

Annexure "B" referred to within request over Lot 1 DP1173048, Lot 10 DP1305248 and Lot 11 DP1305248



lindsaytaylorlawyers

Deed

**1/4-4A Terminal Place and 5 & 7 McLeod Road,
Merrylands**

Planning Agreement

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

Cumberland City Council

Merrylands 88 Pty Ltd

Merrylands (A) 88 Development Pty Ltd

Merrylands (B) 88 Development Pty Ltd

Date: [18/09/2024]

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Regulatory Compliance Tables

Table 1 – Provisions of Act

Act Provision	Requirement	Compliance
S.7.4(1)	'Planning Authority'	Council
	'Developer'	Developer
	Person associated with Developer	Landowner
	Development Application	See definitions of 'Development Application' in clause 1.1 and Item 4.a of the VPA Particulars
	Development Contributions	See Part 2 and Development Contributions Table
S.7.4(1), (2)	Public Purpose	See Column 2 of the Development Contributions Table
S.7.4(3)(a)	Land	See Definition of 'Land' in clause 1.1 and Item 1 of the VPA Particulars
S.7.4(3)(b)(i)	Instrument Change	See definition of 'Instrument Change' in clause 1.1 and Item 3 of the VPA Particulars
S.7.4(3)(b)(ii)	Development	See definition of 'Development' in clause 1.1 and Item 2 of the VPA Particulars
S.7.4(3)(c)	Details of Developer's Provision	See Development Contributions Table
S.7.4(3)(d)	Whether s7.11, s7.12 and Subdivision 4 of Division 7.1 of the Act Apply to the Development	See clause 8 and Item 7.a, 7.c and 7.d of the VPA Particulars
S.7.4(3)(e)	Whether benefits under Deed are or are not to be taken into consideration in determining a Development Contribution under s7.11	See clause 8.3 and Item 7.b of the VPA Particulars

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S.7.4(3)(f)	Mechanism for the Resolution of Disputes	See Part 3
S.7.4(3)(g)	Enforcement of the Deed by a Suitable Means in the Event of Breach by the Developer	See Part 4 and Items 15-19 of the VPA Particulars
S.7.4 (10)	Conformity of Deed with Act, Environmental Planning Instruments, & Development Consents Applying to the Land	Yes
S.7.5	Public Notice & Public Inspection of Draft Agreement	Yes
S.7.6	Registration	See Part 5
S.6.15(1)(d)	If the Development involves the subdivision of land, does this Deed impose requirements that are required to be complied with before a subdivision certificate is issued?	No

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Table 2 – Provisions of Regulation

Regulation Provision	Requirement	Compliance
Environmental Planning and Assessment Regulation 2021		
S.203(1)	Form & Subject-Matter	Yes
S.203(7)	Secretary's Practice Note	Yes
S.204	Public Notice & Public Inspection of Draft Deed	Yes
S.205	Explanatory Note	See Appendix
Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021		
Ss.21, 34	If the Development involves building work or subdivision work, does the Deed specify requirements that are required to be complied with before a construction certificate for the work is issued?	No

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Parties

Council **Cumberland City Council** ABN 22 798 563 329 of PO Box 42 MERRYLANDS NSW 2160 (**Council**)

Developer **Merrylands (A) 88 Development Pty Ltd** ABN 89 658 404 632 of PO Box 4081, Strathfield South NSW 2136 and
Merrylands (B) 88 Development Pty Ltd ABN 23 658 404 730 of PO Box 4081, Strathfield South NSW 2136

Landowner **Merrylands 88 Pty Ltd** ABN 47 648 473 929 of PO Box 4081, Strathfield South NSW 2136

Background

- A The Landowner owns the Land.
- B Merrylands (A) 88 Development Pty Ltd lodged development application 2022/0722 on part of the Land and Merrylands (B) 88 Development Pty Ltd lodged development application 2022/0776 on part of the Land. The Shop Top Housing Development Applications seek Council's consent under the Act to carry out development for the construction of development comprising commercial tenancies, neighbourhood shops and residential units.
- C In connection with the Shop Top Housing Development Applications, the Developer has offered to dedicate land for use as open space area and local roads to Council and to carry out the Developer Works.
- D The Public Domain Works Development Application seeks Development Consent for the Developer Works.
- E The value of the land to be dedicated and the Developer Works to be carried out is to be offset against local infrastructure contributions otherwise payable for the Development.
- F The Parties have agreed to enter into this Deed to give effect to the Developer's offer.

Operative provisions

Part 1 - Preliminary

1 Definitions & Interpretation

Definitions

- 1.1 In this Deed, the words and phrases appearing in Column 1 of the following table have the meaning set out in Column 2 of that table corresponding to those words or phrases except in so far as the context or subject-matter otherwise indicates or requires:

Table

Column 1	Column 2
Word or phrase	Meaning
Act	means the <i>Environmental Planning and Assessment Act 1979</i> (NSW).
Applicable Contributions Plan	means the contributions plan (within the meaning of the Act) specified in Item 6) of the VPA Particulars as amended or substituted from time to time.
Applicable Development Consent	means a development consent specified or described in Item 5 of the VPA Particulars or granted in respect of the Development.
Approval	includes approval, consent, licence, permission or the like.
Approved Person	means a person reasonably approved by the Council to undertake design, construction, supervision, inspection, testing or certification of the Developer Works because of the suitability of their qualifications, skills and experience in the Council's reasonable opinion.
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

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constituted under the *Local Government Act 1993* (NSW), or a person or body exercising functions under any Act including a commission, panel, court, tribunal and the like.

Background Intellectual Property

means Intellectual Property that:

- (a) relates to the Developer Works,
- (b) exists at the date of this Deed or is later created but not as a result of performing this Deed,
- (c) does not belong to a third party.

Bank Guarantee

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

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

Bond

means a documentary performance bond which must be denominated in Australian dollars and be an unconditional undertaking issued by an Australian Prudential Regulation Authority (APRA) regulated authorised deposit taking institution or an insurer authorised by APRA to conduct new or renewal insurance business in Australia that has at all times an investment grade security rating from an industry recognised rating agency.

Charge

means the charge referred to in clause 20.

Charge Land

means the land specified or described in Item 15 of the VPA Particulars.

Claim

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

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Clearance Certificate	means a clearance certificate issued by the Commissioner for Taxation under paragraph 14-220 of Schedule 1 of the <i>Taxation Administration Act 1953</i> (Cth).
CLM Act	means the <i>Contaminated Land Management Act 1997</i> (NSW).
Construction Access Licence	means the licence granted to the Developer by the Council under clause 11.13 of this Deed.
Construction Certificate	has the same meaning as in the Act.
Construction Contract	means a contract or arrangement entered into between the Developer as principal and another person under which the other person undertakes to provide Work required by this Deed, or to supply related goods and services, for the Developer.
Contamination	has the same meaning as in the CLM Act.
Contractor	means the contractor under the Construction Contract.
Contribution Value	in relation to an Item specified in the Development Contributions Table means the \$ amount specified in Column 4 of that Table corresponding to the Item.
Cost	means a cost, charge, expense, outgoing, payment, fee and other expenditure of any nature.
Council Developer Works Contribution Amount	means the \$ amount or amounts specified in Item 9 of the VPA Particulars in relation to all or specified Developer Works.
Council Land Dedication Contribution Amount	means the \$ amount specified in Item 8 of the VPA Particulars in relation to all or specified Dedication Land.
CPI	means the ' <i>Consumer Price Index – Sydney All Groups</i> ' published by the Australian Bureau of Statistics.
Dedication Land	means land that is required to be dedicated to the Council free of cost under this Deed.

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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, in relation to the whole or any specified part of the Developer Works, the period specified in Item 13 of the VPA Particulars commencing on the day immediately after a Practical Completion Certificate is issued by the Council.
Defects Liability Security	means the \$ amount of Security specified in Item 17 of the VPA Particulars indexed in accordance with the Indexation Method.
Developer Works	means Works that the Developer is required to provide under this Deed being the works for which Development Consent is granted (as amended from time to time) under the Public Domain Works Development Application.
Developer Works Agreed Cost	means the \$ amount specified in Item 9 of the Particulars.
Developer Works Location Plan	means the plan contained in Schedule 4 showing the location of the Developer Works.
Developer Works Plans & Drawings	means the detailed plans and drawings for the Developer Works approved by the Council referred to in Schedule 5.
Developer Works Provisions	means the provisions contained in Schedule 6.
Development	means the development specified or described in Item 2 of the VPA Particulars.
Development Application	means the development application within the meaning of the Act specified or described in Item 4.a of the VPA Particulars.
Development Contribution	means the dedication of land free of cost, a monetary contribution, the provision of any other material public benefit including but not limited to the provision of Works, or any combination of them.



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Development Contribution Credit	means the \$ amount specified in Item 10 of the VPA Particulars
Development Contributions Table	means the table contained in Schedule 2.
Dispute	means a dispute or difference between the Parties under or in relation to this Deed.
Draft Plan of Subdivision	means the plan of subdivision shown in Schedule 3.
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 Completion Certificate	means a certificate in writing issued by the Council to the Developer to effect that, in the reasonable opinion of the Council, the Developer Works to which the certificate relates have been completed by the Developer in accordance with this Deed.
Final Lot	means a lot created in the Development for separate occupation and disposition 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 that is to be dedicated or otherwise transferred to the Council.
Force Majeure Event	means an earthquake, cyclone, fire, riot or serious civil commotion, sabotage, act of a public enemy, act of God (excluding storms), war, revolution, radioactive contamination or flood, the effects of which cannot be prevented by taking those steps a prudent and competent person would take.
Foreign Resident Capital Gains Withholding Amount	mean the amount a purchaser is required to pay to the Commissioner for Taxation under paragraph 14-200 of the <i>Taxation Administration Act 1953 (Cth)</i> .
General Security	means a Bank Guarantee or a bond or other form of security on terms reasonably satisfactory to the Council in the amount specified in Item 16.a of the VPA Particulars indexed in accordance with the

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	method of indexation specified in 16.b of the VPA Particulars.
GST	has the same meaning as in the GST Law.
GST Law	has the same meaning as in <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth) and any other Act or regulation relating to the imposition or administration of the GST.
Instrument Change	means the change to the environmental planning instrument specified or described in Item 3 of the VPA Particulars.
Insurances	means the insurances specified in Item 20 of the VPA Particulars and such other insurances required by law in relation to the Developer Works.
Intellectual Property	means all copyright (including moral rights), patents, trademarks, designs, confidential information, circuit layouts, data and any other rights from intellectual activity in the industrial, scientific, literary and artistic fields recognised in domestic law anywhere in the world.
Item	means a numbered item appearing in the VPA Particulars or the Development Contributions Table.
Just Terms Act	means the <i>Land Acquisition (Just Terms Compensation) Act 1991</i> (NSW).
Land	means the land specified or described in Item 1 of the VPA Particulars.
Maintain	in relation to Developer Works, means keep in a good state of repair and working order, and includes repair of any damage to the Works.
Maintenance Period	in relation to Developer Works means the period specified in Item 14 of the VPA Particulars commencing on the date the Council issues a Transfer of Ownership Notice.
Maintenance Security	means the \$ amount of Security specified in Item 18 of the VPA Particulars indexed in accordance with the Indexation Method.
N/A	means Not Applicable
Occupation Certificate	has the same meaning as in the Act.

