

Draft No 3
20 October 2010

City of Ryde Council

Eastwood Centre Developments Pty Limited t/a
Banna Developments

Draft Planning Agreement

Section 93F of the Environmental Planning
and Assessment Act, 1979 (NSW)

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Parties

City of Ryde Council ABN 81 621 292 610 of 1 Devlin Street, Ryde, New South Wales (**Planning Authority**).

Eastwood Centre Developments Pty Limited trading as Banna Developments ACN 121 113 371 of Suite 301, 160 Rowe Street, Eastwood, New South Wales (**Developer**).

Background

- A On 30 November 2007, the Developer made the Development Application to the Planning Authority seeking consent to carry out the Development on the Land.
 - B On 3 February 2009, the Planning Authority granted the Development Consent.
 - C Pursuant to section 93(3) of the Act, the Planning Authority imposed condition 51 of the Development Consent which required the Developer to enter into a Planning Agreement in accordance with the offer made by the Developer to make various Development Contributions towards the Public Facilities.
 - D The Developer subsequently lodged the Section 96 Modification with the Planning Authority to amend the Development Application.
 - E The Developer has offered to enter into this Agreement in connection with the Development Consent, as amended by the Section 96 Modification, to specify the Development Contributions to be made towards the Public Facilities if planning approval for the Section 96 Modification is granted.
-

Operative provisions

1 Planning Agreement under the Act

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

2 Application of this Agreement

This Agreement applies to the Development and the Land.

3 Operation of this Agreement

3.1 The Agreement operates only if:

- (a) the Section 96 Modification is granted by the Planning Authority;
- (b) a condition of the Development Consent (as modified) under section 93I(3) of the Act requires this Agreement to be entered into;
- (c) the Agreement is entered into as required by clause 25C(1) of the Regulation; and
- (d) the Developer gives the Planning Authority notice that an application for a Construction Certificate has been made for the Development.

3.2 Notice of operation of the Agreement

If clauses 3.1(a) – (d) are satisfied, the Developer agrees to notify the Planning Authority upon the issue of the notice to the Planning Authority under clause 3.1(d) that the Agreement is in operation.

4 Definitions and interpretation

4.1 Definitions

In this Agreement the following definitions apply:

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

Agreement means this voluntary planning agreement including any schedules.

Authorities means a government or semi-governmental, local government, statutory, public, ministerial, civil, administrative, fiscal or judicial body or other authority or body having jurisdiction over the Public Domain Works and includes the Planning Authority.

Commencement Date means the date the written notice is provided to the Planning Authority under **Clause 3.2**.

Community Consultation means a process of community consultation as agreed with the Planning Authority prior to the submission of the Works Application including, but not limited to, conducting community meetings, exhibiting the Public Domain Works proposal and receiving submissions or comments from the community on the Public Domain Works.

Construction Certificate means a construction certificate as defined in the Act.

CPI means the All Groups Consumer Price Index (Sydney) as published by the Australian Bureau of Statistics.

Development means the development of the Land in accordance with the Development Consent.

Development Application means the development application submitted to the Planning Authority for the Development of the Land.

Development Consent means development consent no. LDA2007/0936 as modified from time to time and granted by the Planning Authority on 3 February 2009 for the redevelopment of Eastwood Shopping Centre including the demolition of the existing shopping centre, associated car parking structures and the Masonic Building and construction of a mixed commercial/residential development on the Land.

Development Contribution means to dedicate land free of cost, pay a monetary contribution, or provide any other material public benefit, or any combination of them, to be used for or applied towards a Public Purpose.

Eastwood Urban Village means the land identified as the Eastwood Urban Village on the Centres Map – Sheet CEN_001 in the *Ryde Local Environmental Plan 2010*.

Explanatory Note means the explanatory note relating to this Agreement, as required by clause 25E of the Regulation and set out in **Schedule 5**.

GST has the same meaning as in the GST Law.

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.

Land means the land described in **Part A of Schedule 2** and known as 160 – 188 Rowe Street, Eastwood, NSW.

LPMA means the Land and Property Management Authority of New South Wales.

Monetary Contribution means the cash contribution for the Public Domain Works for the amount specified in **Item 1, Column 3 of Schedule 4**.

Occupation Certificate means an occupation certificate as defined in the Act.

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

Planning Authority Land means the Land identified in **Part B of Schedule 2**.

Preparation Works means the design of the Public Domain Works, the preparation of the Works Plans and Documents, Community Consultation, consultation with the Developer and the preparation and submission of the Works Application by the Planning Authority in order to obtain the Works Consent.

Preparation Works Contributions means the cash contribution for the Preparation Works, including the fees for consultants' costs.

