

DRAFT

Voluntary Planning Agreement

Draft 1

[X] May 2022

Penrith City Council

ABN 43 794 422 563

**Altis Frasers JV Pty Ltd as trustee for the ARET Frasers
Project Trust**

ACN 640 585 897

The Trust Company (Australia) Ltd

ACN 652 872 880

DRAFT

Contents

1	Definitions	2
2	Interpretation	4
3	Planning Agreement under the Act	5
4	Application of this agreement	6
5	Operation of this agreement	6
6	Contributions to be made under this agreement	6
6.1	Monetary Contribution	6
7	Application of s 7.11, s 7.12 and s 7.24 of the Act	6
8	Registration of this agreement	7
8.1	Developer Interest	7
8.2	Registration of this agreement.....	7
8.3	Removal from Register	8
8.4	Caveat.....	8
9	Review of this agreement	8
9.1	Review generally	8
10	Dispute Resolution	8
10.1	Reference to Dispute	8
10.2	Notice of Dispute	8
10.3	Representatives of Parties to Meet	9
10.4	Further Notice if Not Settled	9
10.5	Mediation	9
10.6	Expert determination.....	10
10.7	Litigation	11
10.8	No suspension of contractual obligations	11
11	Enforcement	11
11.1	Default.....	11
11.2	Restriction on the issue of Certificates	11
11.3	General Enforcement.....	11
12	Assignment and Dealings	12
12.1	Assignment	12
12.2	Transfer of Land	12
13	Approvals and consents	12
14	No fetter	12
14.1	Discretion	12
14.2	No fetter	13
15	Notices	13
16	General	14
16.1	Relationship between parties	14

DRAFT

16.2	Time for doing acts	14
16.3	Further assurances.....	14
16.4	Variation.....	14
16.5	No assignment.....	14
16.6	Counterparts	14
16.7	Legal expenses, stamp duty and administration fees	14
16.8	Entire agreement	15
16.9	Representations and warranties	15
16.10	Severability	15
16.11	Invalidity	15
16.12	Waiver.....	15
16.13	GST.....	16
16.14	Governing law and jurisdiction.....	16
17	Reporting	16
	Schedule 1 Summary of requirements (section 7.4)	1

DRAFT

Agreement

Date

Parties

Council

Name	Penrith City Council (Council)
ABN	43 794 422 563
Contact	The General Manager
Telephone	02 4732 7777

Developer

Name	Altis Frasers JV Pty Ltd as trustee for the ARET Frasers Project Trust (Developer)
ACN	640 585 897
Contact	Stephen O'Connor
Telephone	+61 420 546 491

Landowner

Name	The Trust Company (Australia) Ltd (Landowner)
ACN	000 000 993
Contact	Stephen O'Connor
Telephone	+61 420 546 491

Background

- A. Part of the Land is zoned IN1 General Industrial under the *State Environmental Planning Policy (Industry and Employment) 2021* (IE SEPP). Clause 66(1)(a) of the Regulation precludes the determination of a development application in relation to land that is zoned IN1 under Chapter 2 of the IE SEPP, unless a Contributions Plan has been approved for the land to which the application relates or if the developer has entered into a planning agreement with a planning authority for the matters that may be the subject of a Contributions Plan.
- B. No Contributions Plan applies to the Land and this planning agreement is to be entered into in satisfaction of clause 66(1)(a) of the Regulation.
- C. This planning agreement will apply to the development of the Land in accordance with any future development consent. This includes, but is not limited to, the following development applications:
- (i) SSD 25725029; and

DRAFT

(ii) SSD 9522.