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Offset Amount	means the amount calculated under clause 15.3
Other Land	means land owned or occupied by a person other than the Developer or the Council to which entry and access is needed by the Developer to perform this Deed.
Participation Rules	means the participation rules as determined by the <i>Electronic Conveyancing National Law</i> as set out in the <i>Electronic Conveyancing (Adoption of National Law) Act 2012</i> (NSW).
Party	means a party to this Deed.
PEXA	means Property Exchange Australia Ltd.
Practical Completion	in relation to the Developer Works or a specified part of the Developer Works occurs when the Council has issued a Practical Completion Certificate for the Developer Works or the part.
Practical Completion Certificate	means a certificate issued by the Council to the Developer to the effect that, in the reasonable opinion of the Council, the Developer Works or a specified part of the Developer Works are substantially complete and any incomplete part or Defect is of a minor nature.
Principal Contractor	means the Person defined in as the Principal Contractor under the <i>Work Health and Safety Act 2011</i> (NSW) or <i>Work Health and Safety Regulation 2011</i> (NSW) or an equivalent under Commonwealth work health and safety laws.
Public Domain Works Development Application	means development application 2023/0485 (PAN-359842) seeking development consent to carry out public domain and civil works including a public open space areas, public art, water feature and associated landscaping on part of the Land.
Rectification Notice	means a notice in writing: <ul style="list-style-type: none">(a) identifying the nature and extent of a Defect or incomplete Work, and(b) specifying the works or actions that are required to Rectify the Defect or incomplete Work, and(c) specifying the date by which or the period within which the Defect or incomplete Work is to be rectified, which date or period must not be unreasonable

having regard to the nature of the Defect or incomplete Work.

Rectify	means rectify, remedy or correct.
Regulation	means the <i>Environmental Planning and Assessment Regulation 2021</i> (NSW).
Section 7.11 Contribution	means a monetary contribution payable to the Council under s7.11 of the Act pursuant to the Applicable Development Consent.
Shop Top Housing Development Applications	means <ul style="list-style-type: none">• Development Application 2022/0722 (PAN-286681) and• Development Application 2022/0776 (PAN-292592) as may be modified from time to time.
Site Audit Report	has the same meaning as in the CLM Act.
Site Audit Statement	has the same meaning as in the CLM Act.
Subdivision Certificate	has the same meaning as in the Act.
Subdivision Works Certificate	has the same meaning as in the Act.
Technical Data	means all technical know-how and information in material form, including manuals, designs, standards, specifications, reports, models, plans, drawings, calculations, software, source code and test results.
Third Party Intellectual Property	means Intellectual Property relating to the Developer Works that is owned by a person other than the Council or the Developer.
Transfer of Ownership Notice	means a notice issued by the Council to the Developer stating that Developer Works the subject of a Practical Completion Certificate vest in the Council on a specified date being not sooner than 14 days after the notice is issued.
VPA Particulars	means the information contained in Schedule 1.
WHS	means work health and safety.

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 carrying out work in, on, over or under land.

Works-As-Executed Plan means detailed plans and specifications of Developer Works carried out by the Developer.

Interpretation

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 or a public holiday 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.
- 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. In particular, and without

limitation, a reference to Developer includes all persons who are defined as the Developer.

- 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.

3 Commencement

- 3.1 This Deed commences and has force and effect on and from the date when the Parties have:
 - 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 and to the Development.
- 4.2 The Developer acknowledges and agrees that the Applicable Development Consent may be granted subject to a condition requiring this VPA to be complied with in connection with the carrying out of the Development and the Developer is not to object to, or seek a review of, or appeal against the imposition of such a condition.
- 4.3 Subject to the terms of this Deed, the Developer acknowledges and agrees that this Deed and the Developer's obligations under this Deed continue to apply even if the Applicable Development Consents are modified or amended.

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 written 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 Subdivision 4 of Division 7.1 of the Act to the Development

- 8.1 This Deed excludes the application of s7.12 of the Act to the Development.
- 8.2 This Deed does not exclude the application of s 7.11 and Division 7.1, Subdivision 4 of the Act to the Development.
- 8.3 Certain benefits under this Deed are to be taken into consideration under section 7.11(6) of the Act to the extent stated in clause 8.4.
- 8.4 Council accepts the provision of the Dedication Land and Developer Works identified in Schedule 2 as a material public benefit and agrees that these will be offset against contributions required to be made under sections 7.11 of the Act pursuant to the *Cumberland Local Infrastructure Contributions Plan 2020* in connection with the development of the Land but only up to the amounts and for the public purposes specified in Column 4 of Schedule 2.

Part 2 – Development Contributions

9 Provision of Development Contributions

Development Contributions

- 9.1 The Developer is to make Development Contributions to the Council in accordance with the Development Contributions Table and any other provision of this Deed requiring the Developer to make Development Contributions.

Effect of modification of Applicable Development Consent

- 9.2 If after this Deed is entered into an Applicable Development Consent is modified or amended under the Act to allow for additional dwellings or commercial premises then the Developer is to pay monetary Development Contributions to the Council for the additional dwellings or commercial premises in accordance with any condition imposed on a Development Consent issued in respect of the Shop Top Housing Development.

Contribution Values

- 9.3 The Parties acknowledge and agree that a Contribution Value:
- 9.3.1 constitutes the agreed value of the public benefit of a Development Contribution required to be made under this Deed irrespective of the cost to the Developer of making the Development Contribution, and
 - 9.3.2 does not serve to define the monetary extent of the Developer's obligation to make the Development Contribution to which the Contribution Value relates.

Application of Development Contributions

- 9.4 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.

Flexibility in application of Development Contributions

- 9.5 Despite clause 9.4, 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 Development Contributions**

- 10.1 If a monetary Development Contribution is required such 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.

11 **Dedication of land**

When dedication of land made

- 11.1 A Development Contribution comprising Dedication Land is dedicated for the purposes of this Deed when:
- 11.1.1 the Council is given:
- (a) a Clearance Certificate that is valid at the time of dedication of the Dedication Land, or
 - (b) the Foreign Resident Capital Gains Withholding Amount in respect of the Dedication Land, and
- 11.1.2 One of the following has occurred:
- (a) a deposited plan is registered in the register of plans held with the Registrar-General that dedicates the Dedication Land as a public road (including a temporary public road) under the *Roads Act 1993 (NSW)* or creates a public reserve or drainage reserve under the *Local Government Act 1993 (NSW)*, or
 - (b) the Council is given evidence that a transfer of the Dedication Land to the Council has been effected by means of electronic lodgement and registration through PEXA or another ELNO.

Developer to facilitate dedication

- 11.2 The Developer is to do all things reasonably necessary to enable registration of the instrument of transfer to occur.

Dedicated Land to be free of encumbrances

- 11.3 Subject to clause 11.4, the Developer is to ensure that Dedication Land 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 provided in this Deed or agreed in writing by the Council.

Request by Developer

- 11.4 If, having used all reasonable endeavours, the Developer and the Landowner cannot ensure that Dedication Land is free from all encumbrances and affectations, the Developer may request that Council agree to accept the land

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subject to those encumbrances and affectations, but the Council may withhold its agreement in its absolute discretion.

Site Audit Report & Site Audit Statement

- 11.5 Before dedicating the Dedication Land to the Council, the Developer, at its cost, is to obtain and provide to the Council a Site Audit Report and Site Audit Statement stating that the Dedication Land is suitable for the purpose for which the Dedication Land is required to be dedicated under this Deed without being subject to compliance with an environmental management plan.

Indemnity

- 11.6 The Developer indemnifies and agrees to keep indemnified the Council against all Claims made against the Council as a result of any Contamination on or emanating from the Dedication Land but only where that Contamination existed on or before the date that the Dedication Land is transferred or dedicated to Council or compulsorily acquired by Council pursuant to this Deed or where the Contamination arises during the occupation of the Dedication Land by the Developer under the Construction Access Licence.

Responsibility for Cost of Land Dedication

- 11.7 The Developer is responsible for meeting all Costs of and incidental to the dedication of the Dedication Land to the Council unless one of both of the following applies:
- 11.7.1 Item 8 of the VPA Particulars specifies a Council Land Dedication Contribution Amount towards the Cost of all or specified Dedication Land, or
 - 11.7.2 this Deed otherwise expressly provides for a Dedication Land Cost to be met that is not required to be met by the Developer.

Contribution by Council towards Cost of Dedication Land

- 11.8 If Item 8 of the VPA Particulars specifies a Council Land Dedication Contribution Amount, the Council is to pay that amount to the Developer in accordance with any requirements specified in that Item or otherwise in accordance with a written agreement entered into between the Council and the Developer.

Caveat by Council

- 11.9 The Developer acknowledges that the Council has an equitable estate or interest in the Dedication Land entitling the Council, pursuant to section 74F of the *Real Property Act 1900* (NSW), to lodge with the Registrar-General a caveat prohibiting the recording of any dealing affecting the Council's estate or interest in that land until registration of the Deed on the title of the Land.

Permitted Encumbrances

- 11.10 The Council acknowledges and agrees that the Dedication Land will be subject to the following encumbrances:

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- 11.10.1 a right of carriageway subject to and as approved by Development Consent to the Development in favour of electricity network/service provider for the Land;
- 11.10.2 an easement subject to and as approved by Development Consent to the Development in favour of Sydney Water.
- 11.11 If the Developer proposes to alter the width and length and location of the encumbrances referred to in clause 11.10 it must obtain the prior written consent of the Council which shall not be unreasonably withheld.
- 11.12 Council acknowledges and agrees that the Dedication Land may be subject to:
 - 11.12.1 an easement subject to and as approved by Development Consent to the Development to drain water in favour of the land on which that part of the Development other than the Dedication Land is located; or
 - 11.12.2 a licence for rock anchorsprovided such easements and licences do not interfere with the use of the Dedication Land as open space and subject to the Council being satisfied as to the terms of the easements and licences.
- 11.13 Upon dedication of the Dedication Land the Council grants to the Developer the Construction Access Licence on the terms set out in Schedule 8 of this Deed.
- 11.14 The parties acknowledge that the plan in Schedule 7 is a draft plan which formed part of the development application for the Development showing the Developer's proposed future rights of carriageway and easements for the Development which, as at the date of this Deed is being assessed by the Council. The parties acknowledge that any rights of carriageway and easements burdening the Dedication Land are subject to approval under the Development Consent to the Development.

