
Penrith Rugby League Club Limited

Penrith City Council

Planning Agreement Outlet Centre

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

Contents

1	Planning Agreement under the Act	1
2	Application of this Agreement	1
3	Operation of this Agreement	2
4	Definitions and interpretation	2
	4.1 Definitions	2
	4.2 Interpretation	4
5	Development Contributions to be made under this Agreement	5
6	Planning Application	5
7	Application of sections 94, 94A and 94EF of the Act to the Development	6
8	Registration of this Agreement	6
9	Review of this Agreement	7
10	Dispute Resolution	7
	10.1 Reference to Dispute	7
	10.2 Notice of Dispute	7
	10.3 Representatives of Parties to Meet	7
	10.4 Neither party may constrain	8
11	Security and Enforcement	8
	11.1 Security	8
	11.2 Enforcement	8
12	Notices	8
	12.1 Delivery	8
	12.2 Change of Details	9
	12.3 Giving of Notice	9
	12.4 Delivery outside of business hours	9
13	Approvals and consent	10
14	Assignment and Dealings	10
	14.1 Assignment	10
	14.2 Transfer Dealings	10
15	Release and discharge	10
16	GST	11
	16.1 Construction	11
	16.2 Intention of the Parties	11
	16.3 Consideration GST exclusive	12
	16.4 Payment of GST – additional payment required	12
	16.5 Valuation of non-monetary consideration	13
	16.6 Tax invoice	13
	16.7 Adjustment event	13

16.8	Reimbursements	13
16.9	No Merger	13
17	Costs	14
18	Entire Agreement	14
19	Further acts	14
20	Governing law and jurisdiction	14
21	No fetter	14
22	Representations and warranties	14
23	Severability	15
24	Waiver	15
25	Effect of Schedules	15
26	Relationship of parties	16
27	Further steps	16
28	Counterparts	16
29	Rights cumulative	16
	Schedule 1 - Section 93F Requirements	1
	Schedule 2 - Land Description	3
	Schedule 3 - Development Contributions – Development Contributions	4
	Schedule 4 - Explanatory Note	6
	Annexure A – Novation Deed/Assignment Deed	11

Date 28 NOVEMBER 2012

Parties

Penrith City Council ABN 43 794 422 563 of 601 High Street, Penrith, New South Wales (**Planning Authority**)

Penrith Rugby League Club Limited ABN 57 000 578 398 of Mulgoa Road, Penrith, New South Wales (**Developer**)

Background

- A On 10 December 2009 the Developer submitted the Planning Proposal to the Planning Authority for the Amending LEP and to facilitate the Development on the Land.
 - B The Planning Proposal was lodged by the Planning Authority with DP&I on 2 June 2010 and received Gateway determination on 13 August 2010.
 - C As part of that Planning Proposal, a rezoning is sought for part of the Land to permit an Outlet Centre of up to 25,000m² NUFA. Once the rezoning is obtained, the Developer proposes to submit a Planning Application to obtain Planning Approval for the Outlet Centre.
 - D In connection with the Planning Proposal the Developer submitted an offer dated 26 March 2012 to enter into this Agreement to make the Development Contributions towards the Public Facilities if the Amending LEP is made.
-

Operative provisions

1 Planning Agreement under the Act

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

2 Application of this Agreement

This Agreement applies to the:

- (a) Land; and
- (b) Outlet Centre component of the Development.

3 Operation of this Agreement

This Agreement operates only if:

- (a) The Amending LEP is published on the NSW Legislation website; and
- (b) The Agreement is entered into as required by Clause 25C(1) of the Regulation.

4 Definitions and interpretation

4.1 Definitions

In this Agreement the following definitions apply:

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

Agreement means this planning agreement including any schedules.

Amending LEP means the Local Environmental Plan proposed under the Planning Proposal to amend *Penrith Local Environmental Plan 2010*, if made.

Authority means, in respect of a particular context or circumstance, each Federal, State or Local Government, semi-Government, quasi-Government or other body or authority, statutory or otherwise, including but not limited to any court or tribunal, having jurisdiction and responsibility in respect of that context or circumstance.

Business Day means a day which is not a Saturday, Sunday or bank or public holiday in Sydney.

Commencement Date means the date upon which the Agreement is taken to operate under **clause 3**.

Construction Certificate has the same meaning as in section 109C of the Act.

Development means the 'Panthers Penrith Precinct' development as described in the Planning Proposal being a mixed use development inclusive of 25,000m² NUFA of Outlet Centre, 12,500m² GFA of retail, 25,000m² GFA of campus style offices and entertainment facilities, hotel accommodation, seniors living, residential, recreation facilities and exhibition space.

Development Contribution means the contribution identified in **schedule 3**.

DP&I means the NSW Department of Planning and Infrastructure.

