

Deed

Former Bushells Factory Planning Agreement

Under s7.4 of the *Environmental Planning and Assessment Act 1979*

**Canada Bay City Council
New Concord Development Pty Ltd**

Dated: 21 AUGUST 2023

Former Bushells Factory Planning Agreement

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Summary Sheet

Council:

Name: City of Canada Bay Council
Address: Locked Bag 1470 DRUMMOYNE NSW 2047
Telephone: 02 9911 6555
Facsimile: 02 9911 6550
Email: council@canadabay.nsw.gov.au
Representative: General Manager

Developer:

Name: New Concord Development Pty Ltd
Address: 160 Burwood Road, Concord NSW 2137
Telephone: 02 9747 9400]
Email: john.elliott@freshfood.com.a
Representative: John Elliot

Land:

See definition of *Land* in clause 1.1.

Development:

See definition of *Development* in clause 1.1.

Development Contributions:

See clause 9 and Schedule 1.

Application of s7.11, s7.12 and s7.24 of the Act:

See clause 8.

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Security:

See Part 6.

Registration:

See clause 33.

Restriction on dealings:

See clause 34.

Dispute Resolution:

See Part 5.

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Under s7.4 of the *Environmental Planning and Assessment Act 1979*

Parties

City of Canada Bay Council ABN 79 130 029 350 of Locked Bag 1470
DRUMMOYNE NSW 2047 (**Council**)

and

New Concord Development Pty Limited ABN 68 615 291 088 of 160
Burwood Rd (**Developer**)

Background

- A The Developer owns the Land.
- B The Developer has sought an amendment to the LEP to change the zoning of the Land, and the development standards applying to the Land and to list the former Bushells factory building as an item of local heritage.
- C The Developer has offered to make Development Contributions under this Deed if the LEP Amendment is made and if development consent is granted to the carrying out of the Development.

Operative provisions

Part 1 - Preliminary

1 Interpretation

- 1.1 In this Deed the following definitions apply:

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

Approval includes approval, consent, licence, permission or the like.

Authority means the Commonwealth or New South Wales government, a Minister of the Crown, a government department, a public authority established by or under any Act, a council or county council constituted under the *Local Government Act 1993*, or a person or body exercising functions under any Act including a commission, panel, court, tribunal and the like.

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

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

Building means the buildings approved under any Development Consent for the Development which contain residential or commercial floor space.

Claim includes a claim, demand, remedy, suit, injury, damage, loss, Cost, liability, action, proceeding or right of action.

Contamination has the same meaning as in the CLM Act.

Contaminated Land Consultant means a suitably qualified environmental consultant with experience in land contamination and remediation in New South Wales certified by one of the following certification schemes or equivalent: the ELIANZ Contaminated Land Assessment Specialist Certified Environmental Practitioner (CEnvP) Site Contamination (SC) scheme, Site Contamination Practitioners Australia – Certified Practitioner (SCPA), or Certified Professional Soil Scientist Contaminated Site Assessment and Management (CPSS CSAM)

Cost means a cost, charge, expense, outgoing, payment, fee and other expenditure of any nature.

CLM Act means the *Contaminated Land Management Act 1997*.

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

Dedication Plan means the plan in Schedule 2.

Deed means this Deed and includes any schedules, annexures and appendices to this Deed.

Defect means anything that adversely affects, or is likely to adversely affect, the appearance, structural integrity, functionality or use or enjoyment of a Work or any part of a Work.

Defects Liability Period means the period of 2 years commencing on the day immediately after a Work is completed for the purposes of this Deed.

Design Life means the period of time during which no major maintenance is required to an infrastructure asset to maintain its serviceability and function.

Development means the development of the Land facilitated by the LEP Amendment.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

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Development Contribution means a monetary contribution, the dedication of land free of cost, the carrying out of work, or the provision of any other material public benefit, or any combination of them, to be used for, or applied towards a public purpose, but does not include any Security or other benefit provided by a Party to the Council to secure the enforcement of that Party's obligations under this Deed for the purposes of s7.4(3)(g) of the Act.

Dispute means a dispute or difference between the Parties under or in relation to this Deed.

ELNO has the meaning given to that term in the Participation Rules.

Equipment means any equipment, apparatus, vehicle or other equipment or thing to be used by or on behalf of the Developer in connection with the performance of its obligations under this Deed.

Final Lot means a lot created in the Development capable of separate occupation, use or disposition for residential purposes or a lot of a kind or created for a purpose that is otherwise agreed by the Parties, not being a lot created by a subdivision of the Land:

- (a) that is to be dedicated or otherwise transferred to the Council, or
- (b) on which is situated a dwelling-house that was in existence on the date of this Deed.

GST has the same meaning as in the GST Law.

GST Law has the same meaning as 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.

Item means a Development Contribution item specified in Column 1 of Schedule 1.

Just Terms Act means the *Land Acquisition (Just Terms Compensation) Act 1991*.

Land means Lot 5 in DP129325, Lot 2 in DP230294, Lot 398 in DP 752023 and Lot 399 in DP 752023 known as 160 Burwood Road, Concord, and any lot created by a subdivision or consolidation of those lots.

LEP means the *Canada Bay Local Environmental Plan 2013*.

LEP Amendment means an amendment to the LEP as a result of the Planning Proposal.

Maintain, in relation to a Work, means keep in a good state of repair and working order, and includes repair of any damage to the Work.

New Foreshore Park means land with an area of not less than 5,900sqm as shown on the Dedication Plan and which is to be zoned RE1 under the LEP.

Occupation Certificate has the same meaning as in the Act.

Participation Rules means the participation rules as determined by the *Electronic Conveyancing National Law* (NSW).

Party means a party to this Deed.

Principal Contractor means the person defined in as the Principal Contractor under the *Work Health and Safety Act 2011* (NSW) or *Work Health and Safety Regulation 2011* (NSW) or an equivalent under Commonwealth work health and safety laws.

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Planning Proposal means the *160 Burwood Rd, Concord Bushells Factory Redevelopment Amended Planning Proposal (PP2018/0003)* dated June 2020 as amended by Council at its meeting on 28 March 2023.

Public Domain Land means an area of approximately 9740m² and generally in the location marked as 'Public Domain Land' in the Public Domain Plan.

Public Domain Plan means the plan in Schedule 4.

Public Easement means an easement and restriction on use to be registered on the title to the Land and burdening the Public Domain Land in the same terms as the terms in Schedule 7, or on such other terms agreed by Council.

Rectification Notice means a notice in writing:

- (a) identifying the nature and extent of a Defect,
- (b) specifying the works or actions that are required to Rectify the Defect,
- (c) specifying the date by which or the period within which the Defect is to be rectified.

Rectify means rectify, remedy or correct.

Regulation means the *Environmental Planning and Assessment Regulation 2021*.

Seawall Renewal Works means the reconstruction of the seawall along the frontage of the New Foreshore Park at the location shown in Schedule 3 in accordance with the requirements in Schedule 5.

Security means a cash deposit, or Bank Guarantee or bond issued by a financial institution approved by the Council, or other form of security to the satisfaction of the Council, indexed in accordance with the CPI from the date of this Deed.

