

Deed

**Part Lot 2 DP1145808, Archbold Road,
Eastern Creek**

Planning Agreement

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

Blacktown City Council

IRM Property Group (No.2) Pty Limited

Date: 14 July 2022

Part Lot 2 DP1145808, Archbold Road, Eastern Creek Planning Agreement

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Summary Sheet

Council:

Name: Blacktown City Council (ABN 18 153 831 768)

Address: PO Box 63 BLACKTOWN NSW 2148

Telephone: 02 9839 6000

Facsimile: 02 9831 1961

Email: council@blacktown.nsw.gov.au

Representative: Dennis Bagnall

Developer:

Name: IRM Property Group (No.2) Pty Limited

Address: 305 Parramatta Road, Auburn NSW 2144

Telephone: 1300 424 646

Email: katie.mccallum@bingoindustries.com.au

Representative: Katie McCallum, Senior Legal Counsel

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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Registration:

See clause 29.

Restriction on dealings:

See clause 30.

Dispute resolution:

See clauses 27 and 28.

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Planning Agreement

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

Parties

Blacktown City Council ABN 18 153 831 768 of 62 Flushcombe Road, Blacktown NSW 2148 (**Council**)

and

IRM Property Group (No.2) Pty Limited ABN 50 114 816 296 of PO Box 7, Enfield NSW 2136 (**Developer**)

Background

- A The Land is owned by the Developer.
- B The Developer has lodged a Development Application for the Development on the Land.
- C The Developer agrees to make Development Contributions in accordance with this Deed in connection with 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, Development 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.

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

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

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

Compliance Certificate has the same meaning as in the Act.

Construction Certificate has the same meaning as in the Act.

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

CP18 means Council's Eastern Creek Stage 3 Contributions Plan No. 18 as in force at the date of this Deed.

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 for a Work means the period of 1 year commencing on the day immediately after Works Completion for the Work.

Developer means Developer and the Landowner jointly and severally, unless the context otherwise requires.

Development means the development described in Development Application SPP-21-00007 as amended in relation to the Land to be carried out subject to the conditions of a relevant Development Consent if and when such Approval is granted.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

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.

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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.

Evacuation Diagram means the emergency evacuation plan submitted with the Development Application for the Development being plan ref 41489 and dated April 2021.

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.

Land means the land to which the DA relates being part Lot 2 in DP1145808.

Occupation Certificate has the same meaning as in the Act.

Party means a party to this Deed.

Principal Contractor means the person defined as the Principal Contractor under the *Work Health and Safety Act 2011* (NSW) or *Work Health and Safety Regulation 2017* (NSW) or an equivalent under Commonwealth work health and safety laws.

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 a reasonable period within which the Defect is to be rectified.

Rectify means rectify, remedy or correct.

Registrar-General means the Registrar-General referred to in the *Real Property Act 1900*.

Regulation means the *Environmental Planning and Assessment Regulation 2000*.

Works means the construction of the Work shown in the Works Plans.

Works Plans means the plans for the Work described in the Schedule as modified if at all by any Approval for the Work.

WHS Law means the *Work Health and Safety Act 2011* (NSW) and *Work Health and Safety Regulation 2017* (NSW), and any other regulations made under that Act.

Work means the physical result of any building, engineering or construction work in, on, over or under land.

Works Completion means in relation to a Work, the date on which the Work is taken to be completed under clause 17.1 of 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.

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- 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.
- 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 servants, 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.

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3 Application of this Deed

- 3.1 This Deed applies to the Land and to the Development.

4 Commencement

- 4.1 This Deed commences and has force and effect on and from the date when the Parties have:
- 4.1.1 all executed the same copy of this Deed, or
 - 4.1.2 each executed separate counterparts of this Deed and exchanged the counterparts.
- 4.2 The Parties are to insert the date when this Deed commences on the front page and on the execution page.

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 Relating to this Deed

- 6.1 The Parties may, at any time, enter into such other agreements or arrangements relating to the subject-matter of this Deed that they consider are necessary or desirable in order to give effect to this Deed.
- 6.2 An agreement or arrangement referred to in clause 6.1 is not to be inconsistent with this Deed.