Operative part

1 Definitions

In this agreement, unless the context indicates a contrary intention:

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

Address means a party's address set out in the Notices clause of this agreement;

Approval means any certificate, licence, consent, permit, approval or other requirement of any Authority having jurisdiction in connection with the activities contemplated by this agreement;

Authority means any government, semi-governmental, statutory, administrative, fiscal or judicial body, department, commission, authority, tribunal, public or other person;

Business Day means a day on which banks are open for general banking business in Sydney, excluding Saturdays and Sundays;

Claim means any claim, loss, liability, damage, proceeding, order, judgment or expense arising out of the operation of this agreement;

Construction Certificate means a construction certificate as defined under section 6.4 of the Act;

Contributions means the dedication of land, the payment of money or the carrying out of Works required under this agreement.

Contributions Plan has the same meaning as under the Act;

CPI means the All Groups Consumer Price Index applicable to Sydney published by the Australian Bureau of Statistics;

Damages means all liabilities, losses, damages, costs and expenses, including legal fees and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties;

Dealing, in relation to the Land, means, without limitation, selling, transferring, assigning, mortgaging, charging, encumbering or otherwise dealing with the Land;

Development means carrying out of development on the Land in accordance with any future Development Consent, including any Development Consent given in relation to State significant development application SSD 25725029 and State significant development application SSD 9522;

Development Application has the same meaning as in the Act;

Development Consent has the same meaning as in the Act;

Existing Approval means the State significant development application SSD9522 approved by the Minister for Planning and Public Spaces on 21 December 2020.

Fax Number means a party's facsimile number set out in the Notices clause of this agreement;

DRAFT

GST has the same meaning as in the GST Law;

GST Law has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition of or administration of the GST;

Insolvent means, in relation to a party:

- (a) that party makes an arrangement, compromise or composition with, or assignment for, the benefit of its creditors or a class of them;
- (b) a receiver, receiver and manager, administrator, provisional liquidator, trustee, controller, inspector or analogous person is appointed in relation to, or over, all or any part of that party's business, assets or securities;
- (c) a presumption of insolvency has arisen under legislation because of the party's failure to comply with a statutory demand or analogous process;
- (d) an application for the winding up of, or for the appointment of a receiver to, that party, other than winding up for the purpose of solvent reconstruction or re amalgamation, is presented and not withdrawn or dismissed within [21] days (or such longer period agreed to by the parties), or an order is made or an effective resolution is passed for the winding up of, or for the appointment of a receiver to, that party, or any analogous application is made or proceedings initiated;
- (e) any shareholder or director of that party convenes a meeting for the purpose of considering or passing any resolution for the winding up or administration of that party;
- (f) that is an individual, a creditor's petition or a debtor's petition is presented to the Official Receiver or analogous authority in relation to that party;
- (g) an execution or analogous process is levied or enforced against the property of that party;
- (h) that party ceases or suspends, or threatens to cease or suspend, the conduct of all or a substantial part of its business;
- (i) that party disposes of, or threatens to dispose of, a substantial part of its assets;
- (j) that party stops or suspends, or threatens to stop or suspend, payment of all or a class of its debts; or
- (k) that party is unable to pay the party's debts as and when they become due and payable.

Land means Lot 1 in DP 1018318 and Lot 1 in DP 1271677, known as 657-769 Mamre Road, Kemps Creek;

Landowner means The Trust Company (Australia) Ltd (ACN 000 000 993);

Law means:

- (a) any law applicable including legislation, ordinances, regulations, by-laws and other subordinate legislation;
- (b) any Approval, including any condition or requirement under it; and

DRAFT

- (c) any fees and charges payable in connection with the things referred to in paragraphs (a) and (b);

Modification Application means any application to modify the Development Consent under section 4.55 of the Act;

Monetary Contribution means the monetary contribution payable by the Developer under clause 6 of this agreement;

Occupation Certificate means an occupation certificate as defined under section 6.4 the Act;

Register means the Torrens title register maintained under the *Real Property Act 1900* (NSW);

Regulation means the Environmental Planning and Assessment Regulation 2021;

Related Body Corporate has the meaning given to that term in s 9 of the *Corporations Act 2001* (Cth);

Subdivision Certificate means a subdivision certificate defined under section 6.4 of the Act;

Subdivision Works Certificate means a subdivision works certificate defined under section 6.4 of the Act; and