Site Audit Report has the same meaning as in the CLM Act.

Site Audit Statement has the same meaning as in the CLM Act.

Stage means a stage of the Development approved by a Development Consent or otherwise approved in writing by the Council for the purposes of this Deed.

WHS Law means the *Work Health and Safety Act 2011 (NSW)* and *Work Health and Safety Regulation 2011 (NSW)*.

Work means the physical result of any building, engineering or construction work in, on, over or under land required to be carried out under this Deed, and includes the remediation of Contamination required under this Deed.

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

- 1.2.1 Headings are inserted for convenience only and do not affect the interpretation of this Deed.
- 1.2.2 A reference in this Deed to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
- 1.2.3 If the day on which any act, matter or thing is to be done under this Deed is not a business day, the act, matter or thing must be done on the next business day.

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- 1.2.4 A reference in this Deed to dollars or \$ means Australian dollars and all amounts payable under this Deed are payable in Australian dollars.
- 1.2.5 A reference in this Deed to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST.
- 1.2.6 A reference in this Deed 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.
- 1.2.7 A reference in this Deed to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- 1.2.8 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed.
- 1.2.9 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- 1.2.10 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.
- 1.2.11 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.
- 1.2.12 References to the word 'include' or 'including' are to be construed without limitation.
- 1.2.13 A reference to this Deed includes the agreement recorded in this Deed.
- 1.2.14 A reference to a Party to this Deed includes a reference to the employees, agents and contractors of the Party, the Party's successors and assigns.
- 1.2.15 A reference to 'dedicate' or 'dedication' in relation to land is a reference to dedicate or dedication free of cost.
- 1.2.16 Any schedules, appendices and attachments form part of this Deed.
- 1.2.17 Notes appearing in this Deed are operative provisions of this Deed.

2 Status of this Deed

- 2.1 This Deed is a planning agreement within the meaning of s7.4(1) of the Act.
- 2.2 The Developer agrees that this deed operates as a deed poll in favour of the Council on and from the date of execution of this deed by the Developer until the date on which this deed commences.

3 Commencement

- 3.1 This Deed commences and has force and effect on and from the date when the Parties have:

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- 3.1.1 both executed the same copy of this Deed, or
- 3.1.2 each executed separate counterparts of this Deed and exchanged the counterparts.
- 3.2 The Parties are to insert the date when this Deed commences on the front page and on the execution page.

4 Application of this Deed

- 4.1 This Deed applies to the Land, the LEP Amendment and to the Development.

5 Warranties

- 5.1 The Parties warrant to each other that they:
 - 5.1.1 have full capacity to enter into this Deed, and
 - 5.1.2 are able to fully comply with their obligations under this Deed.

6 Further agreements

- 6.1 The Parties may, at any time and from time to time, enter into agreements relating to the subject-matter of this Deed that are not inconsistent with this Deed for the purpose of implementing this Deed.

7 Surrender of right of appeal, etc.

- 7.1 The Developer is not to commence or maintain, or to cause or procure the commencement or maintenance, of any proceedings in any court or tribunal or similar body appealing against, or questioning the validity of this Deed, or an Approval relating to the Development in so far as the subject-matter of the proceedings relates to this Deed.

8 Application of s7.11, s7.12 and s7.24 of the Act to the Development

- 8.1 This Deed does not exclude the application of s7.11 or s7.12 of the Act to the Development.
- 8.2 The benefits under this Deed are not to be taken into consideration when determining a development contribution under s7.11 of the Act in relation to the Development.
- 8.3 This Deed does not exclude the application of s7.24 of the Act to the Development.

Part 2 – Development Contributions Generally

9 Provision of Development Contributions

- 9.1 The Developer is to make Development Contributions to the Council in accordance with Schedule 1, any other provision of this Deed relating to the making of Development Contributions and otherwise to the satisfaction of the Council.
- 9.2 The Council is to apply each Development Contribution made by the Developer under this Deed towards the public purpose for which it is made and otherwise in accordance with this Deed.
- 9.3 Despite clause 9.2, the Council may apply a Development Contribution made under this Deed towards a public purpose other than the public purpose specified in this Deed if the Council reasonably considers that the public interest would be better served by applying the Development Contribution towards that other purpose rather than the purpose so specified.
- 9.4 Any value for a Work required to be provided under this Deed is to be indexed in accordance with the CPI from the date the value is determined to the date the Development Contribution is provided.

Part 3 –Provisions relating to dedication of Land

10 Preconditions to Dedication of the New Foreshore Park

- 10.1 Prior to the dedication of the New Foreshore Park registration of the Public Easement, and the issuing of the first Occupation Certificate for the last Building in the Development, the Developer must (at its cost):
 - 10.1.1 remediate the New Foreshore Park and Public Domain Land to a standard suitable for the purposes of a publicly accessible public park for recreational uses and publicly accessible public domain in accordance with:
 - (a) Council's *Contaminated Land Policy*;
 - (b) *State Environmental Planning Policy (Resilience and Hazards) 2021*;
 - (c) any guidelines in force under the CLM Act;
 - (d) any Approval;
 - (e) the lawful requirements of any Authority; and
 - (f) all applicable laws,and must retain a Contaminated Land Consultant to supervise all aspects of the site remediation;
 - 10.1.2 obtain and provide to the Council a site validation report for the New Foreshore Park and Public Domain Land prepared by a Contaminated Land Consultant which documents:

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- (a) the extent of validation sampling;
 - (b) that the remediation and validation has been undertaken in accordance with any approved remediation action plan; and
 - (c) that the New Foreshore Park and Public Domain Land is suitable for the purposes stated in clause 10.1.1 above (without being subject to compliance with an environmental management plan);
- 10.1.3 obtain and provide to the Council a Site Audit Report and Site Audit Statement addressed to the Council which states that the New Foreshore Park and Public Domain Land has been remediated in accordance with any approved remediation action plan and is suitable for the purposes stated in clause 10.1.1 above (without being subject to compliance with an environmental management plan);
- 10.1.4 carry out and complete the embellishment of the New Foreshore Park and Public Domain Land as required by Item C1 of Schedule 1; and
- 10.1.5 carry out and complete the Seawall Renewal Works in accordance with the requirements in Schedule 5 and this Deed.
- 10.2 The Developer indemnifies and agrees to keep indemnified the Council:
 - 10.2.1 against all Claims made against the Council as a result of any Contamination on or emanating from the New Foreshore Park and Public Domain Land but, in respect of the New Foreshore Park, only in relation to Contamination that existed on or before the date that the New Foreshore Park is transferred or dedicated to Council or compulsorily acquired by Council pursuant to this Deed, and
 - 10.2.2 in relation to any failure of the Developer to comply with this clause 10.
- 10.3 Without limiting any other provision of this Deed, the Council is not required to accept dedication of the New Foreshore Park unless and until the Developer has complied with this clause 10, and the Developer must not register the Public Easement unless it has complied with this clause 10.