12 Application of Developer Works Provisions

Application of Developer Works Provisions

- 12.1 The Developer Works Provisions apply to and in respect of Developer Works required by this Deed.

13 Cost of Developer Works

Responsibility for Cost of Developer Works

- 13.1 The Developer is responsible for meeting all Costs of and incidental to the Developer Works required to be provided under this Deed.

14 **Development Contribution Credit**

Application of clause

- 14.1 This clause 14 applies if a Development Contribution Credit is specified in Item 10 of the VPA Particulars.

Application of Development Contribution Credit

- 14.2 Pursuant to s7.11(5)(b) of the Act, in consideration of the Developer carrying out the Developer Works and otherwise performing all of its obligations under this Deed, the Section 7.11 Contribution payable by the Developer is to be reduced by the Development Contribution Credit.

15 **Offset against Outstanding Development Contribution Amount**

- 15.1 In consideration of the Developer and the Landowners performing their obligations under this Deed, Council agrees that the:
- 15.1.1 dedication of the Dedication Land; and
 - 15.1.2 completion of the Developer Works,
- will satisfy the requirement under each Applicable Development Consent granted in respect of the Development to make development contributions (in whole or part) to the extent specified in this Deed.
- 15.2 Council agrees to reduce the development contributions payable for the Development under the Applicable Development Consents by the Offset Amount.
- 15.3 The Offset Amount will be determined in accordance with the following formula:
- $$\text{Offset Amount} = \text{Value of the Developer Works} + \text{Value of the Dedication Land}$$
- Where:
- Value of the Developer Works** is calculated by reference to the estimated Cost of those Works contained in the relevant Column 4 of Schedule 2; and
- Value of the Dedication Land** is calculated by reference to the value attributed to that land in the Column 4 of Schedule 2 ("Dedication Land")

16 **Offset Certificate**

- 16.1 Within 10 Business Days of dedication of any of the Dedication Land, the Council must issue a certificate to the Developer ("Offset Certificate") which sets out:
- 16.1.1 the Developer Works carried out in accordance with this Deed;

- 16.1.2 the Dedication Land which has been dedicated to the Council;
and
- 16.1.3 the Offset Amount.
- 16.2 The Developer is not entitled to a further credit if an Offset Certificate shows that the Offset Amount is higher than the development contributions payable for the Development under the Applicable Development Consents owing at the date of the Offset Certificate.
- 16.3 If an Offset Certificate shows that the Offset Amount is lower than the development contributions payable for the Development under the Applicable Development Consents owing at the date of the Offset Certificate, then the Outstanding Amount is reduced by the Offset Amount.
- 16.4 The parties agree that the Council may issue one or more Offset Certificates.

Part 3 – Dispute Resolution

17 Dispute Resolution – mediation

Application of clause

- 17.1 This clause 17 applies to any Dispute arising in connection with this Deed other than a dispute to which clause 18 applies.

When Dispute arises

- 17.2 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.

Meeting between Parties

- 17.3 If a notice is given under clause 17.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.

Meditation of Dispute

- 17.4 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.

Exercise of legal rights

- 17.5 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.

Costs

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

18 Dispute resolution – expert determination

Application of clause

- 18.1 This clause 18 applies to a Dispute arising in connection with this Deed if:
- 18.1.1 the Parties agree that the Dispute can be appropriately determined by Expert Determination, or
 - 18.1.2 the Chief Executive Officer (or equivalent) of the professional body that represents persons who appear to have the relevant expertise to determine the Dispute gives a written opinion at the joint request of the Parties that the Dispute can be determined by a member of that body.

When Dispute arises

- 18.2 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.

Meeting between Parties

- 18.3 If a notice is given under clause 18.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.

Expert determination

- 18.4 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.

Expert determination binding

- 18.5 The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.

Costs of Parties

- 18.6 Each Party is to bear its own costs arising from or in connection with the appointment of the expert and the expert determination.

Costs of Expert

- 18.7 The Parties are to share equally the costs of the President, the expert, and the expert determination.

Part 4 - Enforcement

19 General Security

Application of this clause

- 19.1 This clause 19 applies if Item 16.a of the VPA Particulars specified an amount of General Security.

Composition of General Security

- 19.2 For the avoidance of doubt, the General Security includes the Defects Liability Security and the Maintenance Security.

Provision of General Security

- 19.3 The Developer is to provide the General Security to the Council:
- 19.3.1 before the Developer obtains a Construction Certificate for Developer Works or before the Developer commences any part of the Developer Works, whichever occurs first, or
 - 19.3.2 at such other time agreed in writing by the Council.

Apportionment of General Security

- 19.4 If agreed in writing by the Council, the General Security may be apportioned to different Stages or different Developer Works, in which case the Developer is to provide the portion of the General Security relating to a particular Stage or particular Developer Works to the Council before the Developer obtains a Construction Certificate for the particular Stage or the Developer commences the particular Developer Works.

Purpose of General Security

- 19.5 The Council is to hold the General Security as security for the Developer performing its obligations under this Deed relating to the Developer Works and other material public benefits (other than the payment of monetary Development Contributions and the dedication of Dedication Land).

Indexation of General Security

- 19.6 The Developer is to ensure that the amount of the General Security provided to the Council at any time is indexed in accordance with Item 16.b of the Particulars.

Call-up of General Security

- 19.7 Subject to clause 22.2, if the Developer breaches any its obligations under this Deed relating to the purpose for which the General Security is required to be provided, the Council may, without further notice to the Developer and notwithstanding any other remedy it may have under this Deed, under any Act or otherwise at law or in equity, call-up the General Security, the Defects Liability Security or the Maintenance Security, as appropriate, and apply it to remedy the Developer's breach and the Council's costs specified in clause 22.5 of so doing.

Release & return of General Security

- 19.8 Subject to clause 19.10, the Council is to release and return the General Security or any unused part of it to the Developer within 14 days of issuing a Practical Completion for the Developer Works unless the Parties have entered into a written agreement providing for the progressive release of the General Security at times or upon the occurrence of events specified in the agreement.
- 19.9 Despite clause 19.8 but subject to clause 19.10, if the Developer has provided the Council with a portion of the General Security relating to a particular Stage or particular Developer Works, the Council is to release and return the portion or any unused part of it to the Developer within 14 days of issuing a Practical Completion Certificate for all of the Developer Works in the particular Stage or the particular Developer Works.
- 19.10 The amount of the General Security released and returned by the Council under clause 19.8 or 19.9 must not exceed the amount of the General Security minus the percentages of that amount allocated to the Defects Liability Security and the Maintenance Security.
- 19.11 The Council is to release and return the Defects Liability Security, or any remaining part, to the Developer within 28 days after the end of the Defects Liability Period if, at that time, the Developer is not in breach of an obligation under this Deed to which the Defects Liability Security relates.
- 19.12 The Council is to release and return the Maintenance Security, or any remaining part, to the Developer within 28 days after the end of the Maintenance Period if, at that time, the Developer is not in breach of an obligation under this Deed to which the Maintenance Security relates.

Replacement General Security

- 19.13 The Developer may provide the Council with a replacement General Security at any time.
- 19.14 On receipt of a replacement General Security, the Council is to release and return the replaced the General Security to the Developer.

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- 19.15 If the Council calls-up the General Security or any portion of it, the Council may give the Developer a written notice requiring the Developer to provide a further or replacement General Security to ensure that the amount of General Security held by the Council equals the amount the Council is entitled to hold under this Deed.

Restriction on entering Council land

- 19.16 Despite any other provision of this Deed, 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 General Security to the Council in accordance with this Deed.

20 Charge on Dedication Land

Application of this clause

- 20.1 This clause applies if Item 15 of the VPA Particulars specifies land for the purposes of the definition of 'Charge Land' in clause 1.1 of this Deed.

Grant of charge

- 20.2 On the date of execution of this Deed, the Landowner grants to the Council a fixed and specific charge over the Landowner's right, title and interest in the Charge Land, to secure:
- 20.2.1 the performance of the Developer's and the Landowner's obligations to dedicate the Dedication Land and to carry out the Public Works on the Dedication Land, and
 - 20.2.2 any damages that may be payable to the Council, or any costs which may be incurred by the Council in the event of a breach of this Deed by the Developer or the Landowner relating to the dedication of the Dedication Land and the carrying out of the Public Works on the Dedication Land..
- 20.3 The Developer and the Landowner are to do all other things reasonably necessary, including executing all other documents, to allow for the registration of the Charge.

Exercise of rights under Charge

- 20.4 Subject to clause 22.2, the Council may exercise its rights under the Charge if the Developer does not make the Development Contributions in accordance with this Deed.

Registration

- 20.5 Upon the execution of this Deed, the Landowner is to execute, and the Developer is to give to the Council, an instrument in registrable form under

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the *Real Property Act 1900* (NSW) that is effective to register the Charge on the title to the Charge Land.

20.6 If the Charge Land does not form the whole of a lot in a deposited plan at the time that the instrument referred to in clause 20.5 is required to be given:

20.6.1 the Developer is to give the Council and the Landowner is to execute an instrument that charges the whole of the lot containing the Charge Land, and

20.6.2 a reference in this Deed to the Charge Land is taken to be a reference to the whole of that lot.

20.7 The Developer and Landowner are to do all other things necessary, including executing all other documents, to enable lodgement and registration of the Charge to occur electronically through PEXA or another ELNO.

Caveat and discharge

20.8 The Developer and the Landowner acknowledge that the Council has an equitable estate or interest in the Charge Land entitling the Council, pursuant to section 74F of the *Real Property Act 1900* (NSW), to lodge with the Registrar-General a caveat prohibiting the recording of any dealing affecting the Council's estate or interest in that land.

20.9 The Developer and the Landowner agree that:

20.9.1 the Council may lodge a caveat on the title of the Charge Land,

20.9.2 the Council is to release the caveat from any part of the Charge Land once that part is contained in a separate lot to the remainder of the Charge Land, and

20.9.3 the Council cannot be required to have the caveat removed from the title to the Charge Land other than in accordance with clause 20.10.

20.10 In order to enable Final Lots to be sold, the Council is to release the Charge and withdraw the caveat from the title to any Final Lot on satisfaction by the Developer of its obligations under this Deed to make Development Contributions in respect of the creation of the lot.