Public Benefit means those benefits identified in **Schedule 3**.

Public Domain Works means the Public Facility works identified in **Item 1, Column 2 of Schedule 4** to be carried out on the Planning Authority Land.

Public Facility means a public amenity, a public service, a public facility, public land, public infrastructure, a public road, a public work, or any other act matter or thing that meets a Public Purpose.

Public Purpose means any purpose that benefits the public or a section of the public, specified in section 93F(2) of the Act.

Registrar-General means the office of the Registrar-General under the *Real Property Act 1900* (NSW).

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

Section 96 Modification means the application submitted by the Developer on 21 April 2010 to modify the Development Consent under section 96 of the Act.

Works Application means the development application submitted by the Planning Authority for the Public Domain Works.

Works Consent means any approval, authorisation or consent required to be obtained under the Act for the Public Domain Works.

Works Consent Date means the date of determination of the Works Consent.

Works Plans and Documents means the Works Application supporting documents and architectural plans for the development of the Public Domain Works.

4.2

Interpretation

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

- (a) headings are inserted for convenience only and do not affect the interpretation of this Agreement;
- (b) 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;
- (c) 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;
- (d) a reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars;
- (e) a reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision;
- (f) a reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced;
- (g) a reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement unless otherwise specified;

- (h) an expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency;
- (i) 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;
- (j) 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;
- (k) references to the word 'include' or 'including' are to be construed without limitation;
- (l) a reference to this Agreement includes the agreement recorded in this Agreement;
- (m) 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; and
- (n) any schedules and attachments form part of this Agreement.

5 Development Contributions to be made under this Agreement

5.1 Preparation Works Contribution and Monetary Contributions

- (a) Subject to this Agreement, the Developer is to make a Development Contribution in accordance with **Schedule 4**, by:
 - (i) paying the Preparation Works Contribution to the Planning Authority; and
 - (ii) paying the Monetary Contribution to the Planning Authority.
- (b) Development Contributions made in accordance with this Agreement are made in full and final satisfaction of all costs and expenses required to be borne by the Developer of and incidental to the provision of the Public Facility to which it relates.
- (c) Any monetary contribution to be paid in accordance with **Clause 5.1(a)** is to be indexed quarterly in accordance with the CPI from the Commencement Date until paid.

5.2 Use of Monetary Contributions and Preparation Works Contributions

- (a) The Planning Authority must, in accordance with this Agreement:
 - (i) subject to **clause 6.2**, apply the Preparation Works Contributions only towards the Preparation Works;
 - (ii) apply the Monetary Contributions only towards the Public Domain Works; and

- (iii) expend those monies for the purposes identified in **clause 5.2(a)(i)** and **5.2(a)(ii)** in accordance with the timing set out in **clause 7.3**.
- (b) If requested by the Developer, the Planning Authority will provide copies of invoices as evidence of the application of the contributions towards the Preparation Works and Public Domain Works. The invoices will be provided to the Developer within 10 business days of any such request.

6 Delivery of Development Contributions under this Agreement

6.1 Delivery of monetary contributions

- (a) The Planning Authority must issue the Developer with a tax invoice within 20 business days from:
 - (i) the Commencement Date for the Preparation Works Contribution; and
 - (ii) the Works Consent Date for the Monetary Contributions.
- (b) The Developer must pay that tax invoice within 30 business days of receipt.
- (c) The Preparation Works Contribution and Monetary Contributions are made for the purposes of this Agreement when cleared funds are deposited by means of electronic funds transferred by the Developer into a bank account nominated by the Planning Authority.

6.2 Use of unexpended Preparation Works Contributions

The Parties agree that:

- (a) within 10 business days of the Works Consent Date, the Planning Authority will provide the Developer with evidence of the amount expended for the Preparation Costs, including any tax invoices, receipts or accounts; and
- (b) where the Planning Authority expends less than the Preparation Works Contributions amount, the Planning Authority will apply those unexpended monies towards the Public Domain Works.

6.3 Use of unexpended Monetary Contributions

The Parties agree that:

- (a) Within 10 business days of the issue of the Final Occupation Certificate for the Development Consent, the Planning Authority will provide the Developer with evidence of the amount expended for the Monetary Contributions, including any tax invoices, receipts or accounts; and
- (b) Where the Planning Authority expends less than the Monetary Contributions amount, the Planning Authority will apply those unexpended monies towards any Public Facility within the Eastwood Urban Village.

7 Public Domain Works and Works Consent

7.1 Planning Authority obligations

- (a) The Parties agree that the Planning Authority shall:
 - (i) Carry out the Preparation Works;
 - (ii) Obtain the Works Consent; and
 - (iii) Carry out the Public Domain Works.