11 When land is dedicated

- 11.1 A Development Contribution comprising the dedication of land is made for the purposes of this Deed when:
 - 11.1.1 The Council is provided with
 - (a) a Clearance Certificate that is valid at the time of dedication of land, or
 - (b) the Foreign Resident Capital Gains Withholding Amount in respect of the land to be dedicated, and
- one of the following has occurred:
- (a) a deposited plan is registered in the register of plans held with the Registrar-General that dedicates land as a public road (including a temporary public road) under the *Roads Act 1993* or creates a public reserve or drainage reserve under the *Local Government Act 1993*, or

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- (b) the Council is given evidence that a transfer has been effected by means of electronic lodgement through Property Exchange Australia Ltd or another ELNO.
- 11.2 The Developer is to do all things reasonably necessary to enable registration of the instrument of transfer to occur.
- 11.3 The Developer is to ensure that land dedicated to the Council under this Deed is free of all encumbrances and affectations (whether registered or unregistered and including without limitation any charge or liability for rates, taxes and charges) except as otherwise agreed in writing by the Council.
- 11.4 If, having used all reasonable endeavours, the Developer cannot ensure that land to be dedicated to the Council under this Deed is free from all encumbrances and affectations, the Developer may request that Council agree to accept the land subject to those encumbrances and affectations, but the Council may withhold its agreement in its absolute discretion.

Part 4 –Provisions relating to carrying out of Work

12 Principal Contractor

- 12.1 The Developer is to notify the Council of the details of the Principal Contractor for a Work before any construction of the Work occurs.

13 Carrying out of Work

- 13.1 The Developer is to carry out and complete each Work in a good and workmanlike manner having regard to the intended purpose of the Work and in accordance with:
 - 13.1.1 the location, design, specifications, materials, and finishes for the Work approved by Council,,
 - 13.1.2 any Approval,
 - 13.1.3 the lawful requirements of any Authority, and
 - 13.1.4 all applicable laws.
- 13.2 The Developer is to give the Council not less than 5 business days' written notice of its intention to commence carrying out of a Work.
- 13.3 The Developer is to ensure that anything necessary for the proper performance of its obligations under this Deed is supplied or made available.

14 Warranties relating to Work

- 14.1 The Developer warrants to the Council that:
 - 14.1.1 it has obtained all Approvals and has complied with all laws and applicable industry standards in relation to each Work,

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14.1.2 it accepts that, if any aspect of a Work does not comply with this Deed, the Council is entitled to require the Developer to cease the Work and immediately pursue its legal and equitable rights and remedies relating to the non-compliance,

14.1.3 each Work, when completed, are to be fit for purpose.

15 Ownership & Care of Works

15.1 The Developer owns, and is responsible for care of, each Work, and bears all risk and liability in connection with the Work, unless and until the part of the Land on which the Work is located is dedicated to Council.

16 Work Health & Safety

- 16.1 The Developer acknowledges that it is the Principal Contractor under WHS Law for the Works unless and until such time that the Developer engages a person to construct the Works, or engages another person conducting a business, or undertaking, to be the Principal Contractor for the Works, and authorises the person to have management or control of the workplace relating to the Works and to discharge the duties of a Principal Contractor under WHS Law.
- 16.2 If the Developer at any time terminates the engagement of the person engaged to construct the Works or to otherwise be the Principal Contractor for the Works, the Developer becomes the Principal Contractor until such time as a new person is appointed to construct the Works or to otherwise be the Principal Contractor for the Works.
- 16.3 The Developer is to use its best endeavours to ensure that all persons involved in the Works comply with relevant WHS Law and procedures.
- 16.4 The Developer is to use its best endeavours to ensure that:
- 16.4.1 the Council can audit, inspect and test the Works without breaching WHS Law,
 - 16.4.2 the Council can access and use the Works without breaching WHS Law.
- 16.5 The Developer is to promptly inform the Council of any serious incident or dangerous occurrence occurring in relation to the Works where a person is injured or otherwise exposed to a risk to his or her health or safety, including, but not limited to, an incident which is required to be reported to WorkCover.

17 Approval of Works

- 17.1 The location, design, specifications, materials and finishes for a Work are to be determined and approved in accordance with this clause.
- 17.2 Before commencing the design of a Work, the Developer is to request the Council to provide the Developer with the Council's requirements for the location, design, specifications, materials and finishes for the Work.
- 17.3 Before commencing the design of the Seawall Renewal Works, the Developer is to:

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- 17.3.1 provide the Council with a geotechnical assessment which includes:
 - (a) borehole testing of the existing ground conditions to bedrock beneath the proposed wall and ground supported by the existing seawall; and
 - (b) an assessment of the suitability of a basalt stone revetment wall for the proposed seawall over the asset lifecycleprepared by a suitably qualified structural engineer, and
- 17.3.2 request the Council, TfNSW and NSW Fisheries to provide the Developer with any documents which outline specifications or requirements for the Seawall Renewal Works.
- 17.4 For the Seawall Renewal Works, the Developer is then to:
 - 17.4.1 provide Council with a copy of TfNSW's and NSW Fisheries specifications and requirements for the Seawall Renewal Works, and
 - 17.4.2 submit to the Council, TfNSW and NSW Fisheries for Approval details of the location, design, specifications, materials and finishes for the Seawall Renewal Works, which must comply with the specifications and requirements provided by Council, TfNSW and NSW Fisheries to the greatest extent possible.
- 17.5 For Works other than the Seawall Renewal Works, the Developer is to submit details of the location, design, specifications, materials and finishes to Council for Approval.
- 17.6 The Council may reasonably require the Developer to make any change to the location, design, specifications, materials and finishes for the Work that it reasonably considers necessary or desirable as a precondition to approving the design of the Work.
- 17.7 The Developer is to make any change to the location, design, specifications, materials, and finishes of the Work as is reasonably required by the Council and by TfNSW and NSW Fisheries (in respect of the Seawall Renewal Works).
- 17.8 The Developer is not to make any application for any Approval for a Work and is not to commence construction of a Work unless the Council, and Council, TfNSW and NSW Fisheries (in respect of the Seawall Renewal Works) have first notified the Developer of their approval of the location, design, specifications, materials and finishes of the Work.

18 Variation to Work

- 18.1 The design or specification of any Work that is required to be carried out by the Developer under this Deed may be varied by agreement in writing between the Parties, acting reasonably, without the necessity for an amendment to this Deed
- 18.2 Without limiting clause 18.1, the Developer may make a written request to the Council to approve a variation to the design or specification of a Work in order to enable it to comply with the requirements of any Authority imposed in connection with any Approval relating to the carrying out of the Work.
- 18.3 The Council is not to unreasonably delay or withhold its approval to a request made by the Developer under clause 18.1.

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- 18.4 The Council, acting reasonably, may from time to time give a written direction to the Developer requiring it to vary the design or specification of a Work before the Work is carried out in a specified manner and submit the variation to the Council for approval.
- 18.5 The Developer is to comply promptly with a direction referred to in clause 18.4 at its own cost.

19 Access to land by Council

- 19.1 The Council may enter any land on which Work is being carried out by the Developer under this Deed in order to inspect, examine or test the Work, or to remedy any breach by the Developer of its obligations under this Deed relating to the Work.
- 19.2 The Council is to give the Developer prior reasonable notice before it enters land under clause 19.1.