20.11 For the purposes of clause 20.2, the Council is to use its reasonable endeavours to provide any documentation necessary to enable the release of the Charge and withdrawal of the caveat from the title of a Final Lot on or immediately prior to the date for settlement of the sale of that lot.

Subdivision of charge land not precluded

20.12 Nothing in this Deed prevents the registration of a plan of subdivision in respect of the Charge Land nor the creation of a Final Lot from the Charge Land.

Priority

20.13 The Landowner is not to create any mortgage or charge over the Charge Land or grant any other interest in the Charge Land ranking in priority equal

with or ahead of the Charge created under this Deed without the prior written approval of the Council.

21 Acquisition of Dedication Land

Compulsory acquisition of Dedication Land

- 21.1 Subject to clause 21.2 and 22.2, if the Developer does not dedicate the Dedication Land at the time at which it is required to be dedicated under Schedule 2, the Developer consents to the Council compulsorily acquiring the land for compensation in the amount of \$1 without having to follow the pre-acquisition procedure under the Just Terms Act.
- 21.2 The Council is to only acquire land pursuant to clause 21.1 if it considers it reasonable to do so having regard to the circumstances surrounding the failure by the Developer to dedicate the land required to be dedicated under this Deed.

Pre-acquisition agreement

- 21.3 Clause 21.1 constitutes an agreement for the purposes of s30 of the Just Terms Act.

Re-imburement of Council for third party compensation

- 21.4 If, as a result of the acquisition referred to in clause 21.1, 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 the General Security.

Indemnity

- 21.5 The Developer and the Landowner, severally 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 Dedication Land except if, and to the extent that, the Claim arises because of the Council's negligence or default.
- 21.6 The Developer and Landowner are to promptly do all things necessary, and consents to the Council doing all things necessary, to give effect to this clause 21, including without limitation:
- 21.6.1 signing any documents or forms,
 - 21.6.2 giving land owner's consent for lodgement of any Development Application,
 - 21.6.3 producing certificates of title to the Registrar-General under the *Real Property Act 1900* (NSW), and
 - 21.6.4 paying the Council's costs arising under this clause 21.

22 **Breach of obligations**

Notice of breach

- 22.1 If the Council reasonably considers that the Developer or Landowner are in breach of any obligation under this Deed, it may give a written notice to the Developer:
- 22.1.1 specifying the nature and extent of the breach,
 - 22.1.2 requiring the Developer or Landowner 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,
 - 22.1.3 specifying the period within which the breach is to be rectified or compensation paid, being a period that is reasonable in the circumstances.

Notice of breach pre-requisite to exercise of rights

- 22.2 The Council may not exercise its rights under clause 19.7, 20.4 or 21.1 unless it has first given the Developer or Landowner a notice under clause 22.1 and the Developer or Landowner has failed to comply with the Notice.

Step-in right relating to Developer Works

- 22.3 If the Developer fails to comply with a notice given under clause 22.1 relating to the provision of Developer Works, the Council may, notwithstanding any other remedy it may have under this Deed, under any Act or otherwise at law or in equity, 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.

Recovery of costs by Council as debt due

- 22.4 Despite any other provision of this Deed, any costs incurred by the Council in remedying a breach of this Deed may be recovered by the Council as a debt due in a court of competent jurisdiction.
- 22.5 For the purpose of clause 22.4, the Council's costs of remedying a breach the subject of a notice given under clause 22.1 include, but are not limited to:
- 22.5.1 the costs of the Council's employees, agents and contractors reasonably incurred for that purpose,
 - 22.5.2 all fees and charges necessarily or reasonably incurred by the Council in remedying the breach, and
 - 22.5.3 all legal costs and expenses reasonably incurred by the Council, by reason of the breach.

Exercise of Council's rights at law or in equity

- 22.6 Nothing in this clause 22 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.

23 Enforcement in a court of competent jurisdiction

- 23.1 Without limiting any other provision of this Deed, the Parties may enforce this Deed in any court of competent jurisdiction.
- 23.2 For the avoidance of doubt, nothing in this Deed prevents:
- 23.2.1 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
 - 23.2.2 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 5 – Registration & Restriction on Dealings

24 Registration of this Deed

Application of clause

- 24.1 This clause 24 applies if Item 19 of the VPA Particulars states that this Deed is to be registered for the purposes of s7.6(1) of the Act.

Documents for registration

- 24.2 Within 14 days of the commencement of this Deed, the Developer is to deliver to the Council:
- 24.2.1 an instrument in registrable form requesting registration of this Deed on the title to the Land duly executed by the Landowner, and
 - 24.2.2 the written irrevocable consent of the Landowner and each person referred to in s7.6(1) of the Act to that registration.
- 24.3 The Developer is to do such other things as are reasonably necessary to enable lodgement and registration of this Deed to occur electronically through PEXA or another ELNO.

Removing notation from title

- 24.4 Upon the dedication of the Dedication Land to the Council in accordance with this Deed, the Parties are to do such things as are reasonably necessary to

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remove any notation relating to this Deed from the title of such part of the Land:

- 24.4.1 in so far as the part of the Land concerned is a Final Lot,
- 24.4.2 in relation to any other part of the Land, once the Developer and Landowner have completed their obligations under this Deed to the reasonable satisfaction of the Council, or
- 24.4.3 this Deed is terminated or otherwise comes to an end for any other reason.

25 Restriction on dealings

Restriction

25.1 The Landowner is not to:

- 25.1.1 sell or transfer the Land, other than a Final Lot, or
- 25.1.2 assign the Landowner's rights or obligations under this Deed, or novate this Deed,

to any person unless:

- 25.1.3 the Landowner 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
- 25.1.4 the Council has given written notice to the Landowner and 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
- 25.1.5 the Landowner and the Developer are not in breach of this Deed, and
- 25.1.6 the Council otherwise consents to the transfer, assignment or novation, such consent not to be unreasonably withheld.

25.2 The Developer is not to:

- 25.2.1 assign the Landowner's rights or obligations under this Deed, or novate this Deed,

to any person unless:

- 25.2.2 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
- 25.2.3 the Council has given written notice to the Developer and the Landowner stating that it reasonably considers that the purchaser, transferee, assignee or novatee, is reasonably capable of performing its obligations under this Deed, and

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25.2.4 the Landowner and the Developer are not in breach of this Deed, and

25.2.5 the Council otherwise consents to the transfer, assignment or novation, such consent not to be unreasonably withheld.

Continued performance of obligations by Developer

25.3 Subject to clause 25.4, the Developer and Landowner acknowledge and agree that they remain liable to fully perform their obligations under this Deed unless and until they have complied with their obligations under clause 25.1.

Exclusion from restriction

25.4 Clause 25.1 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.

Notice of Transfer

25.5 Despite any other provision of this clause 25, if the Land is transferred after the date of registration of this Deed the Developer must notify the Council in writing of the proposed new landowner 30 business days prior to the proposed settlement of the contract for the sale of the Land.

Part 6 – Indemnities & Insurance

26 Risk

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

27 Release

27.1 The Developer and Landowner release 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.

28 Indemnity

28.1 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 or the Landowner's obligations under this Deed except if, and to the extent that, the Claim arises because of the Council's negligence or default.

29 **Insurance**

Requirement for Developer insurances

- 29.1 Subject to clause 29.2, the Developer is to take out and keep current to the satisfaction of the Council the Insurances in relation to the Developer Works until the Developer Works are completed in accordance with this Deed.
- 29.2 In addition to the Insurances required under clause 29.1 the Developer must ensure that its contractors for the Developer Works take out and keep current to the satisfaction of the Council professional liability insurance for an amount of \$10,000,000 in relation to the Developer Works until the Developer Works are completed in accordance with this Deed.

Failure to comply with requirement

- 29.3 If the Developer fails to comply with clause 29.1 or 29.2, 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:
- 29.3.1 by calling upon the General Security provided by the Developer to the Council under this Deed, or
 - 29.3.2 recovery as a debt due in a court of competent jurisdiction.
- 29.4 The Developer is not to commence to provide any Developer Works unless it has first provided to the Council satisfactory written evidence of all of the insurances specified in clause 29.1 and 29.2.

Part 7 – Other Provisions

30 **Annual report by Developer**

Not Used

31 **Review of Deed**

Obligation to review Deed

- 31.1 The Parties agree to review this Deed 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.

Review triggers

- 31.2 For the purposes of clause 31.1, the relevant changes include (but are not limited to) any change to a law that restricts or prohibits or enables the

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Council or any other planning authority to restrict or prohibit any aspect of the Development.

Duty of Parties

- 31.3 For the purposes of addressing any matter arising from a review of this Deed referred to in clause 31.1, the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Deed.

Where change of law occurs

- 31.4 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.

No Dispute

- 31.5 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 31.1 (but not 31.4) is not a Dispute for the purposes of this Deed and is not a breach of this Deed.

32 Notices

- 32.1 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:
- 32.1.1 delivered or posted to that Party at its address set out in Item 21 or 22 of the VPA Particulars, or
 - 32.1.2 emailed to that Party at its email address set out in Item 21 or 22 of the VPA Particulars.
- 32.2 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.
- 32.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
- 32.3.1 delivered, when it is left at the relevant address,
 - 32.3.2 sent by post, 2 business days after it is posted, or
 - 32.3.3 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.
- 32.4 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.

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32.5 The Parties acknowledge that item 22 may identify two representatives. Notification of one of the Developer's representatives is sufficient notification for the purposes of this Deed and the Developer shall not dispute any notification given by the Council on the basis that the notification was given to and sent to only one of those representatives,

33 **Approvals and Consent**

33.1 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 **Costs of this Deed**

Costs of Deed

34.1 The Developer is to pay to the Council the Council's costs in relation 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.

Enforcement costs

34.2 The Council may serve a notice in writing on the Developer ('**Enforcement Cost Notice**') requiring the Developer to pay all or any reasonable costs and expenses incurred by the Council in connection with:

34.2.1 investigating a non-compliance by the Developer with this Deed, and

34.2.2 enforcing compliance by the Developer with this Deed.

34.3 For the avoidance of doubt, the costs and expenses referred to in clause 34.2 may include the costs or expenses incurred by the Council relating to the preparation or serving of the Enforcement Cost Notice.

34.4 An Enforcement Cost Notice is to specify the amount required to be paid to the Council by the Developer and the date by which the amount is to be paid.

34.5 The Council may recover any unpaid costs and expenses specified in an Enforcement Cost Notice as a debt in a court of competent jurisdiction.

No dispute

34.6 Part 3 of this Deed does not apply to anything done by the Council and any requirement imposed on the Developer by the Council in accordance with this clause 34.

35 Entire Deed

- 35.1 This Deed contains everything to which the Parties have agreed in relation to the matters it deals with.
- 35.2 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.

