of Development Consent No.585/2005, issued on 4 September 2006, and of a bulk and scale that will not be greatly

dissimilar to the approved development when viewed from the public domain in Talavera and Alma Roads and/or the M2 Motorway.

The buildings are to be constructed to a high standard in terms of their ecologically sustainable design features.

The land adjacent to Shrimpton's Creek, with an area of 4,600m<sup>2</sup>, that has been identified as public park on the maps accompanying *RLEP 137* and in draft *DCP 55* is to be landscaped and transferred to Council, free of cost, for public park purposes.

The proposal involves landscaping of the areas surrounding the proposed buildings and the building setback areas to create an attractive setting for the buildings and to provide a desirable streetscape presentation to both Talavera and Alma Roads.

### 3. **Summary of Objectives, Nature and Effect of the Draft Planning Agreement**

#### 3.1 Summarise the cost/benefit.

The Developer seeks to obtain an FSR bonus of 3925m<sup>2</sup> for its commercial office building on the land. In exchange for the Bonus FSR, the Developer will provide the Development Contributions which consist of:

A The s.94 contributions required under the Contributions Plan (without discount or offset) at time of lodgment being the Monetary Contribution under the agreement;

B Dedication of 4,600m<sup>2</sup> of open space the Dedicated Land under the agreement;

C The embellishment of the Dedicated Land in accordance with Council's specifications; and

D The carrying out of stormwater and drainage works.

E Includes, provision for maintenance agreement over park and associated assets for a period of ten (10) years. Prior to an occupation certificate, the parties will execute a maintenance agreement which with respect to the dedicated land together with a handover report of assets confirming structural adequacy.

G St Hilliers will, at its cost, prepare an implementation deed for required additional works to weir component only, should Macquarie Park, flood plain management committee deem modification required as a result of catchments modeling..



**4. Assessment of the Merits of the Draft Planning Agreement**

**4.1 The planning purposes served by the Draft Planning Agreement.**

Identify relevant legislative/policy objectives and how the VPA achieve the objective.

The policy objectives are to enable the provision of community facilities in a manner which provides flexibility. In this development, the community will, in addition to the Monetary Contributions under s.94 obtain dedicated and embellished open space free of charge and capital works carried out to the local stormwater drainage system which improve the amenity of adjoining lands in exchange for a 10% increase in FSR.

**4.2 How the Draft Planning Agreement promotes the objects of the *Environmental Planning and Assessment Act 1979*.**

Environmentally Sustainable Development and Intergenerational Equity are provided by the improvement of local stormwater infrastructure and more useable public open space.

**4.3 How the Draft Planning Agreement promotes the public interest.**

Improved Existing stormwater drainage system. Improved amenity of public open space.

**4.4 For planning authorities:**

**(1) Councils – How the Draft Planning Agreement promotes the elements of the Council's charter.**

The following is a summary of the Planning Agreement in terms of the relevant elements of Council's Charter under the terms of Section 8 of the Local Government Act 1993.

A To provide adequate, equitable and appropriate services and facilities for the community and to ensure that those services and facilities are managed efficiently and effectively.

The Planning Agreement will result in:

- the provision of land for public open space purposes in accordance with Council's contemporary planning policies for development in the Macquarie Park Corridor and the embellishment of that for its intended purpose; and
- the enhancement of the management of stormwater flows through the site to cater for demands emanating off-site from the upper parts of the Shrimpton's Creek catchment.

B To exercise community leadership.

The Planning Agreement will enable Council to show leadership by facilitating the establishment of vital community infrastructure required for the planned intensification of development in the Macquarie Park Corridor in an efficient and cost effective manner.

C To promote and provide for children's needs.

The Planning Agreement will assist in meeting children's needs by establishing a public open space area capable of being used by children for recreation in this locality.

D To properly manage, develop, enhance and conserve the environment in a manner consistent with and promoting the principles of ecologically sustainable development.

The Planning Agreement will result in the enhancement of the environment by developing and enhancing public open space facilities in this locality and enhancing the ability of Shrimpton's Creek to fulfil its role as part of the natural drainage system through this part of the City in the context of the extensive development that has occurred off-site and upstream in its catchment.

These outcomes will contribute to the ecological sustainability of development in the Macquarie Park Corridor.