7 Surrender of Right of Appeal, etc.

- 7.1 The Developer is not to commence or maintain, or cause to be commenced or maintained, any proceedings in the Land and Environment Court of New South Wales involving an appeal against, or questioning the validity of, a Development Consent relating to the Development or an approval under s4.55 of the Act to modify a Development Consent relating to the Development to the extent that it relates to the existence of this Deed or requires any aspect of this Deed to be performed according to the terms of this Deed. For the avoidance of doubt, this clause does not prevent the Developer from commencing any proceedings in relation to an alleged breach by the Council of its obligations under this Deed.

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

- 8.1 This Deed excludes the application of s7.12 of the Act to the Development.

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- 8.2 This Deed excludes the application of s7.11 of the Act 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

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.

10 Payment of Monetary Contributions

- 10.1 A monetary Development Contribution is made for the purposes of this Deed when the Council receives the full amount of the contribution payable under this Deed in cash or by unendorsed bank cheque or by the deposit by means of electronic funds transfer of cleared funds into a bank account nominated by the Council.
- 10.2 If the Development Consent is modified to allow for additional developable area after the issuing of the first Construction Certificate for the Development, the Developer is to pay monetary Development Contributions to the Council for the additional developable area not later than 7 days after the Development Consent has been modified.

11 Access to the Land

- 11.1 The Developer is to permit the Council, its officers, employees, agents and contractors to enter the Land or any other land at reasonable times upon giving reasonable prior notice (except in the case of emergency in which case entry may be made at any time), in order to inspect, examine or test any Work or to remedy any breach of the Developer relating to the carrying out of a Work.
- 11.2 The Developer is not required to permit the Council to enter land to remedy a breach under clause 11.1 unless the Council has given the Developer prior notice of the breach within a reasonable time after becoming aware of the

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breach under clause 22.1 and the Developer fails to comply with the notice to the Council's reasonable satisfaction under clause 22.4.

- 11.3 The Council is to permit the Developer to enter and occupy any land owned or controlled by the Council for the purpose of enabling the Developer to carry out any Work under this Deed that is required to be carried out on such land or to perform any other obligation imposed on the Developer by or under this Deed.

12 Work Health & Safety

- 12.1 The Developer acknowledges that it is the Principal Contractor under WHS Law for the Works required to be carried out under this Deed (**Developer Works**) unless and until such time that the Developer:
- 12.1.1 engages another person to construct the Developer Works; or
 - 12.1.2 engages another person to be the Principal Contractor for the Developer Works; and
 - 12.1.3 authorises that other person to have management or control of the workplace relating to the Developer Works and to discharge the duties of a Principal Contractor under WHS Law.
- 12.2 If the Developer at any time terminates the engagement of the person engaged to construct the Developer Works or to otherwise be the Principal Contractor for the Developer Works, the Developer becomes the Principal Contractor until such time as a new person is appointed to construct the Developer Works or to otherwise be the Principal Contractor for the Developer Works.
- 12.3 The Developer is to use its best endeavours to ensure that all persons involved in the Developer Works, including but not limited to the person engaged as the Principal Contractor, comply with relevant WHS Law and procedures, including but not limited to:
- 12.3.1 following published government and industry WHS guidelines,
 - 12.3.2 providing WHS induction training,
 - 12.3.3 keeping and regularly updating WHS records,
 - 12.3.4 preparing and maintaining a WHS management plan,
 - 12.3.5 preparing a Project Safety Plan that details safety strategies, including how persons must act to comply with WHS Law,
 - 12.3.6 providing safe work method statements for all tasks and ensuring they are complied with,
 - 12.3.7 directing staff to take corrective action or stop work if they are not complying with the method statements or WHS Law,
 - 12.3.8 identifying hazards and assessing risks using due diligence,
 - 12.3.9 eliminating or controlling risks in line with WorkCover requirements using due diligence,
 - 12.3.10 reviewing risk assessments and controlling measures,
 - 12.3.11 providing information to employers and contractors about WHS,
 - 12.3.12 documenting site-specific safety procedures.