7.2 Works Application and Developer's input

- (a) The Planning Authority shall consult with the Developer on the Preparation Works, Works Plans and Documents and Works Application including any supporting documentation;
- (b) The Developer may review and provide comments to the Planning Authority on the Preparation Works, Works Plans and Documents and Works Application, including any supporting documents; and
- (c) The Planning Authority must, in good faith, take into account the comments provided by the Developer under **clause 7.2(b)**;
- (d) The Planning Authority and the Developer must both act in good faith and with due expedition in their consultations with one another.

7.3 Timing of Public Domain Works and Access

- (a) The Planning Authority shall carry out the Public Domain Works:
 - (i) in a proper and workmanlike manner;
 - (ii) in accordance with all relevant laws;
 - (iii) with due expedition and without delay; and
 - (iv) in accordance with the Works Consent and any other approvals; and
 - (v) will use all reasonable endeavours to complete the Public Domain Works prior to the issue of the final Occupation Certificate for the Development; and
- (b) During the carrying out of the Public Domain Works, the Planning Authority agrees that it will maintain access to, or provide alternative access to, any retail or commercial businesses that are open to trade within the Development at no cost to the Developer.

8 Registration of this Agreement

The Developer must, at its expense, take all practical steps to procure the lodgement of the Agreement on the titles of the Land with the Registrar-General as soon as reasonably practicable after the Commencement Date but in any event, prior to the issue of any Construction Certificate for the Development.

9 Release and Discharge

- (a) Once the Developer has complied with its obligations under this Agreement by the payment of the Preparation Works Contributions and Monetary Contributions the Planning Authority agrees:
- (i) to provide a release and discharge of this Agreement with respect to the Land or any lot, including a strata lot, created on subdivision of the Land, within 10 business days of receiving a request from the Developer; and
 - (ii) to do all things reasonably necessary, including the execution of any necessary documents, to enable the Developer to remove the notation of this Agreement on the relevant folios of the Torrens title register held by the LPMA pertaining to the Land.
- (b) Further to **Clause 9(a)**, the Developer will be released from its obligations under this Agreement if:
- (i) the Developer transfers, assigns or disposes of its obligations in accordance with the requirements of **Clause 16**;
 - (ii) the Development Consent has lapsed;
 - (iii) the Parties agree that the performance of the Agreement has been frustrated by an event outside the control of the Parties to the Agreement; or
 - (iv) the parties otherwise agree to modify or discharge the Agreement in accordance with **Clause 11**.

10 Application of sections 94, 94A and of the Act to the Development

This Agreement wholly excludes the application of sections 94 and 94A of the Act to the Development.

11 Review of this Agreement

- (a) The Parties agree that this Agreement may be reviewed or modified and that any review or modification of this Agreement will be conducted in the circumstances and in the manner determined by the Parties.
- (b) No modification or review of this Agreement, will be of any force or effect unless it is in writing and signed by the Parties to this Agreement.

12 Planning Authority fees and charges

- (a) In recognition of the Development Contributions, the Planning Authority will waive the payment by the Developer of the following construction related fees for work carried out pursuant to the Development Consent:

- (i) Footpath Type A erection permit; and
 - (ii) Footpath hoarding type B erection permit; and
 - (iii) Footpath hoarding inspection permits,
- up to the maximum amount specified as 'Total Construction Fees' in **Table 1 of Schedule 3.**

13 Dispute Resolution

13.1 Reference to Dispute

If a dispute arises between the Parties in relation to this Agreement, then either Party may seek to resolve that dispute in accordance with this **Clause 13.**

13.2 Notice of Dispute

The Party wishing to commence dispute resolution processes must notify the other in writing of:

- (a) the intent to invoke this **Clause 13;**
- (b) the nature or subject matter of the dispute, including a summary of any efforts made to resolve the dispute other than by way of this **Clause 13;**
- (c) the outcomes which the notifying Party wishes to achieve (if practicable); and
- (d) any material impact which the dispute has upon the completion of the Public Domain Works.

13.3 Representatives of Parties to Meet

- (a) The representatives of the Parties must promptly (and in any event within 14 business days of the written notice provided in accordance with **Clause 13.2**) meet in good faith to attempt to resolve the notified dispute.
- (b) The parties may, without limitation:
 - (i) resolve the dispute during the course of that meeting;
 - (ii) agree that further material, expert opinion or consideration is needed to effectively resolve the dispute (in which event the Parties will, in good faith, agree to a timetable for resolution); and
 - (iii) agree that the Parties are unlikely to resolve the dispute and, in good faith, agree to a form of alternative dispute resolution (including expert determination, arbitration or mediation) which is appropriate for the resolution of the relevant dispute.