The Planning Agreement will also result in the construction of an employment complex with high Ecological Sustainable ratings which will minimise energy and water consumption in accordance with accepted community standards.

E To have regard to the long term and cumulative effects of Council's decisions.

The Planning Agreement is consistent with the approach taken by Council in relation to the establishment of the infrastructure planned and required to service the Macquarie Park Corridor in accordance with contemporary planning strategies that have been adopted by the State Government and Council for a greater intensity of development in the Corridor.

F To keep the local community informed about its activities.

Council is to conduct a community consultation program prior to entering into the Planning Agreement.

This will ensure that the community is well informed of the Agreement and will enable Council to consider any matters which may be raised during that program prior to entering into any Agreement.

7. To ensure that Council acts consistently and without bias, particularly where an activity of Council is affected.

The Planning Agreement is consistent with the approach taken by Council in relation to the establishment of the infrastructure planned and required to service the Macquarie Park Corridor in accordance with contemporary planning strategies that have been adopted by the State Government and Council for a greater intensity of development in the Corridor.

(2) **All Planning Authorities – Whether the Draft Planning Agreement conforms with the Authority's Capital Works Program.**

Council does not have a specific Capital Works Program for works to be carried out to provide the infrastructure planned and required to service the Macquarie Park Corridor in accordance with contemporary planning strategies that have been adopted by the State Government and Council for a greater intensity of development in the Corridor.

The works proposed in the Planning Agreement do not rely on any expenditure by Council on off-site works to facilitate them.

In this context, the proposed works resulting from the Planning Agreement:

- are self-contained in the redevelopment of the land; and
- would not effect Council's Capital Works Program.

5. **The impact of the Draft Planning Agreement on the public or any section of the public**

5.1 **The Planning Purposes Served by the Draft Planning Agreement**

The planning purposes served by the Planning Agreement include:

- meeting the demands created by the development for new and enhanced public amenities and public facilities;

- securing on and off-site benefits for the wider community so that the development subject of the application delivers net community benefits in terms of:
- establishing part of an open space network in this locality to provide a linked open space system which will be in public ownership;
- embellishing the proposed public open space to meet community needs and standards; and
- improving the management of the significant stormwater flows emanating from the upper parts of the Shrimpton's Creek catchment through the site;
- the revitalisation of development in this locality in accordance with the contemporary town planning principles incorporated into the Ryde Planning Scheme by virtue of Ryde Local Environmental Plan No.137 which was made on 20 January 2006;
- increasing local employment opportunities in proximity to the railway station to be established on the Epping-Chatswood Rail Link at the intersection of Herring and Waterloo Roads; increasing potential public transport patronage and subsequently maximising the benefit of public expenditure on transport systems in the Macquarie Park Corridor; and
- promoting investment in the Macquarie Park Corridor in accordance with State and Local Government economic development goals and providing a catalyst for accelerated development in the Corridor.

**5.2 How the Draft Planning Agreement Promotes the Objects of the Environmental Planning and Assessment Act 1979**

The Planning Agreement will promote the following objects of the Act:

- The promotion and co-ordination of orderly economic development.

The Planning Agreement contributes to the continued development of the Macquarie Park Corridor in accordance with State and Local Government economic development goals and the contemporary town planning principles

incorporated into the Ryde Planning Scheme by virtue of Ryde Local Environmental Plan No.137.

The Planning Agreement will enable the land to be developed in a timely and efficient manner to promote economic development and employment opportunities.

- The provision of land for public purposes

The Planning Agreement will result in the dedication of land for public open space purposes at no cost to Council.

- Ecologically sustainable development

The Planning Agreement will result in the construction of an employment complex with high Ecological Sustainability Initiatives which will minimise energy and water consumption in accordance with accepted community standards.

- Increased opportunity for public involvement and participation in planning

The Planning Agreement is to be publicly exhibited with comments invited from the public. The Agreement can only be entered into subject to public participation.