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- 12.4 The Developer is to use its best endeavours to ensure that the Council can audit, inspect and test the Developer Works without breaching WHS Law.
- 12.5 The Developer is to promptly inform the Council of any incident occurring in relation to the Developer 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.
- 12.6 Without limiting clause 12.5, the Developer is to inform the Council of the following incidences within the following timeframes:
 - 12.6.1 minor incidents or injuries—within 24 hours of the occurrence,
 - 12.6.2 serious incidents or injuries—on the same day as the occurrence,
 - 12.6.3 incidences where an ambulance was called—as soon as practicable.

13 Carrying Out of Work

- 13.1 A Development Contribution comprising the carrying out of a Work is made for the purposes of this Deed on Works Completion.
- 13.2 Without limiting any other provision of this Deed, the Works are to be carried out in accordance with:
 - 13.2.1 any relevant Approval (including any drawings, plans and specifications relating to an Approval),
 - 13.2.2 any relevant policies and specifications of the Council relevant to the Works to the extent they are not inconsistent with the Development Consent for the Works, and
 - 13.2.3 any other applicable law.
- 13.3 The Developer, at its own cost, is to comply with any reasonable direction given to it by the Council to prepare or modify a design or specification relating to a Work that the Developer is required to carry out under this Deed.

14 Variation to Works

- 14.1 The Works are not to be varied by the Developer, unless:
 - 14.1.1 the Parties agree in writing to the variation, and
 - 14.1.2 any consent or Approval required under the Act or any other law to the variation is first obtained, and
 - 14.1.3 the Developer bears all of the Council's reasonable costs of and incidental to agreeing to and approving the variation.
- 14.2 For the purposes of clause 14.1, a variation may relate to any matter in relation to the Works that is dealt with by this Deed.

15 Protection of People, Property & Utilities

- 15.1 The Developer is to ensure to the fullest extent reasonably practicable in relation to the performance of its obligations under this Deed that:
 - 15.1.1 all necessary measures are taken to protect people and property,

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15.1.2 unnecessary interference with the passage of people and vehicles is avoided, and

15.1.3 nuisances and unreasonable noise and disturbances are prevented.

15.2 Without limiting clause 15.1, 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.

16 Damage and Repairs to Works

16.1 The Developer, at its own cost, is to repair and make good to the reasonable satisfaction of the Council any loss or damage to the Works from any cause whatsoever in connection with the carrying out of any Work by the Developer that occurs before Works Completion.

17 Completion of Works

17.1 The Works are completed for the purposes of this Deed when:

17.1.1 the Council at the request of the Developer, acting reasonably, gives a certificate to the Developer to that effect or the Developer gives the Council a Compliance Certificate to that effect in respect of the Works in accordance with the Development Consent to the Works, and

17.1.2 the Developer gives the Council all certificates, reports and works-as-executed plans required to be given to the Council under the Development Consent for the Works in relation to the completion of the Works.

17.2 The Council is to respond to any request made by the Developer to provide a certificate referred to in clause 17.1 within 10 business days.

17.3 If the Council is the owner of the land on which the Works are located, the Council assumes responsibility for the Work 10 business days after the completion of the Work for the purposes of this Deed, but if it is not the owner at that time, it assumes that responsibility only if it later becomes the owner.

17.4 Before the Council gives the Developer a notice referred to in clause 17.1, 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.

17.5 The Developer, at its own cost, is to promptly comply with a direction referred to in clause 17.4.

17.6 The Developer is to use all reasonable endeavours to procure in favour of the Council from the Developer's contractor engaged in relation to the Works any warranty reasonably required by the Council relating to the design, construction, supervision, inspection, testing or certification of the Work.