Explanatory Note means the Explanatory Note attached at **schedule 4**.

GFA has the meaning given to it in the *Standard Instrument (Local Environmental Plans) Order 2006*.

GST has the same meaning as in the GST Law.

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

Land means the land described in **schedule 2**.

Land Owners mean Mulgoa Road (No. 1) Pty. Limited and Panthers Property Management Pty Ltd.

LPI means the Land and Property Information of New South Wales or any other government agency replacing it.

Novation Deed means the Deed attached at **Annexure A**.

NUFA (net useable floor area) has the meaning given to the expression, "net useable floor area" in the Amending LEP.

Occupation Certificate has the same meaning as in section 109C of the Act.

Outlet Centre means an outlet centre of up to 25,000m² NUFA as regulated by the Amending LEP.

Outlet Centre Tenancy Lease means a lease for a tenancy in the constructed Outlet Centre.

Outlet Land means that part of the Land upon which the Outlet Centre will be located.

Outlet Landowner means the owner of the Outlet Land from time to time.

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

Plan of Subdivision means the plan of subdivision which includes the creation of the separate lot upon which the Outlet Centre will be located, being the Outlet Land.

Planning Application means a development application made under Parts 4 of the Act for the Outlet Centre.

Planning Approval means the determination by approval of the Planning Application for the Outlet Centre.

Planning Proposal means the planning proposal submitted under Part 3, Division 4 of the Act for the Amending LEP, DP&I reference PP_2010_PENRI_001_00, or its amended form as has been endorsed by the Planning Authority.

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

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

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

Site Controls means the development standards, requirements and controls identified in the Amending LEP that are relevant to an Outlet Centre.

Subdivision has the meaning given to it in the Act.

Transfer Dealings means selling or transferring the Outlet Land.

4.2 Interpretation

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

- (a) Headings are inserted for convenience only and do not affect the interpretation of this Agreement.
- (b) If the day on which any act, matter or thing is to be done under this Agreement is not a Business Day, the act, matter or thing must be done on the next Business Day.
- (c) A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- (d) A reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- (e) A reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- (f) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
- (g) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- (h) Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- (i) A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- (j) References to the word 'include' or 'including' are to be construed without limitation.
- (k) A reference to this Agreement includes the agreement recorded in this Agreement.
- (l) A reference to a Party to this Agreement includes a reference to the servants, agents and contractors of the Party, and the Party's successors and assigns.
- (m) Any schedules and attachments form part of this Agreement.

5 Development Contributions to be made under this Agreement

- (a) Subject to this Agreement, the Developer is to make a Development Contribution in respect of the Amending LEP and the Planning Application, comprising the contributions identified in **schedule 3**.
- (b) The Developer agrees to provide the Planning Authority with:
 - (i) an executed copy of the Outlet Centre Tenancy Lease no later than 14 Business Days after entry into that lease as evidence of satisfaction of **items 1, 3 and 4** of **schedule 3**; and
 - (ii) the annual reports and management plan at **items 2 and 5 of schedule 3**, in accordance with the timing in **column 4 of schedule 3**.
- (c) The Developer agrees to do all things reasonably necessary to monitor and enforce all tenant uses at the Outlet Centre to facilitate compliance with the use of the Outlet Land as an Outlet Centre.
- (d) Development Contributions made in accordance with this Agreement are made in full and final satisfaction of all costs and expenses required to be borne by the Developer of and incidental to the Public Purpose to which the contributions in this Agreement relate.
- (e) The parties agree that the obligation on the Developer to provide the Development Contributions under this Agreement only triggers once Planning Approval has been granted for an Outlet Centre.

6 Planning Application

- (a) Where the Developer lodges a Planning Application with the relevant consent authority seeking Planning Approval for the Outlet Centre, it must not lodge that Planning Application:
 - (i) unless and until a minimum of 15,000m² GFA of development within the Development, excluding:
 - (A) commercial, residential, or retail development as defined in the Amending LEP; and
 - (B) the Outlet Centre itselfhas been approved and constructed; or
 - (ii) unless the cumulative effect of that Planning Application is that a minimum of 15,000m² GFA of other development within the Development, excluding:
 - (A) commercial, residential or retail development as defined in the Amending LEP; and
 - (B) the Outlet Centre itself,would be approved as a result of any Planning Approval.

- (b) The Developer must not provide land owner's consent to a Planning Application that does not meet the criteria identified in **subclause (a)**.
- (c) The calculation of GFA for the purpose of this **clause 6** excludes completed development on the Land as at the date the Amending LEP is published on the NSW Legislation website.

7 Application of sections 94, 94A and 94EF of the Act to the Development

This Agreement does not exclude the application of sections 94, 94A and 94EF of the Act to the Development.