20 Protection of people, property & utilities

- 20.1 The Developer is to ensure to the fullest extent reasonably practicable in relation to the performance of its obligations under this Deed that:
 - 20.1.1 all necessary measures are taken to protect people and property,
 - 20.1.2 unnecessary interference with the passage of people and vehicles is avoided, and
 - 20.1.3 nuisances and unreasonable noise and disturbances are prevented.
- 20.2 Without limiting clause 20.1, the Developer is not to obstruct, interfere with, impair or damage any public road, public footpath, public cycleway or other public thoroughfare, or any pipe, conduit, drain, watercourse or other public utility or service on any land except as authorised in writing by the Council or any relevant Authority.

21 Repair of damage

- 21.1 The Developer is to Maintain any Work required to be carried out by the Developer under this Deed until the Work is completed for the purposes of this Deed or if the Work is located on land to be dedicated to Council, until that land is dedicated, or such later time as agreed between the Parties.
- 21.2 The Developer is to carry out its obligation under clause 21.1 at its own cost and to the satisfaction of the Council.

22 Completion of Work

- 22.1 The Developer is to give the Council not less than 5 business days' written notice of the date on which it will complete Work required to be carried out under this Deed.

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- 22.2 The Council is to inspect the Work the subject of the notice referred to in clause 22.1 within 10 business days of the date specified in the notice for completion of the Work.
- 22.3 Work required to be carried out by the Developer under this Deed, is completed for the purposes of this Deed when the Council, acting reasonably, gives a written notice to the Developer to that effect.
- 22.4 If the Council is the owner of the land on which Work the subject of a notice referred to in clause 22.3 is issued, the Council assumes responsibility for the Work 10 business days after the issuing of the notice, but if it is not the owner at that time, it assumes that responsibility when it later becomes the owner. Council does not assume responsibility for any Work on the Public Domain Land.
- 22.5 Before the Council gives the Developer a notice referred to in clause 22.3, it may give the Developer a written direction to complete, rectify or repair any specified part of the Work to the reasonable satisfaction of the Council.
- 22.6 The Developer, at its own cost, is to promptly comply with a direction referred to in clause 22.5.
- 22.7 The Developer is to procure in favour of the Council from the Developer's contractor engaged in relation to a Work, any warranty reasonably required by the Council relating to the design, construction, supervision, inspection, testing or certification of the Work.

23 Rectification of defects

- 23.1 The Council may give the Developer a Rectification Notice during the Defects Liability Period.
- 23.2 The Developer, at its own cost, is to comply with a Rectification Notice according to its terms and to the reasonable satisfaction of the Council.
- 23.3 The Council is to do such things as are reasonably necessary to enable the Developer to comply with a Rectification Notice that has been given to it under clause 23.1.
- 23.4 For the avoidance of doubt clause 31 applies to a failure to comply with a Rectification Notice.

24 Works-As-Executed-Plan

- 24.1 No later than 5 business days after Work is completed for the purposes of this Deed, the Developer is to submit to the Council a full works-as-executed-plan in respect of the Work.
- 24.2 The Developer, being the copyright owner in the plan referred to in clause 24.1, gives the Council a non-exclusive licence to use the copyright in the plans for the purposes of this Deed.

25 Removal of Equipment

- 25.1 When Work on any Council owned or controlled land is completed for the purposes of this Deed, the Developer, without delay, is to:

- 25.1.1 remove any Equipment from Land and make good any damage or disturbance to the land as a result of that removal, and
- 25.1.2 leave the land in a neat and tidy state, clean and free of rubbish.

Part 5 – Dispute Resolution

26 Dispute resolution – expert determination

- 26.1 This clause applies to a Dispute between any of the Parties to this Deed concerning a matter arising in connection with this Deed that can be determined by an appropriately qualified expert if:
 - 26.1.1 the Parties to the Dispute agree that it can be so determined, or
 - 26.1.2 the Chief Executive Officer of the professional body that represents persons who appear to have the relevant expertise to determine the Dispute gives a written opinion that the Dispute can be determined by a member of that body.
- 26.2 A Dispute to which this clause applies is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 26.3 If a notice is given under clause 26.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 26.4 If the Dispute is not resolved within a further 28 days, the Dispute is to be referred to the President of the NSW Law Society to appoint an expert for expert determination.
- 26.5 The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.
- 26.6 Each Party is to bear its own costs arising from or in connection with the appointment of the expert and the expert determination.
- 26.7 The Parties are to share equally the costs of the President, the expert, and the expert determination.

27 Dispute Resolution - mediation

- 27.1 This clause applies to any Dispute arising in connection with this Deed other than a Dispute to which clause 26 applies.
- 27.2 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 27.3 If a notice is given under clause 27.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 27.4 If the Dispute is not resolved within a further 28 days, the Parties are to mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and are to request the President of the Law Society to select a mediator.
- 27.5 If the Dispute is not resolved by mediation within a further 28 days, or such longer period as may be necessary to allow any mediation process which has

been commenced to be completed, then the Parties may exercise their legal rights in relation to the Dispute, including by the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.

- 27.6 Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.
- 27.7 The Parties are to share equally the costs of the President, the mediator, and the mediation.

Part 6 - Enforcement

28 Security for performance of obligations

- 28.1 The Developer is to provide Security to the Council in the amount of 100% of the value of the Works (other than the remediation of Contamination) in relation to the performance of its obligations under this Deed.
- 28.2 The Developer is to provide the Security to the Council for a Work (other than the remediation of Contamination) before it commences the Work.
- 28.3 The Parties are to agree on a suitably qualified quantity surveyor and jointly brief the agreed quantity surveyor, at the Developer's cost, to prepare a report on the estimated cost of carrying out each Work in respect of which Security is required, which will be the value of the Work for the purposes of clause 28.1.
- 28.4 The Council, in its absolute discretion, may refuse to allow the Developer to enter, occupy or use any land owned or controlled by the Council or refuse to provide the Developer with any plant, equipment, facilities or assistance relating to the carrying out the Development if the Developer has not provided the Security to the Council in accordance with this Deed.
- 28.5 The Council may call-up and apply the Security in accordance with clause 31 to remedy any breach of this Deed notwithstanding any other remedy it may have under this Deed, under any Act or otherwise at law or in equity.
- 28.6 The Council is to release and return part of the Security for a Work or any unused part of it to the Developer within 14 days of completion of the Work, such that during the Defects Liability Period for the Work the Council holds Security in the amount of 10% of the value of that Work, determined in accordance with this clause.
- 28.7 The Council is to release and return the Security for a Work or any unused part of it to the Developer within 14 days of completion of the Defects Liability Period for the Work.
- 28.8 The Developer may at any time provide the Council with a replacement Security.
- 28.9 On receipt of a replacement Security, the Council is to release and return the Security that has been replaced to the Developer.
- 28.10 If the Council calls-up the Security or any portion of it, it may, by written notice to the Developer, require the Developer to provide a further or replacement Security to ensure that the amount of Security held by the Council equals the amount it is entitled to hold under this Deed.