13.4 Neither party may constrain

if:

- (a) at least one meeting has been held in accordance with **Clause 13.3;** and

- (b) the Parties have been unable to reach an outcome identified in **Clause 13.3(b)(i) and (iii)**; and
 - (c) either of the Parties, acting in good faith, forms the view that the dispute is reasonably unlikely to be resolved in accordance with a process agreed under **Clause 13.3**.
- then, that Party may, by 14 business days written notice to the other Party, terminate the dispute resolution process in respect of that dispute. The termination of the process set out in this clause does not of itself amount to a breach of this Agreement.

14 Security and Enforcement

14.1 Security

The Parties agree that security for performance of the Developer's obligations is achieved by the registration of this Agreement on the titles to the Land for the Preparation Works Contributions and Monetary Contributions.

14.2 Enforcement by any party

- (a) Without limiting any other remedies available to the Parties, this Agreement may be enforced by any Party in any court of competent jurisdiction.
- (b) Nothing in this Agreement prevents:
 - (i) A Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Agreement or any matter to which this Agreement relates; and
 - (ii) The Planning Authority from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Agreement or any matter to which this Agreement relates.

15 Notices

15.1 Delivery

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;

City of Ryde Council

Attention:

[To be inserted]

Address:

1 Devilin Street, Ryde, NSW

Fax Number:

[To be inserted]

Eastwood Centre Developments Pty Limited t/a Banna Developments

Attention: Brad Chan

Address: Suite 301, 160 Rowe Street, Eastwood, NSW

Fax Number: 02 9804 6160

15.2 Change of Details

If a Party gives the other Party three 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.

15.3 Giving of Notice

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, two business days after it is posted; and
- (c) if it is sent by fax, as soon as the sender receives from the senders fax machine a report of an error free transmission to the correct fax number.

15.4 Delivery outside of business hours

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 5:00 pm 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.

16 Assignment and Dealings

16.1 Assignment

- (a) A Party must not assign or deal with any right under this Agreement without the prior written consent of the other Party.
- (b) Any purported dealing in breach of this **Clause 16.1** is of no effect.

16.2 Transfer

- (a) The Developer may not transfer, assign or dispose of its obligations under this Agreement to a transferee (**Transferee**) unless:
 - (i) the Transferee delivers to the Planning Authority a deed signed by the Transferee in a form and of such substance as is acceptable to the Planning Authority acting reasonably containing provisions under which the Transferee agrees to comply with all the obligations of the Developer under the Agreement; and

- (ii) any default by the Developer under any provision of this Agreement has been remedied by the Developer or waived by the Planning Authority on such conditions as the Planning Authority may determine in its absolute discretion.

17 GST

17.1 Construction

In this Clause 17:

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

17.2 Intention of the Parties

Without limiting the operation of this Clause 17, as at the date of this Agreement, the Parties intend that:

- (a) Divisions 81 and 82 of the GST Act apply to the supplies made under and in connection with this Agreement; and
- (b) no additional amount will be payable to a Supplier (as defined in Clause 17.4 below) on account of GST.

17.3 Consideration GST exclusive

All prices or other sums payable or consideration to be provided under this Agreement are exclusive of GST.

17.4 Payment of GST – additional payment required

- (a) If an entity (**Supplier**) makes a taxable supply under or in connection with this Agreement (**Relevant Supply**), then, subject to Clause 17.4(d), the Party required under the other provisions of this Agreement to provide the consideration for that Relevant Supply (**Recipient**) must pay an additional amount to the Supplier (**GST Amount**), as calculated under Clause 17.4(b), 17.4(c) and 17.4(e) (as appropriate).
- (b) To the extent that the consideration to be provided by the Recipient for the Relevant Supply under the other provisions of this Agreement is a payment of money (including, for the avoidance of doubt, any payment under Clauses 17.4(c) and 17.4(e)), the Recipient must pay to the Supplier an additional amount equal to the amount of the payment multiplied by the rate or rates of GST applicable to that Relevant Supply.
- (c) To the extent that the consideration to be provided by the Recipient for that Relevant Supply is neither:
 - (i) a payment of money; nor
 - (ii) a taxable supply,

(Non-taxable non monetary consideration),

the Recipient must pay to the Supplier an additional amount equal to 1/11th of the GST-inclusive market value of the Non-taxable non-monetary consideration.

- (d) To the extent that the consideration payable by the Recipient is a taxable supply made to the Supplier by the Recipient, then, notwithstanding **Clause 17.4(a)** and subject to **Clause 17.4(e)**, no additional amount is payable by the Recipient to the Supplier on account of the GST payable on that taxable supply.