36 Further Acts

- 36.1 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.

37 Governing Law and Jurisdiction

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

38 Individual Liability and Benefits

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

39 No Fetter

- 39.1 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.

40 Illegality

- 40.1 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.



41 **Severability**

- 41.1 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.
- 41.2 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.

42 **Amendment**

- 42.1 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.

43 **Waiver**

- 43.1 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.
- 43.2 A waiver by a Party is only effective if it:
- 43.2.1 is in writing,
 - 43.2.2 is addressed to the Party whose obligation or breach of obligation is the subject of the waiver,
 - 43.2.3 specifies the obligation or breach of obligation the subject of the waiver and the conditions, if any, of the waiver,
 - 43.2.4 is signed and dated by the Party giving the waiver.
- 43.3 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.
- 43.4 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.
- 43.5 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.

44 **GST**

- 44.1 In this clause:
Adjustment Note, Consideration, GST, GST Group, Margin Scheme, Money, Supply and Tax Invoice have the meaning given by the GST Law.

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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.

- 44.2 Subject to clause 44.4, 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.
- 44.3 Clause 44.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.
- 44.4 No additional amount shall be payable by the Council under clause 44.2 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.
- 44.5 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:
- 44.5.1 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;
- 44.5.2 that any amounts payable by the Parties in accordance with clause 44.2 (as limited by clause 44.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 44.6 No payment of any amount pursuant to this clause 44, 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.
- 44.7 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.
- 44.8 This clause continues to apply after expiration or termination of this Deed.

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45 **Explanatory Note**

- 45.1 The Appendix contains the Explanatory Note relating to this Deed required by section 205 of the Regulation.
- 45.2 Pursuant to section 205 of the Regulation, the Parties agree that the Explanatory Note is not to be used to assist in construing this Deed.



Schedule 1: VPA Particulars

(Clause 1.1)

Item	Details
1. Land	<p>Lot 1 DP1173048 known as 1/4 & 4A Terminal Place, Merrylands.</p> <p>Lot 10 DP 1305248 known as 5 McLeod Road, Merrylands.</p> <p>Lot 11 DP 1305248 known as 7 McLeod Road, Merrylands.</p>
2. Development	<p>The development the subject of Development Applications, being in summary:</p> <ul style="list-style-type: none"> • construction of a 21 storey shop top housing development comprising four (4) commercial tenancies and 236 apartments over five (5) levels of basement parking. • construction of three (3) shop top housing buildings ranging in height from 12 to 17 storeys and comprising of six (6) shops and 303 apartments over six (6) levels of basement parking, and • the Developer Works.
3. Instrument Change	N/A
4. Application: a. Development Applications	The Shop Top Housing Development Applications, and the Public Domain Works Development Application.
5. Applicable Development Consent	Any consent granted under the Act to the Shop Top Housing Development Applications as modified from time to time.
6. Applicable Contributions Plan	Cumberland Local Infrastructure Contributions Plan 2020
7. Application of the following provisions of the Act to the Development: a. Section 7.11	S7.11 contributions that would be payable pursuant to a condition of consent imposed on a Development Consent granted to one or both of the Shop Top Housing Development Applications.

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b. Consideration of benefits	The Development Contributions are to be offset against s7.11 contributions referred to in Item 7.a above.
c. Section 7.12	Excluded
d. Subdivision 4 of Division 7.1	Not excluded
8. Council Land Dedication Contribution Amount	Not applicable
9. Developer Works Agreed Cost	\$7,606,066.00 (excluding GST)
10. Development Contribution Credit	N/A
11. Not Used	N/A
12. Not Used	
13. Defects Liability Period	12 months
14. Maintenance Period	12 months
15. Charge Land	N/A
16. General Security:	
a. General Security	100% of the value of the Developer Works
b. Indexation of General Security	CPI
17. Defects Liability Security	10% of the value of the Developer Works
18. Maintenance Security	N/A
19. Registration of this Deed	Yes
20. Insurances	
a. Contract Works Insurance	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.
b. Public Liability	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.

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c. Workers Compensation Insurance	As required by law.
d. Other insurance	As required by law.
21. Council Contact for Notices	<p> Postal Address: PO Box 42 MERRYLANDS NSW 2160 </p> <p> Email: council@cumberland.nsw.gov.au </p> <p> Telephone: (02) 8757 9000 </p> <p> Representative: The General Manager </p>
22. Developer and Landowner Contact for Notices	<p> Developer: </p> <p> Postal Address: PO Box 4081, Strathfield South NSW 2136 </p> <p> Email: anas@aland.com.au </p> <p> Telephone: 02 8076 5510 </p> <p> Representative: Anas Rahhal </p> <hr/> <p> Landowner: </p> <p> Postal Address: PO Box 4081, Strathfield South NSW 2136 </p> <p> Email: anas@aland.com.au </p> <p> Telephone: 02 8076 5510 </p> <p> Representative: Anas Rahhal </p>

Schedule 2: Development Contributions Table

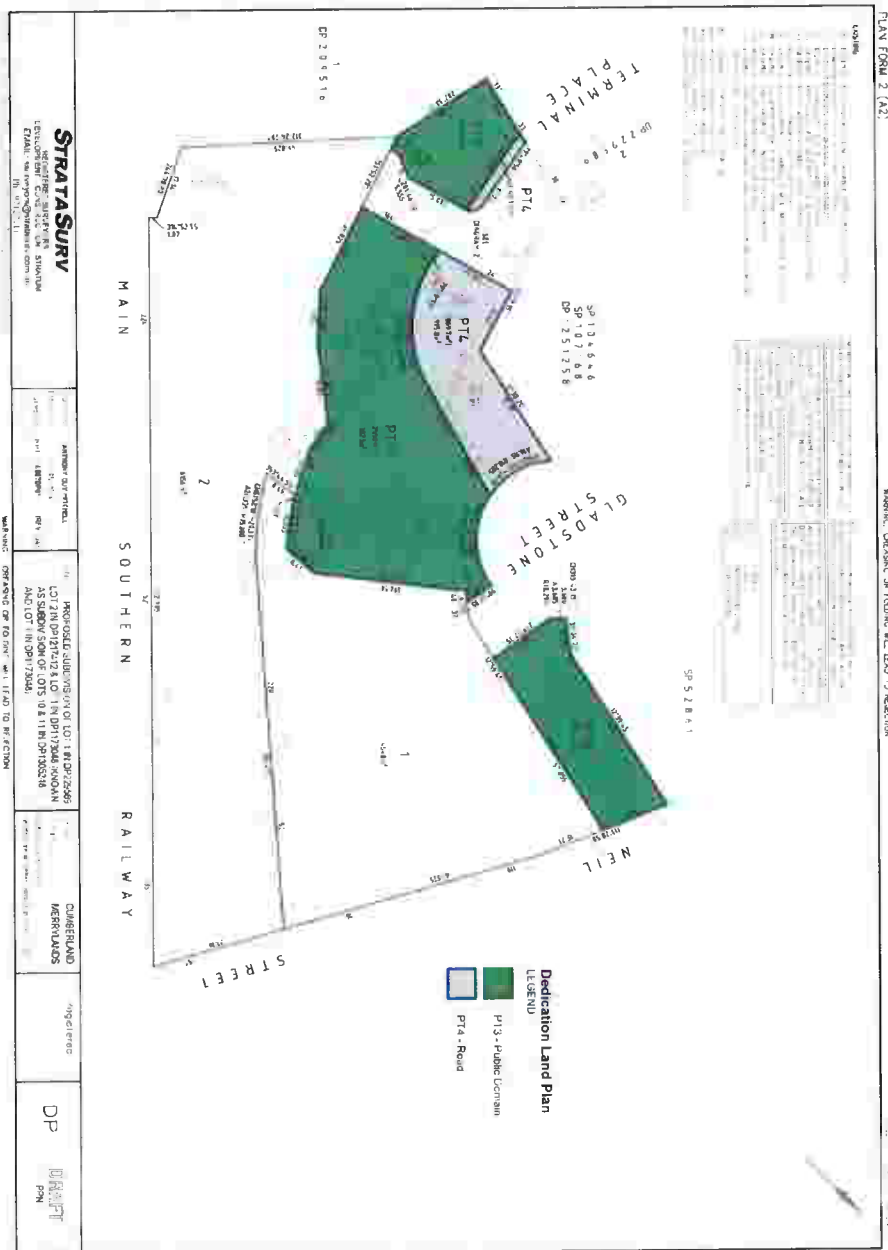
COLUMN 1 Item No / Details	COLUMN 2 Public Purpose	COLUMN 3 Timing	COLUMN 4 Contribution Value \$
A. Dedication Land			
1. Local Road Land identified as Lot 4 in Draft Subdivision Plan in Schedule 3 and otherwise presently known as McLeod Road. The size of the area of Lot 4 to be dedicated is 915.8m ² (PT4).	Roads and traffic management	Immediately prior to the issue of any Occupation Certificate for DA2022/0722 or the issue of an Occupation Certificate for DA2022/0776, whichever is the earlier.	\$1,623,713.40 (excl GST)
2. Local Open Space Land identified as PT 3 in Draft Subdivision Plan in Schedule 3. The size of the area of Pt 3 to be dedicated is 3,823m ² .	Passive recreation	Immediately prior to the issue of any Occupation Certificate for DA2022/0722 or the issue of an Occupation Certificate for DA2022/0776, whichever is the earlier	\$6,778,179.00 (excl GST)
A. Developer Works			
3. Public domain works associated with Precinct of Neil Street, Terminal Park and Boulevard Park as approved under any Development Consent for the Public Domain Works Development Application.	Public recreation	Either: <ul style="list-style-type: none"> Immediately prior to the issue of the last Occupation Certificate for DA2022/0722 or DA2022/0776, (whichever is the later); or 5 years from the date on which the Dedication 	\$7,606,066.00 (excl GST)

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		Land is dedicated to the Council, or such other date as the Parties may agree.	
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Schedule 3: Draft Plan of Subdivision showing Location of Dedication Land



[Handwritten signature]

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Schedule 4: Developer Works Location Plan



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Schedule 5: Developer Works Plans and Drawings

Plans and drawings not available at date of execution of this Deed. Refer to Schedule 6.

Schedule 6: Developer Works Provisions

Deed not Construction Contract

- 1 The Parties acknowledge and agree that this Deed is not a Construction Contract between the Council and the Developer.

Developer Works before execution of Deed

- 2 The terms of this Schedule 6 apply to any Developer Works that occurred before the Deed was executed.