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- 28.11 The Developer is to ensure that the Security provided to the Council is at all times maintained to the full current indexed value.

29 Caveat and Discharge

- 29.1 The Developer agrees that the Council may lodge a caveat on the title of any part of the Land that includes the New Foreshore Park or the Public Domain Land.
- 29.2 Council will release the caveat from that part of the Land once this Deed is registered on the title to that Land.
- 29.3 The Council cannot be required to have the caveat removed from the title to the Land other than in accordance with clause 29.2.

30 Acquisition of land required to be dedicated

- 30.1 If the Developer does not dedicate land required to be dedicated under this Deed or register the Public Easement at the time required under this Deed, the Developer consents to the Council compulsorily acquiring the land or the Public Easement (as the case may be) for compensation in the amount of \$1 without having to follow the pre-acquisition procedure under the Just Terms Act.
- 30.2 The Council is to only acquire land or the Public Easement pursuant to clause 30.1 if it considers it reasonable to do so having regard to the circumstances surrounding the failure by the Developer to dedicate the land or register the Public Easement as required under this Deed.
- 30.3 Clause 30.1 constitutes an agreement for the purposes of s30 of the Just Terms Act.
- 30.4 If, as a result of the acquisition referred to in clause 30.1, the Council is required to pay compensation to any person other than the Developer, the Developer is to reimburse the Council that amount, upon a written request being made by the Council, or the Council can call on any Security provided under clause 28.
- 30.5 The Developer indemnifies and keeps indemnified the Council against all Claims made against the Council as a result of any acquisition by the Council of the whole or any part of the land concerned except if, and to the extent that, the Claim arises because of the Council's negligence or default.
- 30.6 The Developer is to promptly do all things necessary, and consents to the Council doing all things necessary, to give effect to this clause 30, including without limitation:
- 30.6.1 signing any documents or forms,
- 30.6.2 giving land owner's consent for lodgement of any Development Application,
- 30.6.3 producing certificates of title to the Registrar-General under the *Real Property Act 1900*, and
- 30.6.4 paying the Council's costs arising under this clause 30.

31 Breach of obligations

- 31.1 If the Council reasonably considers that the Developer is in breach of any obligation under this Deed, it may give a written notice to the Developer:
 - 31.1.1 specifying the nature and extent of the breach,
 - 31.1.2 requiring the Developer to:
 - (a) rectify the breach if it reasonably considers it is capable of rectification, or
 - (b) pay compensation to the reasonable satisfaction of the Council in lieu of rectifying the breach if it reasonably considers the breach is not capable of rectification,
 - 31.1.3 specifying the period within which the breach is to be rectified or compensation paid, being a period that is reasonable in the circumstances.
- 31.2 If the Developer fails to fully comply with a notice referred to in clause 31.1, the Council may, without further notice to the Developer, call-up the Security provided by the Developer under this Deed and apply it to remedy the Developer's breach.
- 31.3 If the Developer fails to comply with a notice given under clause 31.1 relating to the carrying out of Work under this Deed, the Council may step-in and remedy the breach and may enter, occupy and use any land owned or controlled by the Developer and any Equipment on such land for that purpose.
- 31.4 Any costs incurred by the Council in remedying a breach in accordance with clause 31.2 or clause 31.3 may be recovered by the Council by either or a combination of the following means:
 - 31.4.1 by calling-up and applying the Security provided by the Developer under this Deed, or
 - 31.4.2 as a debt due in a court of competent jurisdiction.
- 31.5 For the purpose of clause 31.4, the Council's costs of remedying a breach the subject of a notice given under clause 31.1 include, but are not limited to:
 - 31.5.1 the costs of the Council's employees, agents and contractors reasonably incurred for that purpose,
 - 31.5.2 all fees and charges necessarily or reasonably incurred by the Council in remedying the breach, and
 - 31.5.3 all legal costs and expenses reasonably incurred by the Council, by reason of the breach.
- 31.6 Nothing in this clause 31 prevents the Council from exercising any rights it may have at law or in equity in relation to a breach of this Deed by the Developer, including but not limited to seeking relief in an appropriate court.

32 Enforcement in a court of competent jurisdiction

- 32.1 Without limiting any other provision of this Deed, the Parties may enforce this Deed in any court of competent jurisdiction.
- 32.2 For the avoidance of doubt, nothing in this Deed prevents:

- 32.2.1 a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Deed or any matter to which this Deed relates, or
- 32.2.2 the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Deed or any matter to which this Deed relates.

Part 7 – Registration & Restriction on Dealings

33 Registration of this Deed

- 33.1 The Parties agree to register this Deed for the purposes of s7.6(1) of the Act.
- 33.2 Upon the execution of this Deed by the Developer, the Developer is to deliver to the Council in registrable form:
 - 33.2.1 an instrument requesting registration of this Deed on the title to the Land duly executed by the owner of the Land, and
 - 33.2.2 the written irrevocable consent of each person referred to in s7.6(1) of the Act to that registration.
- 33.3 The Developer is to do such other things as are reasonably necessary to enable registration of this Deed to occur.
- 33.4 The Parties are to do such things as are reasonably necessary to remove any notation relating to this Deed from the title to the Land:
 - 33.4.1 in so far as the part of the Land concerned is a Final Lot,
 - 33.4.2 in relation to any other part of the Land, once the Developer has completed its obligations under this Deed to the reasonable satisfaction of the Council or this Deed is terminated or otherwise comes to an end for any other reason.

34 Restriction on dealings

- 34.1 The Developer is not to:
 - 34.1.1 sell or transfer the Land, other than a Final Lot, or
 - 34.1.2 assign the Developer's rights or obligations under this Deed, or novate this Deed,to any person unless:
 - 34.1.3 the Developer has, at no cost to the Council, first procured the execution by the person to whom the Land or part is to be sold or transferred or the Developer's rights or obligations under this Deed are to be assigned or novated, of a deed in favour of the Council on terms reasonably satisfactory to the Council, and
 - 34.1.4 the Council has given written notice to the Developer stating that it reasonably considers that the purchaser, transferee, assignee or novatee, is reasonably capable of performing its obligations under this Deed, and

- 34.1.5 the Developer is not in breach of this Deed, and
- 34.1.6 the Council otherwise consents to the transfer, assignment or novation, such consent not to be unreasonably withheld.
- 34.2 Subject to clause 34.3, the Developer acknowledges and agrees that it remains liable to fully perform its obligations under this Deed unless and until it has complied with its obligations under clause 34.1.
- 34.3 Clause 34.1 does not apply in relation to any sale or transfer of the Land if this Deed is registered on the title to the Land at the time of the sale.

Part 8 – Indemnities & Insurance

35 Risk

- 35.1 The Developer performs this Deed at its own risk and its own cost.

36 Release

- 36.1 The Developer releases the Council from any Claim it may have against the Council arising in connection with the performance of the Developer's obligations under this Deed except if, and to the extent that, the Claim arises because of the Council's negligence or default.

37 Indemnity

- 37.1 The Developer indemnifies the Council from and against all Claims that may be sustained, suffered, recovered or made against the Council arising in connection with the performance of the Developer's obligations under this Deed except if, and to the extent that, the Claim arises because of the Council's negligence or default.