2 Interpretation

In this agreement, unless the context indicates a contrary intention:

- (a) **(documents)** a reference to this agreement or another document includes any document which varies, supplements, replaces, assigns or novates this agreement or that other document;
- (b) **(references)** a reference to a party, clause, paragraph, schedule or annexure is a reference to a party, clause, paragraph, schedule or annexure to or of this agreement;
- (c) **(headings)** clause headings and the table of contents are inserted for convenience only and do not affect interpretation of this agreement;
- (d) **(person)** a reference to a person includes a natural person, corporation, statutory corporation, partnership, the Crown and any other organisation or legal entity and their personal representatives, successors, substitutes (including persons taking by novation) and permitted assigns;
- (e) **(party)** a reference to a party to a document includes that party's personal representatives, executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns;
- (f) **(president, General Manager, CEO or managing director)** the president, General Manager, CEO or managing director of a body or Authority means any person acting in that capacity;
- (g) **(requirements)** a requirement to do any thing includes a requirement to cause that thing to be done, and a requirement not to do any thing includes a requirement to prevent that thing being done;

DRAFT

- (h) **(including)** including and includes are not words of limitation, and a list of examples is not limited to those items or to items of a similar kind;
- (i) **(corresponding meanings)** a word that is derived from a defined word has a corresponding meaning;
- (j) (singular) the singular includes the plural and vice-versa;
- (k) **(gender)** words importing one gender include all other genders;
- (l) **(parts)** a reference to one or more things includes each part and all parts of that thing or group of things but nothing in this clause implies that part performance of an obligation constitutes performance of that obligation;
- (m) **(rules of construction)** neither this agreement nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting;
- (n) **(legislation)** a reference to any legislation or provision of legislation includes all amendments, consolidations or replacements and all regulations or instruments issued under it;
- (o) **(time and date)** a reference to a time or date in connection with the performance of an obligation by a party is a reference to the time and date in City or State, Australia, even if the obligation is to be performed elsewhere;
- (p) **(joint and several)** an agreement, representation, covenant, right or obligation:
 - (i) in favour of two or more persons is for the benefit of them jointly and severally; and
 - (ii) on the part of two or more persons binds them jointly and severally;
- (q) **(writing)** a reference to a notice, consent, request, approval or other communication under this agreement or an agreement between the parties means a written notice, request, consent, approval or agreement;
- (r) **(replacement bodies)** a reference to a body (including an institute, association or Authority) which ceases to exist or whose powers or functions are transferred to another body is a reference to the body which replaces it or which substantially succeeds to its power or functions;
- (s) **(Australian currency)** a reference to dollars or \$ is to Australian currency;
- (t) **(month)** a reference to a month is a reference to a calendar month; and
- (u) **(year)** a reference to a year is a reference to twelve consecutive calendar months.

3 Planning Agreement under the Act

- (a) The parties agree that this agreement is a planning agreement within the meaning of section 7.4 of the Act.
- (b) Schedule 1 Summary of requirements (section 7.4) of this agreement summarises the requirements for planning agreements under s 7.4 of the Act and the way this agreement addresses those requirements.

DRAFT

4 Application of this agreement

This agreement applies to:

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

5 Operation of this agreement

This agreement commences on and from the date it is executed by all parties.

6 Contributions to be made under this agreement

6.1 Monetary Contribution

- (a) The Developer will pay to Council a monetary contribution of \$9,600,000 or an amount calculated in accordance with the following formula, whichever is the greater:

$$\$9,600,000 \times \frac{\text{The CPI at the time of payment}}{\text{The CPI at the date of this agreement}}$$