### **5.3 How the Draft Planning Agreement Promotes the Public Interest**

The public interest is served by outcomes that deliver State and Local Government policy outcome including:

- delivery of public infrastructure in terms of components of open space and stormwater drainage networks free of cost to the local community;
- delivery of increased employment opportunities for local residents;
- delivery of increased patronage of public transport systems serving the Macquarie Park Corridor;
- delivery of the development outcomes sought by:
- the Ryde Planning Scheme;
- Ryde Local Environmental Plan No.137;

- the Macquarie Park Corridor Master Plan; and
- draft Development Control Plan No.55 - Macquarie Park Corridor; and
- contribution to the delivery of elements of the NSW State Government's metropolitan strategy as enunciated in *City of Cities 2006*.

**Signed and dated by all parties**

**Attachment C**

**Template condition of development consent [This is a form of a proposed condition to be imposed on development consents where a VPA is used]**

(Where planning agreement accompanied a development application)

- C1. Pursuant to section 80A(1) of the *Environmental Planning and Assessment Act 1979*, the planning agreement that relates to the development application the subject of this consent must first be executed prior to the lodgment of any application for a certificate under s109 of the EPA Act.

### Schedule 1 – Reference Schedule

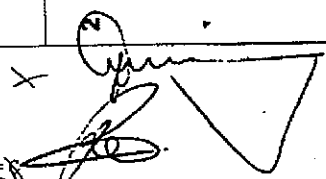
Item	Name	Description
1.	Owner's Name	88 Talavera Road North Ryde Pty Limited
2.	Owner's Representative	Nick Perks
3.	Land	Lot 1 DP 563745 shown on the attached plan at Annexure A.
4.	Development	Construction of and use of the Land for office, car parking, open space and drainage works.
5.	Monetary Contribution	Total of \$2,274,696
6.	Dedicated Land	Part of Lot 1 DP 563745 being the 4,600m <sup>2</sup> shown on the plan attached at Schedule 5 and bounded by; Alma Rd, Talavera Rd, M2 Motorway and RTA land and 200mm from the Western Creek wall.
7.	Public Benefits	Provision of embellished open space and drainage works.
8.	Guarantee Amount	\$221,408
9.	Public Liability Insurance	Minimum \$20 million
10.	Notices	
	Council Attention	Troy Loveday
	Address	1 Devlin Street, Ryde, NSW
	Fax Number	9952 8070
	Owner Attention	Nick Perks 88 Talavera Road, North Ryde Pty Limited
	Address	88 Cumberland Street, The Rocks NSW
	Fax Number	02 9259 5201



**Schedule 2 – Owner's Works**

A	B	C	D	E	F	G
No.	Item of Owner's Work	Extent of Design Refinement	Mandatory Elements	Date for provision of contribution item	Relevant Drawing Nos.	Value
1	Dedication of 4,600 m <sup>2</sup> Public Open Space	Yes	✓	Occupation Certificate	06104-DA-17 rev.C	\$920,000
	<b>Sub Total</b>					<b>\$920,000</b>
	Embellishment of Public Open Space (Park Works)	Yes	✓	Occupation Certificate	S96.2_L101-B S96.2_L102-A S96.2_L201-B S96.2_L301-B N06125-A-9001.1 N06125-A-9002.1	

2

X 

A	B	C	D	E	F	G
No.	Item of Owner's Work	Extent of Design Refinement	Mandatory Elements	Date for provision of contribution item	Relevant Drawing Nos.	Value
					N06125-A-9003.1 N06125-A-9004.1 N06125-A-9005.1	
	(a) Demolition to existing Stormwater culvert					\$8,000
	(b) Temporary Stormwater diversion					\$65,000
	(c) Landscaping					\$188,405
	(d) Irrigation					\$25,000
	(e) Paving					\$51,590

A	B	C	D	E	F	G
No.	Item of Owner's Work	Extent of Design Refinement	Mandatory Elements	Date for provision of contribution item	Relevant Drawing Nos.	Value
	(f) External Lighting					\$38,000
	(g) Balustrades					\$62,500
	(h) Bridge Over Creek					\$183,406
	(i) Kerb & gutter					\$22,490
	(l) Footpaths & Crossovers					\$17,435
3	Civil Drainage Works (Creek Works)	Yes	✓	Occupation Certificate		
	(a) Clearing of site & topsoil					\$50,000
	(b) Upgrade & realign creek					\$195,000