38 Insurance

- 38.1 The Developer is to take out and keep current to the satisfaction of the Council the following insurances in relation to Work required to be carried out by the Developer under this Deed up until the Work is taken to have been completed in accordance with this Deed:
 - 38.1.1 contract works insurance, noting the Council as an interested party, for the full replacement value of the Works (including the cost of demolition and removal of debris, consultants' fees and authorities' fees), to cover the Developer's liability in respect of damage to or destruction of the Works,
 - 38.1.2 public liability insurance for at least \$20,000,000.00 for a single occurrence, which covers the Council, the Developer and any subcontractor of the Developer, for liability to any third party,
 - 38.1.3 workers compensation insurance as required by law, and

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- 38.1.4 any other insurance required by law.
- 38.1.5 If the Developer fails to comply with clause 38.1, the Council may effect and keep in force such insurances and pay such premiums as may be necessary for that purpose and the amount so paid shall be a debt due from the Developer to the Council and may be recovered by the Council as it deems appropriate including:
 - 38.1.6 by calling upon the Security provided by the Developer to the Council under this Deed, or
 - 38.1.7 recovery as a debt due in a court of competent jurisdiction.
- 38.1.8 The Developer is not to commence to carry out any Work unless it has first provided to the Council satisfactory written evidence of all of the insurances specified in clause 38.1.

Part 9 – Other Provisions

39 Submission of Development Application

- 39.1 The first Development Application for the Development is to propose as the first stage of the Development, the adaptive reuse of the Bushell's Central Roasting Hall factory building identified in the Planning Proposal.

40 Annual report by Developer

- 40.1 The Developer is to provide to the Council by not later than each anniversary of the date on which this Deed is entered into a report detailing the performance of its obligations under this Deed.
- 40.2 The report referred is to be in such a form and to address such matters as required by the Council from time to time.

41 Review of Deed

- 41.1 The Parties agree to review this Deed every five years, and otherwise if either party is of the opinion that any change of circumstance has occurred, or is imminent, that materially affects the operation of this Deed.
- 41.2 For the purposes of clause 41.1, the relevant changes include (but are not limited to) any change to a law that restricts or prohibits or enables the Council or any other planning authority to restrict or prohibit any aspect of the Development.
- 41.3 For the purposes of addressing any matter arising from a review of this Deed referred to in clause 41.1, the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Deed.
- 41.4 If this Deed becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties agree to do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Deed is entered into.

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- 41.5 A failure by a Party to agree to take action requested by the other Party as a consequence of a review referred to in clause 41.1 (but not 41.4) is not a Dispute for the purposes of this Deed and is not a breach of this Deed.

42 Notices

- 42.1 Any notice, consent, information, application or request that is to or may be given or made to a Party under this Deed is only given or made if it is in writing and sent in one of the following ways:
- 42.1.1 delivered or posted to that Party at its address set out in the Summary Sheet, or
 - 42.1.2 emailed to that Party at its email address set out in the Summary Sheet.
- 42.2 If a Party gives the other Party 3 business days' notice of a change of its address or email, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or emailed to the latest address.
- 42.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
- 42.3.1 delivered, when it is left at the relevant address,
 - 42.3.2 sent by post, 2 business days after it is posted, or
 - 42.3.3 sent by email and the sender does not receive a delivery failure message from the sender's internet service provider within a period of 24 hours of the email being sent.
- 42.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

43 Approvals and Consent

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

44 Costs

- 44.1 The Developer is to pay to the Council the Council's costs relating to preparing, negotiating, executing and stamping this Deed, and any document related to this Deed within 7 days of a written demand by the Council for such payment.

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- 44.2 The Developer is also to pay to the Council the Council's reasonable costs of enforcing this Deed within 7 days of a written demand by the Council for such payment.

45 Entire Deed

- 45.1 This Deed contains everything to which the Parties have agreed in relation to the matters it deals with.
- 45.2 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 Deed was executed, except as permitted by law.

46 Further Acts

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

47 Governing Law and Jurisdiction

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

48 Joint and Individual Liability and Benefits

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

49 No Fetter

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

50 Illegality

- 50.1 If this Deed or any part of it becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties are to co-operate and do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Deed is entered into.

51 Severability

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

52 Amendment

- 52.1 No amendment of this Deed will be of any force or effect unless it is in writing and signed by the Parties to this Deed in accordance with section 203 of the Regulation.
- 52.2 The Parties are to act in good faith in considering any request by a Party to amend this Deed.

53 Waiver

- 53.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Deed, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.
- 53.2 A waiver by a Party is only effective if it:
- 53.2.1 is in writing,
 - 53.2.2 is addressed to the Party whose obligation or breach of obligation is the subject of the waiver,
 - 53.2.3 specifies the obligation or breach of obligation the subject of the waiver and the conditions, if any, of the waiver,
 - 53.2.4 is signed and dated by the Party giving the waiver.
- 53.3 Without limitation, a waiver may be expressed to be conditional on the happening of an event, including the doing of a thing by the Party to whom the waiver is given.
- 53.4 A waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given, and 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.
- 53.5 For the purposes of this Deed, an obligation or breach of obligation the subject of a waiver is taken not to have been imposed on, or required to be complied with by, the Party to whom the waiver is given.

54 GST

54.1 In this clause:

Adjustment Note, Consideration, GST, GST Group, Margin Scheme, Money, Supply and Tax Invoice have the meaning given by the GST Law.

GST Amount means in relation to a Taxable Supply the amount of GST payable in respect of the Taxable Supply.

GST Law has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Input Tax Credit has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a party includes an Input Tax Credit for an acquisition made by that party but to which another member of the same GST Group is entitled under the GST Law.

Taxable Supply has the meaning given by the GST Law excluding (except where expressly agreed otherwise) a supply in respect of which the supplier chooses to apply the Margin Scheme in working out the amount of GST on that supply.

54.2 Subject to clause 54.4, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Deed, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.

54.3 Clause 54.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.

54.4 No additional amount shall be payable by the Council under clause 54.2 unless, and only to the extent that, the Council (acting reasonably and in accordance with the GST Law) determines that it is entitled to an Input Tax Credit for its acquisition of the Taxable Supply giving rise to the liability to pay GST.

54.5 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Deed by one Party to the other Party that are not subject to Division 82 of the *A New Tax System (Goods and Services Tax) Act 1999*, the Parties agree:

54.5.1 to negotiate in good faith to agree the GST inclusive market value of those Supplies prior to issuing Tax Invoices in respect of those Supplies;

54.5.2 that any amounts payable by the Parties in accordance with clause 54.2 (as limited by clause 54.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.

54.6 No payment of any amount pursuant to this clause 54, and no payment of the GST Amount where the Consideration for the Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided a Tax Invoice or Adjustment Note as the case may be to the recipient.

54.7 Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability.

54.8 This clause continues to apply after expiration or termination of this Deed.

55 Explanatory Note

- 55.1 The Appendix contains the Explanatory Note relating to this Deed required by section 205 of the Regulation.
- 55.2 Pursuant to section 205(5) of the Regulation, the Parties agree that the Explanatory Note is not to be used to assist in construing this Planning Deed.