- (b) The Monetary Contribution must be paid to Council prior to the issue of the first Construction Certificate for the Development (excluding any Construction Certificate for the Existing Approval) , or if no such certificate is required, prior to the commencement of any work comprising the Development (but excluding the Existing Development).
- (c) The Monetary Contribution must be paid by way of bank cheque in favour of Council or by deposit by means of electronic funds transfer into an account specified by Council.
- (d) The Monetary Contribution will be taken to have been made when the Council notifies the Developer in writing that the bank cheque has been received and cleared funds or electronic funds have been deposited in the Council's bank account.
- (e) The parties agree and acknowledge that the Monetary Contribution will be used by the Council towards landscaping and open space embellishment within the Mamre Road Precinct, and would extend to the following:
 - (i) provision of new trees, shrubs and ground cover to areas reserved for open space;
 - (ii) construction of bike paths and walking tracks for use by the local community;
 - (iii) outdoor exercise equipment; and
 - (iv) picnic and rest areas.

7 Application of s 7.11, s 7.12 and s 7.24 of the Act

- (a) This agreement excludes the application of section 7.11 of the Act to the Development.
- (b) This agreement excludes the application of section 7.12 of the Act to the Development.

DRAFT

- (c) This agreement does not exclude the application of section 7.24 of the Act to the Development.

Note that s 7.4(3A) of the Act provides that sections 7.11 and 7.12 of the Act cannot be excluded unless the consent authority for the development or the Minister is a party to the agreement. The consent authority may be the Sydney Western City Planning Panel and not Council. Section 7.4(5A) provides that a planning authority must not enter into a planning agreement that excludes the application of section 7.24 without the approval of the Minister or a development corporation designated by the Minister.

8 Registration of this agreement

8.1 *Developer Interest*

The Landowner represents and warrants to the Council that on the date of this agreement it is the registered proprietor of the Land.

8.2 *Registration of this agreement*

- (a) The Developer agrees to procure the registration of this agreement under the Real Property Act 1900 (NSW) in the relevant folios of the Register of the Land in accordance with section 7.6 of the Act.
- (b) The Developer, at its own expense, must:
 - (i) procure the lodgement of this agreement with the Registrar-General as soon as reasonably practicable after this agreement comes into operation, but in any event, no later than 20 Business Days after that date;
 - (ii) procure the registration of this agreement by the Registrar-General in the relevant folios of the Register for the Land as soon as reasonably practicable after this agreement is lodged for registration; and
 - (iii) provide documentary evidence that the registration of this agreement has been completed to Council within 5 Business Days of receiving confirmation that the registration has occurred.
- (c) The Developer warrants that, as at the date of this agreement, it has obtained the consent of each person who has an estate or interest in the Land registered under the Real Property Act 1900 (NSW) or is seized or possessed of an estate or interest in the Land to the registration of this agreement on title.
- (d) The Developer, at its own expense will, promptly after the execution of this agreement, take all practical steps, and otherwise do anything that the Council reasonably requires to procure:
 - (i) an acceptance of the terms of this agreement and an acknowledgement in writing from any existing mortgagee in relation to the Land that the mortgagee will adhere to the provisions of this agreement if it takes possession of the Land as mortgagee in possession,
 - (ii) the execution of any documents; and
 - (iii) the production of the relevant duplicate certificates of title,to enable the registration of this agreement in accordance with clause 8.2.

DRAFT

- (iv) The Landowner consents to the registration of the agreement in accordance with this clause 8.2.

8.3 *Removal from Register*

The Council will, at the Developer's cost, provide a release and discharge of this agreement so that it may be removed from the folios of the Register for the Land (or any part of it) provided the Council is satisfied the Developer has duly fulfilled its obligations under this agreement in respect of that part of the Land.

8.4 *Caveat*

- (a) The Developer acknowledges and agrees that:
 - (i) when this agreement 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 1900 (NSW) and consequently the Council will have a sufficient interest in the Land in respect of which to lodge a caveat over the Land notifying that interest;
 - (ii) it will not object to the Council lodging a caveat in the relevant folios of the Register for the Land nor will it seek to remove any caveat lodged by the Council provided the caveat does not prevent registration of any dealing or plan other than a transfer.
- (b) The Council must, at Developer's cost, register a withdrawal of any caveat in respect of the Land within five Business Days after the Developer complies with clause 8.2

9 *Review of this agreement*

9.1 *Review generally*

- (a) This agreement may be reviewed or modified;
- (b) any review or modification of this agreement will be conducted in the circumstances and in the manner determined by the parties;
- (c) no modification or review of this agreement will be of any force or effect unless it is in writing and signed by the parties to this agreement; and
- (d) a party is not in breach of this agreement if it does not agree to an amendment to this agreement requested by a party in, or as a consequence of, a review.