8 Registration of this Agreement

- (a) Subject to **clause 15 and clause 8(b)**, the Developer must, at its expense, procure the registration of the Agreement on the relevant folios of the register held by the LPI pertaining to the Land as soon as reasonably practicable after the Commencement Date, but in any event, no later than 120 Business Days after that date.
- (b) The Parties agree that Lot 1021 DP812335 is excluded from the registration requirements in this **clause 8** and that no Outlet Centre will be built on the land in Lot 1021 DP 812335.
- (c) Subject to **clause 8(e)**, until such time as this Agreement is registered on the relevant folios of the register held by the LPI pertaining to the Land, the Developer agrees that the Planning Authority may lodge a caveat to prevent the transfer of the Land but no other Dealing.
- (d) If the Planning Authority lodges a caveat in accordance with **clause 8(c)**, then the Planning Authority will do all things reasonably necessary to:
 - (i) ensure that the caveat does not prevent or delay either the registration of this Agreement or any Dealing with the Land other than a transfer; and
 - (ii) remove the caveat from the title to the Land promptly, following registration of this Agreement in accordance with **clause 8(a)**.
- (e) Despite **clause 8(c)**, the Planning Authority as caveator must consent to registration of a transfer of the Land or any part of the Land from the Developer to a third party if that third party has entered into a Voluntary Planning Agreement on the same terms as this Agreement in accordance with **clause 14**.
- (f) On registration of the Plan of Subdivision, the Planning Authority consents to the Agreement being registered only on that separate lot and the Planning Authority must do all things reasonably necessary, including the execution of any documents, to enable the Developer to:

- (i) remove the notation of this Agreement on the relevant folios of the register, held by the LPI pertaining to the Land or the relevant part of the Land; and
 - (ii) register the notation of this Agreement on the relevant folios of the register, held by the LPI pertaining to the Outlet Land.
- (g) If after 120 Business Days, the Developer has failed or has been unable to register this Agreement on any of the Land in accordance with **clause 8(a)**, the Developer must pay the Council's reasonable costs and expenses, including legal costs, of exercising its rights under **clause 8(c)** of this Agreement.

9 Review of this Agreement

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

10 Dispute Resolution

10.1 Reference to Dispute

If a dispute arises between the Parties in relation to this Agreement, then either Party must resolve that dispute in accordance with this clause.

10.2 Notice of Dispute

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

- (a) the intent to invoke this clause;
- (b) the nature or subject matter of the dispute, including a summary of any efforts made to resolve the dispute other than by way of this clause; and
- (c) the outcomes which the notifying Party wishes to achieve (if practicable).

10.3 Representatives of Parties to Meet

- (a) The representatives of the Parties must promptly (and in any event within 14 Business Days of the written notice provided in accordance with **clause 10.2**) meet in good faith to attempt to resolve the notified dispute.
- (b) The Parties may, without limitation:
 - (i) resolve the dispute during the course of that meeting;
 - (ii) agree that further material, expert opinion or consideration is needed to effectively resolve the dispute (in which event the Parties will, in good faith, agree to a timetable for resolution);

- (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 Neither party may constrain

If:

- (a) at least one meeting has been held in accordance with **clause 10.3**; and
- (b) the Parties have been unable to reach an outcome identified in **clause 10.3(b)(i) to (iii)**; and
- (c) either of the Parties, acting in good faith, forms the view that the dispute is reasonably unlikely to be resolved in accordance with a process agreed under **clause 10.3**,

then, that Party may, by 14 Business Days written notice to the other Party, terminate the dispute resolution process in respect of that dispute. The termination of the process set out in this clause does not of itself amount to a breach of this Agreement.

11 Security and Enforcement

11.1 Security

The Parties agree that registration of this Agreement constitutes suitable means of enforcement for the purpose of section 93F(3)(g) of the Act.

11.2 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 Planning Authority from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Agreement or any matter to which this Agreement relates.

12 Notices

12.1 Delivery

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

- (a) Delivered or posted to that Party at its address set out below.

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

Penrith City Council

Attention: General Manager
Address: 601 High St, Penrith NSW 2750
Fax Number: 02 4732 7958
Email: pgrimson@penrithcity.nsw.gov.au; and
pencit@penrithcity.nsw.gov.au

Penrith Rugby League Club Limited

Attention: General Manager - Corporate Real Estate
Address: 123 Mulgoa Road Penrith NSW 2750
Fax Number: 02 4731 2665
Email: stacey.fishwick@panthers.com.au; and
realestate@panthers.com.au

12.2 Change of Details

If a Party gives the other Party three Business Days notice of a change of its address, email address or fax number, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, electronically sent, posted or faxed to the latest address, email address or fax number.

