

Council signatory 

Council witness 

Executed under Power of Attorney dated 18 September 2014

The Trust Company Limited Attorney

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Witness 

Sydney North Planning Panel


Witness 

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

and

**The Trust Company Limited ACN 004 027 749 as custodian
for Goodman Australia Industrial Trust No. 3**

and

Goodman Funds Management Australia Limited
ABN 13 113 249 595

and

Sydney North Planning Panel

**85-97 Waterloo Road, Macquarie Park
Planning Agreement**

Contents

1.	Interpretation.....	1
	1.1 Definitions	1
	1.2 General.....	7
2.	Planning Agreement.....	8
	2.1 Commencement	8
	2.2 Planning agreement under the EP&A Act.....	8
	2.3 Application of the Planning Agreement	8
3.	Development Contributions.....	8
	3.1 Payment or Delivery of Contributions – Works and Land.....	8
	3.2 Monetary Contribution	8
4.	Application of s7.11, s7.12 and s7.24 of the EP&A Act.....	10
	4.1 Application of s7.11, s7.12 and s7.24 of the EP&A Act.....	10
5.	Caveat	10
	5.1 Caveatable Interest.....	10
	5.2 Caveat Prior to Registration.....	10
6.	Registration of this Deed.....	10
	6.1 Ownership of the Land.....	10
	6.2 Registration on title.....	10
7.	Release and Discharge	10
8.	Breaches to be rectified	11
9.	Security	11
10.	Assignment and other dealings	11
11.	Review of Deed.....	11
12.	Dispute resolution.....	11
13.	Overdue payments	12
	13.1 Interest on overdue money.....	12
	13.2 Compounding	12
	13.3 Interest on liability merged in judgment or order.....	12
14.	GST.....	12
	14.1 Interpretation.....	12
	14.2 Consideration GST exclusive	12
	14.3 GST not payable on Contributions	12
	14.4 Additional amount of GST payable.....	12
	14.5 No merger.....	13
15.	Explanatory Note.....	13
16.	Notices.....	13
	16.1 Form	13
	16.2 Change of address.....	13
	16.3 Receipt.....	13
	16.4 Receipt - next Business Day.....	14
17.	Schedules and Annexures to this Deed	14

18.	General provisions.....	14
19.	Obligations under this Planning Agreement.....	14
20.	Termination.....	15
21.	Trust Provisions.....	16
	Schedule 1 – Section 7.4 Requirements.....	17
	Schedule 2 - Description of the Land and the Development	19
	Schedule 3 – Contributions Schedule	20
	Schedule 4 - Contribution Works Procedures.....	22
	Schedule 5 - Contribution Land Procedures	29
	Schedule 6 - Notification and rectification of breach.....	33
	Schedule 7 - Dispute Resolution.....	35
	Schedule 8 - Registration of Deed.....	39
	Schedule 9 - Release and Discharge Terms	40
	Schedule 10 – Security.....	41
	Schedule 11 - Assignment and Dealing.....	45
	Schedule 12 – General Provisions.....	47
	Schedule 13 – Pro-forma Novation Deed.....	51
	Schedule 14 – Trust Provisions	56

Planning Agreement made at **NORTH SYDNEY** on **27 MARCH** 2019.

- Parties**
- The Council of the City of Ryde (ABN 81 621 292 610)** of 1 Devlin Street, Ryde, NSW
(**Council**)
- The Trust Company Limited ACN 004 027 749 as custodian for Goodman Australia Industrial Trust No. 3** of Level 17, 60 Castlereagh Street, Sydney NSW 2000
(**Custodian**)
- Goodman Funds Management Australia Limited ABN 13 113 249 595 as responsible entity for Goodman Australia Industrial Trust No. 3** of Level 17, 60 Castlereagh Street, Sydney NSW 2000 (**Trustee**)
- Sydney North Planning Panel c/- Planning Panels Secretariat, 320 Pitt Street, Sydney NSW 2000 (Consent Authority)**

Background

- A. As at the date of this agreement, the Custodian is the owner of the Land.
- B. The Developer has lodged a Development Application for approval of the Concept Masterplan and Stage 1 of the Development. The Developer proposes to lodge Development Applications for the future stages of the Development in accordance with any approval of the Concept Masterplan.
- C. The Developer has offered to make Contributions in connection with the Incentive Floor Space and Height sought for the Development and those Contributions are to be provided in accordance with this Deed.

Deed

Operative provisions

1. Interpretation

1.1 Definitions

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

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

Appeal means an appeal (including an application for any kind of leave to appeal) in a Court of competent jurisdiction against the decision of a lower court.

Appeal Notice means:

- (a) in proceedings in the Court of Appeal:
- (i) an application for leave to Appeal;
 - (ii) a Notice of Intention to Appeal; or
 - (iii) if a valid Notice of Intention to Appeal has been lodged, a Notice of Appeal;
- and
- (b) in proceedings in the High Court, an application for Special Leave to Appeal.

Application means an application for any Approval.

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

Approved GFA means the gross floor area, as defined in the LEP, of any Stage of the Development for which Development Consent has been granted.

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

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

- (a) the rate the Council calculates as the average of the bid rates quoted at approximately 10:30 am on that day by each of five or more institutions chosen by the Council which provide rates for display on the "BBSY" page of the Reuters Monitor System for Bills of a 90 day tenor which are accepted by that institution (after excluding the highest and the lowest, or in the case of equality, one of the highest and one of the lowest bid rates); or
- (b) where the Council is unable to calculate a rate under paragraph (a) because it is unable to obtain the necessary number of quotes, the rate set by the Council in good faith at approximately 10:30 am on that day, having regard, to the extent possible, to the rates otherwise bid for Bills of a 90 day tenor at or around that time.

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

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

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

- (a) one of the following trading banks:
 - (i) Australia and New Zealand Banking Group Limited,
 - (ii) Commonwealth Bank of Australia,
 - (iii) Macquarie Bank Limited,
 - (iv) National Australia Bank Limited,
 - (v) St George Bank Limited,
 - (vi) Westpac Banking Corporation,
 - (vii) Bank of China (Australia) Limited, or
- (b) any other financial institution approved by the Council in its absolute discretion.

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

Building means a building proposed to be constructed on the Land, but excludes marketing suites or other buildings which are not intended to remain on the Land indefinitely.

Cash Deposit has the same meaning as given to that term in clause 1.4 of Schedule 10.

Cash Deposit Account has the same meaning as given to that term in clause 1.4 of Schedule 10.

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

Concept Masterplan means the proposed masterplan as generally shown at **Annexure B** and which is subject of Development Application LDA2017/0096 submitted on 21 March 2017.

Construction Certificate has the same meaning as section 6.4(a) of the EP&A Act (or if the Former Building and Subdivision Provisions apply, section 109C(1)(b) of the EP&A Act).

Contribution Land means the land to be dedicated or the interest in land to be transferred (as the case may be) by the Developer as described in Table 1 of Schedule 3.

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

Contributions means the Monetary Contribution, the Contribution Land and the Contribution Works to be provided by the Developer to Council in accordance with this Deed as described in Schedule 3.

Costs includes all costs, charges and expenses reasonably incurred in relation to the subject matter, including those incurred in connection with advisers.

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

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

Deed means this Deed.

Defects Liability Period means the period of 12 months commencing on the date of Handover of relevant Item of the Contribution Works in accordance with clause 1.6(b) of Schedule 4.

Developer means the Custodian and the Trustee, unless otherwise specified in this Deed.

Development means the development described in clause 2 of Schedule 2

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

Development Consent means each 'Development Consent' as that term is defined in the EP&A Act or an approval under Part 5 of the EP&A Act for the Development or any part of it and includes any Modification granted with respect to the Development Consent.

Encumbrance, in relation to the Contribution Land, means any:

- (a) security for the payment of money or performance of obligations, including a mortgage, charge, lien, pledge, trust, power or title retention;
- (b) right, interest or arrangement which has the effect of giving another person a preference, priority or advantage over creditors including any right of set-off;

- (c) right that a person (other than the owner) has to remove something from land (known as a profit à prendre), easement, public right of way, restrictive or positive covenant, lease, or licence to use or occupy; or
- (d) third party right or interest or any right arising as a consequence of the enforcement of a judgment,

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

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

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

Explanatory Note means the explanatory note relating to and publicly notified with this Planning Agreement, as required by clause 25E of the EP&A Regulation.

Former Building and Subdivision Provisions has the same meaning as in clause 18 of the *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017*.

GST has the meaning it has in the GST Act.

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

Handover means, with respect to any Contribution Works, the time Council takes possession of and assumes responsibility for the work in accordance with Schedule 4 of this Deed.

IFSR Rate means the agreed rate of \$260.00 per sqm of incentive floor area and height available for commercial development under clause 6.9 of the LEP.

Insurer means an insurer that is licensed by the Australian Prudential Regulatory Authority (APRA) to operate in Australia or has an investment grade rating from an industry recognised rating agency such as Moodies, Standard & Poors or Bests.

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

Item means the object of a Contribution specified in Column 1 of tables 1 and 2 in Schedule 3.

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

Law means:

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

Legal Costs means legal costs and expenses reasonably incurred.

Legal Challenge means proceedings in a Court in which a declaration that a Development Consent or Approval in relation to the Development is invalid, and includes, but is not limited to, any proceedings in which such a declaration is sought which are heard on remitter from another Court following an Appeal.

LEP means the *Ryde Local Environmental Plan 2014*.

Macquarie Park Access Network means the Access Network as described in Part 4.5 of the Ryde Development Control Plan

Maintenance Period has the same meaning as in clause 1.6(d)(ii) of Schedule 4.

Modification means a "*modification*" of a Development Consent within the meaning of section 4.55 of the EP&A Act.

Monetary Contribution means the amount of \$17,132,470.55 which has been calculated in the manner set out in Annexure C, indexed in accordance with increases in the CPI from the date of this Deed to the date of payment and as adjusted in accordance with clause 3.

Occupation Certificate means a certificate referred to in section 6.4(c) of the EP&A Act (or if the Former Building and Subdivision Provisions apply, section 109C(1)(c) of the EP&A Act) and which may be interim or final.

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

Pedestrian Link Land means Item 2 of the Contribution Land described in Schedule 3.

Pedestrian Link Works means Item 2 of the Contribution Works described in Schedule 3.

Permitted Encumbrance means each of:

- (a) easements benefitting statutory authorities, encroachments authorised by Approvals and environmental management requirements;
- (b) any of the following:
 - (i) an Encumbrance (other than a mortgage, charge, pledge, lien, security interest, title retention, contractual right of set-off, or any other security agreement or arrangement in favour of any person); and
 - (ii) such other agreement or arrangement,
the Council (acting reasonably) agrees in writing are permitted encumbrances; and
- (c) any Encumbrance that does not prevent the future use of the relevant land for the public purpose for which it is to be dedicated under this Deed, unless the Encumbrance is a charge arising as a result of unpaid taxes or charge.

Planning Agreement means this Deed.

Planning Controls means:

- (a) Council's Development Control Plan 2014 adopted on 28 May 2013;
- (b) the LEP.

Practical Completion means in relation to each Contribution Work, the point in time at which the Council issues a Compliance Certificate for that Item of the Contribution Work in accordance with any Development Consent granted for the works.

Proposed GFA means the estimated gross floor area for each Stage of the Development, as specified in Schedule 2.

Public Domain Manual means the *City of Ryde Public Domain Technical Manual Section 6 – Macquarie Park Corridor* adopted on 20 January 2016.

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

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

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

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

Remediation Action Plan means any plan approved by a Site Auditor for the remediation of any part of the Land, including by way of adoption and implementation of an environmental management plan, if required for the purpose of obtaining any Approval.

RMS means the NSW Roads and Maritime Services.

Road Land means Item 1 of the Contribution Land.

Road Works means Item 1 of the Contribution Works.

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

Stage means a stage of the Development as described in Schedule 2.

Standard Requirements means a requirement in order to comply with the Building Code of Australia, any applicable Australian Standard, any requirement, standard or specification applied by an Authority, the Public Domain Manual, the Planning Controls and any other engineering requirement to ensure a work is functional and suitable for its intended purpose.

Subdivision has the meaning given to "subdivision of land" in section 6.2 of the EP&A Act (formerly section 4B) and Subdivide has a similar meaning.

Subdivision Certificate has the meaning given to it in the EP&A Act.

Suspension Expiry Date means the date on which the Suspension Period ends.