10 *Dispute Resolution*

10.1 *Reference to Dispute*

If a dispute arises between the parties in relation to this agreement, the parties must not commence any court proceedings relating to the dispute unless the parties have complied with this clause, except where a party seeks urgent interlocutory relief.

10.2 *Notice of Dispute*

The party wishing to commence the dispute resolution process must give written notice (Notice of Dispute) to the other parties of:

DRAFT

- (a) The nature of the dispute,
- (b) The alleged basis of the dispute, and
- (c) The position which the party issuing the Notice of Dispute believes is correct.

10.3 *Representatives of Parties to Meet*

- (a) The representatives of the parties must promptly (and in any event within 10 Business Days of the Notice of Dispute) meet in good faith to attempt to resolve the notified dispute.
- (b) The parties may, without limitation:
 - (i) resolve the dispute during the course of that meeting,
 - (ii) agree that further material or expert determination in accordance with clause 10.6 about a particular issue or consideration is needed to effectively resolve the dispute (in which event the parties will, in good faith, agree to a timetable for resolution); or
 - (iii) agree that the parties are unlikely to resolve the dispute and, in good faith, agree to a form of alternative dispute resolution (including expert determination, arbitration or mediation) which is appropriate for the resolution of the relevant dispute.

10.4 *Further Notice if Not Settled*

If the dispute is not resolved within 20 Business Days after the nominated representatives have met, either party may give to the other a written notice calling for determination of the dispute (Determination Notice) by mediation under clause 10.5 or by expert determination under clause 10.6

10.5 *Mediation*

If a party gives a Determination Notice calling for the dispute to be mediated:

- (a) The parties must agree to the terms of reference of the mediation within Business Days of the receipt of the Determination Notice (the terms shall include a requirement that the mediation rules of the Institute of Arbitrators and Mediators Australia (NSW Chapter) apply;
- (b) The mediator will be agreed between the parties, or failing agreement within 5 Business Days of receipt of the Determination Notice, either Party may request the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter) to appoint a mediator;
- (c) The mediator appointed pursuant to this clause 10.5 must:
 - (i) Have reasonable qualifications and practical experience in the area of the dispute; and
 - (ii) Have no interest or duty which conflicts or may conflict with his or her function as a mediator, he or she being required to fully disclose any such interest or duty before his or her appointment;

DRAFT

- (d) The mediator shall be required to undertake to keep confidential all matters coming to his or her knowledge by reason of his or her appointment and performance of his or her duties;
- (e) The parties must within 10 Business Days of receipt of the Determination Notice notify each other of their representatives who will be involved in the mediation (except if a resolution of the Council is required to appoint a representative, the Council must advise of the representative within 15 Business Days of the resolution);
- (f) The parties agree to be bound by a mediation settlement and may only initiate judicial proceedings in respect of a dispute which is the subject of a mediation settlement for the purpose of enforcing that mediation settlement; and
- (g) In relation to costs and expenses:
 - (i) Each party will bear its own professional and expert costs incurred in connection with the mediation; and
 - (ii) The costs of the mediator will be shared equally by the parties unless the mediator determines that a party has engaged in vexatious or unconscionable behaviour in which case the mediator may require the full costs of the mediation to be borne by that party.