- (e) Notwithstanding **Clause 17.4(d)** if the GST-inclusive market value of the non-monetary consideration of the Relevant Supply (**Supplier's taxable supply**) is less than the GST-inclusive market value of the non-monetary consideration comprising the taxable supply made by the Recipient to the Supplier for the Supplier's taxable supply (**Recipient's taxable supply**) then, the Recipient must pay to the Supplier an additional amount equal to 1/11th of the difference between the GST-inclusive market value of the Recipient's taxable supply and the GST-inclusive market value of the Supplier's taxable supply.

- (f) The recipient will pay the GST Amount referred to in this **Clause 17.4** in addition to and at the same time as the first part of the consideration is provided for the Relevant Supply.

17.5 Valuation of non-monetary consideration

The Parties will seek to agree upon the market value of any non-monetary consideration which the Recipient is required to provide under **Clause 17.4**. If agreement cannot be reached prior to the time that a Party becomes liable for GST, the matter in dispute is to be determined by an independent expert nominated by the President for the time being of the Institute of Chartered Accountants in Australia. The Parties will each pay one half of the costs of referral and determination by the independent expert.

17.6 Tax invoice

The Supplier must deliver a tax invoice to the Recipient before the Supplier is entitled to payment of the GST Amount under **Clause 17.4**. The Recipient can withhold payment of the GST Amount until the Supplier provides a tax invoice.

17.7 Adjustment event

If an adjustment event arises in respect of a taxable supply made by a Supplier under this Agreement, the GST Amount payable by the Recipient under **Clause 17.4** will be recalculated taking into account any previous adjustment under this clause to reflect the adjustment event and a payment will be made by the Recipient to the Supplier or by the Supplier to the Recipient as the case requires.

17.8 Reimbursements

Where a party is required under this Agreement to pay, indemnify or reimburse an expense, loss or outgoing of another party, the amount to be paid, indemnified or reimbursed by the first party will be the sum of:

- (a) the amount of the expense, loss or outgoing less any input tax credits in respect of the expense, loss or outgoing to which the other party, or to which the representative member of a GST group of which the other party is a member, is entitled; and
- (b) any additional amount payable under **Clause 17.4** in respect of that reimbursement.

17.9 No Merger

This **Clause 17** does not merge in the completion, discharge, rescission or termination of this document or on the transfer of any property supplied or to be supplied under this document.

18 Costs

The parties agree to bear their own costs of preparing, negotiating, executing and stamping this Agreement and any document related to this Agreement.

19 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, 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.

20 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 Agreement and all transactions incidental to it.

21 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.

22 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.

23 No fetter

Nothing in this Agreement shall be construed as requiring the Planning Authority 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.

24 Representations and warranties

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

25 Severability

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.

26 Waiver

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.

27 Effect of Schedules

The Parties agree to comply with any terms contained in Schedules to this Agreement as if those terms were included in the operative part of the Agreement.

28 Relationship of parties

This Agreement is not intended to create a partnership, joint venture or agency relationship between the parties.

29 Explanatory Note Relating to this Agreement

- (a) **Schedule 5** contains the Explanatory Note relating to this Agreement required by clause 25E of the Regulation.
- (b) Pursuant to clause 25E(7) of the Regulation, the Parties agree that the Explanatory Note in **Schedule 5** is not to be used to assist in construing this Agreement.

30 Further steps

Each party must promptly do whatever any other party reasonably requires of it to give effect to this document and to perform its obligations under it.

31 Counterparts

This document may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

32 Rights Cumulative

Except as expressly stated otherwise in this agreement, the rights of a Party under this Agreement are cumulative and are in addition to any other rights of that Party.

Executed as an agreement:

[Corrs Note: Council to confirm execution clause]

Executed by **Ryde City Council** by its
duly appointed officer in the presence
of:)
)
)

Witness

Officer

.....
Name of Witness (print)

.....
Name of Officer (print)

Executed by Eastwood Centre)
Developments Pty Limited trading as)
Banna Developments)
ACN 121 113 371)

.....
Company Secretary/Director

.....
Director

.....
Name of Company Secretary/Director
(print)

.....
Name of Director (print)