18 Rectification of Defects and Operation

18.1 During the Defects Liability Period, the Council may give to the Developer a Rectification Notice.

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- 18.2 The Developer is to comply with a Rectification Notice at its own cost according to its terms and to the reasonable satisfaction of the Council.
- 18.3 If the Developer breaches clause 18.2, the Council may have the relevant Defect rectified and may recover its reasonable costs of so doing as a debt due in a court of competent jurisdiction.
- 18.4 After the Defects Liability Period, the Developer is to maintain the Works in a proper and efficient condition and operate the Works in a proper and efficient manner.

19 Works-as-Executed-Plan

- 19.1 The Developer is to submit to the Council a full works-as-executed-plan in respect of the Works in accordance with the Development Consent for the Development.
- 19.2 The Developer, being the copyright owner in the plan referred to in clause 19.1, gives the Council a non-exclusive licence to use the copyright in the plans for the purposes of this Deed.

20 Removal of Equipment

- 20.1 When Work on any Council owned or controlled land is completed for the purposes of this Deed, the Developer, without delay, is to:
 - 20.1.1 remove any Equipment from that land and make good any damage or disturbance to the land as a result of that removal, and
 - 20.1.2 leave the land in a neat and tidy state, clean and free of rubbish.

21 Security Relating to the Carrying Out of Work

- 21.1 Prior to the issuing of the first Construction Certificate in respect of the Development, the Developer is to:
 - 21.1.1 provide to the Council for the Council's approval a report prepared by a suitably qualified and experienced registered quantity surveyor which identifies the estimated cost of construction of the Works and all such supporting documentation as required by the Council, and
 - 21.1.2 provide the Council with Security for the Work in an amount equal to 25% of the estimated cost of construction of the Works as approved by the Council.
- 21.2 If the Developer has provided Security for the Works under a Development Consent, then the amount of Security required under this clause 21 is to be reduced by the amount of Security that has been provided under the Development Consent, provided that the Developer expressly authorises the Council to call-up and apply any Security that has been provided under the Development Consent for the purposes this Deed.
- 21.3 The amount of the Security is to be indexed annually and on the anniversary of the date of this Deed in accordance with the *Consumer Price Index (All Groups - Sydney)* published by the Australian Bureau of Statistics.

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- 21.4 The Developer is to ensure that the Security held by the Council at all times equals the amount of the Security so indexed.
- 21.5 The Developer may at any time provide the Council with a replacement Security and, in such case, the Council is to release and return to the Developer, as directed, the Security it holds that has been replaced.
- 21.6 The Council is to release and return a Security or any unused part of it to the Developer within 14 days of compliance by the Developer with its Development Contribution Obligations to which the Security relates.
- 21.7 The Council may call-up a Security if it considers, acting reasonably, that the Developer has not complied with its Development Contributions Obligations under this Deed to which the Security relates, subject to the requirements of clause 21.8.
- 21.8 However, the Council is not to call-up a Security unless it has given the Developer not less than 30 days' notice of its intention to do so and the Developer has not rectified the non-compliance to the Council's reasonable satisfaction before that period has expired.
- 21.9 If the Council calls-up a Security, it may use the amount paid to it in satisfaction of any costs incurred by it in remedying the non-compliance including but not limited to:
 - 21.9.1 the reasonable costs of the Council's servants, agents and contractors reasonably incurred for that purpose,
 - 21.9.2 all fees and charges necessarily or reasonably incurred by the Council in order to have the Work carried out, completed or rectified, and
 - 21.9.3 all legal costs and expenses reasonably incurred by the Council, by reason of the Developer's non-compliance.
- 21.10 If the Council calls-up a Security, it may, by notice in writing to the Developer, require the Developer to provide a further or replacement Security in an amount that, when added to any unused portion of any existing Security, does not exceed the amount of the Security the Council is entitled to hold under this Deed relating to the relevant Development Contribution Obligation.
- 21.11 The dispute resolution provisions of this Deed do not apply to a matter the subject of this clause.