Suspension Period means the period of time from and including the date on which a document initiating a Legal Challenge has been served on the Council and the Developer and ending on:

- (a) subject to paragraphs (b) and (c), the date on which:
 - (i) the Legal Challenge is discontinued;
 - (ii) final orders (apart from any orders as to costs) are made in the Legal Challenge; or
 - (iii) for any other reason, the Legal Challenge no longer includes an application for a declaration that the Development Consent or Approval for the Development is invalid;

whichever is the earlier;

- (b) subject to paragraph (c), if an Appeal Notice is filed and served in connection with final orders in the Legal Challenge or an Appeal from the Legal Challenge (apart from any orders as to costs), the date on which:
 - (i) the Appeal is discontinued;
 - (ii) final orders (apart from any orders as to costs) are made in the Appeal; or
 - (iii) for any other reason, the Appeal no longer includes an appeal in respect of a Court decision regarding the validity of the Development Consent whichever is earlier,

unless the orders in the Appeal require the Legal Challenge to be remitted to another Court in relation to the validity of the Development Consent or Approval for the Development, in which case paragraph (a) re-applies; or

- (c) the date which is 15 Business Days after the date on which the period of time allowed for filing an Appeal Notice described in paragraph (b) has expired, if no valid Appeal Notice has been filed and served by that first-mentioned date.

For the avoidance of doubt, the Suspension Period continues if paragraph (b) applies.

Taxes means taxes, levies, imposts, deductions, charges and duties (including stamp and transaction duties), excluding GST (which is dealt with at clause 14), together with any related interest, penalties, fines and expenses in connection with them, except if imposed on, or calculated having regard to, net income of a person but excluding any liability arising to the extent caused by any act or omission of the Council.

Works Specifications means those specifications for the Contribution Works attached at **Annexure D**.

1.2 General

In this Deed:

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

2. Planning Agreement

2.1 Commencement

- (a) Subject to clause 2.1(b), this Deed commences on the execution of this Deed by all Parties.
- (b) Notwithstanding clause 2.1(a), the obligations under clause 3 of this Deed take effect on the date the first Development Consent is granted for the Development.

2.2 Planning agreement under the EP&A Act

This Deed constitutes a planning agreement within the meaning of section 7.4 of the EP&A Act.

2.3 Application of the Planning Agreement

This Deed applies to:

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

3. Development Contributions

3.1 Payment or Delivery of Contributions – Works and Land

- (a) The Parties agree that the Developer must (at its Cost and risk):
 - (i) undertake the Contribution Works in accordance with Schedule 3 and Schedule 4; and
 - (ii) dedicate or transfer (as the case may be) the Contribution Land to Council in accordance with Schedule 3 and Schedule 5.
- (b) The Parties agree that the provision of the Contribution Works and the dedication of the Contribution Land will serve the public purposes set out in Column 2 in the relevant Tables to Schedule 3.

3.2 Monetary Contribution

- (a) The Developer is to pay to the Council the Monetary Contribution.
- (b) The Monetary Contribution must be paid in instalments as specified in Table 3 of Schedule 3, subject to clauses 3.3, 3.4 and 3.5.
- (c) The Council must provide the Developer with a tax invoice within ten Business Days of being requested to do so by the Developer and the Monetary Contribution must be paid by the Developer to Council by bank cheque. If the Developer does not pay the Monetary Contribution by the due date specified on the tax invoice, the Council may issue any further tax invoices to account for increases in accordance with CPI that apply as at the date of issue of the replacement tax invoice. Council cannot specify a due date on a tax invoice that is less than 20 Business Days from the date Council provides the tax invoice to the Developer.
- (d) The Monetary Contribution is to be used by Council towards the embellishment of Public Parks and Open Spaces in Macquarie Park; and/or the Macquarie Park Access Network at Council's unfettered discretion.

3.3 Increase in Monetary Contribution

If any Approved GFA for a Stage of the Development is more than the Proposed GFA for that Stage, the Monetary Contribution payable in accordance with Table 3 of Schedule 3 for that Stage will be increased by recalculating the Monetary Contribution following the approach set out in Annexure C, so that the amount payable consists of the contributions otherwise payable in respect of the new Proposed GFA under section 7.11 of the EP&A Act and the contributions payable based on the IFSR Rate, taking into account any credit given by Council, acting reasonably, for the costs of the Contribution Works and the Contribution Land.

3.4 Reduction in Monetary Contribution – Approved GFA

- (a) If any Approved GFA for a Stage of the Development is less than the Proposed GFA for that Stage, the Monetary Contribution payable in accordance with Table 3 of Schedule 3 for that Stage will be reduced by recalculating the Monetary Contribution following the approach set out in Annexure C, so that the amount payable consists of the contributions otherwise payable in respect of the new Proposed GFA under section 7.11 of the EP&A Act and the contributions payable based on the IFSR Rate, taking into account any credit given by Council, acting reasonably, for the costs of the Contribution Works and the Contribution Land.
- (b) If the Monetary Contribution payable in connection with the construction of a Building has been reduced in accordance with clause 3.4(a) and the Developer proposes, at any time prior to the issue of an Occupation Certificate for that Building, to Modify the Development Consent for a Building or lodge a further Development Application that will have the effect of increasing the Approved GFA for the relevant Stage of the Development, the Developer agrees that the Monetary Contribution will be further adjusted by recalculating the Monetary Contribution following the approach set out in Annexure C, to account for the increased Approved GFA and agrees to pay any additional amount on demand by Council, acting reasonably.

3.5 Reduction in Monetary Contribution – Pedestrian Link Works

- (a) After Council has approved the construction drawings for the Pedestrian Link Works in accordance with clause 1.3 of Schedule 4 and prior to the grant of a Construction Certificate for development of the Pedestrian Link Land, the Developer must provide a report prepared by a quantity surveyor estimating the cost of the Pedestrian Link Works (**Cost Estimate**).
- (b) Council must advise the Developer within 20 Business Days of receiving the Cost Estimate, whether or not it agrees with the Cost Estimate.
- (c) If Council agrees with the Cost Estimate, the Monetary Contribution for the relevant Stage of the Development will be reduced by the amount specified in the Cost Estimate.
- (d) If Council does not agree with the Cost Estimate, either party may refer the matter for dispute resolution in accordance with clause 12 and Schedule 7 to determine an appropriate reduction to the Monetary Contribution based on the estimated cost of the Pedestrian Link Works.

3.6 Cost of Road Works

For the avoidance of doubt, the total Offset amount specified in Annexure C will not change and the amount of the Monetary Contribution will not be adjusted to account for the actual cost of the Road Works or changes to the value of the Road Land.

4. Application of s7.11, s7.12 and s7.24 of the EP&A Act

4.1 Application of s7.11, s7.12 and s7.24 of the EP&A Act

- (a) This Deed excludes the application of sections 7.11 and 7.12 of the EP&A Act to the Development.
- (b) This Deed does not exclude the application of section 7.24 of the EP&A Act to the Development.
- (c) The Consent Authority is a party to this Deed only for the purposes of section 7.4(3A) of the EP&A Act and does not exercise any functions as a planning authority for the purposes of Part 7, Division 7.1, Subdivision 2 of the EP&A Act under this Deed .

5. Caveat

5.1 Caveatable Interest

The Custodian acknowledges and agrees that when this Deed is executed the Council is deemed to have acquired, and the Developer is deemed to have granted, an equitable estate and interest in the Land for the purposes of section 74F(1) of the Real Property Act and consequently the Council has a sufficient interest in the Land in respect of which to lodge with NSW Land Registry Services a caveat notifying that interest.

5.2 Caveat Prior to Registration

The Custodian acknowledges that:

- (a) The Council may lodge a caveat restricting transfer of the Land to protect its rights under this Deed, and the Custodian will not object to the Council lodging a caveat in the relevant folio of the Register for the Land, and nor (subject to the provisions of this clause 5) will the Custodian seek to remove any caveat lodged by the Council.
- (b) The Council (as the Caveator) will provide any consent the Custodian may reasonably require to enable this Deed or any Dealing that is not inconsistent with this Deed to be registered against the title to the Land.
- (c) The Council will promptly, following registration of this Deed, do all things reasonably necessary to remove the caveat from the title to the Land.

6. Registration of this Deed

6.1 Ownership of the Land

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

6.2 Registration on title

The Developer agrees to promptly do all things that are necessary to procure the registration of this Deed in the relevant folio of the Register for the Land in accordance with section 7.6 of the EP&A Act and in accordance with Schedule 8.

7. Release and Discharge

The Council agrees to release and discharge this Deed and remove any caveat lodged by the Council pursuant to clause 5 on the release and discharge terms contained in Schedule 9 to this Deed.

8. Breaches to be rectified

- (a) If the Council considers that the Developer has defaulted on the performance of any of its obligations under this Deed, then the Council may give written notice to the Developer which:
 - (i) identifies the nature of the breach; and
 - (ii) specifies that the breach must be rectified by the Developer within a reasonable period of time which must not be less than 20 Business Days (except in the case of an emergency or where there is an issue of public safety where less time may be specified) and what action must be taken to rectify that breach.
- (b) If the Council gives a written notice under clause 8(a) then the provisions in Schedule 6 will apply.

9. Security

The Developer has agreed to provide security to the Council for performance of its obligations under this Deed including:

- (a) provision of a Bank Guarantee on the terms and conditions of Schedule 10;
- (b) Council being provided with the right to compulsorily acquire the Contribution Land pursuant to clause 1.3 of Schedule 5 in the event of breach by the Developer to dedicate or transfer the Contribution Land; and
- (c) lodgement of a caveat and registration of this document on title pursuant to clauses 5 and 6.

10. Assignment and other dealings

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

11. Review of Deed

- (a) The Parties may agree to review this Deed at any time. Any review or modification will be conducted in the circumstances and in the manner determined by the Parties.
- (b) The consent of the Consent Authority is not required for any modification of this Deed that does not involve an amendment to clause 4.1, provided that the Developer notifies the Consent Authority in writing of any proposed modification at least 10 Business Days prior to executing any amending deed.
- (c) Notwithstanding clause 11(b), if required to validate any amending deed, the Consent Authority will execute the deed as soon as practicable after receiving a request to do so by the other Parties.

12. Dispute resolution

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

13. Overdue payments

13.1 Interest on overdue money

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

13.2 Compounding

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

13.3 Interest on liability merged in judgment or order

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

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

14. GST

14.1 Interpretation

- (a) Except where the context suggests otherwise, terms used in this clause 14.1 have the meanings given to those terms by the GST Act.
- (b) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 14.1.
- (c) A reference to something done (including a supply made) by a Party includes a reference to something done by any entity through which that Party acts.

14.2 Consideration GST exclusive

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

14.3 GST not payable on Contributions

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

14.4 Additional amount of GST payable

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

14.5 No merger

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

15. Explanatory Note

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

16. Notices

16.1 Form

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

Council

Name: Council of the City of Ryde
Address: Level 1, Building 0, Binary Centre, 3 Richardson Place, North Ryde
NSW 2113
Email: cityofryde@ryde.nsw.gov.au
For the attention of: General Manager

Developer

Name: Goodman Property Services (Aust) Pty Limited
Address: Level 17, 60 Castlereagh Street, Sydney NSW 2000
Facsimile: 02 9230 7444
For the attention of: General Counsel, Australia

Consent Authority

Name: Sydney North Planning Panel
Address: 320 Pitt Street, Sydney NSW 2000
Email: information@planning.nsw.gov.au
For the attention of: Panels Secretariat

16.2 Change of address

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

16.3 Receipt

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

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

16.4 Receipt - next Business Day

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

17. Schedules and Annexures to this Deed

The Parties agree:

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

18. General provisions

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

19. Obligations under this Planning Agreement

- (a) Subject to clauses 19(e) to (i), where a Legal Challenge is commenced the Parties' obligations under this Deed are immediately suspended and the Developer shall not have any obligation to make any Contributions under this Deed until the expiration of the Suspension Period or where clause 19(e) applies.
- (b) Subject to clause 19(c), where any Legal Challenge is commenced or where the Court declares or orders any Approval to be invalid, the Parties agree to:
 - (i) meet, no later than 5 Business Days after the date of service of commencement of the Legal Challenge and after any declaration or order that Approval is invalid, to discuss in good faith:
 - (A) the suspension of the Parties rights and obligations under this Agreement; and
 - (B) their intentions in relation to that declaration or order, including, without limitation, any intention to Appeal that declaration; and
 - (ii) consult regularly with the other in relation to any Appeal and must respond within a reasonable period to each other's questions, queries and enquiries and generally keep each other informed regarding the progress of any such Appeal.
- (c) The Parties will not be required to meet or consult pursuant to clause 19(b) in circumstances where any of the Parties receives legal advice that it should not so meet or consult with the other Party in connection with any such declaration or Appeal.
- (d) The Parties agree that any discussions held between the Parties under this clause 19 are confidential and that a common interest between them exists for the purposes of legal professional privilege in connection with those discussions.
- (e) Notwithstanding clause 19(a), the Developer may elect at its Cost and risk to proceed with the Development, in which circumstances, clauses 19(a) and 19(b) will not apply and the Developer must continue to comply with all obligations under this Deed.