Schedule 1

*Section 93F Requirements

Provision of the Act	This Agreement
Under section 93F(1), the Developer has:	
(a) sought a change to an environmental planning instrument.	(a) No
(b) made, or proposes to make, a development application.	(b) Yes, development consent LDA2007/0936 granted on 3 February 2009 by the Planning Authority and a Section 96 Modification application has also been submitted to amend the development consent
(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.	(c) Yes
Description of the land to which this Agreement applies - (Section 93F(3)(a))	See Part A of Schedule 2.
Description of the development to which this Agreement applies - (Section 93F(3)(b)(iii))	The redevelopment of Eastwood Shopping Centre including the demolition of the existing shopping centre, associated car parking structures and the Masonic Building and construction of a mixed commercial/residential development as may be modified.
The scope, timing and manner of delivery of Development Contributions required by this Agreement - (Section 93F(3)(c))	See Clause 3, 5 & 6 of this Agreement.
Applicability of Section 94 of the Act - (Section 93F(3)(d))	This Agreement wholly excludes the application of section 94 of the Act to the Development.
Applicability of Section 94A of the Act - (Section 93F(3)(d))	This Agreement wholly excludes the application of section 94A of the Act to the Development.
Applicability of Section 94EF of the Act - (Section 93F(3)(d))	Not Excluded.

Provision of the Act	This Agreement
Applicability of Section 93F(3)(e) of the Act	Not Applicable.
Mechanism for Dispute resolution - (Section 93F(3)(f))	See Clause 13
Enforcement of this Agreement - (Section 93F(3)(g))	See Clause 14
Registration of this Agreement (Section 93H)	Yes -- See Clause 8
No obligation to grant consent or exercise functions - (Section 93F(9))	See Clause 23

Schedule 2

Part A - Land Description

Street Address: 160 – 188 Rowe Street, Eastwood, NSW

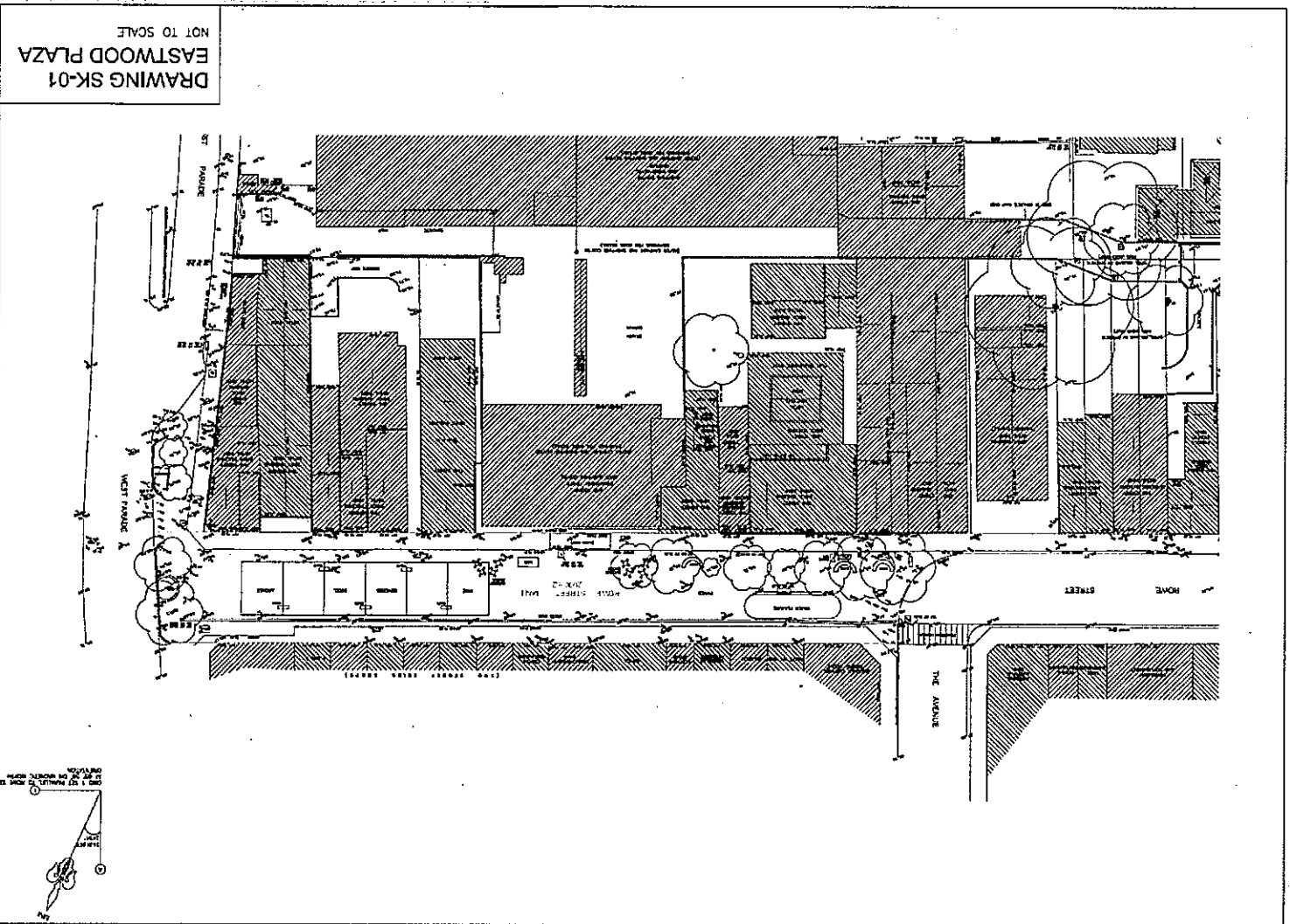
Lot and DP
Lot 1 DP 583398
Lot 1 DP 315919
Lot A DP342118
Lot 1 DP15579
Lot 2 DP15579
Lot 2 DP583398
Lot 1 DP105344
Lot 1 DP211809
Lot 2 DP211809
Lot 7 DP656027
Lot A DP317789
Lot 1 DP173607
Lot 2 DP306248
Lot 1 DP331280
Lot 3 DP4231
Lot A DP374497
Lot 3 DP1082714
Lot 2 DP1082714
Lot 1 DP1082714
Lot 8 DP1098697