A	B	C	D	E	F	G
No.	Item of Owner's Work	Extent of Design Refinement	Mandatory Elements	Date for provision of contribution item	Relevant Drawing Nos.	Value
(d)	New retaining walls, footings and finishes to creek bed walls					\$495,292
(e)	new natural stone creek bank					\$253,950
(a)	Supervision and labour					\$172,240
(b)	Design fees, inspection & certification					\$113,680
(c)	Overhead & profit					\$100,420
(d)	escalation to 2009					\$66,243
	<b>SUB TOTAL</b>					<b>\$2,108,651</b>

A	B	C	D	E	F	G
No.	Item of Owner's Work	Extent of Design Refinement	Mandatory Elements	Date for provision of contribution item	Relevant Drawing Nos.	Value
	Contingency @ 5% of budget					\$105,433
	<b>TOTAL WORKS BUDGET</b>					<b>\$2,214,084</b>
	<b>TOTAL OF VPA EXCLUDING MONETARY CONTRIBUTIONS</b>					<b>\$3,134,084</b>

PAGE 37 OF 40 PAGES *x [Signature]*

**Schedule 3 -- Public Benefits Offer versus Section 94 Contributions**

Table 1 identifies the Monetary Contributions payable in respect of the proposed development, calculated in accordance with City of Ryde -- Section 94 Contribution Plan No.1 -- 2003 (current at time of lodgement)

Proposed Building	Area (GFA)	s.94 Public Space	s.94 Stormwater	s.94 administration	Project Total
Commercial Office Space	315934	\$947,790	\$1,232,127	\$94,779	\$2,274,696
<b>TOTAL Monetary Contributions</b>					<b>\$2,274,696</b>

Table 2 identifies the Public Benefits offered under the Voluntary Planning Agreement between 88 Talavera Road Pty Limited and City of Ryde Council.

Voluntary Planning Agreement Offer - Public Benefits	Offer Value
Dedicated Land	\$920,000
Park & Creek Works	\$2,214,084
<b>VPA OFFER IN EXCESS OF DEVELOPER OBLIGATIONS</b>	<b>\$3,134,084</b>

*2*

*[Signature]*

**Schedule 4 – Monetary Contributions**

**Monetary Contributions \$2,274,696**

Contributions Installments	Amount of Installment	Date Installment Due and Payable
Payment	\$2,274,695.90	Prior to Occupation Certificate

2

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X *[Signature]*  
X *[Signature]*

Schedule 5 – Plan of Dedicated Land

Plan no: 06104-DA-17 rev.C

✓

x *[Signature]*

PAGE 40 OF 40 PAGES *[Signature]*



**THIS IS AN ANNEXURE TO REQUEST WITH CITY OF RYDE COUNCIL AS APPLICANT DATED**

NATIONAL AUSTRALIA BANK LIMITED ABN 12 004 044 937 as mortgagee under mortgage Registered No. AD278376 hereby consents to the within **Request** but without prejudice to and reserving all its rights powers and remedies under its security.

DATED at Sydney this 8<sup>TH</sup> Day of April 2008.

Signed in my presence by Roger James Corkery, Level 2 Attorney of National Australia Bank Limited pursuant to Power of Attorney Registered No. 39 Book 4512 who is personally known to me.



.....  
Sefike Kirikkaya  
Bank Officer  
255 George Street, Sydney NSW

Signed for and on behalf of National Australia Bank Limited by its said Attorney.



.....  
Level 2 Attorney

**THIS IS AN ANNEXURE TO REQUEST WITH CITY OF RYDE COUNCIL AS  
APPLICANT DATED**

**NATIONAL AUSTRALIA BANK LIMITED ABN 12 004 044 937 as mortgagee under  
mortgage Registered No. AD278376 hereby consents to the within Request but without  
prejudice to and reserving all its rights powers and remedies under its security.**


**DATED at Sydney this 8<sup>TH</sup> Day of April 2008.**

Signed in my presence by Roger James  
Corkery, Level 2 Attorney of National  
Australia Bank Limited pursuant to Power  
of Attorney Registered No. 39 Book 4512  
who is personally known to me.



.....  
Sefike Kirikkaya  
Bank Officer  
255 George Street, Sydney NSW

Signed for and on behalf of National  
Australia Bank Limited by its said  
Attorney.



.....  
Level 2 Attorney