- (f) If this Deed is terminated as the result of any Appeal the parties will meet in accordance with clause 19(b) to discuss any matters that may need to be addressed as a result of the commencement of the Contribution Works.
- (g) If any Approval is declared invalid, the parties will meet in accordance with clause 19(b) of this Deed to discuss their respective rights and obligations under this Deed as a consequence of that determination.
- (h) If the Developer elects to proceed with the Development notwithstanding the commencement of any Legal Challenge, then the Developer is liable for and indemnifies Council against all liability, loss, Costs and expenses (including Legal Costs) arising from or incurred in connection with the Developer proceeding with the Development despite the Legal Challenge.
- (i) The Parties agree that if this clause 19 applies and there is a suspension of the Parties' obligations under this Deed, any Contribution Works that have been commenced, but not completed, will be left in a state that is safe to the public before those Contribution Works cease notwithstanding the commencement of any Suspension Period.
- (j) This clause 19 will not merge on completion or termination of this Deed.

20. Termination

- (a) Either Council or the Developer may terminate this Deed by notice in writing to the other party prior to commencement of the Development, if the consent to Development Application LDA2017/0096 lapses or is surrendered by the Developer prior to commencement of the Development.
- (b) If this Deed is terminated under clause 20(a) then:
 - (i) the rights of each party that arose before the termination or which may arise at any future time for any breach or non-observance of obligations occurring prior to the termination are not affected;
 - (ii) each party must take all steps reasonably necessary to minimise any loss the other may suffer as a result of the termination of this Deed;
 - (iii) the Council will return the Bank Guarantee to the Developer after first deducting any amounts owing to the Council or costs incurred by the Council in accordance with this Deed; and
 - (iv) the Council will, at the Developer's cost, do all things reasonably required to remove this Deed or any caveat from the certificate of title to the Land, including by signing a request for removal of this Deed, or a withdrawal of caveat, as applicable.
- (c) The parties acknowledge that the Developer shall be entitled to request that Council terminate this Deed in the following circumstances:
 - (i) where there is a proposed or actual change in the planning controls applicable to the Land or part of the Land; or
 - (ii) where each Stage that has been commenced, has been fully performed, the Developer is not in breach of this Deed, and the Developer has surrendered the Concept Masterplan.
- (d) Where a request is made under clause 20(c), the parties must enter into discussions in Good Faith.

- (e) This clause does not limit the circumstances in which the parties may agree to terminate this Deed.
- (f) For the purposes of this clause 20, **Good Faith** means to act:
 - (i) honestly;
 - (ii) reasonably, having regard to the terms of this Deed;
 - (iii) not arbitrarily or capriciously;
 - (iv) without intention to cause harm; and
 - (v) with respect for the intent of the parties' bargain as a matter of substance, and not only form,

but any obligation to act in Good Faith under this Deed does not create and is not intended to give rise to any fiduciary relationship between the parties and does not require a party to take into account the interests of the other party.

21. Trust Provisions

The Trust Provisions in Schedule 14 of this Deed apply, despite anything to the contrary in this Deed.

Schedule 1 – Section 7.4 Requirements

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

Requirement under the EP&A Act	This Planning Agreement
<p>Planning instrument and/or development application – (Section 7.4(1))</p> <p>The Developer has:</p> <p>(a) sought a change to an environmental planning instrument.</p> <p>(b) made, or proposes to make, a Development Application.</p> <p>(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.</p>	<p>(a) No</p> <p>(b) Yes (the Developer has lodged a Development Application for Stage 1 of the Development and approval of the Concept Masterplan and proposes to make Development Applications for the future stages of the Development)</p> <p>(c) Not applicable</p>
<p>Description of land to which this Deed applies – (Section 7.4(3)(a))</p>	<p>The Land described in clause 1 of Schedule 2.</p>
<p>Description of change to the environmental planning instrument or the development to which this Deed applies – (Section 7.4(3)(b))</p> <p>Describe:</p> <p>(a) the proposed change to the environmental planning instrument to which this Deed applies; and</p> <p>(b) the development to which this Deed applies.</p>	<p>(a) Not applicable</p> <p>(b) The Development described in clause 2 of Schedule 2</p>
<p>The scope, timing and manner of delivery of contribution required by this planning agreement – (Section 7.4(3)(c))</p>	<p>As set out in clause 3, Schedule 3 – Contributions Schedule, Schedule 4 – Contribution Works Procedures and Schedule 5 – Contribution Land Procedures.</p>
<p>Applicability of Section 7.11 of the EP&A Act – (Section 7.4(3)(d))</p>	<p>Section 7.11 of the EP&A Act is excluded from applying to all Stages of the Development.</p>
<p>Applicability of Section 7.12 of the EP&A Act – (Section 7.4(3)(d))</p>	<p>Section 7.12 of the EP&A Act is excluded from applying to all Stages of the Development.</p>
<p>Applicability of Section 7.24 of the EP&A Act – (Section 7.4(3)(d))</p>	<p>Section 7.24 of the EP&A Act is not excluded in respect of the Development.</p>

Requirement under the EP&A Act	This Planning Agreement
<p>Consideration of benefits under this Deed if section 7.11 applies – (Section 7.4(3)(e))</p> <p>Are the benefits under this Deed to be taken into consideration if Section 7.11 of the EP&A Act is not excluded?</p>	<p>Not applicable. Section 7.11 is excluded .</p>
<p>Mechanism for Dispute resolution – (Section 7.4(3)(f))</p> <p>Does this Deed provides a mechanism for the resolution of disputes under the agreement?</p>	<p>Refer to clause 12 and Schedule 7.</p>
<p>Enforcement of this Deed (Section 7.4(3)(g) and section 7.6)</p> <p>This Deed provides for enforcement by a suitable means in the event of a breach.</p>	<p>Refer to clauses 8 and 9, clause 1.3 in Schedule 5, Schedule 6 and Schedule 10.</p>
<p>Registration of this Deed</p> <p>The Parties agree that this Deed will be registered</p>	<p>See clause 6 and Schedule 8.</p>
<p>No obligation to grant consent or exercise functions – (Section 7.4(9))</p> <p>The Parties acknowledge that this Deed does not impose an obligation on a planning authority to grant a Development Consent, or to exercise any function under the EP&A Act in relation to a change to an environmental planning instrument.</p>	<p>Refer to clause 1.8 of Schedule 12.</p>

Schedule 2 - Description of the Land and the Development

1. Land

Lot 2 DP 1046092 known as 85 Waterloo Road, Macquarie Park ("Lot 2"), and Lot 3 DP 1046092 known as 97 Waterloo Road, Macquarie Park ("Lot 3").

2. Development

Staged development of the Land including the following:

- (a) **Stage 1** comprising the construction of an 11-13 storey commercial office building on Lot 3 including four (4) split level basements with a Proposed GFA of 15,932 square metres and construction of the Road Works, being that part of the Development subject to Development Application LDA2017/0096 submitted on 21 March 2017.
- (b) **Stage 2** which includes a building on Lot 2 with a Proposed GFA of 24,180 square metres, being Concept Building 2 as shown on the Concept Masterplan.
- (c) **Stage 3** which includes a building on Lot 2 with a Proposed GFA of 18,200 square metres, being Concept Building 3 as shown on the Concept Masterplan.
- (d) **Stage 4** which includes a building on Lot 2 with a Proposed GFA of 15,400 square metres, being Concept Building 4 as shown on the Concept Masterplan.

Schedule 3 – Contributions Schedule

1.1 Contributions Tables

Table 1 – Contribution Land

<u>Column 1 – Item</u>	<u>Column 2 – Public Purpose</u>	<u>Column 3 – Manner and Extent</u>	<u>Column 4 – Date Contribution Land is to be dedicated</u>
1. Road Land	Public roads	The Developer to lodge for registration a plan of subdivision or consolidation to dedicate as Public Road, in accordance with Schedule 5, that part of the Land generally identified as “Road to be dedicated” on the plan at Annexure A.	Prior to the issue of an Occupation Certificate for any part of Stage 1 of the Development.
2. Pedestrian Link Land	Pedestrian pathways	The Developer to lodge for registration an easement, in accordance with Schedule 5, for public pedestrian access generally in the location of the Land identified as “Pedestrian link” on the plan at Annexure A.	Prior to the issue of an Occupation Certificate for the building identified as 'Building 4' on the Concept Masterplan in Annexure B (“ Pedestrian Link Stage ”).

Table 2 - Contribution Works

<u>Column 1 – Item</u>	<u>Column 2 – Public Purpose</u>	<u>Column 3 – Manner and Extent</u>	<u>Column 4 - Date Contribution Works are to be Practically Complete</u>
1. Road Works	Road works – public roads	The Developer to construct, in accordance with Schedule 4, a road to be dedicated as Public Road on the Road Land.	Practical Completion of the Works must be achieved prior to the issue of an Occupation Certificate for any part of Stage 1 of the Development.
2. Pedestrian Link Works	Pedestrian pathways	The Developer to construct, in accordance with Schedule 4, a pedestrian pathway on the Pedestrian Link Land.	Practical Completion of the Works must be achieved prior to the issue of an Occupation Certificate for the building identified as 'Building 4' on the Concept Masterplan in Annexure B (“ Pedestrian Link Stage ”).

Table 3 – Monetary Contributions

<u>Column 1 – Item</u>	<u>Column 2 – Public Purpose</u>	<u>Column 3 – Manner and Extent</u>	<u>Column 4 - Date Monetary Contributions are payable</u>
1. \$19,572.22*	See clause 3.2(d)	See clause 3.2(c)	Prior to the issue of a Construction Certificate for Stage 1 of the Development.
2. \$6,667,865.83	See clause 3.2(d)	See clause 3.2(c)	Prior to the issue of a Construction Certificate for Stage 2 of the Development.
3. \$5,657,725.94*	See clause 3.2(d)	See clause 3.2(c)	Prior to the issue of a Construction Certificate for Stage 3 of the Development.
4. \$4,787,306.56*	See clause 3.2(d)	See clause 3.2(c)	Prior to the issue of a Construction Certificate for Stage 4 of the Development.

* Each instalment is to be indexed in accordance with increases in the CPI from the date of this Deed to the date of payment.

Schedule 4 - Contribution Works Procedures

This Schedule 4 applies to all Contribution Works.

1.1 Approvals and Design responsibility

- (a) The Developer must at its Cost and risk:
 - (i) prepare all Applications and submit such application to Council and obtain all Approvals necessary to carry out the Contribution Works and which have not already been obtained; and
 - (ii) comply with all conditions of all Approvals for the Contributions Works.
- (b) The Developer agrees to procure the design of the Contribution Works in accordance with this Deed and the Development Consent.

1.2 Design phase

- (a) The Developer acknowledges and agrees that prior to the grant of Development Consent for any part of the Contributions Works, the Council may require the design for those works to be adjusted so that it is consistent with the Standard Requirements.
- (b) If the Council does not provide any of Council's policies, standards and specifications forming part of the Standard Requirements, the Developer must request those documents from the Council.

1.3 Construction Drawings

- (a) Prior to obtaining a Construction Certificate for the relevant Item of the Contributions Works, the Developer must provide construction drawings for that Item to Council.
- (b) The Council must provide a response to the Developer within 10 Business Days of the Developer providing the construction drawings to the Council in accordance with clause 1.3(a) of this Schedule; and
 - (i) The Council may, by notice in writing and acting reasonably, approve, vary or direct a variation to the construction drawings so as to reflect the Standard Requirements; and
 - (ii) The Developer must comply with any direction given by the Council under clause 1.3(b) of this Schedule.
- (c) For the avoidance of doubt:
 - (i) any approval of the construction drawings provided by the Council under this Agreement, does not constitute the grant of any Construction Certificate or other building certification under the EP&A Act; and
 - (ii) the Council is not responsible for the costs of any variation in accordance with this clause.

1.4 Construction phase

- (a) The Developer must procure the execution and completion of the Contribution Works in a good and workmanlike manner and so that they are diligently progressed to Practical Completion, and in accordance with:

- (i) the Approvals;
 - (ii) any Development Program provided to the Council under this Schedule;
 - (iii) the requirements of all Laws, including without limitation, workplace health and safety legislation; and
 - (iv) its other obligations under this Deed.
- (b) The Developer must not commence construction of any of the Contribution Works until it has given the Council copies of all Approvals necessary for the construction of the Contribution Works.

1.5 Review of Contribution Works

The Developer acknowledges and agrees that:

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

1.6 Developer responsibilities

- (a) The Developer is responsible for the delivery and care of the Contribution Works at all times prior to Handover of the Contribution Works.
- (b) Subject to clause 1.18 of this Schedule, the Council accepts Handover and assumes responsibility for the Contribution Works when they have reached Practical Completion and:
 - (i) following dedication to Council of that part of the Contribution Land on which the Contribution Works are located; or
 - (ii) in the case of the Pedestrian Link Works that are not located on land to be dedicated to Council, when the Developer provides documentary evidence to Council that easements on terms required under Schedule 5 have been registered against the title to the relevant land.
- (c) Prior to the dedication of the Contribution Land on which the Contribution Works are located, or the registration of relevant easements, as the case may be, the Developer is responsible for:
 - (i) providing all things and taking all measures reasonably within its control to protect people and property in relation to the Land where failure to do so may render the Council or the Developer liable under the Law; and
 - (ii) taking any urgent action in relation to the Land necessary to protect people and the consequences of any failure to take such action where failure to do

so may render the Council or the Developer liable under the Law.