Approved persons

- 3 The Developer is to design, construct, supervise, and test the Developer Works using Approved Persons.
- 4 Where the Developer proposes to substitute or add an Approved Person, the Developer must notify the Council in writing, and provide details of the new Approved Person who is to be engaged from in relation to the Developer Works.
- 5 The Council may, in its reasonable discretion, notify the Developer that a new Approved Person notified under clause 4 is not to be engaged in relation to the Developer Works, and the Developer must promptly take such action as is necessary to ensure that the person does not continue to be engaged in relation to the Developer Works.

Developer to procure compliance

- 6 The Developer is to provide every Approved Person engaged by it in relation to the Developer Works with a copy of this Deed executed by both Parties and procure their compliance with the relevant requirements of this Deed.

Requirement for Construction Contract

- 7 The Developer must enter into a Construction Contract with its Contractor for the construction of the Developer Works before any construction work occurs.
- 8 The Developer must provide the Council with a copy of the Construction Contract upon receipt of a written request by the Council.
- 9 The Developer must obtain the approval of the Council to any change to the Contractor, which approval the Council may not unreasonably withhold.

General obligations relating to Developer Works

- 10 The Developer is to provide the Developer Works:
 - 10.1 in the location or locations shown on the Developer Works Location Plan, in accordance with the Developer Works Plans and Drawings, and
 - 10.2 otherwise in accordance with this Deed.

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- 11 The Developer is to provide and complete the Developer Works in a good and workmanlike manner having regard to the intended purpose of the Developer Works and in accordance with:
- 11.1 all applicable laws,
 - 11.2 any Approval required by any law relating to the provision of the Developer Works, and
 - 11.3 the lawful requirements of any Authority.
- 12 The Developer is to ensure that anything necessary for the proper performance of its obligations under this Deed relating to the provision of the Developer Works is supplied or made available for that purpose.

Warranties relating to Developer Works

- 13 The Developer warrants to the Council that:
- 13.1 it has obtained all Approvals and has complied with all laws and applicable industry standards in relation to the Developer Works,
 - 13.2 it accepts that, if any aspect of the Developer Works do not comply this Deed, the Council is entitled to require the Developer to cease the Developer Works and to pursue its rights and remedies relating to the non-compliance under this Deed and, subject to this Deed, at law or in equity,
 - 13.3 the Developer Works, when completed, are to be fit for purpose,
 - 13.4 only Approved Persons are to be engaged in relation to the Developer Works.
- 14 The Developer is to procure in favour of the Council from the appropriate Approved Person engaged in relation to the Developer Works, any warranty reasonably required by the Council relating to the design, construction, supervision, inspection, testing or certification of the Developer Works.

Ownership & care of Developer Works

- 15 The Developer owns, and is responsible for care of the Developer Works, and bears all risk and liability in connection with the Developer Works, until the Council gives the Developer a Transfer of Ownership Notice in relation to the Developer Works.

Work health & safety

- 16 The Developer acknowledges that it is the Principal Contractor under WHS Law for the Developer Works unless and until such time that:
- 16.1 the Developer engages the Contractor to construct the Developer Works, or
 - 16.2 engages another person to be the Principal Contractor for the Developer Works,
- and authorises the 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.
- 17 For the purpose of the Developer's compliance with its obligations under clause 16, the Council:

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- 17.1 acknowledges that the Developer (or the Contractor, where appropriate) is the person with management and control of the relevant works area for the purpose of Part 2 of the *Work Health and Safety Act 2011* (NSW); and
- 17.2 authorises the Developer (or the Contractor, where appropriate) to exercise authority of the Council necessary to enable the Developer to discharge its obligations under clause 16.
- 18 If the Developer at any time terminates the engagement of the Contractor, or terminates its authority for the Contractor or other person referred to in clause 16 to be the Principal Contractor for the Developer Works, the Developer becomes the Principal Contractor until such time as a new person is appointed as Contractor or to otherwise be the Principal Contractor for the Developer Works.
- 19 The Developer is to use its best endeavours to ensure that all persons involved in the Developer Works comply with relevant WHS Law and procedures, including but not limited to:
- 19.1 following published government and industry WHS guidelines,
- 19.2 providing WHS induction training,
- 19.3 keeping and regularly updating WHS records,
- 19.4 preparing and maintaining an WHS management plan,
- 19.5 preparing a Project Safety Plan that details safety strategies, including how persons must act to comply with WHS Law,
- 19.6 providing safe work method statements for all tasks and ensuring they are complied with,
- 19.7 directing staff to take corrective action or stop work if they are not complying with the method statements or WHS Law,
- 19.8 identifying hazards and assessing risks using due diligence,
- 19.9 eliminating or controlling risks in line with WorkCover requirements using due diligence,
- 19.10 reviewing risk assessments and controlling measures,
- 19.11 providing information to employers and contractors about WHS,
- 19.12 documenting site-specific safety procedures.
- 20 The Developer is to use its best endeavours to ensure that:
- 20.1 the Council can audit, inspect and test the Developer Works without breaching WHS Law, and
- 20.2 the Council can access and use the Developer Works without breaching WHS Law.
- 21 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.

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Accidents & dangerous occurrences

- 22 The Developer is to notify WorkCover and the Council, as soon as it becomes aware of any serious accident or dangerous occurrence relating to the Developer Works.
- 23 Within a further 7 days, the Developer must formally notify or procure the notification of WorkCover of the accident or occurrence in accordance with the WHS Law, using any prescribed form.
- 24 The Developer must give to the Council a copy of all information and documents that have been provided to WorkCover relating to the accident or occurrence.
- 25 The Developer must also give to the Council, if requested by the Council, a written report relating to the accident or occurrence in the form specified by the Council.
- 26 The Developer must cooperate with WorkCover and the Council if the accident or occurrence is investigated by Work Cover or the Council.
- 27 The Developer must immediately give the Council a copy of any improvement or prohibition notices that WorkCover issues in relation to the Developer Works.

Design of Developer Works

- 28 Clauses 28 - 35 apply if and to the extent that Schedule 5 does not contain Developer Works Plans and Drawings for the Developer Works or any part.
- 29 The Developer may not commence construction of the Developer Works unless the Developer Works are designed and approved in accordance with this Deed.
- 30 Before commencing the design of the Developer Works, the Developer is to request the Council to provide the Developer with the Council's design requirements for the works.
- 31 Upon receipt of the Developer's request, the Council may:
- 31.1 initially request the Developer to provide a written proposal concerning the design of the Developer Works, including preliminary concept designs, to assist Council in determining and notifying the Developer of its requirements, and subsequently request the Developer to submit the plans and drawings of the Developer Works to the Council for approval, or
- 31.2 request the Developer to submit the plans and drawings of the works to the Council for approval.
- 32 The Council may reasonably require the Developer to make any change to the plans and drawings of the Developer Works that it reasonably considers necessary or desirable as a precondition to approving the plans and drawings, and the Developer is to make any such change.
- 33 The Council is to inform the Developer in writing when it approves the plans and drawings of the Developer Works.
- 34 The Parties are to ensure that the reference to the plans and drawings approved by the Council under are included in Schedule 5 without delay after that approval is given.
- 35 The Developer is not to make any application for any Approval relating to the Developer Works unless the Council approved the plans and drawings of the Developer Works under this Deed.

Variations to approved Developer Works & Costs

- 36 The Developer Works may be varied by agreement in writing between the Parties, acting reasonably, without the necessity for an amendment to this Deed.
- 37 The Party seeking the variation is to make a written request to the other Party accompanied by such information and supporting documents as is reasonably necessary to enable the other Party to properly consider the request.
- 38 The Party to whom the request is made is not to unreasonably delay, or withhold its Approval to, the request.
- 39 The Party who seeks the variation of the Developer Works must meet the costs of the variation, unless the other Party otherwise agrees.

Developer's obligations before construction commencement

- 40 Not less than 10 business days before the Developer commences construction of any of the Developer Works specified in Part C of Schedule 2 of this Deed, the Developer is to give the Council written notice of its intention to do so accompanied by:
- 40.1 a copy of all approved plans and drawings for the Developer Works so specified in electronic and paper format, and
- 40.2 a list of all Approved Persons and their contact details.
- 41 The Developer is to organise and conduct a pre-start meeting with Council personnel before starting the construction of a Developer Work specified in Part C of Schedule 2 of this Deed.

Protection of people, property & utilities

- 42 The Developer is to use all reasonable endeavours to ensure that, in providing the Developer Works:
- 42.1 all necessary measures are taken to protect people and property,
- 42.2 unnecessary interference with the passage of people and vehicles is avoided, and
- 42.3 nuisances and unreasonable noise and disturbances are prevented.
- 43 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 in connection with the Developer Works unless authorised in writing by the Council or any relevant Authority.

Damage to assets & property

- 44 The Developer must immediately notify the Council in writing of any loss or damage that occurs in respect of a Council asset of which it becomes aware while performing the Developer Works.
- 45 The Developer must replace or fix any Council asset the Developer loses or damages while performing the Developer Works in accordance with any reasonable requirements of the Council.
- 46 If an audit, inspection or test of the Developer Works shows that:

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- 46.1 the Developer Works do not conform to the location, design, specifications, materials or finishes approved by the Council under this Deed, or
- 46.2 damage has occurred to a Council asset or the property of another person in connection with the Developer Works,

the Council may give the Developer a notice in writing requiring it to take corrective action to bring the Developer Works into conformity or repair the damage, as the case requires.

- 47 Without limiting any other remedies available to the Council under this Deed, if the Developer does not comply with the Council's requirements under clauses 46-52, the Council may take the action required of the Developer and recover the Council's costs of so doing from the Developer.

Entry onto Land

- 48 The Developer is responsible for obtaining all necessary rights to lawfully enter, occupy, and provide the Developer Works on Other Land.
- 49 Upon receiving reasonable prior written notice from the Developer, the Council is to allow the Developer and the Approved Persons, to enter, occupy, and use Council owned or controlled land specified in the notice at any reasonable time if the occupation or use of the land by the Developer and the Approved Persons is reasonably necessary for the Developer Works.
- 50 The Council is not required to allow the Developer to enter, occupy and use any Council owned land that is used for public purposes unless and until the Developer has paid any applicable fee or rent, as approved by the Council, for that purpose.
- 51 Upon receiving reasonable prior notice from the Council, the Developer is to provide the Council with safe and unhindered access at any reasonable time to any land on which the Developer Works are being, or have been, provided.
- 52 The Council must comply with the Developer's reasonable safety requirements while on any land on which the Developer Works are being provided.