22 Failure to Carry Out Works

- 22.1 If the Council reasonably considers that the Developer is in breach of any obligation under this Deed relating to the Works, including compliance with a Rectification Notice, the Council may give the Developer a notice requiring the breach to be rectified to the Council's reasonable satisfaction.
- 22.2 The dispute resolution provisions of this Deed do not apply to the giving of a notice under clause 22.1.
- 22.3 A notice given under clause 22.1 is to allow the Developer a period of not less than 28 days to rectify the breach or such further reasonable period.
- 22.4 The Council may step-in and carry out and complete the Work the subject of a notice under clause 22.1 if the Developer fails to comply with the notice to the Council's reasonable satisfaction.

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- 22.5 The Developer is to do all things reasonably necessary to enable the Council to exercise its rights under clause 22.4.
- 22.6 If the Council incurs a cost in carrying out, completing or rectifying a defect in the Works resulting from non-compliance by the Developer with this Deed, the Council may recover the cost from the Developer in a court of competent jurisdiction.
- 22.7 For the purpose of clause 22.6, the Council's costs of carrying out, completing or rectifying a defect in the Works include, but is not limited to:
 - 22.7.1 the reasonable costs of the Council's servants, agents and contractors reasonably incurred for that purpose,
 - 22.7.2 all fees and charges necessarily and reasonably incurred by the Council in order to have the Work carried out, completed or rectified, and
 - 22.7.3 all legal costs and expenses reasonably incurred by the Council, by reason of the Developer's failure to comply with this Deed.
- 22.8 Nothing in this clause 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.

Part 3 – Other Provisions

23 Risk

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

24 Release

- 24.1 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.

25 Indemnity and Insurance

- 25.1 The Developer indemnifies the Council, its employees, officers, and workers from and against all losses, damages, costs (including legal costs on a full indemnity basis), charges, expenses, actions, claims and demands whatsoever to the extent sustained, suffered, recovered or made arising from the carrying out by the Developer of any Work or the performance by the Developer of any other obligation under this Deed in a negligent manner or in breach of this Deed.
- 25.2 The Developer is to cause to be taken out and kept current to the reasonable 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:

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- 25.2.1 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,
- 25.2.2 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,
- 25.2.3 workers compensation insurance as required by law, and
- 25.2.4 any other insurance required by law.
- 25.3 If the Developer fails to comply with clause 25.2, the Council, after giving reasonable prior written notice to the Developer, 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 recovery as a debt due in a court of competent jurisdiction.
- 25.4 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 25.2.

26 Enforcement in a Court of Competent Jurisdiction

- 26.1 Without limiting any other provision of this Deed, the Parties may enforce this Deed in any court of competent jurisdiction.
- 26.2 To avoid doubt, nothing in this Deed prevents:
 - 26.2.1 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,
 - 26.2.2 the Council from lawfully 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.

27 Dispute Resolution—Expert Determination

- 27.1 This clause applies to a Dispute under this Deed which relates to a matter that can be determined by an appropriately qualified expert.
- 27.2 Any Dispute between the Parties as to whether a Dispute to which this clause applies can be determined by an appropriately qualified expert is to be referred to the Chief Executive Officer of the professional body that represents persons with the relevant expertise for determination, which is to be final and binding on the Parties.
- 27.3 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 27.4 If a notice is given under clause 27.3, the Parties are to meet within 14 days of the notice in an attempt to resolve the dispute.

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- 27.5 If the Dispute is not resolved within a further 28 days, the Dispute must be referred to the President of the NSW Law Society to appoint an expert for expert determination.
- 27.6 The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.
- 27.7 Each Party must bear its own costs arising from or in connection with the appointment of the expert and the expert determination.

28 Dispute Resolution—Mediation

- 28.1 This clause applies to any Dispute under this Deed other than a Dispute to which clause 27.1 applies.
- 28.2 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 28.3 If a notice is given under clause 28.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 28.4 If the Dispute is not resolved within a further 28 days, the Parties must mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and must request the President of the Law Society, or the President's nominee, to select a mediator.
- 28.5 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.