10.6 *Expert determination*

If the dispute is not resolved under clause 10.3 or clause 10.5 or the parties otherwise agree that the dispute may be resolved by expert determination, the parties may refer the dispute to an expert, in which event:

- (a) the dispute must be determined by an independent expert in the relevant field:
 - (i) agreed upon and appointed jointly by the parties; and
 - (ii) in the event that no agreement is reached or no appointment is made within 10 Business Days of the agreement to refer the dispute to an expert, appointed on application of a party by the then President of the Law Society of New South Wales;
- (b) the expert must be appointed in writing and the terms of the appointment must not be inconsistent with this clause;
- (c) the determination of the dispute by such an expert will be made as an expert and not as an arbitrator and will be in writing and contain the reasons for the determination;
- (d) the expert will determine the rules for the conduct of the process but must conduct the process in accordance with the rules of natural justice;
- (e) each party will bear its own costs in connection with the process and the determination by the expert and will share equally the expert's fees and costs; and
- (f) any determination made by an expert pursuant to this clause is final and binding upon the parties except unless:
 - (i) within 15 Business Days of receiving the determination, a party gives written notice to the other party that it does not agree with the determination and commences litigation; or

DRAFT

- (ii) the determination is in respect of, or relates to, termination or purported termination of this agreement by any party, in which event the expert is deemed to be giving a non-binding appraisal.

10.7 *Litigation*

If the dispute is not finally resolved in accordance with this clause 10, then either party is at liberty to litigate the dispute.

10.8 *No suspension of contractual obligations*

Subject to any interlocutory order obtained under clause 10.1 the referral to or undertaking of a dispute resolution process under this clause 10 does not suspend the parties' obligations under this agreement.

11 Enforcement

11.1 *Default*

- (a) In the event a party considers another party has failed to perform and fulfil an obligation under this agreement, it may give notice in writing to the other party
- (b) (Default Notice) giving all particulars of the matters in respect of which it considers default has occurred and by such notice require the default to be remedied within a reasonable time not being less than 21 days.
- (c) In determining a reasonable time, regard must be had to both the nature of the default and the work or other action required to remedy it and whether or not the continuation of the default constitutes a public nuisance or raises other circumstances of urgency or emergency.
- (d) If a party disputes the Default Notice it may refer the dispute to dispute resolution under clause 10 of this agreement.

11.2 *Restriction on the issue of Certificates*

- (a) The payment of the Monetary Contribution in accordance with clause 6.1 must be made before a Construction Certificate is issued for the Development or any part of the Development.

11.3 *General Enforcement*

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

DRAFT

12 Assignment and Dealings

12.1 *Assignment*

- (a) A party must not assign or deal with any right under this agreement without the prior written consent of the other parties (not to be unreasonably withheld).
- (b) Any change of ownership or control (as defined in section 50AA of the Commonwealth Corporations Act 2001) of a party (excluding the Council) shall be deemed to be an assignment of this agreement for the purposes of this clause.
- (c) Any purported dealing in breach of this clause is of no effect.

12.2 *Transfer of Land*

- (a) The Developer or the Landowner, if the Developer is not the owner of the land may not transfer, assign or dispose of the whole or any part of its right, title or interest in the Land (present or future) or in the Development to another person (Transferee) unless before it sells, transfers or disposes of that right, title or interest:
 - (i) the Developer or Landowner satisfies the Council that the proposed Transferee is financially capable of complying with the Landowner's or Developer's obligations (as applicable) under this agreement;
 - (ii) the Developer or Landowner (as applicable) satisfies the Council that the rights of the Council will not be diminished or fettered in any way;
 - (iii) the Transferee delivers to the Council a novation deed signed by the Transferee in a form and of such substance as is acceptable to the Council containing provisions under which the Transferee agrees to comply with all the outstanding obligations of the Landowner or Developer (as applicable) under this agreement;
 - (iv) any default under any provisions of this agreement has been remedied or waived by the Council, on such conditions as the Council may determine, and
 - (v) the Developer and the Transferee pay the Council's reasonable costs in relation to the assignment.