- (d) The Developer is to Maintain each Contribution Work during the Maintenance Period. For the purposes of this clause:
- (i) **Maintain** means keep in a good state of repair and working order, and includes repair of any damage to the Contribution Work.
 - (ii) **Maintenance Period** means a period of 12 months from the Handover of that work to Council in accordance with clause 1.6(b) of this Schedule.

1.7 Damage

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

1.8 Quality of Material and Work

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

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

1.9 Inspection

- (a) Council may enter the Land to inspect the progress of the Contribution Works, subject to:
 - (i) the terms of any contract for the construction of the Contribution Works (**Construction Contract**) (save for any clause of the Construction Contract which prevents Council from accessing the Land);
 - (ii) giving reasonable notice to the Developer;
 - (iii) complying with all reasonable directions of the Developer;
 - (iv) exercising its right under this clause entirely at its own risk in all respects; and
 - (v) being accompanied by the Developer or its nominee, or as otherwise agreed.
- (b) Council may, within 5 Business Days of carrying out an inspection, notify the Developer of any defect or non-compliance in the Contribution Works and direct the Developer to carry out work to rectify that defect or non-compliance. Such work may include, but is not limited to:

- (i) removal of defective or non-complying material from the Contribution Land;
 - (ii) demolishing defective or non-complying work;
 - (iii) reconstructing, replacing or correcting any defective or non-complying work; and
 - (iv) not delivering any defective or non-complying material to the site of the Contribution Works.
- (c) If the Council has issued a direction to carry out further work under clause 1.9(b) of this Schedule, the Developer must, at the Developer's cost, rectify the defect or non-compliance specified in the notice within the time period specified in the notice.
- (d) If the Developer fails to comply with a direction to carry out work given under clause 1.9(b) of this Schedule, Council will be entitled to refuse to accept Practical Completion and Handover of the Contribution Works (or the relevant part of the Contribution Works) in accordance with this Deed.

1.10 Risk

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

1.11 Insurance

- (a) The Developer must ensure that there is effected and maintained insurance policies covering such risks, and on terms, reasonably acceptable to the Council (acting reasonably) including:
- (i) physical loss, damage or destruction of each aspect of the Contribution Works (including any associated temporary works);
 - (ii) third party liability;
 - (iii) contractors; and
 - (iv) professional indemnity insurance with respect to design works only.
- (b) The policies must provide cover for the period from the date of the commencement of construction of the Contribution Works until the end of the Defects Liability Period and any relevant Maintenance Period for each and every aspect of the Contribution Works and during the Defects Liability Period or Maintenance Period, for the purpose of providing insurance cover in respect of the Developer's defects liability and maintenance obligations under this Deed.

1.12 Amount of property insurance

The insurance cover under clause 1.11 of this Schedule in relation to any works insurance must be for an amount not less than the full insurable value of the relevant Contribution Works on a full reinstatement and replacement basis (including extra costs of reinstatement, costs of demolition and removal of debris, and professional fees).

1.13 Insurance generally

All insurances which the Developer is required by clause 1.11 of this Schedule to effect and maintain:

- (a) must be with an Insurer; and

- (b) must not in any respect limit or derogate from the liabilities or obligations of the Developer under this Deed.

1.14 Providing proof of insurance

The Developer must give the Council certificates of the insurance policies which are required by clause 1.11 of this Schedule to be effected and maintained, prior to the commencement of the Defects Liability Period, and otherwise whenever reasonably requested in writing by the Council.

1.15 Premiums

The Developer must punctually pay or procure that all premiums in respect of all insurances required under clause 1.11 of this Schedule, be paid.

1.16 Additional Obligations

The Developer must:

- (a) not do or omit to do anything which if done or not done is likely to vitiate, impair, derogate or prejudice any insurance or is likely to prejudice any claim under any insurance policy required under this Deed;
- (b) if necessary, rectify or cause to be rectified anything which might prejudice any insurance cover;
- (c) reinstate or cause to be reinstated an insurance policy if it lapses;
- (d) immediately notify the Council in writing if an insurer gives notice of cancellation in respect of any insurance policy; and
- (e) give full, true and particular information to the insurer of all matters and things the non-disclosure of which might in any way prejudice or affect any such insurance cover or the payment of all or any benefits under the insurance.

1.17 Application of insurance proceeds

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

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

1.18 Rectification

- (a) At any time during the Defects Liability Period (in respect of a Contribution Work), the Council may inspect the Contribution Work for the purpose of ascertaining what defects and omissions (if any) in the Contribution Work are required to be made good by the Developer.

- (b) The Council may, acting reasonably, give notice to the Developer that:
 - (i) states that part of the Contribution Work that is defective, giving details;
 - (ii) specifies the works which the Council considers are required to rectify the defect;
 - (iii) provides a reasonable estimate of the Costs and Legal Costs to rectify such works, including particulars of how those Costs and Legal Costs were calculated; and
 - (iv) allows the Developer a reasonable period to rectify such works.
- (c) The Developer must rectify any defects or omissions in the Contribution Work which are identified in a notice issued in accordance with clause 1.18(b) of this Schedule.
- (d) If the Developer fails to complete or rectify such works within the period required by a notice issued under clause 1.18(b) of this Schedule then the Council may have such works completed or rectified and the Developer must reimburse the Council promptly following any demand by the Council for all Costs and Legal Costs reasonably incurred by the Council in completing or rectifying such works that are not satisfied by the calling up of a Bank Guarantee under Schedule 10.
- (e) The Developer indemnifies the Council for all monies payable by the Developer to the Council pursuant to clause 1.18(d) of this Schedule that are not satisfied by the calling up of a Bank Guarantee under Schedule 10, provided that the Council takes any reasonable action to mitigate the costs incurred and the indemnity excludes any Costs or Legal Costs arising due to the negligence of Council.
- (f) The indemnity in clause 1.18(e) of this Schedule is a continuing obligation, separate and independent from the Developer's other obligations and survives completion, rescission or termination of this Deed. The Developer must pay on demand any amount it must pay under the indemnity in clause 1.18(e) of this Schedule.

1.19 Development Program

- (a) Whenever requested by Council, the Developer must provide an updated Development Program to the Council from time to time as the Development progresses.(b) The Council is not to disclose the Development Program referred to in clause 1.19(a) of this Schedule to any third party unless required by law or in any other circumstances, with the consent of the Developer.

1.20 Remediation

- (a) The Developer must, at its Cost, carry out any Remediation of the Contribution Land in accordance with the *Contaminated Land Management Act 1997*, any Remediation Action Plan and any other legislation and guidelines relating to the Remediation.
- (b) Prior to the dedication of the Contribution Land to Council, the Developer must:
 - (i) provide to Council a Site Audit Report or, as the case may be, a preliminary investigation report prepared by a Site Auditor, confirming that the Contribution Land is suitable for its intended purpose; and
 - (ii) satisfy any conditions in the Site Auditor's statement, including any measures required to be implemented to ensure any ongoing monitoring obligations.

- (c) The Council agrees that the Developer will be released from any liability for contamination (as defined under the *Contaminated Land Management Act 1997*) of the Contribution Land provided that it has completed Remediation as required under this clause and a Site Audit Report confirms that the Contribution Land is suitable for its intended purpose.

Schedule 5 - Contribution Land Procedures

1.1 Dedication and Creation of Easements

- (a) In relation to the Road Land, the Developer must at its Cost and risk cause the Road Land to be dedicated to Council and opened as public road in accordance with section 9 of the *Roads Act 1993*, by including on the relevant Subdivision plan to be registered, a statement of intention to dedicate that land as Public Road. The Road Land will be taken to have been dedicated once the Subdivision plan bearing the statement of intention referred to in this subclause has been registered in accordance with the Real Property Act.
- (b) In relation to the Pedestrian Link Land, the Developer must create an easement on the Pedestrian Link Land on the terms identified in clause 1.2 of this Schedule 5 and procure NSW Land Registry Services to register the easement.
- (c) In complying with clauses 1.1(a) and 1.1(b) of this Schedule 5, the Developer must do all things reasonably necessary to procure the registration of the relevant plan or dealing, including by promptly satisfying any requisitions raised by Land Registry Services.

1.2 Pedestrian Thoroughfare Easements

- (a) The Developer must register against the title to the relevant part of the Land, an easement in gross burdening the Pedestrian Link Land permitting public access to the Pedestrian Link Land and generally in accordance with the following terms (in which the term Easement Site means the Pedestrian Link Land):
 - (i) The owner of the Easement Site grants to the Council and members of the public full and free right to go, pass and repass over the Easement Site at all times:
 - (A) with or without companion animals (as defined in the *Companion Animals Act 1998*) or other small pet animals; and
 - (B) on foot without vehicles (other than wheelchairs or other disabled access aids).
 - (ii) The owner of the Easement Site must, to the satisfaction of Council, acting reasonably:
 - (A) keep the Easement Site (including any services in, on or under the Easement Site) in good repair and condition;
 - (B) keep the Easement Site clean and free from rubbish; and
 - (C) maintain public liability insurance in the amount of \$20,000,000 covering the use of the Easement Site in accordance with the terms of this easement.
 - (iii) The owner of the Easement Site must ensure that any rules made by an owner's corporation relating to the Easement Site have been approved by the Council, acting reasonably.
 - (iv) If any member or members of the public loiter or congregate, for any purpose which the owner of the Easement Site, not acting unreasonably, considers to be a nuisance or a safety risk, the owner may either remove

those members of the public, or arrange for their removal by an appropriate authority.

- (v) The owner of the Easement Site may (but is not obliged to) erect safety signage and any other appropriate signage and may erect CCTV cameras in the Easement Site. If the owner of the Easement Site erects CCTV cameras in the Easement Site, the owner is under no obligation to operate them or to maintain them in an operational condition.
 - (vi) The owner of the Easement Site may (but is not obliged to) engage security personnel to monitor and control the behaviour of the public including but not limited to prohibiting smoking, consumption of alcohol, passage of animals, bicycles and skateboards and the like in accordance with any rules made by an owner's corporation relating to the Easement Site. If the owner of the Easement Site engages security personnel there is nothing requiring the owner to maintain the engagement of the security personnel.
 - (vii) The owner of the Easement Site may with the Council's prior written consent (except in the case of an emergency, in which case the Council's prior written consent is not required) temporarily close or temporarily restrict access through all or part of the Easement Site for the time and to the extent necessary but only on reasonable grounds for the purposes of:
 - (A) construction, construction access, repairs, maintenance, replacement and alteration to the Easement Site or any improvements in, on or under the Easement Site; or
 - (B) security, public safety or evacuation of the Easement Site and adjoining buildings.
 - (viii) Subject to ensuring the provision of access in accordance with above clause (i) of this easement, the owner of the Easement Site may, provided any necessary planning approvals are obtained:
 - (A) carry out works in the Easement Site for the purposes of maintaining, replacing or enhancing the Easement Site; and
 - (B) install or erect works of art or street furniture or any other similar improvements at ground level within the Easement Site.
 - (ix) The Council is solely empowered to release this easement.
 - (x) This easement may only be varied by written agreement between the Council and the owner of the Easement Site.
- (b) Any requirement to register an easement against the title to the relevant part of the Land will be satisfied when the Developer provides to the Council a copy of the relevant title search showing the registration of the instrument.

1.3 Acquisition of Contribution Land

- (a) If the Developer does not transfer or grant to the Council the interests in land as required by this Deed (including the dedication or transfer of the Contribution Land to Council (as the case may be)), the Council may (as contemplated by this Deed) either:
 - (i) compulsorily acquire the land that was otherwise to be dedicated to Council; or

- (ii) compulsorily acquire the interest in land that was otherwise to be granted by the Developer,

in which case the Developer consents to the Council compulsorily acquiring that land or interest in land for compensation in the amount of \$1.00 without having to follow the pre-acquisition procedures in the *Land Acquisition (Just Terms Compensation) Act 1991*, and may call upon a Bank Guarantee provided under Schedule 10 to cover the Council's reasonable Costs and Legal Costs of the acquisition or transfer.

- (b) Clause 1.3(a) of this Schedule constitutes an agreement for the purposes of s30 of the *Land Acquisition (Just Terms Compensation) Act 1991*.
- (c) Except as otherwise agreed between the Developer and the Council, the Developer must ensure that the Contribution Land is free of all Encumbrances (other than Permitted Encumbrances) and affectations (including any charge or liability for rates, Taxes and charges), on the date that the Council will acquire the Contribution Land in accordance with this clause.
- (d) The Developer indemnifies and keeps indemnified the Council against all Claims made against the Council as a result of any acquisition by the Council of the whole or any part of the relevant interest in land under this clause.
- (e) The Developer must pay the Council, promptly on demand, an amount equivalent to all reasonable Costs and Legal Costs incurred by the Council acquiring the whole or any part of the relevant interest in land under this clause.