Audit, inspection, testing of Developer Works

- 53 The Council may undertake an audit, inspection or test of the Developer Works at any reasonable time for any purpose related to this Deed upon giving reasonable prior notice to the Developer.
- 54 The Developer is to provide the Council with any assistance that is reasonably required by the Council to enable the Council to undertake any audit, inspection or test of the Developer Works.
- 55 If an audit, inspection or test reasonably shows that particular action must be taken in relation to the Developer Works, the Developer is to:
- 55.1 take the action in the manner, and within the time, the Council reasonably requires, and
- 55.2 provide evidence to the Council that the action has been taken.
- 56 If an audit, inspection or test shows that the Developer Works have not been provided in accordance with this Deed, the Developer is to pay any Costs incurred by the Council in connection with the audit, inspection or test.

- 57 If the Council reasonably decides that a further and more detailed audit, inspection or test of the Developer Works is required, the Council may determine an approved fee in that regard and the Developer is to pay to the Council the fee so approved.

Access to information & records

- 58 The Council may make a written request to the Developer:
- 58.1 to provide information to the Council concerning the Developer Works,
 - 58.2 to allow the Council to inspect the Developer's records concerning the Developer Works, including by giving the Council access to premises owned, occupied or controlled by the Developer for that purpose.
- 59 The Developer is to comply with any such request made by the Council not later than 15 business days after the Council makes the request.

Practical Completion of Developer Works

- 60 The Developer is to use all reasonable endeavours to ensure that the whole of the Developer Works is the subject of one or more Practical Completion Certificates within a reasonable time from commencement of the Developer Works and prior to the issue of any Occupation Certificate for the development proposed under the Applicable Development Consents.
- 61 The Developer is to give the Council written notice requesting ('**Developer's Request**') that the Council issue a Practical Completion Certificate for the Developer Works or any part of the Developer Works.
- 62 The Developer's Request is to be accompanied by the following information:
- 62.1 a Works-as-Executed Plan of the Developer's Works to which the Developer's Request relates, and
 - 62.2 all technical data relating to those Works, including but not limited to, geotechnical testing, structural certificates, CCTV footage and material certifications.
- 63 Upon receipt of the Developer's Request, the Council is to inspect the relevant Developer Works in the presence of a representative of the Developer at a time reasonably agreed between the Parties that is not later than 14 days after the Council receives the request.
- 64 As a precondition to issuing a Practical Completion Certificate, the Council may direct the Developer in writing to complete, Rectify or repair any specified part of the Developer Works the subject of the Developer's Request within a period specified in the direction in order to bring the Developer Works into conformity with this Deed or any Approval.
- 65 The Developer is to promptly comply with any such direction given by the Council.
- 66 The Council may undertake more than one inspection and issue more than one direction to the Developer in order to be satisfied that a Practical Completion Certificate may be issued for the Developer Works the subject of the Developer's Request.
- 67 The Council is to promptly issue a Practical Completion Certificate for the Developer Works the subject of the Developer's Request when it is reasonably satisfied that no

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aspect of the relevant Developer Works reasonably requires completion, rectification or repair.

Maintenance of Developer Works

- 68 The Developer is to Maintain the Developer Works during the Maintenance Period.
- 69 The Council is to permit the Developer to enter any land owned or controlled by the Council to enable the Developer to Maintain the Developer Works during the Maintenance Period.

Rectification of Defects

- 70 The Council may give the Developer a Rectification Notice during the Defects Liability Period.
- 71 The Developer is to comply with a Rectification Notice according to the terms of the Rectification Notice and to the reasonable satisfaction of the Council.
- 72 The Council is to do such things as are reasonably necessary to enable the Developer to comply with a Rectification Notice given by the Council including permitting the Developer to enter the Dedication Land.

Final Completion of Developer Works

- 73 The Developer is to use all reasonable endeavours to ensure that the whole of the Developer Works is the subject of one or more Final Completion Certificates at the end of Defects Liability Period.
- 74 The Developer may make a written request ('**Developer's Request**') to the Council to issue a Final Completion Certificate for the Developer Works or any part of the Developer Works at the end of Defects Liability Period.
- 75 The Developer's Request is to be accompanied by a full Works-As-Executed-Plan for the Developer Works for which the Final Completion Certificate is sought in a format agreed to by the Council.
- 76 Upon receipt of the Developer's Request, the Council is to inspect the relevant Developer Works in the presence of a representative of the Developer at a time reasonably agreed between the Parties that is not later than 14 days after the Council receives the request.
- 77 As a precondition to issuing a Final Completion Certificate, the Council may direct the Developer in writing to complete, Rectify, repair or Maintain any specified part of the Developer Works the subject of the Developer's Request within a period specified in the direction in order to bring the Developer Works into conformity with this Deed or any Approval.
- 78 The Developer is to promptly comply with any such direction given by the Council.
- 79 The Council may undertake more than one inspection and issue more than one direction to the Developer in order to be satisfied that a Final Completion Certificate may be issued for the Developer Works the subject of the Developer's Request.
- 80 The Council is to promptly issue a Final Completion Certificate for the Developer Works the subject of the Developer's Request when it is reasonably satisfied that no aspect of the relevant Developer Works reasonably requires completion, rectification or repair.

Copyright in Works-As-Executed Plan

- 81 The Developer, being the copyright owner in the Works-As-Executed Plan, assigns the copyright in the Works-As-Executed Plan to the Council free of Cost to the Council.
- 82 If the Developer is not the copyright owner of the Work-As-Executed Plan, the Developer is to promptly procure the assignment of the copyright of the Works-As-Executed Plan to the Council free of cost to the Council.

Transfer of Ownership of Developer Works

- 83 At any time after the Council issues a Practical Completion Certificate for Developer Works to the Developer, the Council may issue a Transfer of Ownership Notice to the Developer for those Developer Works.
- 84 The Developer Works the subject of a Transfer of Ownership Notice vest in the Council on the vesting date stated in the Transfer of Ownership Notice.

Transfer of land on which Developer Works Constructed

- 85 Unless otherwise specified in this Deed or agreed in writing between the Parties:
- 85.1 the Developer is to do all things necessary to dedicate or procure the dedication to the Council of the land on which Developer Works the subject of a Transfer of Ownership Notice are constructed,
- 85.2 the dedication is to occur by not later than the vesting date stated in the Transfer of Ownership Notice,
- 85.3 the dedication is to be free of cost to the Council.
- 86 Land on which Developer Works the subject of a Transfer of Ownership Notice are constructed that is required to be dedicated to the Council under clause 85 is Dedication Land for the purposes of this Deed.

Easements, covenants, etc.

- 86.1 The Developer must create, or procure the creation of, any easement or covenant or any other instrument benefitting the Council that is reasonably required by the Council in relation to the Developer Works.
- 86.2 The Developer is to ensure that any such easement, covenant or other instrument is registered on the title to the relevant land before the vesting date specified in a Transfer of Ownership Notice for such Works.
- 86.3 The Costs required to be incurred by the Developer in doing so include, unless otherwise agreed in writing between the Parties, the payment of compensation to any person.

Removal of structures & Equipment

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

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- 87.1 remove from the land any structure not comprising or required in connection with the completed Developer Works and make good any damage or disturbance to the land as a result of that removal,
 - 87.2 remove from the land any Equipment and make good any damage or disturbance to the land as a result of that removal, and
 - 87.3 leave the land in a neat and tidy state, clean and free of rubbish.
-



Schedule 8: Terms of Construction Access Licence

Commencement of Licence

- 1 The Parties acknowledge and agree that as and from the date on which the Dedication Land is dedicated to the Council, the Council grants to the Developer a non-exclusive licence for the Developer to continue to occupy and use the Dedication Land for the purposes specified in clause 2 of this Schedule 8.
- 2 The permitted purposes under this licence are:
 - 2.1 passing and re-passing over so much of the Dedication Land on foot or in vehicles to access land identified as Lot 1 or Lot 2 in the Draft Plan of Subdivision but only to the extent reasonably necessary to carry out the Development, and
 - 2.2 storage and use of construction plant and equipment but only to the extent reasonably necessary to carry out the Development.

(Permitted Purposes).

Use of Dedicated Land

- 3 The terms of this Schedule 8 apply to the entry, use and occupation of the Dedication Land once the Dedication Land has been dedicated to the Council, except as otherwise provided for under this Deed.

Fee Payable

- 4 No Fee is payable by the Developer for the use of the Dedication Land in accordance with the provisions of this Schedule 8.

Nature of Rights granted

- 5 The Council and the Developer agree as follows:
 - 5.1 it is not the intention of either of them to create the relation of landlord and tenant;
 - 5.2 legal possession and control of the Dedication Land shall at all times remain vested in the Council and the Developer shall not acquire any estate or interest in the Dedication Land;
 - 5.3 the Developer shall not be entitled to use the Land to the exclusion of the Council or others authorised by the Developer; and
 - 5.4 the Construction Access Licence is personal to the Developer and must not be assigned other than as part of any assignment of this Deed in accordance with the provisions of this Deed.
- 6 The Council retains its right of access over the Dedication Land and to:
 - 6.1 enter the Dedication Land upon giving the Developer not less than 24 hours prior written notice with employees, workmen, contractors and vehicles for whatever purposes in connection with the exercise of its statutory powers and rights under this Deed,

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- 6.2 temporarily prevent the use of the Dedication Land by the Developer to undertake urgent repairs or otherwise in the case of emergencies without payment of compensation, and
- 6.3 provide that the Council must use reasonable endeavours to minimise any inconvenience and interference with the Developer's use and enjoyment of the Dedication Land.

Developer Obligations

- 7 For so long as the Developer uses and occupies the Dedication Land under this Construction Access Licence, the Developer must:
 - (a) ensure that public access to the Dedication Land is prevented and the Dedication Land is secured at all times;
 - (b) comply with all statutes, orders and regulations, present or future, affecting or relating to the use of the Dedication Land by the Developer;
 - (c) comply with all requirements which may be made or notices or orders which may be given to the Developer by any governmental, semi-governmental, health, licensing or any other authority having jurisdiction or authority in respect of the Developer's specific use of the Dedication Land;
 - (d) ensure that the use of the Dedication Land does not result in a Contamination Event or Pollution Event;
 - (e) if a Contamination Event or Pollution Event occurs as a result of the Developer's use of the Dedication Land, the Developer must:
 - (i) as soon as reasonably practicable after the Developer becomes aware of the Contamination Event or Pollution Event, the Developer must notify the Council;
 - (ii) undertake any reasonable emergency clean up works to restrict the spread of Contamination or Pollution and prevent further Contamination or Pollution from occurring; and
 - (iii) if required by the Environment Protection Authority, prepare a management plan at its own cost for the clean-up and remediation of the Contamination or Pollution (as the case may be),
 - (iv) however, for the avoidance of doubt, the Developer is not liable or responsible for any Contamination or Pollution existing as at the Commencing Date including any claim, damage, loss, cost or expense arising out of or in connection with any existing Contamination or Pollution.
 - (f) give to the Council notice in writing of:
 - (i) any material accident, defect, or want of repair in any services, roads, structures or fixtures (including fencing) in or on the Dedication Land; and

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- (ii) any circumstances likely to be or to cause any danger, risk or hazard to the Dedication Land or any person on the Land, as soon as reasonably practicable after the Developer becomes aware of it;
- (g) not cause a nuisance or anything which may be deemed by legislation, regulation, or by-laws to be a nuisance upon or in connection with the Dedication Land and shall abate such nuisance as soon as reasonably practicable and comply with the provisions of every such statute, regulation and by-law and with every requisition or order of any local or other public authority in reference thereto;
- (h) only make such improvements or alterations to the Dedication Land as may be authorised under the Development Consent granted in respect of the Public Doman Works Development Application;
- (i) comply at all times with relevant provisions of the Work Health and Safety Act 2011 (NSW) and the Work Health and Safety Regulation 2011 (NSW);
- (j) not without the prior written approval of the Council (not to be unreasonably withheld or delayed) erect or modify on the Land any signage;
- (k) For the purposes of this clause the following definitions apply:
 - (i) **Contamination Event** means an event which would result in the Contamination of the Dedication Land or any part of it or any water found or stored on the Dedication Land which would or could result in an offence under or the breach of the CLM Act.
 - (ii) **Pollution Event** means an event which would result in pollution (as defined by the *Protection of the Environment Operations Act 1997 (NSW)* which would or could result in an offence under or the breach of that Act.