12.3 Giving of Notice

Subject to **clause 12.4**, any notice, consent, invoice, information, application or request is to be treated as given or made at the following time:

- (a) if it is delivered by process server, when it is served at the relevant address;
- (b) if it is sent by registered post, two Business Days after it is posted; and
- (c) if it is sent by email, when a delivery confirmation report is received by the sender, unless subsequently the sender receives a delivery failure notification, indicating that the electronic mail has not been delivered.

12.4 Delivery outside of business hours

If any notice, consent, information, application or request is delivered on a day that is not a Business Day, or if on a Business Day, after 5.00 pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next Business Day.

13 Approvals and consent

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

14 Assignment and Dealings

14.1 Assignment

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

14.2 Transfer Dealings

- (a) Subject to **clause 8**:
 - (i) The Developer must not have any Transfer Dealings with the Outlet Land unless:
 - (A) Planning Approval is granted for the Outlet Centre; and
 - (B) The Outlet Centre has been constructed; and
 - (C) an Occupation Certificate has been granted for the Outlet Centre.
 - (ii) On satisfaction of **clause 14.2(a)(i)** and subject to **clause 14.2(a)(iii) and (iv)**, the Developer may enter into a Transfer Dealing if the proposed assignee, purchaser or other Party (the "**Incoming Party**") accepts such of the obligations of this Agreement as may be reasonably required.
 - (iii) For the purpose of giving effect to **clause 14.2(a)(ii)** the Planning Authority, the Developer and the Incoming Party must enter into the Novation Deed whereby the Incoming Party agrees to carry out the obligations of the Developer under the Agreement and the Developer is released, from the date of the Novation Deed, from the obligations contained in this Agreement to the extent that they:
 - (A) are novated to the Incoming Party, and
 - (B) remain to be performed.
 - (iv) The Novation Deed may be amended as agreed from time to time by the Parties acting reasonably.

15 Release and discharge

- (a) The Developer will be released from its obligations under this Agreement:

- (i) if the Developer transfers, assigns or disposes of its obligations in accordance with the requirements of **clause 14**;
 - (ii) in respect of any strata lot created on a strata subdivision of the Land, excluding any part of the Outlet Land that is used for the Outlet Centre tenancies, even where the Developer's obligations under this Agreement have not yet been satisfied in respect of that strata lot;
 - (iii) if, subject to **clause 8(f)**, the Land or any part of it created on subdivision of the Land, on the Planning Authority's satisfaction (acting reasonably) that the Land Owner or Developer has complied with its obligations under this Agreement;
 - (iv) if the Amending LEP is declared invalid;
 - (v) if the Planning Approval is declared invalid;
 - (vi) if the Agreement is terminated;
 - (vii) if the Parties agree that the performance of the Agreement has been frustrated by an event outside the control of the Parties to the Agreement;
 - (viii) if the Outlet Land is rezoned, not used for an Outlet Centre or that use ceases; or
 - (ix) if the Parties agree to modify or review the Agreement in accordance with **clause 9** or otherwise agree to discharge the Agreement.
- (b) In any of the circumstances arising under this **clause 15(a)(ii) to (ix)**, the Planning Authority must do all things reasonably necessary, including the execution of any documents, to enable the Developer or Land Owner to remove the notation of this Agreement on the relevant folios of the register, held by the LPI pertaining to the Land or the relevant part of the Land.

16 GST

16.1 Construction

In this **clause 16**:

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

16.2 Intention of the Parties

Without limiting the operation of this **clause 16**, as at the date of this Agreement, the Parties intend that:

- (a) Divisions 81 and 82 of the GST Act apply to the supplies made under and in connection with this Agreement;
- (b) no tax invoices will be exchanged between the Parties; and
- (c) no additional amount will be payable to a Supplier (as defined in **clause 16.4** below) on account of GST.

16.3 Consideration GST exclusive

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

16.4 Payment of GST – additional payment required

- (a) If an entity (**Supplier**) makes a taxable supply under or in connection with this Agreement (**Relevant Supply**), then, subject to **clause 16.4(d)**, the Party required under the other provisions of this Agreement to provide the consideration for that Relevant Supply (**Recipient**) must pay an additional amount to the Supplier (**GST Amount**), as calculated under **clause 16.4(b)**, **16.4(c)** and **16.4(e)** (as appropriate).
- (b) To the extent that the consideration to be provided by the Recipient for the Relevant Supply under the other provisions of this Agreement is a payment of money (including, for the avoidance of doubt, any payment under **clauses 16.4(c)** and **16.4(e)**), the Recipient must pay to the Supplier an additional amount equal to the amount of the payment multiplied by the rate or rates of GST applicable to that Relevant Supply.
- (c) To the extent that the consideration to be provided by the Recipient for that Relevant Supply is neither:
 - (i) a payment of money; nor
 - (ii) a taxable supply,