**Part B – Planning Authority Land Description
Table 1 – Lot and DP Numbers**

[Corrs Note: Insert Council Land Description]

Lot and DP

Table 2 – Drawing SK-01 Eastwood Plaza



Schedule 3

Public Benefit Offer Verses Section 94 Contributions Table 1 – Section 94 Contributions

Table 1 identifies the section 94 contributions payable in respect of the Development, calculated in accordance with the City of Ryde – Section 94 Development Contributions Plan 2007 (Revised June 2010) and identifies the construction fees payable in respect of the Development

Proposed Use of Area	Proposed Area	Proposed Floor Area	Proposed Total
Retail	3,888m ²	\$66.32	\$257,852
Total S94 Contributions Non-residential Development (A1)			\$257,852

Total Section 94 Contributions Residential Development (A2)			\$2,255,476
Residential (85 units)	1 bedroom per dwelling	\$9,345.90	\$794,401
Residential (106 units)	2 bedrooms per dwelling	\$11,215.08	\$1,188,798
Residential (19 units)	3 bedrooms per dwelling	\$14,330.37	\$272,277

Permit Type	Fee	Unit	Quantity	Rate	Total
Footpath Hoarding Type A Erection Permit	\$30	Per metre/mont h	0	0	\$0
Footpath Hoarding Type B Erection Permit	\$50	Per metre/mont h	300	18	\$270,000
Footpath hoarding inspection permits	\$140	per inspection	10	n/a	\$1,400
Total construction fees (B)					\$271,400
Total estimated contributions and fees payable [(C) = (A1) + (A2) + (B)]					\$2,784,728

Table 2 – Voluntary Planning Agreement Offer – Public Benefits

Table 2 identifies the public benefits being offered under this Agreement between the Developer and the Planning Authority in lieu of monetary contributions otherwise payable under the City of Ryde – Section 94 Development Contributions Plan 2007(Revised June 2010) and construction fees otherwise payable.

Public Benefits Offered under the Agreement	Offer Value (excl GST)
Upgrade of Eastwood Plaza for an area of 2,900m² Design and construct improvements to Eastwood Plaza which may include, but is not limited to the following items (subject to Community Consultation): (a) Demolition and removal of existing pavers (b) New paving including tactile pavers (c) Water fountain reconfiguration; (d) CCTV cameras (security room based in shopping centre) (e) New street furniture (f) Children's play area (g) Shade structures Preparation Costs	\$3,000,000
Total Public Benefit under this Agreement (D)	\$400,000
VPA offer in excess of contributions and fees (Net Public Benefit of this Development) [(E) = (D) – (C)]	\$615,272
VPA offer percentage (%) in excess of contributions and fees payable [(X) = (E)/(C)]	22%

Table 3 – Other public infrastructure provided as part of this Development but not included in this Agreement

Other public infrastructure provided as part of the Development
Other public domain improvements
Childcare centre
Amenities for public use

Schedule 4

Developer's Works

Column 1	Column 2	Column 3	Column 4
Item	Public Benefit	Contribution Value	Timing
1	<p>Upgrade of Eastwood Plaza for an area of 2,900 m² including, but not limited to:</p> <ul style="list-style-type: none"> ○ Demolition and removal of existing pavers; ○ New paving including tactile pavers; ○ Water fountain reconfiguration; ○ CCTV cameras (security room based in shopping centre); ○ New street furniture; ○ Children's play area; and ○ Shade structures. 	\$3,000,000	Prior to the issue of the final Occupation Certificate for the Development Consent.
2	Preparation Works	\$400,000	Prior to the Works Consent Date.