1.4 Access for Developer

The Council is to grant to the Developer its officers, employees, agents and contractors a legal right to enter and occupy any land owned or controlled by the Council, including any part of the Land dedicated to Council pursuant to this Deed, to enable the Developer to carry out any work on the Contribution Land for the purposes of maintaining any Contribution Work or rectifying any defect in a Contribution Work in accordance with this Deed.

1.5 Access for the public

- (a) In the event that:
 - (i) an Occupation Certificate is issued for any part of Stage 1 of the Development before the Road Land is dedicated to Council; or
 - (ii) an Occupation Certificate is issued for the Pedestrian Link Stage before the easement in respect of the Pedestrian Link Land is registered in accordance with the Real Property Act ,

then, provided that the Contribution Works have reached Practical Completion, on and from the date that the Occupation Certificate is issued, the Developer grants a licence to Council and the public to access the relevant Item of the Contribution Land in accordance with this clause 1.5.

- (b) Under the licence to access granted under clause 1.5(a) of this Schedule, on and from the date that the relevant Occupation Certificate is issued and until there has been Handover of the relevant Item of the Contribution Land (*Delivered*):
 - (i) members of the public will, at all times, have the right to access, be on and use the relevant Item of the Contribution Land as if it had been Delivered.

- (ii) the Developer will obtain and will maintain at its cost insurance policies on terms satisfactory to the Council (acting reasonably), or will procure that those policies be obtained and maintained, until the date that the relevant Item of the Contribution Land is Delivered, and which provide cover on an occurrence basis for:
 - (A) any damage to the associated Works Contribution; and
 - (B) public liability risk in an amount of \$20 million.
- (iii) the Developer must ensure that:
 - (A) the relevant Items of the Works Contribution are repaired and maintained at the Developer's cost to a standard acceptable to the Council (acting reasonably) until the relevant Item of the Land Contribution is Delivered;
 - (B) any damage to the relevant Items of the Works Contribution which occurs before the relevant Item of the Land Contribution is Delivered is made good at the Developer's cost to a standard acceptable to the Council (acting reasonably); and
 - (C) any proceeds received by the Developer from a claim on the insurances for damage to or destruction of the relevant Items of the Works Contribution will be directed to the cost of rectifying or replacing the relevant Items of the Works Contribution.
- (iv) The Developer must indemnify and keep indemnified the Council from and against all liabilities that the Council may sustain or incur as a result, arising out of or in connection with:
 - (A) any breach of this clause 1.5 of Schedule 5 by the Developer; or
 - (B) any claim, loss, costs or damage incurred or suffered by a third party on the land whilst subject to the licence under clause 1.5(a) of this Schedule; or
 - (C) any damage to the relevant Item of the Contribution Works.
- (v) The indemnity in clause 1.5(b)(iv) of this Schedule 5 will not apply to the extent the liability is due to the negligence of the Council.

Schedule 6 - Notification and rectification of breach

1. Notice of breach

1.1 Developer's Response to Notice

- (a) Promptly upon receipt of a notice under clause 8, the Developer must either:
 - (i) rectify the breach identified in that notice within the time period specified in that notice; or
 - (ii) notify the Council in writing that it does not agree that the breach identified in that notice has occurred, and refer the matter for dispute resolution in accordance with clause 12 and Schedule 7.
- (b) In the absence of a manifest error on the face of the notice, nothing in clause 1.1(a) of this Schedule will constrain or limit the Council's rights of recourse under this Deed.

1.2 Rights of the Council after Giving Notice

- (a) If:
 - (i) the Developer does not take either of the actions outlined in clause 1.1 (a) of this Schedule; or
 - (ii) any dispute notified by the Developer is resolved in favour of the Council,then the Council may take any or all of the actions available to it under this Deed including:
 - (i) taking any action under clause 2.1 of this Schedule;
 - (ii) calling on a Bank Guarantee under Schedule 10;
 - (iii) issuing a further notice to the Developer which:
 - A. identifies the nature of the breach; and
 - B. specifies that the breach must be rectified by the Developer within a reasonable period of time which must not be less than 20 Business Days (except in the case of an emergency or where there is an issue of public safety where less time may be specified) of the Council's notice,and the provisions of clauses 1.1 and 1.2 of this Schedule will apply in respect of that notice (with the necessary changes having been made) and if the Developer does not take either of the actions outlined in clause 1.1(a) of this Schedule then the Council may have recourse against the Developer in relation to the breach.
- (b) The rights of the Council under this Deed, and any action taken by it as referred to in this clause 1.2(a) of this Schedule or otherwise, are without derogation from the other rights and remedies available to the Council under this Deed, at law and in equity in relation to any default of the Developer.

2. Council may rectify breach

2.1 Council may perform Developer's obligations

- (a) This clause applies only if the Council has first complied with clause 1 of this Schedule.
- (b) Before exercising its rights under the remainder of this clause, the Council will give at least 20 Business Days' (except in the case of an emergency or where there is an issue of public safety where less time may be specified) written notice to the Developer of its intention to exercise those rights.
- (c) The Council may (but is not obliged to):
 - (i) perform the Developer's obligations where the Developer fails to:
 - A. rectify the breach identified in the notice referred to in clause 8 within the time period specified in that notice; or
 - B. notify the Council in writing that it does not agree that the breach identified in the notice referred to in clause 8 has occurred and refer the matter for dispute resolution in accordance with clause 12 and Schedule 7;
 - (ii) rectify any breach of this Deed; and
 - (iii) otherwise do anything which the Developer should have done under this Deed in relation to the Developer's obligation subject of the notice under this Schedule 8.
- (d) Without limiting this clause, the Developer agrees that the Council, its employees, agents and contractors, may enter onto the Land and do whatever is necessary to remedy the breach, in the absolute discretion of the Council, subject to compliance with the reasonable directions of the Developer relating to work, health and safety and compliance with all Laws.
- (e) The Developer indemnifies and will keep the Council indemnified from and against all claims, actions, demands, losses, damages, Costs and Legal Costs (**Claim**) reasonably incurred by the Council or for which the Council may become liable in the exercise or purported exercise of the rights of the Council under this clause, except in the event that such Claim is caused by or contributed to by the negligence of the Council or where the Council has exercised its rights in breach of this Deed and provided that the Council takes any reasonable action to mitigate the costs incurred, and Council may call on any Bank Guarantee provided to it under Schedule 10 and in accordance with Schedule 10 to satisfy any such Claim.

Schedule 7 - Dispute Resolution

1.1 Application of Clause

- (a) This Schedule does not apply to the Consent Authority.
- (b) Nothing in this clause requires the Consent Authority to enter into a dispute resolution process with the other Parties to this Deed.
- (c) Nothing in this clause requires the Developer and the Council to ensure that the Consent Authority is involved in dispute resolution processes prior to engaging in that process.
- (d) Notwithstanding the above, the Party issuing a dispute notice must give a copy of the written notice to the Consent Authority.

1.2 Not commence

A Party must not commence any court proceedings relating to a dispute unless it complies with the provisions of this Schedule.

1.3 Written notice of dispute

A Party claiming that a dispute has arisen under or in relation to this Deed must give written notice to the other Parties specifying the nature of the dispute.

1.4 Attempt to resolve

On receipt of notice under clause 1.3 of this Schedule, the Parties must endeavour in good faith to resolve the dispute expeditiously using informal dispute resolution techniques such as mediation, expert evaluation or other techniques agreed by them.

1.5 Mediation

If the Parties do not agree within 10 Business Days of receipt of notice under clause 1.3 of this Schedule (or any further period agreed in writing by them) as to:

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

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

1.6 Expert evaluation generally

- (a) If the Parties agree under clause 1.4 of this Schedule that expert evaluation is the appropriate dispute resolution technique, expert evaluation must be carried out in accordance with this clause.

- (b) Where the Parties are not able to agree on an appropriate expert, the expert is to be appointed by the President of the appropriate institute or association.
- (c) If the Parties cannot agree on which institute or association is appropriate in the circumstances (within the same 10 Business Days), either Party may refer the selection of the institute or association to the President of the Bar Association of New South Wales to select the most appropriate institute or association.
- (d) The institutes or associations from which the expert may be appointed are:
 - (i) if an architect: the Royal Australian Institute of Architects, New South Wales Chapter;
 - (ii) if an engineer: Engineers Australia;
 - (iii) if a valuer: the Australian Property Institute Limited ACN 608 309 128, New South Wales Division;
 - (iv) if an expert in decontamination: Engineers Australia - Environmental College;
 - (v) if an expert in insurance: the Australian and New Zealand Institute of Insurance and Finance, New South Wales Branch;
 - (vi) if a real estate agent: the Real Estate Institute of New South Wales;
 - (vii) if a quantity surveyor: the Australian Institute of Quantity Surveyors, New South Wales Chapter;
 - (viii) if a barrister: the New South Wales Bar Association;
 - (ix) if an accountant: the Institute of Chartered Accountants, New South Wales Division; and
 - (x) if a solicitor or mediator: the Law Society of New South Wales.
- (e) If:
 - (i) more than two types of experts are required to determine the dispute; or
 - (ii) the Parties agree to appoint a lead expert; or
 - (iii) the President of the Bar Association exercising his or her functions in accordance with clause 1.6(c) of this Schedule considers the appointment of a lead expert appropriate

then the Parties must appoint a lead expert.
- (f) The lead expert must be a solicitor who has practised for not less than 15 years and who has not less than 5 years' experience in alternative dispute resolution. The lead expert must be agreed by the Parties and failing agreement will be appointed by the President of the Law Society of New South Wales.

- (g) If a lead expert is appointed the functions of that person are:
- (i) to determine the type of expert required to determine the dispute;
 - (ii) in the absence of agreement between the Parties as to the identity of the expert, to request the appropriate institute or association referred to in clause 1.6(b) of this Schedule ("Institutes and associations") to appoint an expert;
 - (iii) to determine the questions to be put to the expert and, if there is more than one expert, to co-ordinate and determine the timing of each expert determination;
 - (iv) if the dispute requires determination by an expert solicitor, to perform that function;
 - (v) if the expert determinations obtained are ambiguous, contradictory or in conflict, to determine the ambiguity, contradiction or conflict;
 - (vi) on receipt of the expert determinations to deliver to the Parties a final determination of the dispute; and
 - (vii) to determine any question of procedure concerning the dispute resolution process.
- (h) The expert is to be engaged on his standard terms of engagement subject to any amendments required to ensure consistency with this clause.
- (i) Both Parties may, within 20 Business Days of the date of appointment of the expert, make written submissions to the expert on the matter the subject of the dispute. If a Party makes a written submission to the expert, it must give a copy of the submission to the other Party at the same time as it gives the submission to the expert. Submissions must include all particulars upon which a Party seeks to rely in support of its position in relation to the dispute. The expert will determine the procedure for determining the dispute.
- (j) When any dispute or difference referred to in this clause has been referred for determination, the Parties will each use their best endeavours to make available to the expert all facts and circumstances which the expert may require to settle or determine the dispute or difference and must ensure that their respective employees, agents and consultants are available to appear at any hearing or enquiry called for by the expert. The Parties record their agreement that the hearing be concluded within 20 Business Days, and the expert's decision given within 20 Business, of the date of appointment of the expert, and shall use their best endeavours to see that these time frames are met.
- (k) The expert's decision is final and binding on the Parties but only if the value of the dispute (monetary or otherwise) is below \$500,000. In the event that the dispute is more than \$500,000, then any Party may commence court proceedings in relation to the dispute. The cost of the expert's decision is to be borne by the Parties in the shares as the expert determines and in the absence of a determination equally between the Parties.

- (l) The expert will also determine the amount of the costs and expenses of the reference of such dispute to him. In default of such decision, those costs and expenses will be borne by the Parties in equal shares.

1.7 Court proceedings

If the dispute is not resolved within 60 Business Days after notice is given under clause 1.3 of this Schedule, then any Party which has complied with the provisions of this Schedule, may in writing terminate any dispute resolution process undertaken under this clause and may then commence court proceedings in relation to the dispute.

1.8 Not use information

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

1.9 No prejudice

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

1.10 Costs

The costs of appointing a mediator under this Schedule, will be borne equally by the Parties. Each Party will be responsible for its own Legal Costs with respect to any dispute resolution process.