13 Approvals and consents

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

14 No fetter

14.1 *Discretion*

This agreement is not intended to operate to fetter, in any manner, the exercise of any statutory power or discretion of the Council, including, but not limited to, any statutory power or discretion of the Council relating to the Development Application or any other application for Development Consent (all referred to in this agreement as a "Discretion").

DRAFT

14.2 No fetter

No provision of this agreement is intended to constitute any fetter on the exercise of any Discretion. If, contrary to the operation of this clause, any provision of this agreement is held by a court of competent jurisdiction to constitute a fetter on any Discretion, the parties agree:

- (a) they will take all practical steps, including the execution of any further documents, to ensure the objective of this clause is substantially satisfied,
- (b) in the event that (a) cannot be achieved without giving rise to a fetter on the exercise of a Discretion, the relevant provision is to be severed and the remainder of this agreement has full force and effect, and
- (c) to endeavour to satisfy the common objectives of the parties in relation to the provision of this agreement which is to be held to be a fetter on the extent that is possible having regard to the relevant court judgment.

15 Notices

Any notice given under or in connection with this agreement (Notice):

- (a) must be in writing and signed by a person duly authorised by the sender;
- (b) must be addressed as follows and delivered to the intended recipient by hand, by prepaid post or by email at the address below, or at the address last notified by the intended recipient to the sender after the date of this agreement:
 - (i) to Penrith City Council: PO Box 60, Penrith, NSW 2751

Fax: (02) 4732 7958
Email: council@penrith.city
Attention: The General Manager
 - (ii) to Altis Frasers JV Pty Ltd as trustee for the ARET Frasers Project Trust:
Level 2, 1C Homebush Bay Drive Rhodes NSW 2138

Fax: N/A
Email: stephen.oconnor@altisproperty.com.au
Attention: Stephen O'Connor
- (c) is taken to be given or made:
 - (i) in the case of hand delivery, when delivered;
 - (ii) in the case of delivery by post, three Business Days after the date of posting (if posted to an address in the same country) or seven Business Days after the date of posting (if posted to an address in another country); and
 - (iii) in the case of an email, when the sender receives an email acknowledgement from the recipient's information system showing the Notice has been delivered to the email address stated above; and
- (d) if under clause (c) a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent, or later than 4.00 pm (local time), it is taken to have been given or made at the start of business on the next Business Day in that place.

DRAFT

16 General

16.1 *Relationship between parties*

- (a) Nothing in this agreement:
 - (i) constitutes a partnership between the parties; or
 - (ii) except as expressly provided, makes a party an agent of another party for any purpose.
- (b) A party cannot in any way or for any purpose:
 - (i) bind another party; or
 - (ii) contract in the name of another party.
- (c) If a party must fulfil an obligation and that party is dependent on another party, then that other party must do each thing reasonably within its power to assist the other in the performance of that obligation.

16.2 *Time for doing acts*

- (a) If the time for doing any act or thing required to be done or a notice period specified in this agreement expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.
- (b) If any act or thing required to be done is done after 5.00 pm on the specified day, it is taken to have been done on the following Business Day.

16.3 *Further assurances*

Each party must promptly execute all documents and do all other things reasonably necessary or desirable to give effect to the arrangements recorded in this agreement.

16.4 *Variation*

A provision of this agreement can only be varied by a later written document executed by or on behalf of all parties and in accordance with the provisions of the Act.

16.5 *No assignment*

A party cannot assign or otherwise transfer its rights under this agreement without the prior written consent of the other party.

16.6 *Counterparts*

This agreement may be executed in any number of counterparts. All counterparts taken together constitute one instrument.

16.7 *Legal expenses, stamp duty and administration fees*

- (a) The Developer must pay on demand Council's reasonable legal costs and disbursements in connection with the negotiation, preparation, execution, stamping, and release and discharge of this agreement, including the reasonable costs incurred

DRAFT

by the Council in obtaining any advice about this agreement or the value of land or works to be delivered under this agreement.