29 Registration of this Deed

- 29.1 The Parties agree to register this Deed on title to the Land for the purposes of s7.6 of the Act prior to the release of the first Construction Certificate in relation to the Development.
- 29.2 Prior to the release of the first Construction Certificate in relation to the Development, the Developer is to deliver to the Council in registrable form:
 - 29.2.1 an instrument requesting registration of this Deed on the title to the Land duly executed by the registered proprietor of the Land and all other persons required by the Registrar-General to execute such form, and
 - 29.2.2 the written irrevocable consent of each person referred to in s7.6(1) of the Act to that registration, and
 - 29.2.3 the written evidence of CORD holder consent for the purposes of registering this Deed.
- 29.3 The Landowner is to do such other things as are reasonably necessary to enable registration of this Deed to occur.
- 29.4 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 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.

30 Release from this Deed on surrender of consent

- 30.1 The Council must, by written notice served on the Developer, release the Developer from its obligations under this Deed if the Development Consent lapses or is surrendered without having been commenced.
- 30.2 If the Council releases the Developer under clause 30.1, the Council will refund to the Developer any monetary Development Contributions paid by the Developer under this Deed within 28 days of the date written notice is served under that clause.
- 30.3 The Council is not required under clause 30.2 to refund any interest earned on monetary Development Contributions paid by the Developer under this Deed.
- 30.4 If the Council releases the Developer under clause 30.1, the Council is to do such things as are reasonably necessary to remove any notation relation to this Deed from the title to the Land.

31 Assignment, Sale of Land, etc.

- 31.1 Unless the matters specified in clause 31.2 are satisfied:
 - 31.1.1 the Landowner is not to transfer the Land or any part of it to any person, and
 - 31.1.2 the Developer is not to assign their rights or obligations under this Deed, or novate this Deed, to any person.
- 31.2 The matters required to be satisfied for the purposes of clause 31.1 are as follows:
 - 31.2.1 the Developer has, at no cost to the Council, first procured the execution by the person to whom the Land or any part of it is to be transferred, or its obligations under this Deed are to be assigned or novated, of an agreement in favour of the Council on terms satisfactory to the Council under which they agree to be bound by the terms of this Deed, and
 - 31.2.2 the Council, by notice in writing to the Developer has stated that evidence satisfactory to the Council has been produced to show that the assignee or novatee is reasonably capable of performing its obligations under the Deed,
 - 31.2.3 the Developer is not in breach of this Deed, and
 - 31.2.4 the Council otherwise consents to the transfer, assignment or novation, which consent is not to be unreasonably withheld.
- 31.3 Subject to clause 31.4, 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 31.1 and 31.2.
- 31.4 Clauses 31.1 and 31.2 do 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.

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- 31.5 The Developer is to pay the reasonable costs and expenses of the Council in relation to entering into any agreement or registering any new deed on the title to the Land as relevant.

32 Review of this Deed

- 32.1 The Parties agree to review this Deed if any Party is of the opinion that any change of circumstance has occurred, or is imminent, that materially affects the operation of this Deed and requests a review.
- 32.2 For the purposes of clause 32.1, 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 Authority to restrict or prohibit any aspect of the Development.
- 32.3 For the purposes of addressing any matter arising from a review of this Deed, the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Deed.
- 32.4 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.
- 32.5 A failure by a Party to agree to take action requested by the other Party as a consequence of a review of this Deed is not a dispute for the purposes of the dispute resolution provisions of this Deed.

33 Notices

- 33.1 Any notice, consent, information, application or request that must or may be given or made to a Party under this Deed is only given or made if it is in writing and sent in one of the following ways:
- 33.1.1 delivered or posted to that Party at its address set out in the Summary Sheet, or
- 33.1.2 faxed to that Party at its fax number set out in the Summary Sheet, or
- 33.1.3 emailed to that Party at its email address set out in the Summary Sheet.
- 33.2 If a Party gives the other Party 3 business days' notice of a change of its address, fax number or email, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted, faxed or emailed to the latest address or fax number.
- 33.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
- 33.3.1 delivered, when it is left at the relevant address,
- 33.3.2 sent by post, 2 business days after it is posted,
- 33.3.3 sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number, or

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33.3.4 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.