(Non-taxable non-monetary consideration),

the Recipient must pay to the Supplier an additional amount equal to 1/11th of the GST-inclusive market value of the Non-taxable non-monetary consideration.
- (d) To the extent that the consideration payable by the Recipient is a taxable supply made to the Supplier by the Recipient, then, notwithstanding **clause 16.4(a)** and subject to **clause 16.4(e)**, no additional amount is payable by the Recipient to the Supplier on account of the GST payable on that taxable supply.
- (e) Notwithstanding **clause 16.4(d)** if the GST-inclusive market value of the non-monetary consideration of the Relevant Supply (**Supplier's taxable supply**) is less than the GST-inclusive market value of the non-monetary consideration comprising the taxable supply made by the Recipient to the Supplier for the Supplier's taxable supply (**Recipient's taxable supply**) then, the Recipient must pay to the Supplier an additional amount equal to 1/11th of the difference between the GST-inclusive

market value of the Recipient's taxable supply and the GST-inclusive market value of the Supplier's taxable supply.

- (f) The recipient will pay the GST Amount referred to in this **clause 16.4** in addition to and at the same time as the first part of the consideration is provided for the Relevant Supply.

16.5 Valuation of non-monetary consideration

The Parties will seek to agree upon the market value of any non-monetary consideration which the Recipient is required to provide under **clause 16.4**. If agreement cannot be reached prior to the time that a Party becomes liable for GST, the matter in dispute is to be determined by an independent expert nominated by the President for the time being of the Institute of Chartered Accountants in Australia. The Parties will each pay one half of the costs of referral and determination by the independent expert.

16.6 Tax invoice

The Supplier must deliver a tax invoice to the Recipient before the Supplier is entitled to payment of the GST Amount under **clause 16.4**. The Recipient can withhold payment of the GST Amount until the Supplier provides a tax invoice.

16.7 Adjustment event

If an adjustment event arises in respect of a taxable supply made by a Supplier under this Agreement, the GST Amount payable by the Recipient under **clause 16.4** will be recalculated taking into account any previous adjustment under this clause to reflect the adjustment event and a payment will be made by the Recipient to the Supplier or by the Supplier to the Recipient as the case requires.

16.8 Reimbursements

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

- (a) the amount of the expense, loss or outgoing less any input tax credits in respect of the expense, loss or outgoing to which the other party, or to which the representative member of a GST group of which the other party is a member, is entitled; and
- (b) any additional amount payable under **clause 16.4** in respect of that reimbursement.

16.9 No Merger

This **clause 16** does not merge in the completion, discharge, rescission or termination of this document or on the transfer of any property supplied or to be supplied under this document.

17 Costs

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

18 Entire Agreement

- (a) This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with. No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Agreement was executed, except as permitted by law.
- (b) Pursuant to clause 25E(7) of the Regulation, the Parties agree that the Explanatory Note is not to be used to assist in construing this Agreement.

19 Further acts

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

20 Governing law and jurisdiction

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

21 No fetter

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

22 Representations and warranties

- (a) The Developer represents and warrants that on the date of this Planning Agreement:
 - (i) The Land Owners are the legal and beneficial owners of the Land.
 - (ii) The Land Owners have provided written consent to:

- (A) the Developer entering into and performing its obligations under this Planning Agreement;
 - (B) the registration of the Planning Agreement in the relevant folio of the Land titles;
 - (C) the lodgement by the Planning Authority of caveats notifying their interest in the Planning Agreement in the relevant folio of the Land titles, up until such time as the Agreement is registered in the relevant folios of the register held by the LPI pertaining to the Land.
- (b) The Land Owners have agreed, promptly upon request, to lodge at the LPI the relevant certificates of title to enable the registration of the Planning Agreement in the relevant folios of the Land titles.
- (c) The Parties represent and warrant that they have power to enter into this Agreement and comply with their obligations under this Agreement and that entry into this Agreement will not result in the breach of any law.

23 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.

24 Waiver

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

25 Effect of Schedules

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

26 Relationship of parties

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

27 Further steps

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

28 Counterparts

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

29 Rights cumulative

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

Schedule 1

*Section 93F Requirements

Provision of the Act	This Agreement
Under section 93F(1), the Developer has:	
(a) sought a change to an environmental planning instrument.	(a) Yes
(b) made, or proposes to make, a development application.	(b) Yes
(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.	(c) No
Description of the land to which this Agreement applies- (Section 93F(3)(a))	See schedule 2
Description of the development to which this Agreement applies- (Section 93F(3)(b)(ii))	The Development comprises the 'Panthers Penrith Precinct', being a mixed use development inclusive of 25,000m ² NUFA of Outlet Centre, 12,500m ² GFA of retail, 25,000m ² GFA of campus style offices and entertainment facilities, hotel accommodation, seniors living, residential, recreation facilities and exhibition space.
The scope, timing and manner of delivery of Development Contributions required by this Agreement - (Section 93F(3)(c))	See schedule 3
Applicability of Section 94 of the Act - (Section 93F(3)(d))	Section 94 is not excluded as it applies to the Development.
Applicability of Section 94A of the Act - (Section 93F(3)(d))	Section 94A is not excluded as it applies to the Development.
Applicability of Section 94EF of the Act - (Section 93F(3)(d))	Section 94EF is not excluded as it applies to the Development.
Applicability of Section 93F(3)(e) of the Act	The Developer Contributions to be provided under this Agreement must not be taken into consideration in determining a contribution under s94 in respect of the Development or any other development (as that term is defined in the Act) in relation to the Land.