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Schedule 1

(Clause 9)

Development Contributions

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Column 1	Column 2	Column 3	Column 4
Item/ Contribution	Public Purpose	Manner & Extent	Timing

A. Dedication of Land

1. The New Foreshore Park	Public Recreation	Dedication of the New Foreshore Park as shown on the Dedication Plan	Prior to the issuing of the first Occupation Certificate for the last Building in the Development, or by the date which is 2 years after the issue of the first Occupation Certificate for any Building in the Development, whichever is earlier
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B. Carrying out of Work

1. Embellishment of the New Foreshore Park and Public Domain Land	Public Recreation	Embellishment of the New Foreshore Park in accordance with the requirements in Schedule 6 and embellishment of the Public Domain Land in accordance with the Public Domain Plan and Schedule 6	Prior to the issuing of the first Occupation Certificate for the last Building in the Development or by the date which is 2 years after the issue of the first Occupation Certificate for any Building in the Development, whichever is earlier, and before dedication of the New Foreshore Park and registration of the Public Easement
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C. Other Benefits

1. Publicly Accessible Public Domain	Public Recreation	Registration of the Public Easement	Prior to the issuing of the first Occupation Certificate for the last Building in the Development or by the date which is 2 years after the issue of the first Occupation Certificate for any Building in the Development, whichever is earlier
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D. Monetary Contributions

1. Monetary contribution	Public Recreation	Payment of \$250,000.00 +GST indexed from the date of this Deed in accordance with CPI, for the purposes of Council's expenditure on maintenance works of the New Foreshore Park to an 'excellent' standard as defined in Council's <i>Asset Management Strategy</i> March 2022. Payment is to be made to Council's nominated bank account in the form of a bank cheque or electronic funds transfer.	On dedication of the New Foreshore Park.
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Schedule 2

(Clause 1.1)

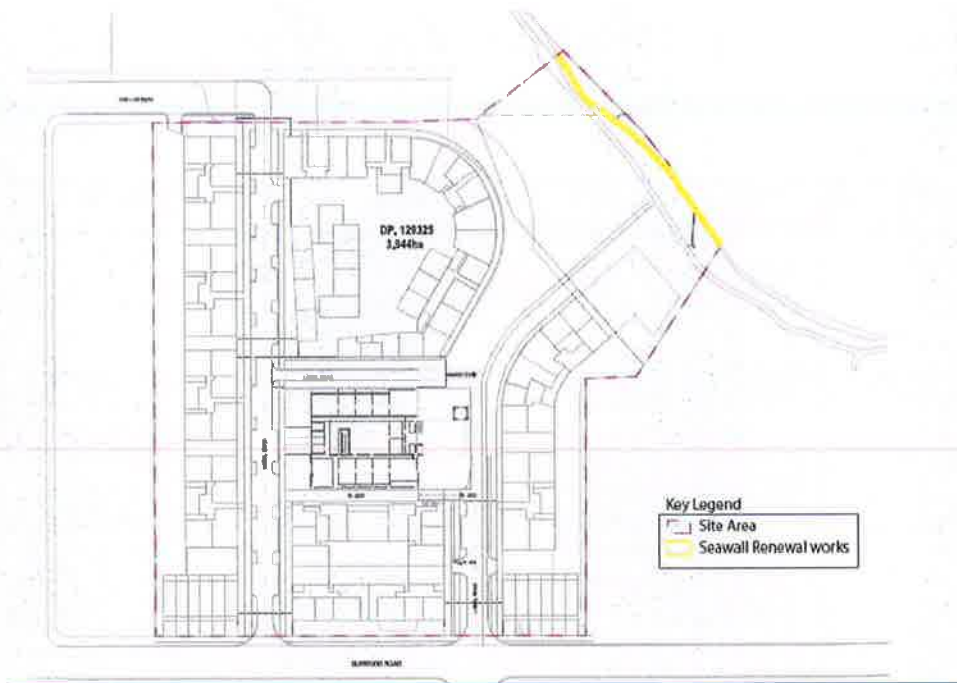
Dedication Plan



Schedule 3

(Clause 1.1)

Seawall Renewal Location Plan



Schedule 4

(Clause 1.1)

Public Domain Plan



Schedule 5

(Clause 1.1)

Requirements for Seawall Renewal Works

The Seawall Renewal Works shall be carried out generally in accordance with the scope below, unless agreed otherwise by Council and the Developer:

- be constructed to the satisfaction of Council;
- have a minimum Design Life of 80 years;
- be designed and certified by a suitably qualified engineer and possess the following engineering qualities,
 - comprise graded basalt stone only, subject to the recommendations of the geotechnical assessment referred to in clause 20.3.1,
 - be wholly founded on bed rock,
- extend to a height above the proposed foreshore shared path by a minimum of 500mm;
- not have any drainage through it, with any surface water to be collected and drained into the drainage system for the New Foreshore Park rather than through the wall,
- include Geofabric to prevent loss of fines,
- extend 10 metres to the west of the western boundary of the New Foreshore Park to accommodate the construction of a stormwater pipe and headwall along Zoeller Street.

Schedule 6

(Clause 20)

Requirements for Embellishment of the New Foreshore Park and Public Domain Land

The embellishment works on the New Foreshore Park and the Public Domain Land must include the following, unless agreed otherwise by both Council and the Developer:

- The construction of a foreshore shared path on the New Foreshore Park and pathways in accordance with Austroads Designs Guidelines;
- Construction of public domain lighting along the foreshore shared path and the remainder of the New Foreshore Park and Public Domain Land to achieve PP3 Standard lighting in accordance with AS 1158, or the relevant Australian Standard in force at the time that the lighting works are being carried out. The Developer shall also provide an electrical supply network including a dedicated electrical distribution board and four General purpose outlets in locations required by Council;
- planting of established trees and other landscaping works; and
- planting of grassed areas, including features such as seating benches.

Schedule 7

(Clause 1.1)

Public Easement

Terms of Easement

- 1 The registered proprietor of the lot burdened grants to Canada Bay City Council (**Council**) and members of the public full and free right to go, pass and repass over the lot burdened at all times:
 - (a) with or without companion animals (as defined in the *Companion Animals Act 1998*) or other small pet animals; and
 - (b) on foot without vehicles (other than bicycles, wheelchairs or other disabled access aids);for all lawful purposes.
- 2 The registered proprietor of the lot burdened must, to the satisfaction of Council, acting reasonably:
 - (a) keep the lot burdened (including any services in, on or under the Lot burdened) in good repair and condition;
 - (b) maintain and repair the lot burdened and all improvements on the lot burdened in accordance with [Drafting Note: Include reference to any maintenance or operational manual] approved by the Council for the lot burdened;
 - (c) keep the lot burdened clean and free from rubbish; and
 - (d) maintain sufficient public liability insurance covering the use of the lot burdened in accordance with the terms of this easement.
- 3 If the registered proprietor of the lot burdened is an owners corporation or community association, then it must ensure that any rules or by-laws adopted by it in relation to the lot burdened have been approved by the Council.