Schedule 8 - Registration of Deed

- (a) The Developer consents to the registration of this Deed and agrees to arrange the production of certificates of title for the Land for the purposes of registration of this Deed on request.
- (b) The Developer will obtain all consents to the registration of this Deed on the title to the Land as are necessary and in particular the consent of any mortgagee or lessee who has a registered interest in the Land.
- (c) The Developer must lodge this Deed with NSW Land Registry Services for registration within 20 Business Days of execution of this Deed.
- (d) The Developer must promptly comply with any requisitions that may be raised with regard to registration of the Deed from NSW Land Registry Services.
- (e) The Developer will notify the Council following registration of the Deed by the Council and forward a copy of the relevant Dealing to the Council.
- (f) The Developer must pay the Council's reasonable Costs associated with registering this Deed upon receipt of a notice from the Council as to the amount of those Costs.

Schedule 9 - Release and Discharge Terms

- (a) Once the Council is satisfied that the Developer has fully complied with all of its obligations under this Deed, at the Developer's request (and Cost), the Council must within ten (10) Business Days of being requested to do so by the Developer:
- (i) provide a full release and discharge of this Deed with respect to the whole of the Land and documentation required to remove the notation of this Deed on title to the Land in registrable form; and
 - (ii) should the Council not already have done so, sign such documentation as is necessary to remove any caveat lodged by the Council in relation to the Land pursuant to clause 5 of this Deed.
- (b) Despite clause (a) of this Schedule, from time to time, the Developer may request and the Council must provide a release and discharge of this Deed so that the Developer may remove the notation of this Deed from the Register in respect of any Stage of the Development or any part of the Land, provided that:
- (i) all obligations under clause 3 of this Deed for the relevant Stage of the Development or the relevant part of the Land have been met;
 - (ii) the Developer has provided the Council with a Bank Guarantee in accordance with Schedule 10; and
 - (iii) the Developer is not otherwise in default of any of its obligations under this Deed (as determined by the Council (acting reasonably), at the time of the Developer's request, unless the Council waives the default.
- (c) For the avoidance of doubt, a release under clause (b) of this Schedule does not operate as a release from any outstanding obligation under this Deed, and is intended only to allow removal of the notation of this Deed from the Register in respect of the relevant Stage or the relevant part of the Land.

Schedule 10 – Security

1. Bank Guarantees

1.1 Bank Guarantees

- (a) On execution of this Deed by all parties, the Developer must provide to Council a Bank Guarantee in the amount of \$300,000 (indexed in accordance with increases in the CPI from the date of this Deed to the date the Bank Guarantee is provided) as security for the Costs and Legal Costs to the Council of enforcing the Developer's compliance with this Deed (***Enforcement Guarantee***).
- (b) Prior to the issue of the first Construction Certificate for the Development, the Developer must provide a Bank Guarantee in the amount of \$6,000,000 as security against the obligations under this Deed to deliver the Contributions, including the costs of transferring the Contribution Land to Council (***Security Guarantee***).
- (c) Prior to the issue of a Construction Certificate for the Pedestrian Link Stage, a Bank Guarantee in the amount of estimated cost of the Pedestrian Link Works determined in accordance with this Agreement as security against the obligations under this Deed to deliver the Pedestrian Link Land and the Pedestrian Link Works (***Pedestrian Link Guarantee***).
- (c) Upon the issue of an Occupation Certificate for each of Stage 1 and the Pedestrian Link Stage, the Developer must provide a Bank Guarantee in the amount of \$600,000 as security against the Developer's obligation to rectify any defects in relation to an Item of Contribution Work during the Defects Liability Period (***Defects Guarantee***).

1.2 Adjustment of Bank Guarantee Amounts

- (a) On each Adjustment Date the Bank Guarantees required under clause 1.1 of this Schedule are to be adjusted to cover a revised amount (**Revised Bank Guarantee Amount**) as determined in accordance with the following formula:

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

where:

RBA is the Revised Bank Guarantee Amount applicable from the relevant Adjustment Date;

BA is the amount of the Bank Guarantee that is current on the relevant Adjustment Date;

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

B is the CPI published immediately before the date of this Deed and, in the case of subsequent adjustments, the immediately preceding Adjustment Date.

No increase or other change will be made to the amount of the Bank Guarantee where B is greater than A.

- (b) The Council must give the Developer written notice of the Revised Bank Guarantee Amounts to apply from the relevant Adjustment Date.

- (c) The Developer must give the Council replacement or further Bank Guarantees so that the Council holds Bank Guarantees for an amount equal to the Revised Bank Guarantee Amounts no later than 15 Business Days after receipt of a notice given under clause 1.2(b) of this Schedule.

1.3 Expiry of Bank Guarantees

Council may reject any Bank Guarantee provided by the Developer that is expressed as expiring on a certain date, in which case the Developer will be taken not to have satisfied its obligation to provide the Bank Guarantee under this Deed.

1.6 Claims under Bank Guarantees

- (a) The Developer agrees that the Council may, after giving at least 10 Business Days prior written notice to the Developer, make claims (in full or in part) under the Security Guarantee in the event that the Developer breaches its obligation to:

- (i) pay any instalment of the Monetary Contribution in accordance with this Deed; or
- (ii) carry out and complete any Item of Contribution Works in accordance with this Deed; or
- (iii) transfer the Contribution Land in accordance with this Deed; and

a notice has been issued by Council requiring the Developer to remedy the breach in accordance with the requirements of Schedule 6, and the breach remains unremedied following the expiry of the rectification period specified in that notice.

- (b) The Developer agrees that the Council may, after giving at least 10 Business Days prior written notice to the Developer, make claims (in full or in part) under the Enforcement Guarantee in the event that the Developer breaches its obligation to pay any instalment of the Monetary Contribution in accordance with this Deed, and a notice has been issued by Council requiring the Developer to remedy the breach in accordance with the requirements of Schedule 6, and the breach remains unremedied following the expiry of the rectification period specified in that notice.

- (c) The Developer agrees that the Council may, after giving at least 10 Business Days prior written notice to the Developer, make claims (in full or in part) under the Pedestrian Link Guarantee in the event that the Developer breaches its obligation to deliver the Pedestrian Link Works or the Pedestrian Link Land and a notice has been issued by Council requiring the Developer to remedy the breach in accordance with the requirements of Schedule 6, and the breach remains unremedied following the expiry of the rectification period specified in that notice.

- (d) The Developer agrees that the Council may, after giving at least 10 Business Days prior written notice to the Developer, make claims (in full or in part) under the Defects Guarantee in the event that the Developer breaches its obligation to rectify defects in or maintain any Item of Contribution Works in accordance with Schedule 4, and a notice has been issued by Council requiring the Developer to remedy the breach in accordance with the requirements of Schedule 6, and the breach remains unremedied following the expiry of the rectification period specified in that notice.

- (e) The Council:

- (i) may retain and use as much of the money it has obtained by making a claim under this clause as is necessary:

- (A) in the case of the Security Guarantee and the Pedestrian Link Guarantee, to compensate the Council for costs reasonably incurred by Council as a result of the Developer's breach of those obligations;
 - (B) in the case of the Enforcement Guarantee, to reimburse the Council for Costs and Legal Costs reasonably incurred in connection with enforcing the Developer's compliance with this Deed; and
 - (C) in the case of the Defects Guarantee, to reimburse the Council for the costs reasonably incurred by Council in connection with the rectification of defects in the Contribution Works, in accordance with clause 1.18 of Schedule 4 of this Deed.
- (f) Council must promptly remit the balance of the money to the Developer, unless the Council reasonably considers that any obligations of the Developer under this deed remain unsatisfied.

1.7 No limitation of obligations

The provision of the Bank Guarantees does not:

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

1.8 Replacement Bank Guarantee

If the Council claims under a Bank Guarantee, in accordance with clause 1.6 of this Schedule, the Developer must provide a replacement Bank Guarantee for an amount which makes whole the amount required in relation to the relevant Bank Guarantee to the Council within 10 Business Days of receiving notice from the Council that the claim has been made.

1.9 Release of the Bank Guarantees

Notwithstanding any other provision of this Deed:

- (a) the Security Guarantee will be released by Council within 20 Business Days after:
 - (i) the Developer has:
 - (A) fully complied with its obligations under this Deed to complete the Road Works, dedicate the Road Land and pay the first instalment of the Monetary Contribution; and
 - (B) provided to Council the Defects Guarantee for the Road Works and the Enforcement Guarantee; or
 - (ii) this Deed is terminated in accordance with clause 20.
- (b) the Pedestrian Link Guarantee will be released by Council within 20 Business Days after the Developer has fully complied with all its obligations under this Deed to

complete the Pedestrian Link Works and grant an easement over the Pedestrian Link Land; and

- (c) the Enforcement Guarantee may be reduced to an amount that is equivalent to \$150,000 (indexed in accordance with increases in the CPI from the date of this Deed to the date the Bank Guarantee is provided) after the grant of Development Consent for any part of Stage 4 of the Development provided Stages 1, 2 and 3 of the Development have been or are, to the Council's satisfaction near completion, by exchanging the Bank Guarantee held by Council with a Bank Guarantee for the reduced amount;
- (d) the Enforcement Guarantee will be released by Council within 10 Business Days after the Developer has fully complied with all of its obligations under this Deed or this Deed is terminated in accordance with clause 20; and
- (e) the Defects Guarantee will be released by Council immediately following the expiry of the Defects Liability Period and Maintenance Period for the Item of Contribution Work in respect of which the Defects Guarantee was provided, subject to any rectification works or maintenance works required during that period being completed.

2. Restriction on issue of Certificates

- (a) For the purposes of section 6.10 of the EP&A Act and any associated regulations (or if the Former Building and Subdivision Provisions apply, 109J(1)(c1) of the EP&A Act) an Occupation Certificate must not be issued for any Building within Stage 1 of the Development unless the obligations to deliver the Road Works and lodge for registration a plan of subdivision or consolidation to dedicate the Road Land have been completed to the satisfaction of Council.
- (b) For the purposes of section 6.10 of the EP&A Act and any associated regulations (or if the Former Building and Subdivision Provisions apply, 109J(1)(c1) of the EP&A Act) an Occupation Certificate must not be issued for any Building within the Pedestrian Link Stage of the Development unless the obligations to deliver the Pedestrian Link Works and lodge for registration an easement over the Pedestrian Link Land have been completed to the satisfaction of Council.
- (c) For the purposes of sections 6.8 and 6.10 of the EP&A Act and any associated regulations (or if the Former Building and Subdivision Provisions apply, section 109F and section 109J(1)(c1) of the EP&A Act, and clause 146A of the EP&A Regulation), prior to the issue of any Construction Certificate for Stages 2, 3 or 4 of the Development, the relevant instalment of the Monetary Contribution in accordance with clause 3 and Table 3 of Schedule 2 of this Deed must be paid.

Schedule 11 - Assignment and Dealing

1.1 Developer's proposed assignment of rights

- (a) Unless the matters specified in clause 1.1(b) of this Schedule are satisfied, the Developer is not to assign or novate to any person their rights or uncompleted obligations under this Deed.
- (b) The Developer must not assign or novate to any person its rights or uncompleted obligations under this Deed unless the prior written consent of Council is obtained. The Council must not withhold its consent in circumstances where the following matters have been satisfied:
 - (i) the Developer has, at no cost to the Council, first procured the execution by the person to whom the rights or uncompleted obligations under this Deed are to be assigned or novated (**incoming party**), of a deed in favour of the Council in the form similar to Schedule 13, completed in a manner satisfactory to the Council. Such deed includes covenants that the incoming party:
 - A. will perform the relevant obligations of the Developer under this Deed (to the extent those obligations have not already been performed); and
 - B. is bound by the terms and conditions of this Deed as if the incoming party had executed the Deed;
 - (ii) the Developer is not in breach of this Deed with respect to the relevant part of the Land in case of an assignment or novation of and interest in part of the Land only, unless the breach is waived by the Council;
 - (iii) the incoming party provides to the satisfaction of Council (acting reasonably) any Bank Guarantee required under Schedule 10 to secure the outstanding obligations under this Deed;
 - (iv) the incoming party provides to the satisfaction of Council (acting reasonably) copies of insurances or any other documents required under this Deed for the carrying out of any outstanding Contribution Works (to the extent such insurances or other documents are required); and
 - (v) the Developer pays Council's reasonable costs in relation to the novation deed and assignment.
- (c) The consent of the Consent Authority is not required for the assignment or novation of any obligations by the Developer under this Deed, provided that the Developer notifies the Consent Authority in writing of the proposed assignment or novation at least 10 Business Days prior to executing any agreement or deed giving effect to the assignment or novation.
- (d) Notwithstanding clause 1.1(c) of this Schedule, if required to validate any assignment or novation deed, the Consent Authority will execute the deed as soon as practicable after receiving a request to do so from the other Parties to this Deed.

1.2 Right of Developer to sell Land

- (a) The Developer must not sell or transfer the whole or any part of the Land or any of its interest in the Land (and must procure that the whole or any part of the Land is not sold or transferred) unless before any such sale, transfer or disposal of any such part of the Land or

such part of the interest in the Land to another person (**Transferee**) the Developer obtains Council's prior written consent. The Council must not withhold its consent in circumstances where the requirements specified in clause 1.1(b) of this Schedule are satisfied.