Provision of the Act	This Agreement
Mechanism for Dispute resolution - (Section 93F(3)(f))	See clause 10.
Enforcement of this Agreement - (Section 93F(3)(g))	See clause 11.
Registration of this Agreement (Section 93H)	See clause 8.
No obligation to grant consent or exercise functions - (Section 93F(9))	See clause 13 and 21.

Schedule 2

Land Description

Title Description	Address
Lot 1021 DP812335	63 Mulgoa Road, Penrith
Lot 1 DP1043008	73 Mulgoa Road, Penrith
Lot 151 DP863625	83 Mulgoa Road, Penrith
Lot 13 DP710086 (part)	123 – 135 Mulgoa Road, Penrith

Schedule 3

	Column 1	Column 2	Column 3	Column 4
No	Contribution	Description	Public Purpose	Timing
1	Tenant's annual reporting	Developer/Outlet Landowner to include a term in the Outlet Centre Tenancy Leases that annual reporting by tenants of the Outlet Centre is required to be made to the Developer/Outlet Landowner (as Lessor) which provides evidence of compliance with the Site Controls for the Outlet Centre	Monitoring of planning impacts of the Outlet Centre	On entry by the Developer/Outlet Landowner into an Outlet Centre Tenancy Lease
2	Developer Outlet Landowner annual reporting	Submission of an annual report by the Developer/Outlet Landowner to Council in relation to the tenants' compliance with the Site Controls for the Outlet Centre as reported under item 1	Monitoring of planning impacts of the Outlet Centre	Submission of the annual report 60 Business Days after the anniversary date of issue of the final Occupation Certificate for the Outlet Centre (or alternate timing as agreed between the Parties in writing)
3	Mandatory lease terms for Outlet Centre Tenancy Leases	Developer to include a "permissible use" term in the Outlet Centre Tenancy Leases that is in accordance with the Amending LEP and make it an essential term of the lease, such that a breach of that mandatory clause would enable the Developer/Outlet Landowner to terminate	Monitoring of planning impacts of the Outlet Centre	On entry by the Developer/Outlet Landowner into an Outlet Centre Tenancy Lease

	Column 1	Column 2	Column 3	Column 4
No	Contribution	Description	Public Purpose	Timing
		the lease		
4	Mandatory lease terms for Outlet Centre Tenancy Leases	Developer/Outlet Landowner to include an essential term in the Outlet Centre Tenancy Leases that the lessee must only sell those types of goods specified in the "Outlet Centre" definition under the Amending LEP, such that a breach of that essential term would enable the landowner to terminate the lease	Monitoring of planning impacts of the Outlet Centre	On entry by the Developer/Outlet Landowner into an Outlet Centre Tenancy Lease
5	Annual preparation and submission of a Management Plan by the Developer/Outlet Landowner	Annual preparation and submission to the Planning Authority of a Management Plan by the Developer/Outlet Landowner that: (a) outlines the terms of all leasing arrangements for the Outlet Centre Tenancy Leases in accordance with the approved land use; (b) contains a system of self-monitoring with respect to the types of goods sold at the Outlet Centre and other trading terms; and (c) identifies the procedures for dealing with occurrences of non-compliance	Monitoring of planning impacts of the Outlet Centre	Submission of the Management Plan 60 Business Days after the anniversary date of issue of the final Occupation Certificate for the Outlet Centre

Schedule 4

Explanatory Note

Environmental Planning and Assessment Regulations 2000

(Clause 25E)

Explanatory Note

Planning Agreement

Under section 93F of the *Environmental Planning and Assessment Act 1979* (NSW) and Clause 25E of the *Environmental Planning and Assessment Regulations 2000*

1 Parties

Penrith City Council ABN 43 794 422 563 of 601 High Street, Penrith New South Wales (**Planning Authority**)

Penrith Rugby League Club Limited ABN 57 000 578 398 of Mulgoa Road, Penrith New South Wales (**Developer**)

2 Description of Subject Land

The land located at the address 63, 73, 83, 123 – 135 Mulgoa Road, Penrith, New South Wales and contained in folio identifies Lot 1021, DP812335, Lot 1 DP1043008, Lot 151 DP863625 and Lot 13 DP710086 (part).