33.4 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.

34 Approvals and Consent

34.1 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.

34.2 A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

35 Costs

35.1 The Developer is to pay to the Council the Council's reasonable costs of 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.

35.2 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.

36 Entire Deed

36.1 This Deed contains everything to which the Parties have agreed in relation to the matters it deals with.

36.2 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.

37 Further Acts

37.1 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.

38 Notations on s10.7(2) Planning Certificates

38.1 The Parties agree that the Council may, in its absolute discretion, make a notation under s 10.7(5) of the Act regarding this Deed on any certificate issued under s 10.7(2) of the Act relating to the Land.

39 Governing Law and Jurisdiction

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

40 Joint and Individual Liability and Benefits

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

41 No Fetter

- 41.1 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.

42 Representations and Warranties

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

43 Illegality

- 43.1 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.

44 Severability

- 44.1 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.
- 44.2 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.

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45 Amendment

- 45.1 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 clause 25C of the Regulation.

46 Waiver

- 46.1 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.
- 46.2 A waiver by a Party is only effective if it:
- 46.2.1 is in writing,
 - 46.2.2 is addressed to the Party whose obligation or breach of obligation is the subject of the waiver,
 - 46.2.3 specifies the obligation or breach of obligation the subject of the waiver and the conditions, if any, of the waiver,
 - 46.2.4 is signed and dated by the Party giving the waiver.
- 46.3 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.
- 46.4 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.
- 46.5 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.

47 GST

- 47.1 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.

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- 47.2 Subject to clause 47.4, 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.
- 47.3 Clause 47.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.
- 47.4 No additional amount shall be payable by the Council under clause 47.2 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.
- 47.5 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:
 - 47.5.1 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;
 - 47.5.2 that any amounts payable by the Parties in accordance with clause 47.2 (as limited by clause 47.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 47.6 No payment of any amount pursuant to this clause 47, 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.
- 47.7 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.
- 47.8 This clause continues to apply after expiration or termination of this Deed.

48 Explanatory Note

- 48.1 The Appendix contains the Explanatory Note relating to this Deed required by clause 25E of the Regulation.
- 48.2 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 Planning Deed.

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Schedule

(Clause 1.1)

Development Contributions

Part Lot 2 DP1145808, Archbold Road, Eastern Creek Planning Agreement

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Column 1	Column 2	Column 3	Column 4
Item/ Contribution	Public Purpose	Manner & Extent	Timing
A. Monetary Contributions			
1. CP18 Traffic and Transport Management Facilities	Traffic and Transport Management	In the amount specified in accordance with the formula in section 3.3 of CP18 indexed to the date of payment in accordance with s5.3 of CP18.	Prior to the release of the first Construction Certificate for the Development.
B. Dedication of Land			
1.Right of way	Emergency access	An easement in gross in favour of the Council for 24/7 access (including by vehicle) to and from the Land and Kangaroo Avenue in accordance with the emergency access route shown on the Evacuation Diagram in terms satisfactory to the Council.	Prior to the release of the first Occupation Certificate for the Development.
C. Carrying out of Work			

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1. Stormwater management works	Water sensitive urban design	On site detention and water sensitive urban design works In accordance with the Civil and Stormwater report and Civil Drawings submitted with the Development Application for the Development (C100-C123) subject to any conditions of Approval.	Prior to the issuing of the first Occupation Certificate for any part of the Development.
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Execution

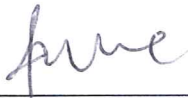
Executed as a Deed

Dated:


Blacktown City Council by its Attorney 14/07/2022
Steven Paul Harris
pursuant to power of attorney
Registered Book 4758 No. 886

Signed sealed and delivered by the COUNCIL, by its attorney, STEPHEN PAUL HARRIS, pursuant to Power of Attorney Registered Book 4758 No.886:

Attorney signature



Witness Signature

JASMIN FRESCO

Witness Name

Executed by the Developer pursuant to s127(1) of the Corporations Act 2001

Director

Director's Name:



Director/Secretary

Director's/Secretary's Name:

STEPHEN SCHMIDHOFER



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Appendix

(Clause 48)

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Explanatory Note

Draft Planning Agreement

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

Parties

Blacktown City Council ABN 18 153 831 768 of 62 Flushcombe Road, Blacktown NSW 2148 (**Council**)

and

IRM Property Group (No.2) Pty Limited ABN 50 114 816 296 of PO Box 7, Enfield NSW 2136 (**Developer**)

Description of the Land to which the Draft Planning Agreement Applies

The Draft Planning Agreement applies to the land the subject of Development Application SPP-21-0007 being part Lot 2 in DP1145808 at Archbold Road, Eastern Creek.

Description of Proposed Development

The Draft Planning Agreement applies to development described in Development Application SPP-21-00007 as amended, in relation to the Land, to be carried out subject to the conditions of a relevant Development Consent if and when approved.

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Description of Development Contributions

The Draft Planning Agreement requires:

- (a) the making of monetary contributions for traffic and transport management in accordance with Council's Contributions Plan CP18;
- (b) the carrying out of on-site detention and water sensitive urban design works on the Land in place of regional facilities specified in CP18;
- (c) the creation of a ROW for emergency access over part the Land and nearby land in favour of the Council.

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

Objectives, Nature and Effect of Draft Planning Agreement

The Draft Planning Agreement is a planning agreement under s7.4 of the *Environmental Planning and Assessment Act 1979 (Act)*. The Draft Planning Agreement is a voluntary agreement under which Development Contributions are made by the Developer for various public purposes (as defined in s7.4(3) of the Act).

The objective of the Draft Planning Agreement is to require the provision of the Development Contributions in conjunction with the carrying out of the Development..

The Draft Planning Agreement:

- relates to the carrying out by the Developer of development on the Land
- excludes the application of s7.11 and s7.12 of the Act to the Development
- does not exclude the application of s7.24 of the Act to the Development
- requires the carrying out and completion of Works, the payment of monetary contributions and the creation of a right of way in favour of the Council
- is to be registered on the title to the Land and remain registered until the Development Contributions are provided
- imposes restrictions on the Parties assigning an interest under the agreement and the developer transferring the land,
- provides two dispute resolution methods for a dispute under the agreement, being expert determination and mediation,
- provides that the agreement is governed by the law of New South Wales, and
- provides that the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* applies to the agreement.

Assessment of the Merits of the Draft Planning Agreement

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How the Draft Planning Agreement Promotes the Public Interest

The Draft Planning Agreement requires the Development Contributions which will serve the wider community.

The Draft Planning Agreement:

- promotes and co-ordinates of the orderly and economic use and development of the Land to which the agreement applies,
- provides and co-ordinates the provision of public infrastructure and facilities in connection with the Development, and
- provides increased opportunity for public involvement and participation in environmental planning and assessment of the Development.

The draft Planning Agreement promotes the public interest by promoting the objects of the Act as set out in s1.3(b), (d) and (j) of the Act.

The Draft Planning Agreement also promotes a number of elements of the principles for local government in Chapter 3 of the *Local Government Act 1993* (NSW) (formerly the Council's charter under section 8 of the *Local Government Act 1993* (NSW)).

The Draft Planning Agreement which requires the Developer to construct Works and dedicate land for public road and is required to be publicly notified promotes the following principles:

- the management of lands and other assets so that current and future local community needs can be met in an affordable way,
- working with others to secure appropriate services for local community needs, and
- actively engaging with their local communities, through the use of the integrated planning and reporting framework and other measures.

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

Yes. The Draft Planning Agreement conforms with the Council's Capital Works Program.

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

Yes. The Draft Planning Agreement requires security and the monetary contributions to be provided prior to the issuing of the first Construction Certificate for the Development and the Works to be completed and the ROW to be created before the issuing of the first Occupation Certificate for the Development.