Schedule 5

Explanatory Note

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Explanatory Note

Planning Agreement

Under section 93F of the *Environmental Planning and Assessment Act 1979* (NSW)

1 Parties

City of Ryde Council (**Planning Authority**),
Eastwood Centre Developments Pty Limited (**Developer**).

2 Description of Subject Land

160 - 188 Rowe Street, Eastwood, New South Wales (**Land**).

3 Description of Proposed Change to the Development Application

The Land is subject of the Development Application No. LDA2007/1936 lodged by the Developer with the Planning Authority on 30 November 2007 which was subsequently approved on 3 February 2009 (**Development Consent**).

The Development Consent provides for the redevelopment of Eastwood Shopping Centre including the demolition of the existing shopping centre, associated car parking structures and the Masonic Building and construction of a mixed commercial/residential development.

The Developer lodged a section 96 modification application (**s96 Application**) with the Planning Authority on 21 April 2010 proposing to amend the Development Consent including:

- (i) an increase of retail floor area from the approved 13,500m² to 13,600m²,

- (ii) an increase of commercial floor area from the approved 1,600m² to 2,200m²;
- (iii) a decrease of floor area for the restaurant from 1,700m² to 1000m²;
- (iv) the addition of 15 residential units from the approved 195 units to a total of 210 residential units; and
- (v) an increase of 24 car parking spaces, resulting in a total of 994 car parking spaces for the whole of the development.

The draft Planning Agreement is proposed to be entered into by the Parties in connection with the s96 Application.

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

The objective of this draft Planning Agreement is for the Developer to provide development contributions to the Planning Authority so that the Planning Authority may provide, for the public benefit, an upgraded public plaza within the Eastwood Urban Village with improved access, security, amenity and lighting.

The draft Planning Agreement provides for:

- The Developer to pay monetary contributions towards the design preparation and submission of a development application for the upgraded public plaza within the Eastwood Urban Village, which may include, but is not limited to the following items (subject to Community Consultation):
 - Demolition and removal of existing pavers
 - New paving including tactile pavers
 - Water fountain reconfiguration
 - CCTV cameras (security room based in shopping centre)
 - New street furniture
 - Children's play area
 - Shade structures
- Other public infrastructure benefits including a childcare centre and public domain improvements.

The value of the contribution works under the draft Planning Agreement is \$3,400,000 (excluding GST) including a capped amount of \$400,000 (excluding GST) for the costs of designing, preparing and submitting the development application for the works to upgrade the Eastwood Plaza.

The Developer will make the development contributions pursuant to the draft Planning Agreement if a condition is imposed in the amended

Development Consent which requires it to enter into the draft Planning Agreement

5 Assessment of the Merits of the Draft Planning Agreement

This section of the Explanatory Note sets out the following:

- The planning purposes served by the Draft Planning Agreement; and
- How the Draft Planning Agreement promotes the public interest and one or more objects of the Act.

The public benefits offered under the draft Planning Agreement are valued at \$3,400,000 (excluding GST). This exceeds the total estimated section 94 Contributions and construction related fees obligations that would otherwise be payable by the Developer to the Planning Authority in respect of the Development the subject of the Development Application by \$615,272 or by 22% in percentage terms.

5.1 For Planning Authorities:

- (a) How the draft Planning Agreement promotes the elements of the Council's charter:

The draft Planning Agreement promotes the Planning Authority's charter under section 8 of the *Local Government Act 1993* (NSW) by:

- (i) providing adequate, equitable and appropriate services and facilities for the community; and
- (ii) keeping the local community informed of the Planning Authority's activities.

- (b) Identify the planning purpose served by the Planning Agreement and assess whether the Draft Planning Agreement provides a reasonable means of achieving it:

The planning purpose of the draft Planning Agreement will serve to enhance the public domain and improvements to a central part of the Eastwood Urban Village.

The draft Planning Agreement provides for a reasonable means of achieving these purposes. In the absence of the draft Planning Agreement, it is uncertain as to when the Planning Authority would have sufficient funds allocated to meet the significant costs required to upgrade the Eastwood Plaza.

- (c) All Planning Authorities – Whether the Draft Planning Agreement conforms with the Authority's Capital Works Program:

The proposed Planning Agreement conforms with Council's capital works program.

5.2 The impact of the Planning Agreement on the public or any section of the public

No privately owned land will be affected by the Development or the construction of the improvements to the Eastwood Plaza. The improvement works in Eastwood Plaza will briefly interfere with the public's access to the Eastwood Plaza public space while the works are being carried out.

5.3 Other matters

The Explanatory Note is not to be used to assist in construing this Agreement