3 Description of Proposed Change to Environmental Planning Instrument

The Developer has submitted a Planning Proposal to the Planning Authority to rezone the Land.

An Amending LEP will facilitate additional development of the 'Panthers Penrith Precinct' on the Land being a mixed use development inclusive of 12,500m² GFA of retail, 25,000m² NUFA of Outlet Centre, 25,000m² GFA of campus style offices, entertainment facilities, hotel accommodation, seniors living, residential, recreation facilities, and exhibition space.

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

The objective of the draft Planning Agreement is to manage the ongoing operation of the proposed Outlet Centre associated with the 'Panthers Penrith Precinct'.

The nature of the draft Planning Agreement is a contractual relationship between Penrith City Council and the Developer for the provision of Development Contributions as listed in Schedule 3 to manage the proposed Outlet Centre being a component of the Development and how it will be provided.

The effect of the draft Planning Agreement is that the Developer must provide Development Contributions that include:

- (a) Annual reporting by tenants providing evidence of compliance with the Site Controls for the Outlet Centre.
- (b) Annual reporting by the land owner to Council in relation to the tenants' compliance with the Site Controls for the Outlet Centre.
- (c) A requirement that all leases contain mandatory provisions that state that all lessees must only sell types of goods specified in the Outlet Centre definition.
- (d) Annual production and submission to Council of a Management Plan by Centre Management.

The draft Planning Agreement:

- (a) Contains a schedule including the description, purpose and timing required in relation to the above Development Contribution.
- (b) Includes a requirement that the Developer will not transfer ownership to another party of any separate lot created by Subdivision to contain the Outlet Centre where it will be used for an Outlet Centre use until the Outlet Centre is approved, constructed and is operational.
- (c) Includes a requirements that the consent authority must not consent to a development application for the Outlet Centre unless a minimum of 15,000sqm of floor space of other development (not being commercial, residential or retail) is developed on the Land prior to or concurrently with an Outlet Centre.
- (d) Does not exclude the application of s94, s94A and s94EF of the Act to the Development.
- (e) Is required to be registered on the Land as security.

5 Assessment of the Merits of the Draft Planning Agreement, including the impact on the public or any relevant section of the public

The draft Planning Agreement satisfies the objectives through the Developer making Development Contributions for the ongoing management of a proposed Outlet Centre being a component of the Development to ensure minimal retail impacts by the Development and to ensure that the Development maintains a community benefit.

The positive impact on the public is that the public will gain benefit from the Development Contributions.

The negative impact on the public is that Penrith City Council will need to monitor the Development Contributions

6 Other Matters

6.1 How the draft Planning Agreement promotes public interest and one or more of the objects of the Act

The draft Planning Agreement promotes the public interest by:

- Promoting and coordinating the orderly and economic use and development of the Land.

And therefore promotes the objects of the *Environmental Planning and Assessment Act 1979* as set out in s5(a)(ii).

6.2 How the draft Planning Agreement promotes one or more of the elements of the council's charter under Section 8 of the Local Government Act 1993

The draft Planning Agreement is consistent with Council's charter under Section 8 of the Local Government Act 1993:

- (a) to have regard to the long term and cumulative effects of its decisions
- (b) to engage in the long term strategic planning on behalf of the local community; and
- (c) to keep the local community and the State government (and through it, the wider community) informed about its activities

6.3 The planning purpose/s served by the draft Planning Agreement

The draft Planning Agreement will provide for a reasonable means of achieving the planning purpose by ensuring that the proposed Outlet Centre is properly managed and monitored to ensure there is a net community benefit to enable Development to occur.

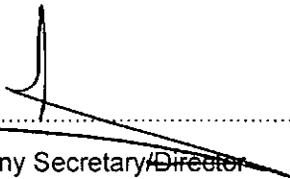
6.4 Whether the draft Planning Agreement conforms with Council's capital works program

The draft Planning Agreement does not impact on Council's capital works program.

Executed as a deed

Executed by Penrith Rugby League Club Limited ABN 57 000 578 398

)
)


.....
Company Secretary/Director

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


.....
Director

DON FELTS
.....
Name of Director (print)

Executed by Penrith City Council by its duly appointed officer in the presence of:

)
)
)


.....
Witness

Glenn McCartney
.....
Name of Witness (print)


.....
Officer

Alan Stoneham
.....
Name of Officer (print)

Annexure A

Novation Deed

Penrith City Council

Penrith Rugby League Club Limited

[Insert Name of New Developer]

Deed of Novation for Planning Agreement (Outlet Centre)