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

1.3 Council's Costs

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

1.4 Council's assignment of rights

Council may assign its rights under this Deed to any successor in title.

1.5 Council to act promptly

The Council must act promptly in dealing with any application made by the Developer in respect of any proposed assignment or dealing proposed under clauses 1.1 or 1.2 of this Schedule.

Schedule 12 – General Provisions

1.1 Approvals and Consent

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

1.2 Costs

- (a) Unless otherwise specified in this Deed, Council's and the Consent Authority's reasonable Costs and Legal Costs relating to this Deed are to be borne by the Developer and are payable on demand.
- (b) Without limiting clause 1.2(a) of this Schedule, the Developer agrees to pay or reimburse the Council and the Consent Authority on demand for:
 - (i) Costs and Legal Costs reasonably incurred in connection with:
 - A. the drafting, negotiating, execution and registration of this Deed, including the cost of any legal advice obtained in connection with the drafting, negotiation, execution or registration of this Deed
 - B. exercising, enforcing or preserving, or attempting to exercise, enforce or preserve, rights under this Deed, including in connection with the Developer default; and
 - C. any waiver, variation, release or discharge of this Deed; and
 - (ii) Taxes and fees (including, without limitation, registration fees and stamp duty) and fines and penalties in respect of fees which may be payable or determined to be payable in connection with this Deed or a payment or receipt or any transaction contemplated by this Deed.

1.3 Effect of terms and conditions in Schedules and Annexures

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

1.4 Entire agreement

To the extent permitted by law, in relation to its subject matter only, this Deed:

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

1.5 Further acts

Except as otherwise set out in this Deed, each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to effect, perfect or complete this Deed and all transactions incidental to it.

1.6 Governing Law and jurisdiction

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

1.7 Enforcement

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

1.8 No fetter

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

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

1.9 Representations and warranties

- (a) Each Party individually represents and warrants that:
 - (i) **(power)** it has power to enter into this Deed and comply with its obligations under the Deed;
 - (ii) **(no contravention or exceeding power)** this Deed does not contravene its constituent documents (if any) or any law or obligation by which it is bound or to which any of its assets are subject, or cause a limitation on its powers or the powers of its officers to be exceeded;
 - (iii) **(authorisations)** it has in full force and effect the authorisations necessary for it to enter into this Deed, to comply with its obligations and exercise its rights under this Deed and to allow this Deed to be enforced;
 - (iv) **(validity of obligations)** its obligations under this Deed are valid and binding and are enforceable against it in accordance with the terms of the Deed;

- (v) **(no immunity)** in the case of the Developer and the Council only, it does not have immunity from the jurisdiction of a court or from legal process; and
 - (vi) **(benefit)** it benefits by entering into this Deed to which it is a Party.
- (b) Each Party acknowledges that each other Party has entered into this Deed in reliance on the representations and warranties in this this clause.

1.10 Severability

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

1.11 Modification

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

1.12 Waiver

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

1.13 Confidentiality

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

1.14 Release and indemnity

- (a) The Developer agrees that the obligation to provide the Contributions is at the risk of the Developer. The Developer releases the Council and the Consent Authority from any Claim, liability or loss arising from, and Costs and Legal Costs incurred in connection with, the Developer's obligation to provide the Contributions, except where arising and to the extent of any negligence, default, act or omission of the Council.
- (b) The Developer indemnifies the Council and the Consent Authority (to the extent that any Claim is made against it) against all liabilities or loss arising from, and any Costs and Legal Costs reasonably incurred in connection with the Council reasonably enforcing the Developer's obligation to provide the Contributions in accordance with this Deed and/or the Council reasonably exercising the Council's rights under or by virtue of this Deed, provided that the Council takes any reasonable action to mitigate the costs incurred and the indemnity excludes any

Costs or Legal Costs arising and to the extent due to the negligence or default of Council.

- (c) The indemnity in clause 1.14(b) of this Schedule is a continuing obligation, independent of the Developer's other obligations under this Deed and continues after this Deed ends.
- (d) It is not necessary for a Party to incur expense or to make any payment before enforcing a right of indemnity conferred by this clause.
- (e) A Party must pay on demand any amount it must pay under an indemnity in this clause.

Novation Deed

[Planning Authority]
Council

[Consent Authority]
Consent Authority

[Developer]
Transferor

[Insert Transferee's name]
Transferee

Novation Deed made at _____ on _____

Parties *[insert]*
 (Council)
 [insert]
 (Consent Authority)
 [insert]
 (Transferor)

[Insert Transferee's name] of *[insert]* (Transferee)

Recitals

A The Council, the Consent Authority and the Transferor are parties to the Original Agreement.

B The Transferor is defined as the Developer under the terms of the Original Agreement.

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

D **[Drafting note. Use this paragraph if all or part of the obligations are to be assigned (but no land is to be transferred)]** The Transferor wishes to assign **[Drafting note. Insert 'all' or 'part of as relevant']** its rights and obligations under the Original Agreement to the Transferee

[or]

[Drafting Note. Use this paragraph if the whole of the Land is to be transferred] The Transferor wishes to transfer the whole of the Land to the Transferee

[or]

[Drafting Note. Use this paragraph if part of the Land is to be transferred] The Transferor wishes to transfer part of the Land to the Transferee.

E **[Drafting Note. Use this paragraph if the whole of the Land is to be transferred]** The parties to this Deed have agreed to the novation of all of the Transferor's obligations under the Original Agreement to the Transferee.

[or]

[Drafting Note. Use this paragraph if part of the Land is to be transferred] The parties to this Deed have agreed to the novation of the part of the Transferor's obligations under the Original Agreement that are relevant to the part of the Land to be transferred, to the Transferee.

This deed provides

1. Definitions and interpretation

1.1 Definitions

Effective Date means *[insert]*.

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

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

[Drafting note. Use this paragraph if all of the obligations are to be assigned or all of the Land is to be transferred] **Required Obligations** means all of the obligations imposed on the

Developer under the terms of the Original Agreement that have not yet been discharged as at the Effective Date.

[Drafting note. Use this definition if part of the obligations are to be assigned (but no land is to be transferred)] **Required Obligations** means [insert details of specific obligations to be assigned].

[Drafting Note. Use this definition if part of the Land is to be transferred] **Required Obligations** means the obligations imposed on the Developer under the terms of the Original Agreement that are relevant to the Transfer Land and that have not yet been discharged as at the Effective Date.

Transfer Land means [Insert details of land to be transferred to Transferee]

Transferor means [insert].

1.2 References to certain general terms

In this deed unless the contrary intention appears:

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

1.3 Headings

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

2. Novation

2.1 Original Agreement

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

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

2.2 Performance by Transferee

On and from the Effective Date, the Transferee must perform all of the Required Obligations under the Original Agreement as if named as the Transferor, whether or not the relevant obligations relate to works performed prior to the date of this Deed, including, but not limited to:

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

2.3 Release of Guarantees

The parties expressly acknowledge and agree that:

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

2.4 Liability before Effective Date

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

3. Affirmation of the Original Agreement

The Original Agreement will be read and construed subject to this deed, and in all other respects the provisions of the Original Agreement are ratified and confirmed, and, subject to

the variation and novation contained in this deed, the Original Agreement will continue in full force and effect.

4. GST

Where a supply made under this deed gives rise to a liability for GST, the Transferee must pay the GST or pay to the Council, the Consent Authority or the Transferor an additional amount equal to the GST payable on or for the taxable supply, whichever is appropriate in the circumstances. Terms used in this clause have the meanings in the *A New Tax System (Goods and Services Tax) Act 1999*.

5. Stamp duty and costs

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

6. Further acts

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

7. Governing law

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

8. Counterparts

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

[insert limitation of liability clause for the Transferor]

[insert Appropriate execution clauses for the parties to the Novation Deed]

Schedule 14 – Trust Provisions

1 Definitions

In this Schedule 14:

Assets includes all assets, property and rights real and personal of any value whatsoever of the Trust.

Constitution means the constitution of the Trust as amended from time to time.

Obligations means all obligations and liabilities of whatever kind undertaken or incurred by, or devolving upon, the Developer under or in respect of this Deed.

Trust means Goodman Australia Industrial Trust No.3.

Trustee's Capacity means as responsible entity of the Trust.

2 Limitation of Custodian's Liability

2.1 The Custodian enters into this Deed as custodian for the Trust and in no other capacity.

2.2 The parties other than the Custodian acknowledge that the Obligations are incurred by the Custodian solely in its capacity as custodian of the Assets and that the Custodian will cease to have any Obligation under this Deed if the Custodian ceases for any reason to be owner of the Assets.

2.3 The Custodian will not be liable to pay or satisfy any Obligations except to the extent to which it is indemnified or entitled to be indemnified:

- (a) by the Trustee; or
- (b) out of the Assets in respect of any liability incurred by it.

The obligation of the Trustee to indemnify the Custodian and the right of the Custodian to be indemnified out of the Assets are limited.

2.4 The parties other than the Custodian may enforce their rights against the Custodian arising from non-performance of the Obligations only to the extent of the Custodian indemnities referred to in clause 2.3.

2.5 Subject to clause 2.6, if any party other than the Custodian does not recover all money owing to it arising from non-performance of the Obligations it may not seek to recover the shortfall by:

- (a) bringing proceedings against the Custodian in its personal capacity; or
- (b) applying to have the Custodian wound up or proving in the winding up of the Custodian.

2.6 Except in the case of and to the extent of fraud, negligence or breach of duty on the part of the Custodian under its custody agreement with the Trustee, the parties other than the Custodian waive their rights and release the Custodian from any personal liability whatsoever, in respect of any loss or damage:

- (a) which they may suffer as a result of any:

- (i) breach by the Custodian of any of its Obligations; or
 - (ii) non-performance by the Custodian of the Obligations; and
- (b) which cannot be paid or satisfied by the indemnities set out above in clause 2.3 in respect of any liability incurred by it.

2.7 The parties other than the Custodian acknowledge that the whole of this Deed is subject to this clause, and subject to clause 2.6, the Custodian shall in no circumstances be required to satisfy any liability arising under, or for non performance or breach of any Obligations under or in respect of, this Deed or under or in respect of any other document to which it is expressed to be a party out of any funds, property or assets other than to the extent that this Deed requires satisfaction out of the Assets under the Custodian's control and in its possession as and when they are available to the Custodian to be applied in exoneration for such liability.

2.8 The parties acknowledge that the Trustee is responsible under the Constitution for performing a variety of obligations relating to the Trust, including under this Deed. The parties agree that no act or omission of the Custodian (including any related failure to satisfy any Obligations) will constitute fraud, negligence or breach of duty of the Custodian for the purposes of clause 2.6 to the extent to which the act or omission was caused or contributed to by any failure of the Trustee or any other person to fulfil its obligations relating to the Trust or by any other act or omission of the Trustee or any other person.

2.9 No attorney, agent or other person appointed in accordance with this Deed has authority to act on behalf of the Custodian in a way which exposes the Custodian to any personal liability and no act or omission of such a person will be considered fraud, negligence or breach of duty of the Custodian for the purposes of clause 2.6.

2.10 Change of Custodian

The Developer agrees that if the custodian of the Trust changes, then the assignment and dealings provisions in Schedule 11 of this Deed will apply so as to require the novation of the obligations under this Deed to the new custodian.

3 Limitation of Trustee's Liability

3.1 Capacity

The Trustee's liability under this Deed is limited to the Trustee's Capacity and the Trustee is not liable in any other capacity.

3.2 Limitation

Subject to clause 3.4 the liability of the Trustee in respect of any cause of action, claim or loss arising:

- (a) under or in connection with this Deed;
- (b) in connection with any transaction, conduct or any other agreement contemplated by this Deed; or
- (c) under or in connection with (to the extent permitted by law) any representation or undertaking given or to be given in connection with this Deed,

(each, a Trust Claim), is limited to the Assets. The right of the parties other than the Trustee to recover any amount in respect of any (and all) Trust Claims is limited to a right to recover an amount not exceeding the amount which the Trustee is entitled and able to recover from the

Assets (after taking account of the costs of exercising its right of indemnity or exoneration) and if, after exercise of those rights, any such amount remains outstanding, no further Trust Claim may be made against the Trustee personally.

3.3 Acknowledgment of limitations

The parties other than the Trustee agree and acknowledge that they must not, in respect of any Trust Claim:

- (a) subject to clause 3.4, bring proceedings against the Trustee in its personal capacity;
- (b) seek to appoint an administrator or liquidator to the Trustee;
- (c) commence the winding-up, dissolution or administration of the Trustee; or
- (d) appoint a receiver, receiver and manager, administrative receiver or similar official to all or any of the assets of the Trustee,

except to the extent that the steps taken affect any Assets or the Trustee's right of recourse against, and indemnity from, the Assets and nothing else.