Insurances

- 8 Without limiting clause 29 of this Deed the Developer is to take out and keep current the Insurances in relation to the use of the Dedication Land under this Construction Access Licence. Clause 29.2 applies to this Construction Access Licence and the Developer is not to commence using the Dedication Land after it has been dedicated to the Council unless it has first provided to the Council satisfactory written evidence of all insurances required under this clause.

Indemnities

- 9 Without limiting clause 26 of this Deed, the Developer occupies the Dedication Land at its own risk.
- 10 For the avoidance of doubt, the parties agree that clause 28 applies to the Developer's entry, occupation and use of the Dedication Land under this Construction Access Licence.
- 11 The indemnities in clause 10 of this Schedule 8 survive termination of the Construction Access Licence or the completion of obligations under this Deed.

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Council's obligations

- 12 Without limitation to the Council's right to enter upon the Dedication Land, the Council may:
- (b) inspect the Dedication Land for the purposes of viewing the state of repair and ascertaining the Developer's compliance with the provisions of this Deed upon giving the Developer not less than 24 hours prior written notice; and
 - (c) may serve upon the Developer notice in writing requiring the Developer to repair any damage to the Dedication Land or any of the Council's property on the Dedication Land which has been caused by the Developer within a reasonable time.
- 13 The Council must use reasonable endeavours to minimise any inconvenience and interference with the Developer's use and enjoyment of the Land in exercising its rights under clause 12.

Disputes

- 14 Clauses 17 and 18 of this Deed apply to any dispute under the Construction Access Licence.

Termination of Licence

- 15 The Construction Access Licence will terminate upon the issue of a Final Completion Certificate under clause 80 of Schedule 6 of this Deed or if this Deed is otherwise terminated.
- 16 The Construction Access Licence may also be terminated by the Council at any time without compensation to the Developer if the Developer is in breach of its obligations to perform the Developer Works and the Council is entitled to exercise rights under clause 19.7 or 20.4 of this Deed.

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Execution

Executed as a Deed

Dated: 18/9/24

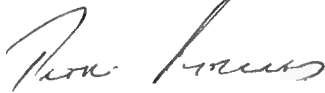
Executed by the Council pursuant to s377 of the Local Government Act 1993:



Signature of General Manager (as the duly authorised delegate of the Council)



Signature of Witness



Name of General Manager

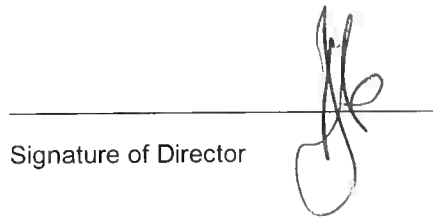


Name of Witness

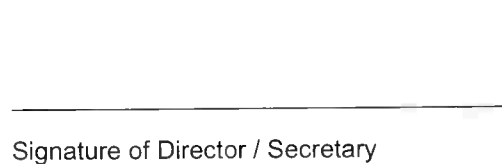
16 Memorial Avenue, Merrylands

Address of Witness

Executed by Merrylands (A) 88 Development Pty Ltd in accordance with s127(1) of the Corporations Act (Cth) 2001



Signature of Director



Signature of Director / Secretary



Name




Name



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Merrylands (A) 88 Development Pty Ltd
Merrylands (B) 88 Development Pty Ltd**

Executed by Merrylands (B) 88 Development Pty Ltd in accordance with
s127(1) of the Corporations Act (Cth) 2001



Signature of Director


Signature of Director / Secretary

Andrew Hirsto

Name

Name

Executed by Merrylands 88 Pty Ltd in accordance with s127(1) of the Corporations
Act (Cth) 2001



Signature of Director

Signature of Director / Secretary

Andrew Hirsto

Name

Name



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Appendix: Explanatory Note

(Clause 45)

Environmental Planning and Assessment Regulation 2021

(Section 205)

Planning Agreement

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

Parties

Council

Cumberland City Council ABN 22 798 563 329 of
PO Box 42 MERRYLANDS NSW 2160 (**Council**)

Developer

Merrylands (A) 88 Development Pty Ltd ABN 89
658 404 632 of PO Box 4081, Strathfield South NSW 2136 and
Merrylands (B) 88 Development Pty Ltd ABN 23
658 404 730 of PO Box 4081, Strathfield South NSW 2136

Landowner

Merrylands 88 Pty Ltd ABN 47 648 473 929 of PO Box
4081, Strathfield South NSW 2136

Description of the Land to which the Planning Agreement Applies

This Planning Agreement applies to land comprised in lot 1 in DP1173048 known as 1/4 & 4A Terminal Place, Merrylands, lot 10 DP 1305248 known as 5 McLeod Road, Merrylands and lot 11 DP 1305248 known as 7 McLeod Road, Merrylands.

Description of Proposed Development

This Planning Agreement applies to the Land and development on the Land the subject of Development Application 2022/0722 (PAN-286681) and Development Application 2022/0776 (PAN-292592), being development for the construction of shop top housing development comprising of commercial tenancies, neighbourhood shops and residential units.

Description of Development Contributions

The Planning Agreement requires the Developer to dedicate part of the land marked proposed Lot 3 in the Subdivision Plan at Schedule 3 for local open space and part of the land marked proposed Lot 4 in the Subdivision Plan at Schedule 3 for local road. The proposed Dedication Land is to be dedicated prior to issuing any occupation certificate in DA2022/0776 (PAN-292592 of the issue of any Occupation Certificate for DA2022/0722 (PAN-286681), whichever is the earlier.

Additionally, works are to be carried out in accordance with development consent granted to Development Application 2023/0485 (PAN-359842) (as may be modified from time to time) on the land that has been dedicated for open space. This development application seeks development consent to carry out public domain and civil works including a public open space area, public art, water feature and associated landscaping on the land dedicated for open space.

Summary of Objectives, Nature and Effect of the Planning Agreement

Objectives of Planning Agreement

The objectives of the Planning Agreement is to provide for the delivery of public benefits within the Neil Street Precinct in connection with the Development by requiring the Developer and the Landowner (as applicable) to:

- dedicate the Dedication Land to the Council for the purposes of public open space and the provision of public road that improves the connectivity and access for the broader precinct, Merrylands town centre and its surrounds; and
- deliver public domain upgrades and works that relates to the embellishment of the proposed future parkland such as Terminal Place, Neil Street and Boulevard Parks.

Nature of Planning Agreement

The Planning Agreement is a planning agreement under section 7.4(1) of the Act. The Planning Agreement is a voluntary agreement under which Development Contributions (as defined in clause 1.1 of the Planning Agreement) are made by the Developer for various public purposes (as defined in section 7.4(2) of the Act).

The details, staging and timing of these Development Contributions are set out in Schedule 2 of the Planning Agreement.

Effect of the Planning Agreement

The Planning Agreement:

- is in connection with Development Application 2022/0722 (PAN-286681) and Development Application 2022/0776 (PAN-292592);
- proposed public works for which development consent is sought under Development Application DA2023/0485 (PAN-286681);

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- relates to the carrying out of the Development (as defined in clause 1.1 of the Planning Agreement) on the Land by the Developer;
- does not exclude the application of s 7.11 and Subdivision 4 of Division 7.1 of the Act to the Development;
- excludes the application of s 7.12 of the Act to the Development;
- is to be registered on the title to the Land;
- imposes restrictions on the Parties transferring the Land or part of the Land or assigning, or novating an interest under the agreement;
- provides a dispute resolution method where a dispute arises under the agreement, being mediation and expert determination; and
- provides that the planning agreement is governed by the law of New South Wales.

Assessment of the Merits of the Planning Agreement

The Planning Purposes Served by the Planning Agreement

The Planning Agreement:

- promotes and co-ordinates the orderly and economic use and development of the land to which it applies;
- provides increased opportunity for public involvement and participation in environmental planning and assessment of the Development; and
- enables the developer Works and Land value of the Dedication Land to be offset against development contributions under sections 7.11.

How the Planning Agreement Promotes the Public Interest

The Planning Agreement requires the Landowner to dedicate land to the Council for the purposes of open space and provides a positive impact on the public as the open space land will serve the Landowner's development as well as the wider community within the Neil Street Precinct and Merrylands town centre.

The Planning Agreement promotes and co-ordinates the orderly and economic use and development of the land to which the Planning Agreement applies by ensuring that the open space needs of the development and wider community are met.

The Planning Agreement also promotes the public interest by promoting the objects of the Act set out in sections 1.3(a), (c) and (j).

The Deed also promotes the following guiding principles for local councils as set out in s8A of the *Local Government Act 1993*:

- the Deed facilitates the Council's management of assets so that current and future local community needs can be met in an affordable way by requiring the Landowner to dedicate open space land that will benefit the wider community,

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- the Deed is an example of Council working with others, being the Landowner, to secure appropriate amenities for local community needs,
- the Deed promotes active engagement with local communities by being required to be publicly notified in accordance with the *Environmental Planning and Assessment Regulation 2021*.

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

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

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

This Planning Agreement contains certain requirements that must be complied with before the Construction Certificate for DA2023/0485 (PAN-286681) is issued. There are also requirements that must be complied with before an Occupation Certificate is issued for either Development Application 2022/0722 (PAN-286681) and Development Application 2022/0776 (PAN-292592). See Schedule 2 of the VPA.