Contents

1	Interpretation	1
	1.1 Definitions	1
	1.2 Construction	1
	1.3 Headings	2
2	Novation	2
	2.1 Original Agreement	2
	2.2 Reference in Original Agreement	2
	2.3 Address for notices	3
3	Affirmation of the Original Agreement	3
4	Indemnities	3
5	Warranties and representations	3
	5.1 Warranties	3
	5.2 Survival of warranties	4
6	GST	4
7	Stamp duty and costs	4
8	Further acts	4
9	Amendment	4
10	Governing law	4
11	Counterparts	4

Date

Parties

Penrith City Council ABN 43 794 422 563 of 601 High Street, Penrith New South Wales (**Planning Authority**)

Penrith Rugby League Club Limited ABN 57 000 578 398 of Mulgoa Road, Penrith New South Wales (**Original Developer**)

[Insert Name] ACN [Insert ABN] of [Insert Address] New South Wales (New Developer)

Background

- A The Planning Authority and the Original Developer are parties to the Original Agreement.
 - B The Original Agreement relates to the whole of the Land ***[or part of the Land (provide description of the relevant part of the Land)]***.
 - C The Original Developer wishes to novate all of its rights and obligations to the New Developer.
-

Agreed terms

1 Interpretation

1.1 Definitions

In this document:

Effective Date means ***[Insert Date]***

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

Original Agreement means the planning agreement dated ***[Insert Date]*** and made between the Planning Authority and the Original Developer.

1.2 Construction

Unless expressed to the contrary, in this document:

- (a) words in the singular include the plural and vice versa;
- (b) any gender includes the other genders;

- (c) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (d) "includes" means includes without limitation;
- (e) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;
- (f) a reference to:
 - (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
 - (ii) a person includes the person's legal personal representatives, successors, assigns and persons substituted by novation;
 - (iii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
 - (iv) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;

1.3 Headings

Headings do not affect the interpretation of this document.

2 Novation

2.1 Original Agreement

Subject to **clause 2.2** and with effect from the Effective Date:

- (a) the New Developer is substituted for the Original Developer as a party to the Original Agreement;
- (b) the New Developer will be bound by the Original Agreement, and will be entitled to the benefit of the Original Agreement, as if the New Developer was a party to the Original Agreement instead of the Original Developer; and
- (c) the Original Developer is released and discharged from all obligations and liabilities, and from all claims (whether for costs, damages, fees, expenses or otherwise), arising under the Original Agreement.

2.2 Reference in Original Agreement

All references to the Original Developer in the Original Agreement are to be construed as references to the New Developer.

2.3 Address for notices

The Planning Authority must address all notices and communications to be given or made by it to the New Developer under the Original Agreement to the following address:

New Developer:

Address: **[Insert]**

Fax: **[Insert]**

Contact Person: **[Insert]**

Email: **[Insert]**

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 Indemnities

The New Developer indemnifies the Original Developer on demand against all liabilities, claims, damages and loss which the Original Developer suffers or incurs in relation to the Original Agreement including those which arise or relate to acts or omissions occurring on or after the Effective Date.

5 Warranties and representations

5.1 Warranties

Each party represents and warrants that, at the time of execution, and at the Effective Date:

- (a) it has capacity unconditionally to execute, deliver and comply with its obligations under this document;
- (b) it has taken all necessary action to authorise the unconditional execution and delivery of, and the compliance with, its obligations under this document;
- (c) this document is a valid and legally binding obligation and is enforceable against it by each other party in accordance with its terms; and
- (d) its unconditional execution and delivery of, and compliance with its obligations under, this document do not contravene:
 - (i) any law or directive from a government entity;
 - (ii) its constituent documents;
 - (iii) any agreement or instrument to which it is a party; or

(iv) any obligation of it to any other person.

5.2 Survival of warranties

The warranties and representations in **clause 5.1** survive the execution of this document and the novation of the Original Agreement.

6 GST

Where a supply made under this deed gives rise to a liability for GST, the consideration to be provided for that supply (other than under this clause) shall be increased by an additional amount equal to the GST payable on the supply. The additional amount must be paid, and the supplier must provide a tax invoice, at the same time as the other consideration for that supply is to be provided under this deed. Terms used in this clause have the meanings in the *A New Tax System (Goods and Services Tax) Act 1999*.

7 Stamp duty and costs

The New Developer will pay all stamp duty arising directly or indirectly from this deed.

8 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.

9 Amendment

This document may only be varied or replaced by a document executed by the parties

10 Governing law

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

11 Counterparts

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

Executed as a deed

Executed by Penrith Rugby League)
Club Limited ABN 57 000 578 398)

.....
Company Secretary/Director

.....
Director

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

.....
Name of Director (print)

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

.....
Witness

.....
Officer

.....
Name of Witness (print)

.....
Name of Officer (print)

Executed by *[Insert New Developer
Name and ABN]*)
)

.....
Company Secretary/Director

.....
Director

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

.....
Name of Director (print)