Terms of Restriction on the Use of Land

The registered proprietor of the lot burdened will:

1. not construct or permit the construction of any buildings or structures on the lot burdened without the prior written consent of Council;
2. not make or permit or suffer the making of any alterations to the finished levels or remove any of the structures constructed on the lot burdened as at the date of creation of this restriction on use, without the prior consent of Council;
3. not carry out any work, or erect any buildings or structures such as fences which would prevent Council or members of the public from moving between the lot burdened and the adjacent land owned by Council.

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New Concord Development Pty Limited

Name of authority whose consent is required to release, vary or modify the easement and restriction above is:

Canada Bay City Council

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City of Canada Bay Council
New Concord Development Pty Limited

Execution

Executed as a Deed

Dated:

21 AUGUST 2023


Executed on behalf of the Council

General Manager
Name:

JOHN CLARK 21/8/23

Witness
Name:

Robbie Rigo

Robbie Rigo

Mayor

Name:

Witness:

Name:

Executed on behalf of the Developer in accordance with s127(1) of the
Corporations Act (Cth) 2001

Director

Name:

Nicholas Edward Barwell

Director/Secretary

Name:

Tan Eng Wah

Appendix

(Clause 55)

Environmental Planning and Assessment Regulation 2021

(Section 205)

Explanatory Note

Draft Planning Agreement

Under s7.4 of the *Environmental Planning and Assessment Act 1979*

Parties

City of Canada Bay Council ABN 79 130 029 350 of Locked Bag 1470 DRUMMOYNE NSW 2047 (Council)

New Concord Development Pty Limited ABN 68 615 291 088 of 160 Burwood Road (Developer)

Description of the Land to which the Draft Planning Agreement Applies

This draft Planning Agreement applies to the land comprised in Lot 5 in DP129325, Lot 2 in DP230294, Lot 398 in DP 752023 and Lot 399 in DP 752023 otherwise known as 160 Burwood Road, Concord, and any lot created by a subdivision or consolidation of those lots.

Description of Proposed Development

This draft Planning Agreement applies to a Planning Proposal endorsed by Council at its meeting of 28 March 2023, proposing to:

- (a) rezone part of the Land from IN1 General Industrial to part B1 Neighbourhood Centre, part R3 Medium Density and part RE1 Public Recreation;
- (b) amend Part 6 of the LEP to:
 - (i) apply the Foreshore Building Line to the Land;
 - (ii) introduce a development standard for the Land that sets out a minimum provision of 7,500m² gross floor area for non-residential uses, of which a minimum 3,000m² gross floor area shall be light industrial uses;

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- (c) amend Schedule 1 to permit the following additional permissible uses within portion of the Land proposed to be zoned R3: *office premises, shops, restaurants and cafes*;
- (d) list the Land as an item of local heritage;
- (e) increase the maximum height of buildings for the Land from 12m to 11m, 15m, 17m, 18m and 20m;
- (f) apply a maximum Floor Space Ratio control for the Land of 0.96:1 or 1.11:1 where the Central Roasting Hall is retained and adaptively reused and the chimney and "B" sign are retained.

This draft Planning Agreement applies to development, within the meaning of the Act, on the Land in accordance with any Development Consent (as modified or substituted from time to time under the Act) granted as a consequence of the making of the LEP Amendment.

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

Objectives of Draft Planning Agreement

The objectives of the Draft Planning Agreement are to facilitate the dedication of land for the purposes of a public park and recreation area and associated embellishment works on the public park land and land to be publicly accessible.

Nature of Draft Planning Agreement

The Draft Planning Agreement is a planning agreement under s7.4 of the EPA Act. It is a voluntary agreement, under which the Developer and Landowner make Development Contributions (as defined in clause 1.1 of the Draft Planning Agreement) for various public purposes (as defined in s 7.4(2) of the EPA Act) if the LEP Amendment is made and if development consent is granted to the carrying out of the Development.

Effect of the Draft Planning Agreement

Specifically, the Developer will make the following contributions:

- dedication of the New Foreshore Park as shown on the Dedication Plan;
- embellishment of the New Foreshore Park in accordance with the requirements in Schedule 6 and embellishment of the Public Domain Land in accordance with the Public Domain Plan and Schedule 6;
- monetary contribution to Council for the purpose of Council maintenance of the New Foreshore Park; and
- registration of an easement over the Public Domain Land to enable public access to the open space.

The Draft Planning Agreement:

- requires the Developer to dedicate land, carry out embellishment works to open space, pay monetary contributions for the maintenance of the New Foreshore Park and the register an easement on land for ongoing public access to the open space,
- contains preconditions to the dedication of the new park, including reconstruction of the seawall,
- relates to the carrying out by the Developer of the Development,

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- does not exclude the application of ss 7.11, 7.12 or 7.24 of the EPA Act to the Development,
- is to be registered on the titles to the Land,
- imposes restrictions on the Developer transferring the Land or part of the Land and on the Developer from assigning an interest under the draft Planning Agreement,
- provides a dispute resolution method where a dispute arises under the draft Planning Agreement, being expert determination and mediation,
- provides that the draft Planning Agreement is governed by the law of New South Wales,
- provides that the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) applies to the draft Planning Agreement.

Assessment of the Merits of the Draft Planning Agreement

The Planning Purposes Served by the Draft Planning Agreement

The Draft Planning Agreement:

- promotes and co-ordinates the orderly and economic use and development of the land to which the Planning Agreement applies,
- captures the shared uplift value of land through the delivery of public services and public amenities,
- provides and co-ordinates community services and facilities,
- provides increased opportunity for public involvement and participation in the form of public notification of the draft Planning Agreement.

The Draft Planning Agreement provides a reasonable means of achieving these planning purposes by requiring the Developer to make development contributions as described further above to Council, to facilitate the development of the Land in connection with the provision of necessary infrastructure, open space community facilities.

How the Draft Planning Agreement Promotes the Public Interest

The Draft Planning Agreement promotes the public interest by:

- promoting the objects of the EPA Act set out in sections 1.3(a),(b), (c), (g) and (j), and
- delivering land for public parks and recreation, including embellishment works on the public park land and other publicly accessible land which will benefit the local and wider community.

For Planning Authorities:

Development Corporations - How the Draft Planning Agreement Promotes its Statutory Responsibilities

N/A

Other Public Authorities – How the Draft Planning Agreement Promotes the Objects (if any) of the Act under which it is Constituted

N/A

Councils – How the Draft Planning Agreement Promotes the Guiding Principles for Councils in section 8A of the Local Government Act 1993 (previously the Elements of the Council's Charter)

The Draft Planning Agreement promotes the guiding principles for Councils by:

- working with others to secure appropriate services for local community needs,
- promoting Council's long-term strategic planning on behalf of the local community.

All Planning Authorities – Whether the Draft Planning Agreement Conforms with the Authority's Capital Works Program

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

All Planning Authorities – Whether the Draft Planning Agreement specifies that certain requirements must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued

This draft Planning Agreement includes requirements that must be complied with before Occupation Certificates are issued.