- (b) On execution of this agreement, the Developer must pay an administration, monitoring and enforcement fee to the Council in the amount of \$[x]. [Note that the amount specified will be equivalent to 1% of the total value of the contributions subject to the agreement.]

16.8 *Entire agreement*

The contents of this agreement constitute the entire agreement between the parties and supersede any prior negotiations, representations, understandings or arrangements made between the parties regarding the subject matter of this agreement, whether orally or in writing.

16.9 *Representations and warranties*

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

16.10 *Severability*

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

16.11 *Invalidity*

- (a) A word or provision must be read down if:
 - (i) this agreement is void, voidable, or unenforceable if it is not read down;
 - (ii) this agreement will not be void, voidable or unenforceable if it is read down; and
 - (iii) the provision is capable of being read down.
- (b) A word or provision must be severed if:
 - (i) despite the operation of clause (a), the provision is void, voidable or unenforceable if it is not severed; and
 - (ii) this agreement will be void, voidable or unenforceable if it is not severed.
- (c) The remainder of this agreement has full effect even if clause 16.11(b) applies.

16.12 *Waiver*

A right or remedy created by this agreement cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right or remedy does not constitute a waiver of that right or remedy, nor does a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.

DRAFT

16.13 GST

- (a) Words and expressions which are not defined in this agreement but which have a defined meaning in GST Law have the same meaning as in the GST Law.
- (b) Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this agreement are exclusive of GST.
- (c) If GST is imposed on any supply made under or in accordance with this agreement, the Developer must pay the GST or pay to the Council an amount equal to the GST payable on or for the taxable supply, whichever is appropriate in the circumstances.

16.14 Governing law and jurisdiction

- (a) The laws applicable in New South Wales govern this agreement.
- (b) The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.

17 Reporting

On or before 31 July in each calendar year after the execution of this agreement and until the Developer's obligations under this agreement are satisfied, the Developer must provide a written report to Council detailing the progress of the provision of Contributions under this agreement and the progress of the Development.

DRAFT

Schedule 1 Summary of requirements (section 7.4)

Subject and subsection of the Act	Planning Agreement
Planning instrument and/or Development Application – Section 7.4(1)	
<p>The Landowners have:</p> <p>(a) Sought a change to an environmental planning instrument</p> <p>(b) Made, or propose to make a Development Application</p> <p>(c) Entered into an agreement with, or are otherwise associated with, a person to whom paragraph (a) or (b) applies</p>	<p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>
Description of the land to which the planning Agreement applies – Section 7.4(3)(a)	Lot 1 in DP 1018318 and Lot 1 in DP 1271677, known as 657-769 Mamre Road, Kemps Creek
Description of the change to the environmental planning instrument or development to which the Planning Agreement applies - Section 7.4(3)(b)	Any future Development Consent granted in relation to the Land
The scope, timing and manner of delivery of contributions required by the Planning Agreement – Section 7.4(3)(c)	See clause 6 (Contributions made under this agreement)
Applicability of section 7.11 of the Act – Section 7.4(3)(d)	Excludes
Applicability of section 7.12 of the Act – Section 7.4(3)(d)	Excludes
Applicability of section 7.24 of the Act – Section 7.4(3)(d)	Does not exclude
Whether the benefits are or are not to be taken into consideration in determining a development contribution under section 7.11 – Section 7.4(3)(e)	N/A
Mechanism for dispute resolution – Section 7.4(3)(f)	See clause 10 (Dispute Resolution)
Enforcement of the Planning Agreement by a suitable means – Section 7.4(3)(g)	See clause 11 (Enforcement and Security)
Registration of the Planning Agreement – Section 7.6	Yes
No obligation to grant consent or exercise functions – Section 7.4(9)	See clause 14 (no fetter)

DRAFT

Executed as an agreement

Executed for and on behalf of **Penrith**)
City Council by its authorised delegate in)
accordance with a resolution of the)
Council dated)

.....
Signature of witness

.....
Signature of Authorised Delegate

Print position:

.....
Print name

.....
Print name

[Insert further execution clauses as required for each party]