3.4 Exception

If the Trustee acts negligently, fraudulently, with wilful misconduct or in breach of trust with a result that:

- (a) the Trustee's right of indemnity, exoneration or recoupment of the Assets; or
- (b) the actual amount recoverable by the Trustee in exercise of those rights,

is reduced in whole or in part or does not exist, then to the extent that such right or the amount so recoverable is reduced or does not exist, the Trustee may be personally liable.

3.5 Warranty

The Trustee warrants that:

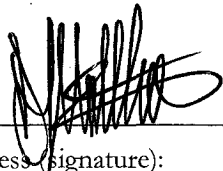
- (a) it is the sole responsible entity of the Trust and no action has been taken to remove or replace it;
- (b) entry into this Deed is for the benefit of the beneficiaries of the Trust and as responsible entity it is authorised and empowered under the Constitution to enter into and to perform its obligations and satisfy or discharge its liabilities under this Deed;
- (c) it is not in breach of the Constitution;
- (d) it is entitled under the Constitution to be indemnified in full in respect of the obligations and liabilities incurred by it under this Deed (subject to the provisions set out in this clause 3);
- (e) it is not aware of any reason why the Assets might be insufficient to satisfy or discharge the obligations and liabilities incurred by it under this Deed; and
- (f) it has the power under the Constitution to execute and perform its obligations and discharge its liabilities under this Deed and all necessary action has been taken to authorise the execution and performance of this Deed under the Constitution.

3.6 Indemnity

The Trustee indemnifies Council for any breach of the warranties set out in clause 3.5 of this Schedule 14.

Executed as a Deed

EXECUTED for and on behalf of)
COUNCIL OF THE CITY OF RYDE by)
its authorised delegate pursuant to Section 377)
of the Local Government Act 1993 in the)
presence of:)



Witness (signature):



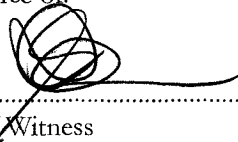
Name (printed):



Signature:

Name: GEORGE DEJES
Position: GENERAL MANAGER


EXECUTED by THE TRUST)
COMPANY LIMITED ACN 004 027 749)
by its attorneys under a power of attorney)
dated 18/09/2014 registered in New South)
Wales with No. 134 Book No. 4676)
in the presence of:

✓ 

Signature of Witness

✓ Grace Deidier

Print name of Witness

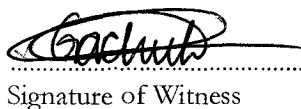
✗ 

Signature of Attorney

Vanessa Milosev
Manager

Print name of Attorney

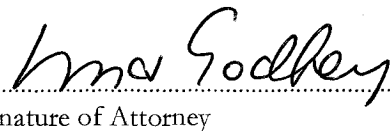
EXECUTED by GOODMAN FUNDS)
MANAGEMENT AUSTRALIA)
LIMITED ABN 13 113 249 595 by its)
attorney under a power of attorney dated 7/3/18)
registered in New South Wales with No. 238)
Book No. 4740 in the presence of:

✓ 

Signature of Witness

✓ ESTHER GACHUHI

Print name of Witness

✓ 

Signature of Attorney

✓ LISA GODFREY

Print name of Attorney

EXECUTED for and on behalf of)
SYDNEY NORTH PLANNING PANEL)
by each of its members in accordance with a)
resolution of the Panel made on)
27 MARCH 2019)
in the presence of:)

Julie Savet Ward

Signature of Witness

Julie Savet Ward

Print name of Witness

Peter DeBorja

Signature of Chair

PETER DEBORJA

Print name of Chair

Signature of Witness

Print name of Witness

Signature of Witness

Print name of Witness

Signature of Witness

Print name of Witness

Signature of Witness

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Annexure A - Road Land and Pedestrian Link Land



Annexure B - Concept Masterplan

97 & 85 WATERLOO ROAD, NORTH RYDE

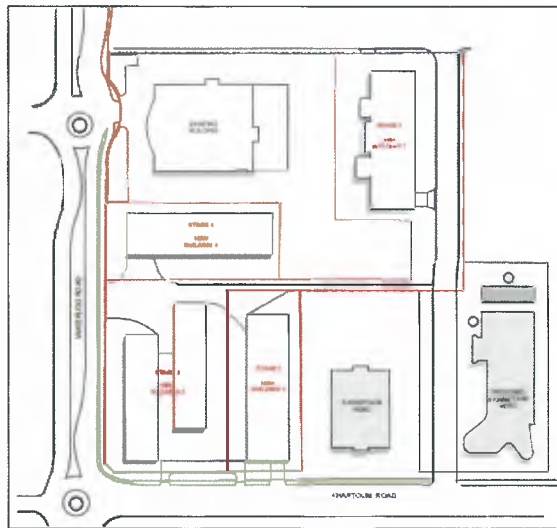
97 & 85 WATERLOO

Total Site Area:	27,705 sqm
Maximum BASE GFA:	33,970 sqm (1.5:1, 1:1)
Maximum INCENTIVE GFA:	83,115 sqm (3:1)

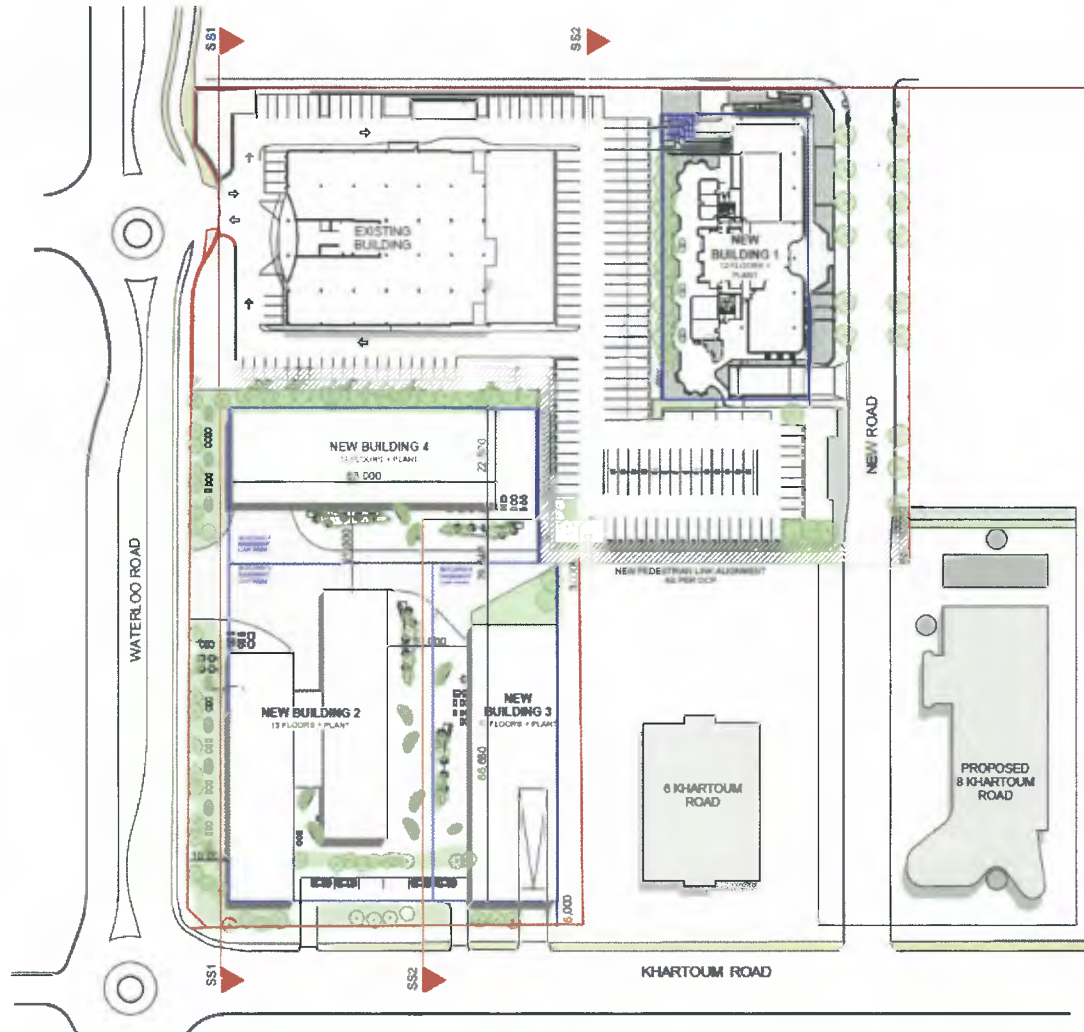
Existing 97 Waterloo GFA:	9,277 sqm (office building)
Existing 85 Waterloo GFA:	Demolished (3,700 sqm)
Building 1 GFA:	15,932 sqm (11 floors)
Building 2 GFA:	24,180 sqm (12 floors)
Building 3 GFA:	18,200 sqm (13 floors)
Building 4 GFA:	15,400 sqm (11 floors)

TOTAL 82,989 sqm

Site	Parking spaces
97 Waterloo Road (existing)	189
Stage 1 Development	280
Stage 2, 3, 4 Development	825



1 PLAN STAGING PLAN 1:1000



2 PLAN SITE PLAN 1:500

<table border="1"> <tr> <td>1</td> <td>DATE</td> <td>DESCRIPTION</td> <td>BY</td> <td>CHK</td> </tr> <tr> <td>1</td> <td>20/10/2018</td> <td>ISSUED FOR PERMIT</td> <td>...</td> <td>...</td> </tr> </table>	1	DATE	DESCRIPTION	BY	CHK	1	20/10/2018	ISSUED FOR PERMIT			97 WATERLOO ROAD, NORTH RYDE, NSW 2113	DEVELOPMENT APPLICATION MATERPLAN- SITE PLAN	265884 DA23
1	DATE	DESCRIPTION	BY	CHK											
1	20/10/2018	ISSUED FOR PERMIT											

Annexure C - Calculation of Monetary Contribution

✓ James to
 ✓ Goodman
 ✓ m a Soderberg
 ✓ W. W. W.
 ✓ witness
 ✓ witness
 Grace Deidier

	Proposed	Existing GFA	Demoished	Nett	S94 per stage	Incentive per Stage Ratio	Incentive GFA per stage	Incentive Contribution per stage	
Stage 1	15,932	11,931		2,701	\$ 13,231	\$ 1,799,812.93	22%	10,584.73 \$ 2,785,456.29	
Stage 2	24,180	6,240		6,240	17,940	\$ 2,440,378.20	33%	16,064.45 \$ 4,227,487.63	
Stage 3	18,200				18,200	\$ 2,475,746.00	25%	12,091.52 \$ 3,181,979.94	
Stage 4	15,400				15,400	\$ 2,094,862.00	21%	10,231.29 \$ 2,692,444.56	
TOTAL	73,712	18,171		8,941	64,771	\$ 8,810,799.13	100%	48,972.00 \$ 12,887,368.42	
TOTAL	82,942	GFA for the site as applied for							
S94 Applicable GFA	64,771								
Base GFA	33,970								
Incentive GFA Max	83,115								
Incentive GFA subject to Incentive Rate	48,972								
Incentive Rate	\$ 250.00	(not indexed)							
Index Base	108.3	Sydney CPI							
Today	114	Sydney CPI							
factor	1.052631579								
Incentive Rate Indexed	\$ 263.16								
Incentive Contribution	\$ 12,887,368.42								
S94 Liability	\$ 8,810,799.13	S94 per sqm \$ 136.03							
Subtotal Contributions	\$ 21,698,167.55	Land Dedication Value \$ 8,636,250 by Goodman							
Offsets		Discount by 75% \$ 2,159,063							
Road Area	2303 sqm	\$ 1,250.00 per sqm rate land value for B3 land							
\$ per sqm	\$1,045	\$ 6,858,000.00 Land value for Road Area Hill PDA							
Land Dedication Value	\$ 2,159,063	\$ 1,714,500.00 being 25% of value of Land for Road by Hill PDA							
Cost of Works by QS	\$ 2,406,635	ex GST							
TOTAL Offset	\$ 4,565,698								
TOTAL Monetary Contrib	\$ 17,132,470.05	\$ 8,321,670.92							
TOTAL Value of VPA	\$ 21,698,167.55	\$ 8,051,703.00							
		\$ 269,967.92							

Total per Stage before Offsets (Incentive + S94)	Total per Stage after Credit	
\$ 4,585,269.22	\$ 19,571.72	Stage 1 Contributions after Credits and Offsets
\$ 6,667,865.83	\$ 6,667,865.83	Stage 2 Contribution after Credit
\$ 5,657,725.94	\$ 5,657,725.94	Stage 3 Contribution
\$ 4,787,306.56	\$ 4,787,306.56	Stage 4 Contribution
\$ 21,698,167.55	\$ 17,132,470.05	
\$ 19,571.72		offset credit carried to stage 2

Council signatory 

Council witness 

The Trust Company Limited Attorney

Witness

Goodman Funds Management Australia Limited Attorney

Sydney North Planning Panel



Witness 

Witness